

**1**

ARTICLES OF INCORPORATION

**2**

BYLAWS

**3**

DCCR's

**4**

AMENDMENTS

**5**

POLICIES

**6**

INSURANCE / CONTRACTS

**7**

BUDGET

**8**

HOMEOWNER LISTING AND MINUTES



**FILED**  
In the Office of the  
Secretary of State of Texas

**APR 07 2015**

**Corporations Section**

**CERTIFICATE OF FORMATION OF  
HILLSIDE ON THE LAKE HOMEOWNERS ASSOCIATION**

The undersigned natural person, being of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as incorporator of a nonprofit corporation under the Texas Business Organizations Code, does hereby adopt the following Certificate of Formation for such corporation:

**ARTICLE I- NAME**

The name of the corporation is Hillside on the Lake Homeowners Association (the "Association").

**ARTICLE II- NONPROFIT CORPORATION**

The Association is a nonprofit corporation.

**ARTICLE III- DURATION**

The Association shall exist perpetually.

**ARTICLE IV- PURPOSE AND POWERS OF THE ASSOCIATION**

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. The Association is formed for the general purposes of exercising the rights and powers and to perform the duties and obligations of a Texas property owners association, in accordance with applicable State law, including, without limitation, all of the powers and privileges, and performing all of the duties and obligations, of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions for Hillside on the Lake that is to be recorded in the Official Public Records of Dallas County, Texas, as the same may be amended from time to time (the "Declaration"). Without limiting the generality of the foregoing, the Association is organized for the following general purposes:

- (a) to fix, levy, collect, and enforce payment by any lawful means all charges or assessments arising pursuant to the terms of the Declaration;
- (b) to pay all expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the Association's property; and
- (c) to have and to exercise any and all powers, rights, and privileges which a nonprofit entity organized under the Texas Business Organizations Code may now, or later, have or exercise.

The above statement of purposes shall be construed as a statement of both purposes and powers. The purposes and powers stated in each of the clauses above shall not be limited or restricted by reference to, or inference from, the terms and provisions of any other such clause, but shall be broadly construed as independent purposes and powers.

**ARTICLE V- REGISTERED OFFICE; REGISTERED AGENT**

The street address of the initial registered office of the Association is 405 State Highway 121 Suite A-210, Lewisville, Texas 75067. The name of its initial registered agent at such address is Kenny Docekal.

**ARTICLE VI- MEMBERSHIP**

The Association is a nonstock membership organization. Membership in the Association shall be as defined and set forth in the Declaration, and is dependent upon ownership of a property interest. Any person or entity acquiring a property interest as set forth in the Declaration shall automatically become a member of the Association. Membership in the Association shall be appurtenant to, and shall run with, the property interest. The foregoing shall not be deemed or construed to include persons or entities holding a property interest merely as security for performance of an obligation. Membership may not be severed from or in any way transferred, pledged, mortgaged, or alienated except together with the title to the qualifying property interest, and then only to the transferee of title to such property interest.

**ARTICLE VII- VOTING RIGHTS**

Voting rights of the members of the Association shall be determined as set forth in the Declaration. No owner, other than the Declarant (as defined in the Declaration) under the Declaration, shall be entitled to vote at any meeting of the Association until such owner has presented to the Association evidence of ownership of a qualifying property interest in the Property (as defined in the Declaration).

**ARTICLE VIII- BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals, who need not be members of the Association. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors of nonprofit corporations pursuant to the Texas Business Organizations Code. The number of Directors of the Association may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Kenny Docekal	405 State Highway 121, Suite A-210 Lewisville, Texas 75067
Bryan Poche	405 State Highway 121, Suite A-210 Lewisville, Texas 75067
Gary Rae	405 State Highway 121, Suite A-210 Lewisville, Texas 75067

As set forth in the Declaration, the initial directors serve at the pleasure of the Declarant, and who will serve until the earlier of the appointment of a successor by Declarant or their successor is elected by the members of the Association as set forth in the Declaration. All of the powers and prerogatives of the Association shall be exercised by the initial Board of Directors named above until the first annual meeting of the Association.

#### ARTICLE IX- LIMITATION OF DIRECTOR LIABILITY

A director of the Association shall not be personally liable to the Association or its members for monetary damages for any act or omission in his capacity as a director, except to the extent otherwise expressly provided by a statute of the State of Texas. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a director of the Association existing at the time of the repeal or modification.

#### ARTICLE X- INDEMNIFICATION

Each person who acts as a director, officer or committee member of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him in connection with any civil or criminal action, suit or proceeding in which he may be named as a party defendant or in which he may be a witness by reason of his being or having been such director or officer or by reason of any action alleged to have been taken or omitted by him in either such capacity. Such indemnification shall be provided in the manner and under the terms, conditions and limitations set forth in the Bylaws of the Association. The Association may also indemnify a person who is or was an employee, agent, trustee, attorney or other representative of the Association, against any liability asserted against or incurred by such person acting in that capacity.

#### ARTICLE XI- DISSOLUTION

The Association may be dissolved with the written and signed assent of not less than ninety percent (90%) of the total number of votes of the Association, as determined under the Declaration. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

#### ARTICLE XII- ACTION WITHOUT MEETING

Any action required by law to be taken at any annual or special meeting of the members of the Association, or any action that may be taken at any annual or special meeting of the members of the Association, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the number of members having the total number of votes of the Association necessary to enact the action taken, as determined under the Declaration or this Certificate of Formation.

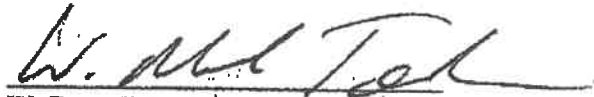
**ARTICLE XIII- AMENDMENT**

This Certificate of Formation may be unilaterally amended without notice to or a vote of the Members to the extent set forth in the Declaration by the Board of Directors or by the Declarant. For all other purposes, an amendment of this Certificate of Formation shall be by proposal submitted to the membership of the Association. Any such proposed amendment submitted to the membership shall be adopted only upon an affirmative vote by the holders of a minimum of two-thirds (2/3) of the total number of votes of the Association, as determined under the Declaration. In the case of any conflict between the Declaration and this Certificate of Formation, the Declaration shall control; and in the case of any conflict between this Certificate of Formation and the Bylaws of the Association, this Certificate of Formation shall control.

**ARTICLE XIV- ORGANIZER**

The name of the organizer is W. Russell Toates, whose address is 5501 LBJ Fwy, Suite 220, Dallas, TX 75240.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, on April 7, 2015.

  
W. Russell Toates, Organizer



**BYLAWS  
OF  
HILLSIDE ON THE LAKE HOMEOWNERS ASSOCIATION**

**Article I**

Name, Membership, and Definitions

Section 1. Name. The name of the Association is HILLSIDE ON THE LAKE HOMEOWNERS ASSOCIATION (hereinafter referred to as the “**Association**”).

Section 2. Membership. The Association shall have members as more fully set forth in that recorded instrument titled “Declaration of Covenants, Conditions and Restrictions for Hillside on the Lake” (said instrument, as amended and supplemented, hereinafter referred to as the “**Declaration**”), the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 3. Definitions/Gender. All other capitalized terms used in these Bylaws shall have the same meanings as that set forth in the Declaration, unless otherwise provided. Pronouns, wherever used in these Bylaws, shall include all persons regardless of gender.

**Article II**

Association: Meetings, Quorum, Voting, Proxies

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board of Directors either in the community of Hillside on the Lake or as convenient to the Members as possible and practical.

Section 2. Annual Meetings. The annual meeting of the Association shall be held on a date and at a time designated each year by the Board of Directors.

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Members representing at least twenty (20%) percent of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to send to the Owner of each Lot written notice of each annual or special meeting of the Association stating the purpose of the meeting, as well as the time and place where it is to be held. Such notice may be delivered personally, by mail, by facsimile, and to the extent expressly authorized by statute, by electronic message. If a Member desires that notice be given at an address other than the Lot, the Member shall provide the alternative address for the purpose of receiving notice in writing to the Secretary. Notice by facsimile must be sent to the facsimile number provided to the Association in writing by that Member. Notice shall be served not less than ten (10) nor more than sixty (60) days before a meeting. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail, first class postage pre-paid, addressed to the Member. If faxed, the notice shall be deemed to be delivered as of the date and time shown on a written confirmation that the facsimile was successfully transmitted. If sent by electronic message, the notice shall be deemed to be delivered as provided by applicable statute. The Board of Directors may use any other means to deliver a notice of a meeting that may become available with advancements in technology, provided that notice by such means is authorized by statute.



Section 5. Waiver of Notice. Waiver of notice of meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to the calling or convening of the meeting is raised before the business (of which proper notice was not given) is put to a vote.

Section 6. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, either in person or by proxy, the presiding officer may adjourn the meeting and reconvene at a time not less than five (5) days and not more than thirty (30) days from the time the original meeting was called. If a time and place for reconvening the meeting is not fixed by those in attendance at such an adjourned meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed herein for a first called meeting. At such reconvened meeting, whether or not a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice provided that (a) at least five percent (5%) of the total votes of the Members as of the date of the meeting is present in person and/or by proxy; and, (b) any action taken shall be approved by at least a majority of all of the Members present, in person and/or by proxy, at such reconvened meeting.

Section 7. Voting. The voting rights of the Members shall be as set forth in the Declaration; provided that, all Members shall have the right to vote in the election of Directors and on any matter concerning the rights or responsibilities of Members. Members may vote in person, by proxy, by absentee ballot, or by electronic ballot.

Section 8. Proxies. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon (a) conveyance by the Member of the Member's interest in a Lot; (b) receipt of notice by the Secretary of the death or judicially declared incompetence of a Member; (c) receipt of written revocation; or, (d) expiration of eleven (11) months from the day of the proxy. In the event a Member executes more than one (1) proxy, the proxy with the most current date shall be valid. Proxies not delivered prior to the start of any meeting shall not be valid.

Section 9. Majority of Members. As used in these Bylaws, the term "majority of Members" shall mean those votes, Members, or any other group, as the context may indicate, totaling more than fifty percent (50%) of the total number.

Section 10. Quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of more than five percent (5%) of the total votes of the Members as of the time of the meeting shall constitute a quorum at all meetings of the Association.

Section 11. Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary, or another person designated by the Secretary, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 12. Action Without a Meeting. To the extent allowed by applicable law, any action which may be taken or is required to be taken at a meeting of the Association may be taken without a meeting if written consent is signed by Members holding the number of votes necessary to approve the action at a meeting. The written consent must (a) set forth the action to be taken and (b) be executed by the required number of Members as of the effective date set forth in the written consent. Any written consent adopted in accordance with this section shall have the same force and effect as a unanimous vote of the Members.

## Article III

### Board of Directors: Number, Powers, Meetings

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, each Director shall be a Member. With the exception of Declarant, not more than one (1) representative of a particular corporation or other entity that is a Member may serve on the Board at any given time. A Member is not eligible to serve on the Board of Directors if the Member has been convicted of a felony or crime involving moral turpitude and there is written, documented evidence of such a conviction from a database or other record maintained by a governmental law enforcement authority.

Section 2. Directors During Development Period. Except as provided in Section 5 of this Article, the Directors shall be selected by the Declarant, acting in its sole discretion, and shall serve at the pleasure of the Declarant during the Development Period, as defined in the Declaration, unless the Declarant shall earlier surrender its right to select Directors. The Directors selected by the Declarant need not be Owners or residents in Hillside on the Lake. Following the termination of the Development Period or the earlier surrender of Declarant's right to select Directors, all Directors must be Members of the Association.

Section 3. Number of Directors. During the Development Period, the Association shall be governed by a Board of Directors consisting of three (3) persons. Upon the expiration of the Development Period, the Association shall continue to be governed by a Board of Directors consisting of three (3) persons unless, at the first meeting of the Members held after the expiration of the Development Period, a majority of the Members present at such meeting vote to increase the number of positions on the Board to five (5).

Section 4. Candidates for Election to the Board. All Members have the right to run for a position on the Board of Directors. Each year, at least sixty (60) days prior to the date of the annual meeting of the Members, the Association shall send notice to all Members of the number of positions on the Board to be filled by election at the upcoming annual meeting and the right of all Members to run for a position on the Board. The notice shall specify a date by which a Member must submit his/her name as a candidate for election to the Board, together with biographical information. The Association must be notified by the Member who desires to run for a position on the Board, not another Member, to confirm the Member's desire to run for election and to serve on the Board. All Members who notify the Association by the stipulated deadline shall be candidates whose names and biographical information shall be included in the notice of annual meeting sent to all Members. A Member who does not submit his/her name by the deadline set forth in the Association's notice may thereafter notify the Association of his/her desire to run for election to the Board and, in that event, the Member shall be a candidate for election to the Board. However, the Association shall not be obligated to send a supplemental notice to all Members advising of the names and biographical information of any candidates who submit their names and biographical information after the deadline in the Association's notice. Provided that, if any notice is thereafter sent or published by the Association which includes a list of candidates for election to the Board, the list shall include the names of all candidates. Nominations for election to the Board shall not be made by a nominating or other committee of the Association. A Member may notify the Association of the Member's desire to run for election to the Board of Directors at any time prior to the date that voting in the election ceases. Nomination for election to the Board shall not be permitted from the floor at the annual meeting.

Section 5. Election and Term of Office. Notwithstanding any other provision set forth herein, prior to the 10<sup>th</sup> anniversary of the date the Declaration has been Recorded, the President of the Association will call a meeting of the Members of the Association where the Members other than Declarant will elect one-third (1/3) of the Board. The term of the person(s) elected to the Board by Owners other than Declarant shall continue in effect until the first meeting of the Members held after the expiration of the Development Period. If, at the first meeting of the Members held after the expiration of the Development Period, the Members do not vote to increase the number of positions on the Board to five (5), one (1) Director shall be elected for a term of one (1) year and two (2) Directors shall be elected for a term of two (2) years each. If, at the First Meeting of the Members held after the

expiration of the Development Period, the Members vote to increase the number of positions on the Board to five (5), two (2) Directors shall be elected for a term of one (1) year each and three (3) Directors shall be elected for a term of two (2) years each. At each annual meeting thereafter, the Members shall elect the number of Directors necessary to fill the positions on the Board whose terms expire as of such annual meeting, each to serve a term of two (2) years. With respect to all positions on the Board of Directors to be filled by the vote of the Members other than Declarant, the candidates receiving the highest number of votes shall be elected to fill such positions.

Section 6. Removal of Directors. Any Director elected by the Members or appointed to serve on the Board (except a person appointed by Declarant) may be removed from the Board, with cause, by the affirmative vote of a majority of the total number of votes of the Members present and voting at a special meeting called for that purpose or at an annual meeting at which a quorum is present. The provisions of Article II, Section 6, which reduce the quorum requirement for an adjourned meeting, shall not be applicable to an adjourned meeting originally called for the purpose of considering the removal of a Director. “Cause”, as it relates to a basis for the removal of a Director, means a failure to comply with a material provision in the governing documents of the Association after notice and a demand for compliance from the Association; the determination of non-compliance with a material provision in the governing documents of the Association and the decision to send a notice and demand for compliance must be approved by not less than a majority of the remaining Directors. In the event of the removal of a Director, a successor for the removed Director shall be elected by a majority vote of the Members voting at the meeting at which the Director was removed. A Director whose removal is proposed shall be given at least ten (10) days written notice of the call of the meeting and the purpose of the meeting; the Director whose removal is proposed shall be given the opportunity to be heard at the meeting. Provided that, if the Board is presented with written documented evidence from a database or other record maintained by a governmental law enforcement authority that a Board member has been convicted of a felony or crime involving moral turpitude, the Board member is immediately ineligible to serve on the Board and shall, therefore, be immediately removed. Any Director may be removed by a vote of a majority of the remaining Directors as the result of the Director’s failure, without just cause, to attend three (3) consecutive, regularly scheduled meetings of the Board of Directors. “Just cause” means any event that, in the reasonable, good faith judgment of the Board, prevents a Director from attending a meeting and includes, without limitation, death or serious injury to a member of the Director’s family or other person with whom the Director has a long-term relationship, a mental or physical ailment or impairment that prevents the Director from attending a meeting, and any mandatory business engagement related to the Director’s livelihood and/or employment. Vacancies on the Board caused by reasons other than removal by a vote of the Members shall be filled by the remaining Directors. A Director elected or appointed to fill a vacancy on the Board shall serve the unexpired term of his predecessor.

Section 7. Voting Procedure for Directors. The election of the Board of Directors shall be conducted at the annual meeting of the Association. At such election, the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Voting for Directors shall be by written ballot unless there is only one (1) candidate for a position on the Board, in which event the candidate may be elected by acclamation.

Section 8. Recount of Votes. Any Member may request a recount of the votes of an election. A request for a recount must be submitted not later than the 15<sup>th</sup> day after the date of the meeting at which the election was held. A demand for a recount must be submitted in writing either:

- a. by certified mail, return receipt requested or by delivery by the U.S. Postal Service with signature confirmation service to the Association’s mailing address as reflected on the last recorded management certificate; or
- b. in person to the Association’s managing agent as reflected on the last recorded management certificate or to the address to which absentee ballots and proxy ballots were mailed.

Upon the receipt of a timely request for a recount, the Association shall, at the expense of the Member requesting the recount, retain the services of a qualified person to perform the recount. The Association shall enter

into a contract for the services of a person who is not a Member of the Association or related to a member of the Board of Directors of the Association within the third degree by blood or marriage and is a:

- i. current or former county judge;
- ii. current or former county elections administrator;
- iii. current or former justice of the peace;
- iv. current or former county voter registrar; or
- v. person agreed on by the Association and the Member requesting the recount.

A recount must be performed on or before the 30<sup>th</sup> day after the date of receipt of the request and payment for the recount. If the recount changes the results of the election, the Association shall reimburse the Member for the cost of the recount. Any action taken by the Board in the period between the initial election vote tally and the completion of the recount is not affected by the recount.

Section 9. Regular Meeting. Regular meetings of the Board of Directors may be held at such time, date, and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of each regular meeting shall be given to all Members as required by law. The Board of Directors may participate in and hold a regular or special meeting by means of:

- a. conference telephone or similar communication equipment by which all persons participating in the meeting can hear each other; or
- b. another suitable electronic communications system, including video conferencing technology or the Internet, only if:
  - i. each Director 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 Director participating in the meeting can communicate concurrently with each other participant.

Participation in a meeting by conference telephone or similar communication or video conferencing technology or the Internet shall constitute presence in person at such meeting except where a Director participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Provided that, without prior notice to the Members, the Board may take action only on routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that required immediate Board action. Any action taken without notice to the Members 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 regular or special Board meeting. Provided further that, the Board may not take action without prior notice to the Members on any matter prohibited by law to be taken without prior notice to the Members.

Section 10. Special Meeting. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two (2) Directors. The notice shall specify the date, time, and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by anyone of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by facsimile, or (d) if authorized by statute, by email. All such notices shall be given or sent to the Director's address, email, or facsimile number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox, at least four (4) days before the time set for the meeting. Notices

given by personal delivery, email, or facsimile shall be delivered or given at least four (4) days before the time set for the meeting. The provisions in Article III, Section 11, relating to notice to the Members shall be applicable to a special meeting of the Board of Directors.

Section 11. Notice of Board Meetings. The Board of Directors shall give Members notice of Board meetings (regular and special), including the date, hour, place, and general subject of the Board meeting, including a general description of any matter to be brought up for deliberation in closed executive session. A notice of meeting shall be:

- a. mailed to all Members at least ten (10) days before the date of the meeting; or;
- b. provided at least 72 hours before meeting by:
  - i. being posted notice in a conspicuous location, either in a Common Area or on the Association's website; and
  - ii. being emailed to all Members who have registered their email addresses with the Association.

It is a Member's duty to register and keep an updated email address with the Association.

Section 12. Waiver of Notice. The transactions of any meeting of the Board of Directors, 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 (a) a quorum is present, and (b) either before or after the meeting, each of the Directors 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 shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice thereof.

Section 13. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the vote of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue and business may be transacted, notwithstanding the withdrawal of Directors during the meeting, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, either in person or by proxy, the President may adjourn the meeting and reconvene at a time not less than five (5) days and not more than thirty (30) days from the time the original meeting was called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to the Directors in the manner prescribed for the original meeting. At such reconvened meeting, whether or not a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice, provided that any action taken shall be approved, in writing, by at least a majority of the Directors required to constitute a quorum at the original meeting.

Section 14. Compensation. No Director shall receive any compensation from the Association for acting in such capacity. However, Directors may be reimbursed for out-of-pocket expenses incurred on Association business. Directors may receive compensation from the Association when taking action at the request of the Association other than in the capacity of Director.

Section 15. Conduct of Meetings. A chairperson shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

Section 16. Open Meetings. All meetings of the Board of Directors shall be open to all Members, but

Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board of Directors. Provided that, if a Member unreasonably disrupts a meeting of the Board of Directors or repeatedly interrupts the discussion between Directors, the Board of Directors shall have the authority, after an initial warning, to cause that Member to be removed from the meeting.

Section 17. Executive Session. The Board of Directors may adjourn a regular or special meeting and reconvene in a closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion of privacy of individual Members, and 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 executive session shall be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual Members, violating any privilege, or disclosing any 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.

Section 18. Action Without a Formal Meeting. Any routine or administrative matter or matter involving a reasonably unforeseen emergency may be taken without a meeting if a written consent, stating the action to be taken, is signed by the number of Directors necessary to take that action at a meeting at which all of the Directors are present and voting. The consent must state the date of each Director's signature. Any such action must be summarized orally including an explanation of any known actual or estimated expenditures approved, and documented in the minutes of the next regular or special Board meeting.

Section 19. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Certificate of Formation of the Association, or these Bylaws directed to be done and exercised exclusively by the Members.

The President shall have the authority to act on behalf of the Board of Directors on all matters relating to the duties of any managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to, and shall be responsible for, the following (by way of explanation, but not limitation):

- (a) Preparing and adopting an annual budget, in which there shall be established the contribution of each Member to the common expenses;
- (b) Levying assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments, if any, of the annual assessment. Unless otherwise determined by the Board of Directors, the annual assessment shall be collected annually in advance.
- (c) Providing for the operation, care, upkeep, and maintenance of all of the Common Areas.
- (d) Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties.
- (e) Collecting the assessments, depositing the proceeds thereof in a bank depository, which it shall approve, and using the proceeds to administer the Association.
- (f) Making and amending rules and regulations for the Association.

- (g) Opening bank accounts on behalf of the Association and designating the signatories required.
- (h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of the Common Area in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty.
- (i) Enforcing, by legal means, the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings, which may be instituted on behalf of or against the Members concerning the Association.
- (j) Obtaining and carrying insurance against casualties and liabilities, including directors' and officers' liability insurance, as provided in the Declaration, and paying the premium cost thereof.
- (k) Paying the cost of all services rendered to the Association or its Members and not directly chargeable to Members.
- (l) Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. All books and records shall be kept in accordance with generally accepted accounting practices, and shall be available as required by Texas law.
- (m) Providing, upon request, information to Members, mortgagees and prospective purchasers of Lots concerning, by way of example and not in limitation, the status of the Association, the status of payment of assessments and related charges on a Lot and the status of compliance with the provisions of the Declaration, and charging a reasonable fee sufficient to cover the expense associated with providing such information.
- (n) Charging a reasonable fee sufficient to cover the expense associated with changing the records of the Association upon the transfer of title to a Lot.
- (o) Adopting policies and procedures deemed necessary and appropriate for the administration of the Association and the conduct of the Directors and officers of the Association, the employees of the Association, if any, and persons serving on behalf of the Association in volunteer capacities.

Section 20. Management Agent.

- (a) The Board of Directors may employ for the Association a professional management agent or agents, or manager, at a compensation rate established by the Board of Directors, to perform such duties and services, as the Board of Directors shall authorize. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.
- (b) If a managing agent or manager is hired, the following management standards of performance will be followed, unless the Board, by resolution, determines otherwise:
  - (i) Two (2) or more persons shall be responsible for handling cash, or its equivalent, in order to maintain adequate financial control procedures;
  - (ii) Cash accounts of the Association shall not be commingled with any other accounts;
  - (iii) No remuneration shall be accepted by the manager or managing agent 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;

(iv) Any financial or other interest which the managing agent or manager may have in any firm providing foods or services to the Association shall be disclosed promptly to the Board of Directors; and

(v) A quarterly or more frequent financial report, as may be determined by the Board, shall be prepared for the Association containing:

- (1) an income statement reflecting all income and expense activity for the preceding three (3) months;
- (2) an account activity statement reflecting all receipt and disbursement activity for the preceding three (3) months;
- (3) a budget comparison report reflecting the status of all income and expense accounts in an "actual" versus "projected" budget format;
- (4) a balance sheet reflecting account balances as of the end of the previous three (3) months (this balance sheet shall include an aged receivables report or other report deemed appropriate by the Treasurer);
- (5) a balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year which shall be distributed within ninety (90) days after the close of any fiscal year to the Board;
- (6) a budget report reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves of ten percent (10%) of a major budget category (as distinct from a specific line item in an expanded chart of accounts); and
- (7) a delinquency report listing all Members who have been delinquent during the preceding three (3) month period in paying the assessments and who remain delinquent at the time of report, and describing the status of any action to collect such assessments which remain delinquent.

## Article IV

### Officers

Section 1. Officers. The officers of the Association shall be the President, Vice-President, Secretary and Treasurer. The Board of Directors may select, appoint and/or remove such other officers, as it shall deem appropriate, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors.

Section 2. Election Term of Office and Vacancies. The officers of the Association shall be elected annually from within and by the Board of Directors at the first meeting of the Board of Directors held after the annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by a majority vote of the Board of Directors, at a duly called meeting of the Board, at which a quorum is present, whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as



generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The Chief Executive Officer of the Association shall be the President. The Treasurer shall have primary responsibility for the preparation of the budget, as provided for in the Declaration, and, with the approval of the Board of Directors, may delegate all or part of the preparation and notification duties to a finance committee, or a management agent.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Etc. All agreements, contracts, deeds, leases, and other instruments of the Association shall be executed by at least one (1) officer or by such other person or persons as may be designated by resolution of the Board of Directors.

Section 7. Checks. All checks shall be signed by at least two (2) officers or Directors or by such other person or persons as to be designated by the Board of Directors. The Board of Directors may authorize that checks for less than \$1,000.00 may only require the signature of one (1) officer or director.

Section 8. Compensation. No officer shall receive any compensation from the Association for acting in such capacity.

#### **Article V** Committees

Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Such committees shall perform such duties and have such powers as may be provided in the resolution creating same. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

#### **Article VI**

##### Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Texas law, the Certificate of Formation, the Declaration, or these Bylaws.

Section 3. Conflicts. If there are conflicts or inconsistencies among the provisions of Texas law, the Declaration, the Certificate of Formation, these Bylaws, and/or any rules and regulations of the Association, the provisions of Texas law, the Declaration, the Certificate of Formation, the Bylaws, and the rules and regulations of the Association (in that order) shall prevail.

Section 4. Books and Records. Books and records of the Association shall be retained by the Association in accordance with the Association's Document Retention Policy. Each Member or Member's designated representative shall have a right to either inspect the requested books and records before obtaining copies or to have the Association forward copies of the requested books and records in accordance with the Association's recorded Records Production and Copying Policy. Provided that, this provision shall not require the Association to release or allow inspection of books and records that are not required by law to be released or inspected, as set forth in the Association's recorded Records Production and Copying Policy. Every Director shall have the absolute

right at any reasonable time to inspect all books, records, and documents of the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association; provided that, the Association shall not be obligated to bear the expense of providing more than one (1) copy of any document to a Director.

Section 5. Audit. An audit of the accounts of the Association shall be performed annually by a qualified, independent certified public accountant. Each annual audit shall be in accordance with generally accepted auditing standards to obtain reasonable assurance that the Association's financial statements are free of material misstatements, to assess accounting principles used, and to evaluate the overall financial statement presentation. A more comprehensive audit may be performed in any given year as deemed necessary or appropriate by the Board.

Section 6. Indemnification. The Association shall indemnify every Director and Officer of the Association and members of any committee established by the Board of Directors against, and reimburse and advance to every Director, Officer and committee member for, all liabilities, costs and expenses' incurred in connection with such directorship or office and any actions taken or omitted in such capacity to the greatest extent permitted under the of the Texas Business Organizations Code and all other applicable laws at the time of such indemnification, reimbursement or advance payment; provided, however, no Director, Officer or committee member shall be indemnified for: (a) a breach of duty of loyalty to the Association or its Members; (b) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (c) a transaction from which such Director, Officer or committee member received an improper benefit, whether or not the benefit resulted from an action taken within the scope of directorship or office; or (d) an act or omission for which the liability of such Director, Officer or committee member is expressly provided for by statute.

Section 7. Amendment. During the Development Period and subject to any applicable provisions in the Declaration, the Declarant may amend these Bylaws without approval of the Board or any Members. These Bylaws may also be amended by the affirmative vote of a majority of the Members present, in person or by proxy, and voting at a meeting duly called for that purpose at which a quorum is present. Notwithstanding the foregoing, these Bylaws may be amended by the affirmative vote of a majority of the Board of Directors at a meeting of the Board of Directors duly called for that purpose if the amendment does not adversely affect any substantive rights of the Members. Provided further that, so long as Development Period exists, no amendment to the Bylaws approved by the Board or the Members shall become effective until approved and acknowledged in writing by Declarant.



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

CTBW43 Accommodation

**HILLSIDE ON THE LAKE**

This Declaration of Covenants, Conditions and Restrictions for Hillside on the Lake is made on the date hereinafter set forth by Declarant (as hereinafter defined).

Declarant is the owner of the Property (as herein defined). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. The development and improvement of the Property may be accomplished by successors and assigns of Declarant as future owners or developers of the Property and Declarant is not in any manner agreeing to or obligating itself to undertake development activities with respect to the Property. The Declaration is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Property. In furtherance of such plan, Declarant has caused or intends to cause the Hillside on the Lake Homeowners Association to be formed as a Texas nonprofit corporation to own, operate, and maintain the Common Areas and Common Maintenance Areas (as defined herein) and to administer and enforce the provisions of this Declaration.

Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any portion of the Property.

Compliance with this Declaration is not a substitute for compliance with Applicable Law. Please be advised that this Declaration does not purport to list or describe each restriction which may be applicable to a Lot located within Hillside on the Lake. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot. Furthermore, an approval by the ACA (as defined herein) should not be construed by the Owner that any improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot.

All master plans, site plans, brochures, illustrations, information and marketing materials related to the Property or Hillside on the Lake, including any statements or projections as to assessments, and expressly including any of the foregoing prepared by the Declarant (collectively, the "Conceptual Plans") are conceptual in nature and/or estimates only. The land uses reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within Hillside on the Lake may include uses which are not shown on the Conceptual Plans and such land uses may be changed from time to time and at any time by the Declarant without notice to any Owner. It is also understood and agreed that assessments will change based on actual expenses incurred by the Association and no assurances are provided regarding the accuracy of any estimated assessments. The Declarant makes no representation or warranty concerning the Conceptual Plans, proposed land uses, proposed planned improvements, or assessments attributable to all or any portion of Hillside on the Lake, and no Owner will be entitled to rely upon the Conceptual Plans, or any statement made by the Declarant or any of Declarant's representatives regarding proposed land uses, proposed or planned improvements, or assessments, when making the decision to purchase any property or construct any improvements within Hillside on the Lake. Each Owner who acquires a Lot within Hillside on the Lake acknowledges that Hillside on the Lake is a master planned community, the development of which will extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

## ARTICLE I. DEFINITIONS

1.1 "ACA" or "Architectural Control Authority" shall have the meaning provided such terms in Section 6.2 herein.

1.2 "ACA Standards" means standards adopted by the ACA regarding architectural and related matters, including, without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which may be either recommended or required by the ACA for use within the Property.

1.3 "Applicable Law" means all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over Hillside on the Lake, specifically including applicable zoning restrictions and permits.

1.4 "Association" means Hillside on the Lake Homeowners Association, a Texas nonprofit corporation established, or to be established, for the purposes set forth herein, or such other Texas nonprofit corporation as the Board shall determine to operate as the Association under this Declaration, provided that only one such nonprofit corporation shall be in existence as the Association at any one time.

1.5 "Association Easement" means an easement intended for the construction, installation, operation, location or repair of any subdivision improvement, including, without limitation, the Association Maintenance Feature, any subdivision sign, screening wall, monument or entry feature, retaining, screening or perimeter wall, drainage facility or other improvement owned by or otherwise for the benefit of the Association.

1.6 "Association Maintenance Features" means the fence, screening wall, monument, entrance signage or other decorative features installed, or that may be installed, by Declarant along or within any other roadway or Common Area of the Property, or any other fence, screening wall, monument, signage or other feature installed by Declarant or the Association.

1.7 "Board" means the Board of Directors of the Association.

1.8 "Builder" means any person or entity that purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business.

1.9 "By-laws" means the by-laws of the Association.

1.10 "Certificate" means the Certificate of Formation of the Association, or any subsequent amendment or restatement thereof.

1.11 "Common Area" and "Common Areas" means all areas (including the improvements and buildings thereon) within the Property owned or to be owned by the Association for the common use and enjoyment of the Members, including, without limitation, any recreational facilities, areas within public rights-of-way, easements (public and private), portion of a Lot, public parks, private streets, landscaping, entry features, fence or similar areas that either the Board or Declarant deems necessary or appropriate to maintain for the common benefit of the Members or that is shown on a Recorded plat of the Property or portion thereof as being maintained by the Association. The Common Areas will include, without limitation, the areas of the Property, and the real property and improvements described on Exhibit "B" attached hereto.

1.12 "Common Expenses" means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas.

1.13 "Common Maintenance Areas" means the Common Areas, if any, and any areas within public rights-of-way, easements (public and private), portion of a Lot, public parks, private streets, landscaping, entry features, fences, vehicular access gate(s), pedestrian access gate(s) or similar areas that either the Board deems

necessary or appropriate to maintain for the common benefit of the Members or that is/are shown on the Plat or any subsequent Recorded plat of the Property or portion thereof as being maintained by the Association.

1.14 "County" means Dallas County, Texas.

1.15 "Declarant" means M/I Homes of DFW, LLC, and its successors and assigns as provided in Section 12.12 herein.

1.16 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Hillside on the Lake, and any amendments and supplements thereto made in accordance with its terms.

1.17 "Designated Interest Rate" means the interest rate designated by the Board from time to time, subject to any interest limitations under Texas law. If the Board fails to designate an interest rate, then the interest rate shall be the lesser of 12% per annum or the highest rate permitted by Texas law. The Designated Interest Rate is also subject to the limitations in Section 12.6 herein.

1.18 "Development Period" means the period of time beginning on the date when this Declaration has been Recorded, and ending at such time as Declarant no longer owns the Property, unless earlier terminated by Declarant. Declarant may terminate the Development Period by an instrument executed by Declarant and Recorded. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

1.19 "Dwelling" means any residential dwelling situated upon any Lot.

1.20 "Entry Signs" means the entry feature signs for the subdivision that are or may be placed by the Declarant or its agents on the Common Area or Common Maintenance Areas.

1.21 "Lot" means any separate residential building parcel shown on the Plat or any subsequent Recorded subdivision plat of the Property. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.

1.22 "Member" means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in Article III herein.

1.23 "Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract for deed, then the purchaser (rather than the fee Owner) will be considered the Owner.

1.24 "Plat" means each plat that is described on Exhibit "A" attached hereto, and any other plat that may be filed of record and that includes any of the Property.

1.25 "Property" means the real property described on Exhibit "A" attached hereto (other than areas dedicated to the City or County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.

1.26 "Record," "Recording" or "Recorded" means the filing of a legal instrument in the Public Records of Dallas County, State of Texas, or such other place as may be designated as the official location for filing deeds, plats, and similar documents affecting title to real property.

## ARTICLE II. PROPERTY RIGHTS

**2.1 Owners' Easements of Use and Enjoyment.** Every Owner will have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, subject to any limitations set forth herein, including, without limitation, the following:

a. **Rules.** The right of the Declarant during the Development Period, and the Association, with the advance written approval of the Declarant during the Development Period, to establish and publish rules and regulations governing the use of the Common Areas and/or the Property.

b. **Suspension of Voting Rights.** The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid except with respect to any election (i) of members of the Board, or (ii) concerning such Owner's rights and responsibilities.

c. **Construction of Improvements.** The right of the Declarant, during the Development Period, and the Association thereafter, to cause such improvements and features to be constructed upon the Common Areas, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

d. **Conveyance of Common Area.** The right of the Declarant during the Development Period, and the Association thereafter, to dedicate, sell or transfer all or any part of the Common Areas. However, following the Development Period no such dedication, sale or transfer will be effective unless there is an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

e. **Mortgage Common Area.** The right of the Association, subject to the provisions hereof, to mortgage or lien all or any part of the Common Areas. However, the Common Areas cannot be mortgaged or liened without an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

**2.2 Prohibitions on Easement of Use and Enjoyment.** Each Owner's right and easement of use and enjoyment in and to the Common Area is further limited as follows:

a. **No Transfer without Lot.** An Owner's right and easement of use and enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot.

b. **No Partition.** Except as provided in Section 2.1.d herein, the Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

**2.3 Right to Delegate Use and Enjoyment of Common Area.** Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the By-laws and any reasonable rules of the Board. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

**2.4 Special Declarant Rights.** Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots; (ii) to maintain improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of improvements by Declarant will not be considered a nuisance, and the right and privilege to conduct the activities enumerated in this Section 2.4 will remain until two (2) years after the expiration or termination of the Development Period.

### ARTICLE III. MEMBERSHIP AND VOTING

3.1 **Membership - Owners.** Every Owner by virtue of ownership of a Lot will be a member of the Association. Membership will be appurtenant to and will not be separated from ownership of any Lot.

3.2 **Voting Rights.** The voting rights in the Association shall be as follows:

a. **Members other than Declarant.** Except as provided in Section 3.2.b below, Members shall be entitled to one vote for each Lot owned. However, when more than one person or Member holds an interest in any Lot, only one vote in total may be cast per Lot as the Owners of such Lot determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Member is the person designated to cast the Lot's vote. If the Members fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.

b. **Declarant.** In addition to the votes to which Declarant is entitled by reason of Section 3.2.a, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to the Declarant pursuant to this Section 3.2, shall be considered a Member for the purpose of casting such votes, and is not required to own any portion of the Property in order to cast any vote.

### ARTICLE IV. ASSESSMENTS

4.1 **Obligation to Pay Assessments.** Subject to and except as provided in this Article IV, each Owner of any Lot by acceptance of a deed therefor, including any Builder that is an owner of a Lot, whether or not it will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges as provided in Section 4.3 herein, (ii) special assessments as provided in Section 4.6 herein, and (iii) specific assessments as provided in Section 4.7 herein.

4.2 **Rate of Assessments.** Both annual assessments and special assessments shall be fixed at a uniform rate for all Lots, regardless of a Lot's location or size or the value of the Dwelling. Notwithstanding the foregoing, the Declarant, during the Development Period, may decrease the amount of annual or special assessments payable by a Builder to an amount determined by Declarant for the period prior to the conveyance of the Lot from the Builder to an Owner. Unless decreased in accordance with the preceding sentence, each Builder will pay assessments as set forth in Section 4.1 above.

4.3 **Annual Assessment – Increases.** The amount of the initial annual assessment shall be an amount as determined by the Board. The annual assessment may be increased at any time by the Board, provided that the Board gives written notice to the Members of the increase. The effective date of the increase shall not be sooner than 60 days from the date of the notice. No vote or other approval shall be required for the increase to be effective, unless the increase is more than 10% of the prior annual assessment. If the increase is more than 10%, then the increase may be disapproved by a 67% or greater vote of the votes cast, provided that the vote occurs within 60 days of the date of the increase notice.

4.4 **Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to an entity, including a Builder that assumes the Declarant status as provided herein), unless the Board elects to commence the annual assessment earlier. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each assessment period. Written notice of the annual assessment shall be sent to an Owner of every Lot subject thereto. The due dates shall be established by the Board. The Board shall also establish whether the annual assessment shall be paid annually, semi-annually, quarterly or monthly.



**4.5 Assessment Obligation of Declarant.** During the Development Period, subject to the limitations set forth below in this Section 4.5, Declarant may annually elect, by written notice to the Association, to pay assessments as otherwise set forth in this Article IV, or to pay to the Association the difference between the Association's operating expenses and the assessments received by the Association (the "Budget Deficit") from the other Owners; provided that if the Budget Deficit is the result of the failure or refusal of an Owner or Owners to pay their annual assessment or special assessments, the Association will diligently pursue (the Declarant may also pursue at its option) all available remedies against such defaulting Owners and will promptly reimburse the Declarant the amounts, if any, so collected. If Declarant fails to provide a written notice to the Association specifying Declarant's election above, Declarant will be deemed to have elected to pay the Budget Deficit. Notwithstanding the foregoing, in no circumstance shall Declarant have any obligation to pay any portion of a Budget Deficit that exceeds the total amount during any fiscal year of the Association that Declarant would have paid if Declarant were paying full assessments for the Lots owned by Declarant during the subject fiscal year. If Declarant elects, in Declarant's sole and absolute discretion, to fund Budget Deficits that exceed the total amount during any fiscal year of the Association that Declarant would have paid if Declarant were paying full assessments for the Lots owned by Declarant during the subject fiscal year, such amounts shall be treated as a loan to the Association, which loan shall bear interest at the lesser of the maximum rate of interest permitted under applicable law or a rate of eighteen percent (18%) per annum until repaid (a "Deficit Loan"). Deficit Loans shall be repaid by the Association to Declarant as non-reserve funds become available or, at Declarant's sole option and discretion, may be offset against all past, current or future assessments payable by the Declarant under this Declaration. Upon termination of the Development Period, Declarant's obligation to pay Budget Deficit attributable to the period of time after the Development Period shall cease.

**4.6 Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to cover expenses which the Board determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget, provided, that any such special assessment must have an affirmative vote of 67% or greater of all outstanding votes entitled to be cast.

**4.7 Specific Assessments.** The Association shall have the power to levy specific assessments against a particular Lot to (i) cover costs incurred in bringing a Lot into compliance with this Declaration, (ii) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests, and/or (iii) collect any sums due by the Owner to the Association (other than annual assessments or special assessments or interest or late charges related thereto), including, without limitation, fines.

**4.8 Purpose of Annual and Special Assessments - Reserve.** Annual assessments and special assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, inspection, repair and replacement of improvements to the Common Maintenance Areas.

**4.9 Personal Obligation to Pay Assessments.** Each assessment provided herein, together with interest at the Designated Interest Rate, late charges, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded first purchase money mortgage or beneficiary of a Recorded first deed of trust (meaning any Recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust), shall be liable for unpaid assessments which accrued prior to mortgagee's acquisition of title. In addition, no mortgagee shall be required to collect assessments.

**4.10 Capitalization of Association - Payment.** Upon acquisition of record title to a Lot by the first Owner thereof (other than Declarant or a Builder), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to two months of the full annual assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and

disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-laws.

**4.11 Failure to Pay Assessments; Remedies of the Association.** With respect to any assessment or other sum due herein not paid within 10 days after the due date, and subject to Section 4.12 below, the Association shall have the right to: (i) charge a late fee, in an amount determined by the Board; (ii) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; and/or (iii) charge costs and fees related to the collection of the sum due. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Areas or abandonment of his or her Lot. The failure to pay assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

**4.12 Payment Plans.** If an Owner is unable to pay any assessment or other sum due herein, then upon written notice to the Association delivered no later than two (2) business days following the due date of such payment, the Association shall extend to such Owner a payment plan on the following terms (a "Payment Plan"):

- a. The amount due herein may be paid in three equal partial payments, due one (1) month, two (2) months and three (3) months following the original due date of such payment.
- b. Such amounts shall be subject to (i) interest at the Designated Interest Rate from the due date until the date the sum is paid; and/or (ii) reasonable costs related to the collection of the sum due.
- c. The Association is not obligated to extend a Payment Plan to an Owner who failed to honor the terms of a previous Payment Plan during the two (2) years following such Owner's default under the previous Payment Plan.

Notwithstanding the terms of this Section 4.12, the Association may adopt an alternative payment plan to the extent permitted by applicable law.

**4.13 Lien.**

a. **Creation of Lien.** The Association shall hereby have a continuing lien against each Lot to secure payment of delinquent assessments (annual assessments, special assessments and specific assessments), as well as interest at the Designated Interest Rate, late charges, and costs of collection, including, without limitation, court costs and reasonable attorneys' fees, and any other fees or charges that are authorized under or pursuant to this Declaration. 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 Lot, the amount of delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

b. **Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial or, if an owner agrees in writing at the time the foreclosure is sought to waive judicial foreclosure pursuant to Section 209.0092 of the Texas Property Code, by nonjudicial foreclosure. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale. The Board may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board's meeting. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code, as amended. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property

Code, as amended, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the By-laws and applicable law, such as Chapter 209 of the Texas Property Code, as amended. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

c. **Subordination of Lien.** The lien of the assessments provided for herein is subordinate to the lien of any Recorded first purchase money mortgage or deed of trust against a Lot.

d. **Effect of Conveyance.** An Owner that conveys title to a Lot shall not be liable for assessments that are attributable to the period after the conveyance of the Lot, except as provided in Section 0.d herein. However, a conveyance of title to a Lot shall not affect the assessment lien or relieve the Owner that conveys the Lot from personal liability for any assessments attributable to the period prior to the date of the conveyance, except as provided in Section 0.d herein.

e. **Effect of Foreclosure.** The foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will extinguish the lien of such assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof shall not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term first in connection with a mortgage or deed of trust shall refer to the lien priority as compared to other mortgages or deeds of trust.

## ARTICLE V. THE ASSOCIATION

5.1 **The Association - Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Certificate, By-laws, and this Declaration. The Association shall continue to exist until the Association is dissolved, regardless if the corporate status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Certificate and the By-laws.

5.2 **Board of Directors.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Certificate and the By-laws. The Board shall have the powers granted in this Declaration, the Certificate, the By-laws, and all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein. The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. At the first meeting of the Association after the expiration of the Development Period, the Board will be increased to consist of five (5) persons. **Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board until the 10<sup>th</sup> anniversary of the date this Declaration is Recorded. No later than the 10<sup>th</sup> anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board must have held a meeting of Members of the Association for the purpose of electing one-third of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.**

5.3 **Limitation on Liability.** Neither the Declarant nor any officer, director, employee or agent of the Association, nor any member of the ACA shall be liable to any person or entity, including any Owner, for any act or omission in the performance of the duties of the Declarant or such officer, director or agent, or member of the

ACA, unless such act or omission is finally determined to constitute fraud or intentional willful misconduct. The liability of an officer, director or committee member of the Association shall be further limited as provided in the Certificate.

**5.4 Indemnification.** To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (a) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**5.5 Insurance.**

a. **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, the following insurance coverage, if reasonably available:

i. **Property Insurance – Common Area.** Blanket property insurance covering loss or damage on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership.

ii. **General Liability Insurance.** Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf.

b. **Additional Insurance.** The Board may obtain additional insurance as the Board determines advisable, including, without limitation, directors and officers liability insurance, fidelity insurance and any insurance to comply with any applicable insurance requirements of any federal agency or secondary mortgage market entity, including, without limitation, the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the U. S. Department of Veterans Affairs ("VA"), and the U.S. Department of Housing and Urban Development ("HUD"), to the extent applicable. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary the Board shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

c. **Review of Policies.** The Board shall periodically review the types and amounts of insurance coverage for sufficiency.

**5.6 Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational, or other agreements with other persons or entities, including without limitation municipal utility districts; provided, any such agreement shall require approval of the Board. The Board may employ for the Association a management agent or 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 policymaking authority. The Association is hereby authorized to negotiate with, exchange with, delegate to, convey to, and accept from a utility district or other special district certain functions, properties (including Common Areas), authorities, and obligations, provided the action is not prohibited by applicable law.

**5.7 Books and Records.** The books and records of the Association shall be made available to the Members for inspection as provided in the By-laws. In addition, Members may obtain copies, at a reasonable cost, of the books and records of the Association as provided in the By-laws.

**5.8 Dissolution of Association; Conveyance of Assets.** If the Association is dissolved other than incident to a merger or consolidation, the assets both real and personal of the Association, shall be conveyed as provided in the Certificate.

**5.9 Adoption of Rules.** To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, rules not in conflict with this Declaration, as it deems proper, covering any and all aspects of Hillside on the Lake (including the operation, maintenance and preservation thereof) or the Association. Any rules, and any modifications thereto, proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

**5.10 Enforcement – Notice.** The Association may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with and subject to the applicable procedures set forth in this Declaration, the By-laws and applicable law, including Chapter 209 of the Texas Property Code, as amended. Specifically, written notice and opportunity for a hearing must be given prior to the Association exercising its remedies if such notice and hearing is required by this Declaration, the By-laws and applicable law, including Chapter 209 of the Texas Property Code, as amended. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

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

b. **Suspension of Voting Rights.** As set forth in Section 2.1b above, the Association may suspend an Owner's right to vote, except with respect to any election (i) of members of the Board or (ii) concerning such Owner's rights and responsibilities.

c. **Suspension of Rights to Use Common Area.** The Association may suspend any person's or entity's right to use any Common Area; provided, however, nothing herein shall authorize the Association to limit ingress or egress to or from a Lot.

d. **Right of Self-Help.** The Association may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration.

e. **Right to Require Removal.** The Association may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Association or its designee shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed, without such action being deemed a trespass.

f. **Levy Specific Assessment.** The Association may levy a specific assessment to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration.

g. **Lawsuit; Injunction or Damages.** The Association has the right, but not the obligation, to bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

h. **Perform Maintenance.** In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Association may record a notice of violation in the Records and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific assessment.

5.11 **Pursuit of Action.** The decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Association's sole and absolute discretion, except that the Association shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Association may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

## ARTICLE VI. ARCHITECTURAL CONTROLS

6.1 **No Improvements Unless Approved by Architectural Control Authority - Except Improvements by Declarant.** No building, fence, wall, outbuilding, landscaping, pool, detached building, athletic or play equipment or facility, structure or improvement will be erected, altered, added onto or repaired upon any portion of any Lot without the prior written consent of the ACA. However, ACA approval is not required for (i) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant to be exempt from the ACA approval requirements; (ii) any improvements to the interior of a Dwelling, except as provided herein; (iii) the painting or re-bricking of the exterior of any Dwelling in accordance with the same color or design as originally constructed by Declarant or in accordance with the approved color and design scheme approved by the ACA; (iv) improvements for which the Declaration expressly states that the ACA's prior approval is not required; or (v) repair or replacement of worn out or damaged improvements if such repair or replacement is with substantially similar materials. Any improvements pursuant to clauses (iii) and (v) immediately preceding must be in compliance with any applicable ACA Standards.

6.2 **Architectural Control Authority.** The ACA shall have the sole and exclusive authority to perform the functions contemplated by the ACA in this Declaration. The purpose of the ACA is to enforce the architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The ACA will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The "ACA" or "Architectural Control Authority" shall be the following entity:

a. **Declarant - During Development Period.** The Declarant shall be the ACA during the Development Period, unless the Declarant in writing has terminated its rights as the ACA.

b. **Architectural Committee - After the Development Period.** The Architectural Committee shall be the ACA after the Declarant's right to act as the ACA has either expired or voluntarily been terminated.

6.3 **Architectural Committee.** A committee to be known as the "Architectural Committee" consisting of a minimum of 3 members will be established after the Declarant's right to act as the ACA has either expired or

voluntarily been terminated. The members of the Architectural Committee will be appointed, terminated and/or replaced by the Board. The Architectural Committee will act by simple majority vote.

**6.4 Submission of Plans.** Prior to the initiation of construction of any work required to be approved by the ACA as provided in Section 6.1 above, the Owner (excluding Declarant and any Builder designated in writing to be exempt from the ACA approval requirements as provided herein) will first submit to the ACA a complete set of plans and specifications for the proposed improvements, including site plans, landscape plans, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACA for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates.

**6.5 Plan Review.**

a. **Timing of Review and Response.** Upon receipt by the ACA of all of the information required by this ARTICLE VI, the ACA will have 30 days in which to review said plans and other documents and materials submitted pursuant to Section 6.4 herein. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACA in form satisfactory to the ACA. If the ACA requests additional information and the applicant fails to provide such information prior to the date stated in the ACA's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACA consider the request. If the ACA fails to issue its written approval within 30 days after the ACA's receipt of all materials requested by the ACA to complete the submission, then such failure by the ACA to issue its written approval shall be deemed disapproved. The ACA may charge a reasonable fee for reviewing requests for approval.

b. **Approval Considerations - Aesthetics.** The proposed improvements will be approved if, in the sole opinion of the ACA: (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements within the Property; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not have an adverse impact on the Property. Decisions of the ACA may be based on purely aesthetic considerations. The ACA shall have the authority to make final, conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and its members change over time.

**6.6 Timing of Completion of Approved Items.** All work approved by the ACA shall be completed within one year after the approval by the ACA or such shorter period that the ACA may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACA. All work and related improvements shall be in compliance with the items approved by the ACA.

**6.7 Improvements Impact on Drainage.** With respect to any improvements performed on a Lot and/or any alterations to the grade of a yard, the Owner shall take proper precautions to insure that such improvements do not cause the surface water drainage on the Lot to (i) drain onto an adjoining Lot in an amount more than the drainage amount prior to the improvement or alteration, or (ii) collect near the foundation of the Dwelling. Although the ACA may comment on and/or deny the approval of plans because of the impact of the proposed improvements or alterations on surface water drainage, the ACA's comments or approval shall not constitute or be construed as a representation, warranty or guaranty that adverse surface water drainage problems will not occur and shall not be relied upon as such. The Owner is responsible for taking the necessary actions in order to avoid any surface water drainage problems, including, without limitation, engaging the services of a qualified consultant.

6.8 **No Waiver.** The approval by the ACA of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACA under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

6.9 **Variations.** The ACA may authorize variances from strict compliance with the requirements herein, in any ACA Standards or any required procedures: (i) in narrow circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence; or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. For purposes of this Section 6.9, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing as the sole or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance shall be contrary to the terms of this Declaration and no variance shall be effective unless in writing or estop the ACA from denying a variance in other circumstances.

6.10 **Architectural Control Authority Standards.** The ACA may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, ACA Standards. The ACA Standards may not conflict with the terms of this Declaration.

6.11 **Enforcement; Non-Conforming and Unapproved Improvements.** If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACA, in their sole and absolute discretion, such improvements will be in violation of this ARTICLE VI to the same extent as if made without prior approval of the ACA. In addition to the Association's rights in Section 5.10 herein, the Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alteration to any improvement on any Lot that is not approved by the ACA.

6.12 **Limitation of Liability.** Neither the Declarant, the Association, the Board, nor the ACA or any member of the ACA, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Review and approval of any submission or application is made on the basis of aesthetic considerations only and not for engineering, structural design or quality of materials. No approval of any plans by either the ACA or the Declarant shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation. Neither Declarant, the Association, the Board, the ACA nor any member of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Dwelling and/or Lot. Declarant and members of the ACA shall have no liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious. The ACA and its members shall be defended and indemnified by the Association as provided in Section 5.4 herein.

## **ARTICLE VII. USE RESTRICTIONS AND COVENANTS**

7.1 **Single Family Residential Use.** All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees; and (iv) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threatens the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (i) through (iv) above in this Section 7.1 shall be made by the Board in their sole and absolute discretion. The business activity prohibition will not apply to the use by Declarant or any



Builder (i) of any Dwelling as a model home, construction office and/or sales office, or (ii) of any Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot; any of which uses may be for the benefit of real property owned by Declarant or any Builder located within or outside of the Property.

**7.2 Parking of Motor Vehicles.** No vehicles or similar equipment will be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such vehicle (i) has less than 1 ton carrying capacity; (ii) has less than 3 axles; (iii) is in operating condition; and (iv) is generally in daily use as a motor vehicle on the streets and highways of the State of Texas. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement, provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board as intended for such vehicular use. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot or a street within the Property, except within an enclosed garage. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or portions of any Lot that are visible from any street within the Property.

**7.3 Trailers, Boats, Commercial and Recreational Vehicles.** No campers, boats, trailers, motor homes, travel trailers, camper bodies, golf carts, recreational vehicles, non-passenger vehicles, vehicles with 3 or more axles or greater than 1 ton carrying capacity, and/or equipment or accessories related thereto may be kept on any Lot, unless such item is operable and such item is (i) kept fully enclosed within a garage located on such Lot; (ii) kept fully screened from view by a screening structure or fencing approved by the ACA; (iii) temporarily parked on any street within the Property or on a Lot for the purpose of loading or unloading; or (iv) a commercial vehicle that is in use for the construction, maintenance or repair of a Dwelling or Lot in the immediate vicinity. The Board will have the absolute authority to determine from time to time whether an item is in operable condition and complies with the requirements in clauses (i) through (iv) above in this Section 7.3. Upon an adverse determination by the Board, the Owner will cause the item to be removed and/or otherwise brought into compliance with this Section 7.3. Notwithstanding any provision herein, no trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time.

**7.4 Fences.**

a. **Required Fencing.** The backyard of each Lot must be fully enclosed with a perimeter fence. To the extent Declarant or a Builder constructs a fence which fully or partially encloses a rear or side yard, then the Owner of that Lot must at all times maintain such fence in accordance with the terms of this Declaration, unless that Owner obtains the ACA's written approval to modify, replace, relocate or remove such fence in accordance with the provisions of this Declaration.

b. **Type of Fencing.** All perimeter fences will be wood, stone, metal, brick, ornamental steel tube and/or masonry. No other type of fencing including, without limitation chain link, shall be permitted without the prior approval of the ACA, which has no obligation to consider or approve another type of fencing. The ACA, however, may from time-to-time consider if other types of fence materials are appropriate for the community and publish a list of other permitted fence materials. All fencing shall comply in all respects (including size and location) with applicable City requirements. All perimeter fences shall be six feet (6'0") in height unless another height is approved by the ACA and shall be a color approved by the ACA. Unless approved by the ACA, fences may not be stained or painted, except that fences may be stained with a clear stain or with the same color stain as originally applied by the Declarant. The portion of all fences which exterior or side faces a street adjoining such Owner's Lot (front, side or rear streets, but not alleys) shall have the smooth surface of the fence materials facing the applicable street. The fence posts and bracing boards on such front, side and rear fences shall face the interior of the fenced yard. Fences located on the side or rear of a Lot that faces a Common Area, open space, park or other recreational area adjoining such Owner's Lot shall be constructed of ornamental iron, unless otherwise approved by the ACA.

c. **Location of Fence.** Unless approved by the City and the ACA, no fence or wall will be placed (i) on any Lot in a location nearer the street than the front building setback line for such Lot, or (ii) on those certain corner Lots whose rear boundary line adjoins any portion of the front yard of a Lot behind the corner Lot, in a location nearer to the front building setback line for the street that is in front of the adjoining Lot. The foregoing shall not limit or restrict fences erected in conjunction with model homes or sales offices. In addition to the foregoing, easements may also restrict the placement of fences. Fences shall not be constructed in any manner that would change or impede drainage onto or from a Lot.

d. **Maintenance of Fencing.** Except with respect to any Association Maintenance Feature, each Owner shall maintain both sides of the portion of fencing on or along the boundary of such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto (as deemed necessary by the Board, in its sole and absolute discretion), except that Owners adjoining a Common Fence (as provided in Section 7.4.f) herein shall share in the cost of such maintenance as provided in Section 7.4.f herein. The Association shall be responsible to maintain any Association Maintenance Feature.

e. **No Changes / Repairs.** All repairs and replacements to the perimeter fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in this Section 7.4.e, no fencing may be changed or modified without the prior written consent of the ACA. This includes the prohibition against changing the height of the fencing and the fencing materials.

f. **Common Fencing.** Except for any Association Maintenance Feature, side and rear yard fences that are installed by Declarant or the builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "Common Fence") shall be maintained jointly by the Owners whose Lot adjoins such Common Fence and the costs associated therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation even if an Owner constructs a second fence along or near the Common Fence, unless the other Owner agrees in writing otherwise and the ACA's approval is obtained. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of one-half (1/2) of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of one-half (1/2) of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term "Arbitration" shall mean binding arbitration pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners.

## 7.5 Common Retaining Wall.

a. **Maintenance of Common Retaining Wall.** If a retaining wall, or a portion of a continuous retaining wall (in either case, a "Common Retaining Wall"), is installed on a common boundary of two Lots or is located on a Lot, but adjacent to (generally within not more than 3 feet) and generally parallel with the boundary another Lot, the Common Retaining Wall shall be maintained as provided in this Section 7.5. As the owner of the Lot at the higher elevation (the "Higher Lot") has more control over the conditions that affect the stability and structural integrity of the Common Retaining Wall, the owner of the Higher Lot is solely responsible for all maintenance, repair and reconstruction of the Common Retaining Wall (unless due to the negligence or willful act or misconduct of the owner of the Lot at the lower elevation (the "Lower Lot"), in which case such costs shall be paid by the owner of the Lower Lot). A retaining wall that is entirely within the boundaries of a Lot and not on or near a dividing line between two Lots is solely the responsibility of the Lot owner. The Common Retaining Wall shall be maintained in the same location, size, style and design and with the same materials, as originally installed, unless the ACA's approval is obtained. In the case of a dispute between owners of Lots as to which Lot is

the Lower Lot and which lot is the Higher Lot, the decision of the ACA shall be final and binding upon the owners.

b. **Easements for Common Retaining Wall.** Common Retaining Walls may not be located exactly on the common boundary line between two Lots. Therefore, there is hereby created an easement in and on the Lot where the Common Retaining Wall is actually located. The easement area shall be limited to the area that is within five (5) feet of the common boundary line. The easement shall be for the benefit of the Owner of the Lot that is responsible for maintenance of the Common Retaining Wall so that such Owner can maintain the Common Retaining Wall as provided in Section 7.5.a.

c. The owner of the Lower Lot is granted a non-exclusive and perpetual right and easement of enjoyment and use over the exterior surface of the Common Retaining Wall for use as a perimeter wall or fence of the Lower Lot. The owner of the Lower Lot is responsible for maintaining the Lower Lot up to the Common Retaining Wall, even if the Common Retaining Wall is inside the boundaries of the Higher Lot.

**7.6 Outbuildings, Sheds and Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, and sheds shall be erected, placed or constructed upon any Lot, unless (i) the building is approved by the ACA prior to the installation or construction of the building; (ii) such building is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition; (iii) the exterior paint and roofing materials of such building shall be consistent with the existing paint and roofing materials of the Dwelling; (iv) the building is located within a backyard that has a fence that completely encloses the backyard; (v) the height of the walls (excluding the roof) is not greater than 8 feet; (vi) the total height of the building (including walls and roof) is not greater than 10 feet; and (vii) the building is less than 200 square feet of floor space. In addition, the Owner is required to comply with any applicable City requirements, including, without limitation, any necessary permits.

**7.7 Animals.** No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that a reasonable number of cats, dogs or other generally recognized household pets may be permitted on any Lot; however, those pets which are permitted to roam free, or in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board. If the animal owner fails to remove the animal from the Lot after the Board's request, the Board may remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the By-laws. All animals will be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal.

**7.8 Signs.** Except for Entry Signs, no sign or emblem of any kind, including "for rent" signs, may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following: (i) an Owner may erect one (1) sign on a Lot advertising the Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size; (ii) an Owner may temporarily place one (1) sign on a Lot advertising the "open house" of a Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during actual open house hours; (iii) an Owner may place one (1) sign on the inside of a window advertising a Dwelling "for rent", provided that the sign does not exceed one and one-half (1 1/2) feet by one and one-half (1 1/2) feet in size; (iv) signs or billboards may be erected by the Declarant or any Builder designated in writing by the Declarant as having the right to erect such signs or billboards; (v) an Owner may temporarily place 1 sign on a Lot advertising a "garage sale", provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during the garage sale hours; or (vi) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 60 days in advance of the election to which they pertain and are removed within 15 days after the election. The ACA may in the ACA Standards permit additional signs and/or

place additional restrictions or limitations on the signs permitted in this Declaration, provided that such additional restrictions or limitations do not conflict with the terms herein. The Association will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing. Removal shall not subject the Association to any liability in connection with such removal.

**7.9 Trash; Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept, placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except solely on a day designated for removal of garbage, then such containers may be placed in the designated location for pick-up of such garbage and the container will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any Builder designated by Declarant.

**7.10 Nuisances.** No noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics, will be carried on upon any Lot, nor will anything be done thereon which the Board determines, in its sole and absolute discretion, is or may become an unreasonable source of annoyance or nuisance to the Property.

**7.11 Antennae and Satellite Dishes.** Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of the Lot outside the Dwelling, except that (i) antennas, satellite dishes or other apparatuses that are one meter or less in diameter and that are designed to receive transmissions other than television broadcast signals shall be permitted; and (ii) antennas or satellite dishes designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACA (a "Permitted Device"), must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained. The ACA in the ACA Standards may include rules or provisions regarding the type of additional Permitted Devices and/or the placement of Permitted Devices, provided that such ACA Standards do not conflict with the terms of this Section 7.11 and do not unreasonably increase the cost of installation, maintenance or use of the Permitted Device. A Permitted Device that complies with the provisions of this Section 7.11 and the ACA Standards shall not require the ACA's approval prior to installation. However, the ACA shall be the sole and exclusive authority for purposes of determining if the item or device complies with the provisions of this Section 7.11 and the ACA Standards.

**7.12 Air-Conditioning Units.** Air-conditioning apparatuses must be installed on the ground behind the rear of the Dwelling, on the ground on the side of the Dwelling or such other location as may be approved by the ACA. No air-conditioning apparatus or evaporative cooler may be located in or on the front of any Dwelling or attached to any roof, wall or any window of any Dwelling.

**7.13 No Temporary Structures as a Residence.** No structure of a temporary character, including, without limiting the generality thereof, any tent, shack, garage or barn will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent, that is erected in the back yard behind a fully screened fence, is permitted provided that such activity is on a temporary basis and does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

**7.14 Sidewalks.** The Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot to the extent required by the City.

**7.15 Landscaping Maintenance.** All yards must be sodded or grassed within a reasonable time period not to exceed seven (7) months after the initial conveyance of a Lot with a Dwelling thereon to an Owner other than a Builder. Except as provided below for "xeriscape" types of landscaping, decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front and side yard may not exceed 10% of the total area of the front and side yard. All trees, grass and other landscaping located on any Lot (or located adjacent to a Lot between the sidewalk and the curb of the street) must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flower beds and planter areas. No hardscape, including, without limitation, edging may include any symbols, characters, numbers or letters, unless approved by the ACA.

a. Subject to the limitations permitted by applicable law, any landscape maintenance requirements adopted for Lots or enforced by the Association or by the ACA may not restrict or prohibit turf or landscape design that promotes water conservation. To the extent permitted by applicable law, an Owner may implement efficient irrigation systems on their Lot, including underground drip or other drip systems, subject to the requirements of this Declaration and any guidelines promulgated by the ACA. Before installing an efficient irrigation system on the unfenced portions of a Lot, the owner must apply to the ACA for approval of the installation and compliance with visibility limitations, if any, established by the ACA for aesthetic purposes.

b. An owner may install and maintain drought-resistant landscaping or water-conserving natural turf on any portion of the Lot that is maintained by the Owner (not the Association), subject to the following conditions.

- i. If the ACA has published xeriscaping guidelines, the Owner is not required to apply for ACA approval for installations that comply strictly with the guidelines. Otherwise, the Owner must submit landscape plans or descriptions that are sufficiently detailed to permit the ACA to determine if the proposed xeriscaping is aesthetically compatible with the surrounding neighborhood for landscaping. The ACA's determination of aesthetic compatibility must be reasonable.
- ii. An Owner may use gravel, rocks, or cacti in place of turf on the unfenced portions of a Lot only if the Owner obtains the ACA's prior written approval of the Owner's detailed landscape plan. The ACA may prohibit, limit, or regulate the use of gravel, rocks, and cacti in a landscape plan based on aesthetics and surface water drainage, in addition to water conservation.

**7.16 Exterior Improvement Maintenance.** All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board, in its sole and absolute discretion.

**7.17 Garages.** Each Dwelling must have a garage that will accommodate a minimum of two (2) automobiles. All garages must comply with City requirements. Garages may be used as Declarant's or a Builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant or Builder as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot.

**7.18 Clothes Hanging Devices.** No clothes hanging devices exterior to a Dwelling are to be constructed or placed on the Lot, except within the Dwelling.

**7.19 Window Treatment.** No aluminum foil, newspaper, reflective film, bed sheets or similar linens, or similar treatment will be placed on windows or glass doors of a Dwelling.

**7.20 Oil and Gas Drilling or Mining.** No drilling, refining, quarrying or mining operation of oil, gas or other minerals of any kind will be permitted upon or from the surface of any Lot, nor will any oil derrick, well, tank, storage facility or other related equipment be permitted on any Lot. This section shall not prohibit subsurface drilling activities that begin upon and are conducted from the surface of real property not subject to these restrictions, provided, however, in no event shall the directional drilling or sub-surface activities be at depths less than two hundred feet (200') below the overlying surface of the Property and no closer than two hundred feet (200') from the boundary line of the Property, and no such drilling shall interfere with or result in damage to or subsidence of the surface of the Property, the structures located at any time thereon, or the support of any such structures.

**7.21 Mail Boxes.** Mailboxes shall be of similar type as originally installed, unless the ACA approves additional types of mail boxes.

**7.22 Athletic and Recreational Facilities.** No outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts may be placed on a Lot unless (i) such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed 12 feet in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACA may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling.

**7.23 Lighting; Exterior Holiday Decorations.** Lighting and/or decorations on a Lot may not be used or placed in a manner which, in the Board's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Dwelling that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six (6) weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

**7.24 Flags, Flagpoles, Lawn Decorations and Sculptures.** The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags, flagpoles and similar items on any portion of such Owner's Lot except the interior of the Dwelling, unless (i) such item is placed within a backyard completely enclosed by a fence which blocks the view of the item at ground level; and (ii) such item is no taller than the fence. To maintain the overall aesthetic character of the community, the following restrictions shall govern the display of flags within the community. Each Homeowner is authorized to mount two temporary or permanent flagstaffs on the front, rear or side of their residence by wall bracket. Homeowners may not locate a flag or flagpole on the Common Area or any portion of the Property owned by Declarant. Additionally:

a. The flag of the United States of America, the flag of the State of Texas and flags of any branch of the United States armed forces are the only permitted flags that may be flown on a Lot. All other flags, pennants, banners, kites or similar types of display are not permitted without the prior written approval of the ACA.

b. Flagpoles must not exceed twenty (20) feet in height, and only one (1) such flagpole may be erected on each Owner's Lot in the front yard, provided the Lot has a front building setback of at least 15 feet. Installations in front yards with smaller setbacks require the ACA's prior written approval. No more than one in-ground flagpole per Lot is permitted without the ACA's prior written approval. No part of a flagpole base may be above-grade (on the surface) or visible from a street without the ACA's prior written approval. In lieu of an in-ground flagpole in the front yard, a flag may be flown from a flagstaff wall-mounted to the first floor façade of the house and projecting at an angle of approximately 45 degrees. Without the ACA's prior written approval, a flagpole may not be installed in the side yard of a corner Lot or the rear yard of a Lot that backs up to a street or Common Area. Such flags may contain no more than

twenty-four (24) square feet of material. Flags and flagpoles must be maintained in good condition, and the ACA may require any deteriorated flag or flagpole to be repaired, replaced or removed.

c. Flagstaffs should not exceed six (6) feet in length. The suggested location for bracket mounting is on the garage doorframe or near the garage door. No roof-mounted flagstaff is allowed. Multiple flag configurations and any flagstaff in excess of six (6) feet must be approved by the ACA prior to installation or display. Such flags may contain no more than twenty-four (24) square feet of material and must be of good taste and presentation.

d. Notwithstanding anything in this section to the contrary, an Owner may display religious objects on the front door or doorframe of the Owner's Dwelling, unless such objects contain patently offensive language or symbols or the object is more than twenty-five (25) square inches in size.

**7.25 No Lot Consolidation or Division.** No Lot may be subdivided. Lots may be replatted by the Lots directly affected by the replatting and subject to compliance with Applicable Law. A copy of the replat will be provided to the Association, provided that replatting with not affect or alter the number of votes or assessments allocated to the Lots as originally platted.

**7.26 Drainage Alteration Prohibited.** Unless approved by the ACA, no Owner will: (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling; or (ii) install landscaping or other improvements that may interfere with, obstruct or divert drainage flows established by the Declarant or any Builder. The foregoing shall not prevent or limit the Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot.

**7.27 Construction Activities.** This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board in its sole good faith judgment, the Board will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

**7.28 Declarant and Builder Development and Construction.** Notwithstanding any other provision herein, Declarant, and its successors and assigns, and any Builders, will be entitled to conduct on the Property all activities normally associated with, and convenient to, the development of the Property and the construction and sale of Dwellings on the Property.

**7.29 Roofing.** The ACA may restrict the installation of roofing shingles that are primarily designed to be wind and hail resistant, provide heating and cooling efficiencies or provide solar generation capabilities ("Specialized Shingles") on any Dwelling if such Specialized Shingles do not resemble shingles used on other Dwellings, are less durable than shingles used on other Dwellings or do not match the aesthetics of the property surrounding the Lot on which such Dwelling is located.

**7.30 Solar Energy Systems.** During the Development Period this Section 7.30 will not apply and the Declarant must provide its written approval for installation of any solar energy device or apparatus (a "Solar Device"). Until expiration or termination of the Development Period, the Declarant may prohibit the installation of any Solar Device. After expiration or termination of the Development Period, upon approval by the ACA Solar Devices may be installed.

a. To obtain ACA approval of a Solar Device, the Owner will provide the following information: the proposed installation location and a description of the Solar Device, including the dimensions, manufacturer, and a depiction (the "Solar Application").

b. Review of a Solar Application by the ACA will be in accordance with the terms and provisions of this Declaration. The ACA will approve a Solar Device if the Solar Application complies with the requirements below unless the ACA makes a written determination that placement of the Solar Device will create a condition that substantially interferes with the use and enjoyment of property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACA's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this Section 7.30 when considering any such request.

c. Unless otherwise approved in advance and in writing by the ACA, each Solar Application and each Solar Device to be installed in accordance therewith must comply with the following:

- i. The Solar Energy Device must be located on the roof of the Dwelling located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Device will be located on the roof of the Dwelling, the ACA may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent (10%) above the energy production of the Solar Device if installed in the location designated by the ACA. If the Owner desires to contest the alternate location proposed by the ACA, the Owner should submit information to the ACA which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Device may extend above the fence line.
- ii. If the Solar Device is mounted on the roof of the Dwelling located on the Owner's Lot, then: (A) the Solar Device may not extend higher than or beyond the roofline; (B) the Solar Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; and (C) the frame, support brackets, or visible piping or wiring associated with the Solar Device must be silver, bronze or black.

**7.31 Rainwater Harvesting Systems.** Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed with the advance written approval of the ACA.

a. To obtain ACA approval of a Rainwater Harvesting System, the Owner shall provide the ACA with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "Rain System Application"). A Rain System Application may only be submitted by an Owner.

b. The decision of the ACA will be made in accordance with this Declaration. Any proposal to install a Rainwater Harvesting System on property owned by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this Section 7.31 when considering any such request.



c. Unless otherwise approved in advance and in writing by the ACA, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

- i. The Rainwater Harvesting System must be consistent with the color scheme of the residence constructed on the Owner's Lot, as reasonably determined by the ACA.
- ii. The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.
- iii. The Rainwater Harvesting System is in no event located between the front of the residence constructed on the Owner's Lot and any adjoining or adjacent street.
- iv. There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the ACA.

d. If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, or another Owner's Lot, the ACA may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System.

e. If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area or another Owner's Lot, the ACA may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, common area, or another Owner's Lot. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, or another Owner's Lot, any additional requirements imposed by the ACA to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the ACA.

## **ARTICLE VIII. COMMON AREAS**

**8.1 Association to Hold and Maintain.** The Association will own all Common Areas in fee simple title. The Association shall maintain, at the Association's cost, the Common Area and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas, at the Association's cost, to the extent the Board determines that such maintenance is desirable or is required by applicable law. The costs of such maintenance for the Common Areas and Common Maintenance Areas shall be the Association's responsibility, regardless if such cost was incurred during the Development Period..

**8.2 Use of Common Areas at Own Risk.** Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board and committees, Declarant, and any Builder are not insurers of personal safety and that each person using the Common Area assumes all risks of personal injury and loss or damage to property, resulting from the use and enjoyment of any portion of the Common Area.

**8.3 Condemnation of Common Area.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board determines, in its business judgment, including, without limitation, (i) to purchase additional Common Areas to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Area any improvements that were on condemned Common Area, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

**8.4 Damage to Common Area.** If the Common Area or improvements on the Common Maintenance Areas are damaged and if there are insurance proceeds sufficient to repair such damage to its prior condition, then the Association shall cause such damage to be repaired or reconstructed unless there is a 67% or greater vote of all outstanding votes entitled to be cast within 90 days after the loss not to repair or reconstruct. If said 67% vote is cast not to repair or reconstruct such damage and no alternative improvements are authorized, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

**8.5 Conveyance of Common Areas by Declarant to Association.** Declarant shall have the right to convey title to any portion of the Property owned by Declarant, or any easement interest therein, to the Association as Common Area, and the Association shall be required to accept such conveyance. Property conveyed by Declarant to the Association as Common Area shall be conveyed free and clear of monetary liens and encumbrances other than taxes and assessments imposed by governmental entities or districts authorized by Texas law. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the Records.

**8.6 Annual Inspection of Common Area - Budget.** From the period commencing at the expiration of the Development Period until 10 years thereafter, the Association shall at least annually examine the condition of the Common Area to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer, or professional contractors such as landscapers and brick masons. Within 15 days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair, and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. An expert's report is a record of the Association that is available to Owners for inspection and copying.

**8.7 Lot 43, Block 3.** The Common Area which is Lot 43, Block 3 is to be used for landscape and parking purposes. The Association, from time-to-time, will establish rules and regulations with respect to parking rights on Lot 43, Block 3.

## **ARTICLE IX. EASEMENTS**

**9.1 Easement for Utilities on Common Area.** During the Development Period, the Declarant, on behalf of itself, reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for the construction, installation, use and maintenance for utilities, including, without limitation, water, sewer, electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements. The Association will also have the right to grant the easements described in this Section 9.1.

**9.2 Easement to Correct Drainage on Property.** For a period of 5 years after the Development Period, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where the Dwelling is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

**9.3 Easement for Right to Enter Lot.** If the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association will have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence. **EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 9.3 (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

**9.4 Easement for Right to Enter and Inspect Common Area.** For a period of 10 years after the date of the expiration of the Development Period, Declarant shall have the right, but not the obligation, to enter upon the Common Area for purposes of inspecting and repairing the Common Area and/or any improvements thereon at Declarant's expense; provided; however, nothing contained herein shall obligate Declarant to make any inspections or repairs.

**9.5 Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Dwellings and landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot 24 months after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

**9.6 Association Easement.** Declarant hereby reserves the Association Easement over, upon and across each Lot for the benefit of the Declarant and the Association for the purpose of placing, constructing and maintaining the Entry Signs, the Association Maintenance Feature, and landscaping owned and/or maintained by the Association in a Common Area.

## **ARTICLE X.**

### **ANNEXATION AND WITHDRAWAL; SUPPLEMENTAL DECLARATIONS**

**10.1 Annexation by Declarant.** While Declarant owns any real property subject to this Declaration, Declarant may, at its sole option, annex real property into the Association and subjecting such real property to the terms hereof, including, without limitation, any property platted as part of the Hillside on the Lake community, in which case such additional property and any common areas will be included in the definition of "Property" or "Common Area", as appropriate, and any reference to "Hillside on the Lake" will include such additional property; provided; however, Declarant shall not have the right to annex real property that is located more than 1 mile from the Property (as such term may be amended), without a vote as provided in Section 10.2 below.

**10.2 Annexation by Association.** The Association may annex any real property into the Association and subject such real property to the terms hereof by an affirmative vote of 67% or greater of all outstanding votes that are entitled to be cast.

**10.3 Recording of Annexation.** The annexation of such real property shall be evidenced by a written Recorded document.

10.4 **No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any real property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

10.5 **Withdrawal of Property.** While Declarant owns any real property subject to this Declaration, Declarant may amend this Declaration to withdraw any real property that does not have a Recorded plat from the definition of the Property and from the coverage of this Declaration, provided that the owner of real property to be withdrawn consents to such withdrawal.

10.6 **Supplemental Declarations.** From time-to-time while Declarant owns any real property subject to this Declaration, Declarant may file one or more Supplemental Declarations that, may contain such other provisions established by Declarant in Declarant's sole and absolute discretion.

## **ARTICLE XI. DISPUTE RESOLUTION**

11.1 **Introduction & Definitions.** The Association, the Owners, Declarant, and all persons subject to this Declaration (individually a "Party" and collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Association and/or the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

a. "Claim" means any claim, grievance, or dispute between the Parties arising from or related to this Declaration, the By-laws or the Property or related to the Common Areas or any improvements of any kind to the Common Areas, except Exempt Claims as defined below. Claims include, without limitation: (i) Claims arising out of or relating to the interpretation, application or enforcement of the Declaration, the By-laws, the Certificate or any rules, regulations or guidelines of any type promulgated by or on behalf of the Association (the "Documents"); (ii) Claims relating to the rights and/or duties of Declarant as Declarant under the Documents; and (iii) Claims relating to the design, construction or maintenance of the Common Maintenance Areas and/or the Property.

b. "Claimant" means any Party having a Claim against any other Party.

c. "Exempt Claims" means the following claims or actions, which are exempt from this Article: (i) the Association's claim for assessments, and any action by the Association to collect assessments; (ii) an action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration; (iii) enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration; (iv) a suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article; and (v) a dispute that is subject to alternate dispute resolution - such as mediation or arbitration - by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

d. "Respondent" means the Party against whom the Claimant has a Claim.

11.2 **Mandatory Procedures.** It is intended that all Claims will attempt to be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, Declarant, the Association, the Board, and all Owners shall be bound by the following dispute resolution procedures of this ARTICLE XI.

11.3 **Notice.** Claimant must notify Respondent in writing of a Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in

the Claim; (2) the basis of the Claim (i.e., the provision(s) of the Declaration, By-laws, Certificate or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section 11.3.

**11.4 Right to Cure.** If the Notice sets forth a Claim regarding an alleged defect or defects (whether one or more, the "Alleged Defects") in any improvements on any portion of the Common Area or the Property, Respondent shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

a. **Notice of Alleged Defect.** If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof Claimant shall give written notice of the Alleged Defect ("Notice of Alleged Defect") to the other Party who constructed the improvement with respect to which the Alleged Defect relates.

b. **Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time after the receipt by a Party of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Party, such Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, areas of Association responsibility, or any other portion of the Property for the purposes of inspecting and/or conducting testing and, if deemed necessary such Party at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

c. **No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this Article shall be construed to impose any obligation on a Party to inspect, test, repair, or replace any item or Alleged Defect for which such Party is not otherwise obligated under applicable law or any warranty provided by such Party. The right reserved to a Party to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to such Party except by a Recorded, written document executed by such Party.

**11.5 Legal Actions.** All legal actions initiated by a Claimant shall be brought in accordance with and subject to this ARTICLE XI. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, or mediation alleging (1) damages for costs of repairing an Alleged Defect ("Alleged Defect Costs"), (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid in to the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Owners prior to initiation of any legal action, regulatory action, cause of action, proceeding, mediation or arbitration which notice shall include at a minimum (1) a description of the Alleged Defect; (2) a description of the attempts of the other Party to correct such Alleged Defect and the opportunities provided to the other Party to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Texas that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the Claim; and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

**11.6 Alternative Dispute Resolution.**

a. **Negotiation.** Each Party to a Claim shall make every reasonable effort to meet in person and confer for the purpose of resolving a Claim by good faith negotiation. Each Party to the Claim shall bear their own attorneys' fees and costs in connection with such negotiation.

b. **Mediation.** If the Parties cannot resolve their Claim within such time period as may be agreed upon by such Parties (the "Termination of Negotiations"), the Party instituting the Claim (the "Disputing Party") shall have thirty (30) days after the Termination of Negotiations within which to submit the Claim to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the Parties to the Claim may mutually agree. No person shall serve as a mediator in any Claim in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all Parties to the Claim. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Claim to mediation within thirty days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Claim and all other Parties to the Claim shall be released and discharged from any and all liability to the Disputing Party on account of such Claim; provided, nothing herein shall release or discharge such Party or Parties from any liability to persons or entities not a Party to the foregoing proceedings.

c. **Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each Party to the Claim shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all Parties to the Claim shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the Parties to the Claim mutually agree to extend the mediation period. The mediation shall be held in the County where the Property is located or such other place as is mutually acceptable by the Parties to the Claim.

d. **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the Parties to the Claim and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties to the Claim agree to obtain and assume the expenses of obtaining such advice as provided in Section 11.6.g below. The mediator does not have the authority to impose a settlement on any Party to the Claim.

e. **Exclusion Agreement.** Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

f. **Parties Permitted at Sessions.** Persons other than the Parties to the Claim may attend mediation sessions only with the permission of all Parties to the Claim and the consent of the mediator. Confidential information disclosed to a mediator by the Parties to the Claim or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic record of the mediation process.

g. **Expenses of Mediation.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any expert advice produced at the direct request of the mediator, shall be borne equally by the Parties to the Claim unless agreed to otherwise. Each Party to the Claim shall bear their own attorneys' fees and costs in connection with such mediation.

11.7 **General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not a party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

11.8 **Litigation Approval and Settlement.** In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial, arbitration or administrative proceeding without the prior approval of Owners of at least seventy five percent (75%) of the Lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceeding instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. Also, the Association may not initiate any judicial, arbitration or administrative proceeding against Declarant without the approval of Owners of at least seventy five percent (75%) of the Lots. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims. This Section 11.8 may not be amended without the approval of Owners of at least seventy five percent (75%) of the Lots.

11.9 **Waiver of Trial by Jury.** EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION AND ANY CLAIM (AS DEFINED IN ARTICLE XI OF THIS DECLARATION) ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY SUCH CLAIM, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

## ARTICLE XII. MISCELLANEOUS

12.1 **Declaration Term - Perpetual.** Unless ninety percent (90%) of all outstanding votes that are entitled to be cast approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the Property and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless Recorded.

### 12.2 **Amendments to Declaration.**

a. **Amendment by Declarant.** This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone during the Development Period; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast by members of the Association. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. Specifically, and not by way of limitation, during the Development Period Declarant may unilaterally amend this Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; (d) to comply with any requirements

promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development; or (e) as Declarant may otherwise determine.

b. **Amendment by Association.** The Association may amend this Declaration by an affirmative vote of sixty seven percent (67%) or greater of all outstanding votes entitled to be cast.

**12.3 Enforcement by Association and/or Owner.** The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

**12.4 Remedies; Cumulative.** In the event any Lot does not comply with the terms herein or any Owner fails to comply with the terms herein, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the By-laws and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

**12.5 Notice to Association of Sale or Transfer.** Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice of the name and address of the purchaser or transferee, within 30 days after the date of such transfer of title, and such other information as the Board may reasonably require. With the Board's approval, and subject to applicable laws, a number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of this Declaration, the By-laws, and/or Certificate, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; transfer to, from, or by the Association; voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section 12.5 does not obligate the Board or the manager to levy transfer-related fees.

**12.6 Limitation on Interest.** All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected, or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to Owner.

**12.7 Construction and Interpretation.** This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

**12.8 Notices.** Except as otherwise provided in the By-laws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given three (3) days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which



address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice

**12.9 Not a Condominium.** This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

**12.10 Severability.** Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions which will remain, in full force and effect.

**12.11 Rights and Obligations Run With Land.** The provisions of this Declaration are covenants running with the Property and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed. Notwithstanding any provision herein, the rights of Declarant as provided herein shall not run with the land, but instead may only be transferred or assigned as provided in Section 12.12 herein.

**12.12 Assignment of Declarant's Rights.** Declarant may assign, in whole or in part, its rights as Declarant by executing a document assigning such rights. There may be more than one Declarant, if Declarant makes a partial assignment of the Declarant status. Upon designation of a successor Declarant, all rights, obligations and responsibilities of the former Declarant in and to such status as "Declarant" shall cease (but only to the extent assigned, in the case of a partial assignment); provided, however, the former Declarant shall continue to be afforded the protections granted herein to Declarant for actions performed by former Declarant during the time period that the former Declarant was Declarant.

**12.13 Disclaimer Regarding Security.** Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system 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 covenants to inform its tenants, invitees, and licensees that the Association, its Board and committees and the Declarant are not insurers and that each person using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

**12.14 Adjacent Land Use.** Although this Declaration may contain disclosures about the Property or its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective owner or resident must make his own inspection of the Property, its location and nearby land uses, and make inquiries of anything that concerns him. Declarant makes no representation of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what the Plat or any future plat shows as potential uses of adjoining land. Declarant and the Association cannot and do not guaranty scenic views or that views will be preserved without impairment, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air.

**12.15 Mortgage Provisions.** An institutional holder, insurer, or guarantor of a first mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot ("Mortgage") which provides a written request to the

Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration relating to such Lot or the Owner or occupant which is not cured within sixty (60) days after notice by the Association to the Owner of such violation; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

**12.16 Attorneys' Fees and Court Costs.** If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

**12.17 Gender.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

**12.18 Headings.** The headings contained in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

**12.19 Conflicts.** In the event of conflict between this Declaration and any By-laws, rules, regulations or Certificate, this Declaration will control.

**12.20 Exhibits.** All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

*Signatures on following page.*

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the day and year written below.

**DECLARANT:**

**M/I HOMES OF DFW, LLC**, a Delaware limited liability company

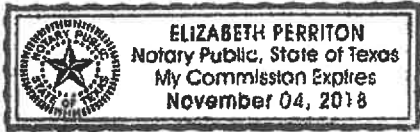
By: [Signature]  
Printed Name: KENNY DOCEKAL  
Title: Controller  
Date: 4/15/15

STATE OF TEXAS

COUNTY OF Denton

0000000000

The foregoing instrument was acknowledged before me on this the 15 day of April, 2015, by Kenny Docekal, the controller of M/I Homes of DFW, LLC, on behalf of said company.



[Signature]  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:

**EXHIBIT "A"**

**The Property**

The following lots as shown on the Final Plat of Hillside on the Lake Phase 1, recorded on February 4, 2015 as Instrument Number 20150029167 of the Official Public Records of Dallas County, Texas:

Lots 1-14, and 37-45, inclusive, Block 1

Lots 1-7, Block 2

**EXHIBIT "B"**

**Common Areas**

The following lots as shown on the Final Plat of Hillside on the Lake Phase 1, recorded on February 4, 2015 as Instrument Number 20150029167 of the Official Public Records of Dallas County, Texas:

Lots 46 and 47, Block 1

Filed and Recorded  
Official Public Records  
John F. Warren, County Clerk  
Dallas County, TEXAS  
04/21/2015 10:19:31 AM  
\$158.00  
201500099092









201800267639  
DEDICATION 1/10

RECEIVED OCT 19 2018

**NOTICE OF FILING OF DEDICATORY INSTRUMENTS FOR  
HILLSIDE ON THE LAKE HOMEOWNERS ASSOCIATION  
[COVENANT ENFORCEMENT AND FINING POLICY]**

STATE OF TEXAS           §  
  §           **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF DALLAS    §

**THIS NOTICE OF FILING OF DEDICATORY INSTRUMENTS** for **HILLSIDE ON THE LAKE HOMEOWNERS ASSOCIATION** (this "Notice") is made this 2<sup>nd</sup> day of October, 2018, by Hillside on the Lake Homeowners Association (the "Association").

**WITNESSETH:**

**WHEREAS**, M/I Homes of DFW, LLC, a Delaware limited liability company ("Declarant"), prepared and recorded an instrument entitled "Declaration of Covenants, Conditions and Restrictions for Hillside on the Lake" on or about April 21, 2015, as Instrument # 201500099092 of the Real Property Records of Dallas County, Texas (the "Declaration"); and

**WHEREAS**, the Association is the property owners' association created to manage or regulate the planned development subject to the Declaration, which development is more particularly described in the Declaration; and

**WHEREAS**, Section 202.006 of the Texas Property Code provides that a property owners' association must file each dedicatory instrument governing the association that has not been previously recorded in the real property records of the county in which the development is located; and

**WHEREAS**, the Association desires to record the attached COVENANT ENFORCEMENT AND FINING POLICY in the Real Property Records of Dallas County, Texas, pursuant to and in accordance with Section 202.006 of the Texas Property Code.

**NOW, THEREFORE**, the dedicatory instrument attached hereto as **Exhibit "A"** is a true and correct copy of the original and is hereby filed of record in the Real Property Records of Dallas County, Texas, in accordance with the requirements of Section 202.006 of the Texas Property Code.



IN WITNESS WHEREOF, the Association has caused this Notice to be executed by its duly authorized agent as of the date first above written.

**HILLSIDE ON THE LAKE HOMEOWNERS ASSOCIATION, a Texas non-profit corporation**

BY Julie E. Blend  
Julie E. Blend, Authorized Agent  
Its: Attorney and Duly Authorized Agent

ACKNOWLEDGMENT

STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Julie E. Blend, Attorney and Duly Authorized Agent of **HILLSIDE ON THE LAKE HOMEOWNERS ASSOCIATION**, known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that she executed the same for the purposes herein expressed and in the capacity herein stated, and as the act and deed of said corporation.

SUBSCRIBED AND SWORN TO BEFORE ME on this 2<sup>nd</sup> day of October, 2018.



Carolyn Camille Parker  
Notary Public, in/for the State of Texas

AFTER RECORDING, PLEASE RETURN TO:  
Julie E. Blend  
Dealey Zimmermann Blend & Gray, PC  
3300 Oak Lawn Ave., Suite 403  
Dallas, Texas 75219

**HILLSIDE ON THE LAKE HOMEOWNERS ASSOCIATION'S  
COVENANT ENFORCEMENT AND FINING POLICY**

**WHEREAS**, the Board of Directors (the "Board") of the Hillside on the Lake Homeowners Association (the "Association") finds there is a need to establish orderly procedures for the enforcement of the restrictive covenants set forth in the Declaration of Covenants, Conditions and Restrictions for Hillside on the Lake, as amended from time to time (the "Declaration") and any other governing document of the Association for the levying of fines against violating owners; and

**WHEREAS**, the Association is authorized by the Texas Property Code and Section 5.10 of the Declaration to adopt and implement sanction measures to enforce the Declaration and any other governing document of the Association.

**NOW, THEREFORE, IT IS RESOLVED** that the following procedures and practices are established for the enforcement of the restrictive covenants of the Declaration and any other governing document of the Association and for the elimination of violations of such provisions found to exist in, on and about the Lots within Hillside on the Lake ("Hillside"), and the same are to be known as the "Covenant Enforcement and Fining Policy" of the Association (hereinafter the "Enforcement Policy") in the discharge of its responsibilities for determination and enforcement of remedies for violations within Hillside:

1. **Establishment of Violation.** Any condition, use, activity or improvement which does not comply with the provisions of the Declaration shall constitute a "Violation" under this Enforcement Policy for all purposes.

2. **Report of Violation.** The existence of a Violation will be verified by a field observation conducted by the Board or its delegate. For the purpose of this Enforcement Policy, the delegate of the Board may include management, an officer or member of the Board, or a member of any committee established by the Board for this purpose. A timely written report shall be prepared by the field observer for each Violation, which will include the following information:

- a. Identification of the nature and description of the Violation(s).
- b. Identification by street address and legal description, if available, of the Lot on which the Violation exists.
- c. Identification of the authority establishing that the subject improvements, modifications or offenses constitute a Violation(s).
- d. Date of the verification observation and name of the person making such observation.

At the same time that the field observation report is prepared, the Board or its delegate will forward to the Owner or Owners of the Lot in question ("Owner") written notice via regular first-class mail of the discovery of a Violation(s) (the "Courtesy Notice"). The Owner will have ten (10) days from the receipt of the Courtesy Notice to correct or eliminate the Violation(s).



The Board or its delegate may, in lieu of this notice, proceed immediately to the notice set forth in paragraph 3 below.

3. Notice of Violation. If the Violation is not corrected or eliminated within the initial ten (10) day period specified in the Courtesy Notice, or if the Board or its delegate deem it appropriate to proceed without the Courtesy Notice, the Association will forward to the Owner of the Lot in question written notice of the violation(s) by regular first-class mail or personal delivery and by certified mail (the "Notice of Violation") to the Owner's last known address as shown on the Association records. A Notice of Violation is not required if the alleged violator received a Notice of Violation relating to a similar Violation within six (6) months of the current Violation and was given a reasonable opportunity to cure the prior Violation. In such event, the Board may impose sanctions as authorized by the Declaration and/or this Enforcement Policy without notice to the Owner other than the Final Notice of Violation described in Paragraph 4 below. The Notice of Violation, if required, will state the following:

- a. The nature, description and location of the Violation, including any property damage caused by the Owner.
- b. The proposed sanction to be imposed, including the amount of any fine or the amount claimed to be due from the Owner for property damage.
- c. If the Violation is corrected or eliminated within a reasonable time that a fine will not be assessed and that no further action will be taken if the Violation is of a curable nature and does not pose a threat to public health or safety.
- d. The recipient may, on or before thirty (30) days from the date the Notice of Violation was mailed to the Owner, deliver to the Association a written request for a hearing.
- e. If the Violation is not corrected or eliminated by the date specified in the Notice of Violation as determined by the Board or its delegate if the Violation is of a curable nature and does not pose a threat to public health or safety, or if a written request for a hearing is not made on or before thirty (30) days from the receipt of the Notice of Violation, that the sanctions delineated in the Notice of Violation may be imposed and that any attorney's fees and costs will be charged to the Owner.
- f. If a hearing is timely requested and is held before a delegate of the Board, that the Owner may appeal the decision of the delegate to the Board.
- g. The recipient 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 an Owner is serving on active military duty.

4. Final Notice of Violation. A formal notice of the Violation and the sanction to be imposed, including the amount of any fine or the amount of any property damage (the "Final Notice of Violation") will be sent by the Association to the Owner by regular first-class mail and by certified mail,

return receipt requested, where, within the time period specified in the Notice of Violation if the Violation has not been corrected or eliminated or the Association has not timely received a written request for a hearing.

5. Request for a Hearing. If the Owner challenges the proposed action by timely requesting a hearing, the hearing shall be held in executive session of the Board or its delegate affording the alleged violator a reasonable opportunity to be heard. Such hearing shall be held no later than the 30<sup>th</sup> day after the date the Board receives the Owner's request for a hearing. Prior to the effectiveness of any sanction hereunder, proof of proper notice of the hearing shall be placed in the minutes of the meeting. 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, agent or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The notice of the hearing shall be sent no later than the 10<sup>th</sup> day before the date of the hearing. The Association or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any imposed by the board or its delegate. The Association shall notify the Owner in writing of its action within ten (10) days after the hearing. The Board may, but shall not be obligated to, suspend any proposed sanction if the Violation is cured within the ten-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Owner.

6. Appeal. Following a hearing before a delegate of the Board, the Owner shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within ten (10) days after the date of the Association's written notice to the Owner of the results of the hearing. Any hearing before the Board shall be held in the same manner as provided in Paragraph 5 for hearings before a delegate of the Board.

7. Correction of Violation. Where the Owner corrects or eliminates the Violation(s) prior to the imposition of any sanction, no further action will be taken (except for collection of any monies for which the Owner may become liable under this Enforcement Policy and/or the Declaration). Written notice of correction or elimination of the Violation may be obtained from the Board upon request for such notice by the Owner and upon payment of a fee for same, the amount of which is set by the Board.

8. Corrective Action. Notwithstanding any other provision contained herein to the contrary, where a Violation is determined or deemed determined to exist, the Board may undertake to cause the Violation to be corrected, removed or otherwise abated if the Board, in its reasonable judgment, determines the Violation may be readily corrected, removed or abated without undue expense and without breach of the peace. Where the Board decides to initiate any such action, the following will apply:

a. The Board must give the Owner and any third party that is known to the Association to be directly affected by the proposed action prior written notice of undertaking of the action.

b. Costs incurred in correcting or elimination the Violation will be referred to the Association to be recovered from the Owner.

c. The Association, and its agents and contractors, will not be liable to the Owner or any third party for trespass or any damages or costs alleged to arise by virtue of action taken under this Paragraph 8.

9. Referral to Legal Counsel. Where a Violation is determined or deemed determined to exist and where the Board deems it to be in the best interests of the Association to refer the Violation to legal counsel for appropriate action, the Board may do so at any time. Such legal action may include, without limitation, sending demand letters to the violating Owner and/or seeking injunctive relief against the Owner to correct or otherwise abate the Violation. Attorney's fees and all costs incurred by the Association in enforcing the Declaration and administering this Enforcement Policy shall become the personal obligation of the Owner.

10. Fines. Subject to the provisions of this Enforcement Policy and/or the Declaration, the imposition of fines will be on the following basis:

a. Fines will be based on an amount that is reasonably related to the nature of the Violation. The Board shall have final discretion in determining the appropriate fine for the Violation in question. The Board may adopt and amend, from time to time, a schedule of fines applicable to Violations within Hillside, which may include a progression of fines for repeat offenders. There shall be no limit to the number or the aggregate amount of fines, which may be levied against an Owner for the same Violation. Fines, if imposed, shall be levied as of the date of the Notice of Violation, regardless of whether the Owner requests a hearing or appeals the fine to the Board.

b. Imposition of fines will be in addition to and not exclusive of any other rights, remedies and recoveries of the Association as created by the Declaration or this Enforcement Policy.

c. Fines are imposed against Lots and become the personal obligation of the Owner of such Lots.

11. Notices. Unless otherwise provided in the Enforcement Policy, all notices required by this Enforcement Policy shall be in writing and shall be deemed to have been duly given if delivered personally and/or if sent by United States Mail, first-class postage prepaid, to the Owner at the address which the Owner has designated in writing and filed with the Secretary of the Association or, if no such address has been designated, to the address of the Lot of the Owner.

a. Where the notice is directed by personal delivery, notice shall be deemed to have been given, sent, delivered or received upon actual receipt by any person accepting delivery thereof at the address of the recipient as set forth in such notice or if no person is there, by leaving the notice taped to the front door of the residence.

b. Where the notice is placed into the care and custody of the United States Postal Service, notice shall be presumed to have been given, sent, delivered or received, as of the third (3<sup>rd</sup>) calendar

day following the date of postmark of such notice bearing postage prepaid and the appropriate name and address as required herein unless otherwise shown by the recipient to have been received at a later date.

c. Where a day required for an action to be taken or a notice to be given, sent, delivered or received, as the case may be, falls on a Saturday, Sunday or United States Postal Service holiday, the required date for the action or notice will be extended to the first day following which is neither a Saturday, Sunday or United States Postal Service holiday.

d. Where the Board has actual knowledge that such situation exists, any action to be taken pursuant to this Enforcement Policy which would directly affect the property of a third party or would be the responsibility of a party other than the Owner, notices required under this Enforcement Policy may be given, if possible, to such third party in addition to the Owner. Notwithstanding any notice sent to a third party, the Owner remains the party responsible for compliance with the requirements of the Declaration. The Board shall accept a response from any such third party only upon the written direction of the Owner, of the Lot upon which the Violation exists.

e. Where the interests of an Owner in a Lot have been handled by a representative or agent of such Owner or where an Owner has otherwise acted so as to put the Association on Notice that its interest in a Lot has been and are being handled by a representative or agent, any notice or communication from the Association pursuant to this Enforcement Policy will be deemed full and effective for all purposes if given to such representative or agent.

f. Where an Owner transfers record title to a Lot at any time during the pendency of any procedure prescribed by this Enforcement Policy, such Owner shall remain personally liable for all costs and fines under this Enforcement Policy. As soon as practical after receipt by the Association of a notice of a change in the record title to a Lot which is the subject of enforcement proceedings under this Enforcement Policy, the Board may begin enforcement proceedings against the new Owner in accordance with this Enforcement Policy. The new Owner shall be personally liable for all costs and fines under this Enforcement Policy, which are the result of the new Owner's failure and/or refusal to correct or eliminate the Violation in the time and manner specified under this Enforcement Policy.

12. Cure of Violation During Enforcement. An Owner may correct or eliminate a Violation at any time during the pendency of any procedure prescribed by this Enforcement Policy. Upon verification by written report to the Board that the Violation has been corrected or eliminated, the Violation will be deemed no longer to exist. The Owner will remain liable for all costs and fines under this Enforcement Policy, which costs and fines, if not paid upon demand therefore by management, will be referred to the Board of Directors of the Association for collection.

13. Definitions. The definitions contained in the Declaration are hereby incorporated herein by reference.

IT IS FURTHER RESOLVED that this Covenant Enforcement and Fining Policy is effective October 1, 2018, to remain in force and effect until revoked, modified or amended.

This is to certify that the foregoing resolution was adopted by the Board of Directors at a meeting of the Board on July 24, 2018, and has not been modified, rescinded or revoked.

*[Handwritten Signature]*  
\_\_\_\_\_  
President

Date 7/24/2018

**HILLSIDE HOMEOWNERS ASSOCIATION, INC.'S SCHEDULE OF FINES**

WHEREAS, the Board of Directors (the "Board") of Hillside Homeowners Association (the "Association") has previously adopted a Covenant Enforcement and Fining Policy (the "Policy") for the Association with regard to covenant violations found to exist within Hillside (the "Properties"); and

WHEREAS, Paragraph 10 of the Policy provides that the Board may adopt a schedule of fines applicable to Violations within the Properties, which may include a progression of fines for repeat offenders.

NOW, THEREFORE, IT IS RESOLVED that the following schedule of fines is hereby established for the Association:

**SCHEDULE OF FINES**

<b><u>VIOLATION</u></b>	<b><u>INITIAL FINE<sup>1</sup></u></b>	<b><u>REPEAT OFFENSE</u></b>
<b><u>Architectural Control</u></b>		
Any part of Article VI of the Declaration	\$500.00	\$500.00
<b><u>Use Restrictions</u></b>		
Any part of Article VII of the Declaration	\$ 50.00	\$100.00

IT IS FURTHER RESOLVED that this Schedule of Fines is effective 10/1, 2018, to remain in force and effect until revoked, modified or amended.

This is to certify that the foregoing resolution was adopted by the Board of Directors at a meeting of the Board on July 24, 2018, and has not been modified, rescinded or revoked.

[Signature]  
President  
7/24/2018  
Date

<sup>1</sup> This Schedule of Fines is to be used solely as a guide to the board in establishing fines for various violations of the Association's governing documents. Fines may vary depending upon the nature and severity of the violation.







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/15/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Davis-Dyer-Max Insurance a Member of the Insurors Group P.O. Box 495429 Garland TX 75049		<b>CONTACT NAME:</b> Sheri Ressler <b>PHONE (A/C, No, Ext):</b> (972) 864-0400 <b>FAX (A/C, No):</b> (972) 278-8400 <b>E-MAIL ADDRESS:</b> sheri.ressman@davis-dyer-max.com	
		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Southern Insurance Company INSURER B: Great American Alliance Ins. Co. INSURER C: Pennsylvania Manufacturers' Assn INSURER D: Philadelphia Indemnity Ins Co INSURER E: INSURER F:	<b>NAIC #</b> 19216 26832 12262 18058
<b>INSURED</b> Hillside on the Lake Homeowners Association % Guardian Association Management, LLC 12700 Hillcrest Road Suite 234 Dallas TX 75230			

**COVERAGES**                      **CERTIFICATE NUMBER: 2018-19 LIABILITY**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000	
	<input checked="" type="checkbox"/> Separation of Insureds	X		CMP 5548740 03	6/4/2018	6/4/2019	MED EXP (Any one person) \$ 5,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:							PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000	
	OTHER:							PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY							Hired / Non-Owned Auto \$ Included
	<input type="checkbox"/> ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$	
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per person) \$	
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per accident) \$	
							PROPERTY DAMAGE (Per accident) \$	
B	<input checked="" type="checkbox"/> UMBRELLA LIAB						EACH OCCURRENCE \$ 1,000,000	
	<input type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR					AGGREGATE \$ 1,000,000	
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			UM30128242	6/4/2018	6/4/2019	\$	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		Y/N				E.L. EACH ACCIDENT \$ 500,000	
	If yes, describe under DESCRIPTION OF OPERATIONS below		N	N/A	201801-07-73-80-4Y	6/4/2018	6/4/2019	E.L. DISEASE - EA EMPLOYEE \$ 500,000
	Description of Operations							E.L. DISEASE - POLICY LIMIT \$ 500,000
D	Directors & Officers Liability			PCAP006760-0118	6/4/2018	6/4/2019	\$1,000,000 - Limit \$1,000 - Deductible	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

### CERTIFICATE HOLDER

### CANCELLATION

Guardian Association Management 12700 Hillcrest Road, Ste 234 Dallas, TX 75230	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE Larry Hughston/SR <i>Larry T. Hughston</i>
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# CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

5/15/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

If this certificate is being prepared for a party who has an insurable interest in the property, do not use this form. Use ACORD 27 or ACORD 28.

<b>PRODUCER</b> Davis-Dyer-Max Insurance a Member of the Insurors Group P.O. Box 495429 Garland TX 75049	<b>CONTACT NAME:</b> Sheri Ressman <b>PHONE (A/C, No, Ext):</b> (972) 864-0400 <b>E-MAIL ADDRESS:</b> sheri.ressman@davis-dyer-max.com <b>PRODUCER CUSTOMER ID:</b> 00016466	<b>FAX (A/C, No):</b> (972) 278-8400													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Southern Insurance Company</td> <td>19216</td> </tr> <tr> <td>INSURER B: Liberty Mutual Insurance</td> <td>23043</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Southern Insurance Company	19216	INSURER B: Liberty Mutual Insurance	23043	INSURER C:		INSURER D:		INSURER E:		INSURER F:
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<b>INSURED</b> Hillside on the Lake Homeowners Association % Guardian Association Management, LLC 12700 Hillcrest Road Suite 234 Dallas TX 75230															

**COVERAGES**                      **CERTIFICATE NUMBER:** 2018-19 **PROPERTY**                      **REVISION NUMBER:**

LOCATION OF PREMISES / DESCRIPTION OF PROPERTY (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Common area only - Hillside on the Lake HOA - Garland TX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	COVERED PROPERTY	LIMITS
<input checked="" type="checkbox"/>	PROPERTY	CMP 5548740 03	6/4/2018	6/4/2019	BUILDING	\$
	CAUSES OF LOSS	Blanket property including Business Personal Property Entry Features, Monuments, Signs, Lighting & Electrical, Landscaping, Irrigation System, Fences/Gates/Walls, Outdoor Property			PERSONAL PROPERTY	\$
	Deductibles				BUSINESS INCOME	\$
	BASIC BUILDING				EXTRA EXPENSE	\$
	BROAD CONTENTS 1,000				RENTAL VALUE	\$
	SPECIAL 1,000				BLANKET BUILDING	\$
	EARTHQUAKE				BLANKET PERS PROP	\$
<input checked="" type="checkbox"/>	WIND 1,000				BLANKET BLDG & PP	\$
	FLOOD				<input checked="" type="checkbox"/> Blanket Property	\$ 206,000
						\$
	INLAND MARINE	TYPE OF POLICY				\$
	CAUSES OF LOSS					\$
	NAMED PERILS	POLICY NUMBER				\$
						\$
B	<input checked="" type="checkbox"/> CRIME	CAC015197-0316	6/4/2018	6/4/2019	<input checked="" type="checkbox"/> Employee Theft	\$ 25,000
	TYPE OF POLICY				<input checked="" type="checkbox"/> Deductible	\$ 250
					<input checked="" type="checkbox"/> Property Manager	\$ Included
A	<input checked="" type="checkbox"/> BOILER & MACHINERY / EQUIPMENT BREAKDOWN	CMP 5548740 03	6/4/2018	6/4/2019	<input checked="" type="checkbox"/> Equipment Breakdown	\$ Included
					<input checked="" type="checkbox"/> Deductible	\$ 1,000
						\$
						\$

SPECIAL CONDITIONS / OTHER COVERAGES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

Guardian Association Management  
 12700 Hillcrest Road, Ste 234  
 Dallas, TX 75230

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Larry Hughston/SR

## ASSOCIATION MANAGEMENT AGREEMENT

THIS AGREEMENT, signed and made effective as of the 27<sup>th</sup> day of March, 2015 (herein referred to as Effective Date) with services scheduled to commence on the 1<sup>st</sup> day of April, 2015 (herein referred to as Commencement Date), is by and between Hillside on the Lake Homeowners' Association, Inc. (herein referred to as "Association") acting by and through its Board of Directors (the "Board" or "Board of Directors") and GUARDIAN ASSOCIATION MANAGEMENT, LLC (herein referred to as "Manager"). The parties are sometimes referred to herein collectively as the "Parties" and individually as a "Party." The Board approved this Agreement on the 27<sup>th</sup> day of March, 2015.

This Agreement is by and between the Association and the Manager.

**1. MANAGER APPOINTMENT** The Association represents that it is the lawful agent of the property owners comprising the Association and that it has the right to collect owner fees and manage the property known as Hillside on the Lake (the "Property"). The Association hereby engages the services of the Manager to operate and manage the Property under the direction of the Board.

**2. TERM** This Agreement shall begin on the Commencement Date and shall automatically renew on a month to month basis unless otherwise terminated. Either party may terminate this Agreement without cause by giving the other party at least sixty (60) days written notice. Such notice shall not affect or impose any right which has accrued to either party prior to the date of notice, including the Association's duty to indemnify, duty to defend, and duty to hold harmless Manager as set forth below. This Agreement shall terminate automatically upon termination of the Association's right to collect assessments, fines, damages, interest and costs from members of the Association.

**3. MANAGEMENT** Manager shall operate and manage the Association's property consistent with industry standards in the locale in which the property is situated.

**4. OPERATING BANK ACCOUNT AND RESERVE BANK ACCOUNT(S)** Manager shall use diligent efforts to collect all owner fees and other money due to the Association including, but not limited to: owner charges, periodic assessments, and special assessments. All receipts shall be deposited in the Association's operating bank account. Manager shall make all disbursements from the operating bank account. Manager may pay bills of the association by auto-debit, auto-draft, credit card, or such other method as is customarily used by Manager in its accounting processes, provided, however, that the Association does not incur any additional cost or expense associated with such method. Manager may establish an interest bearing bank account(s) on behalf of the Association. The Association's bank accounts shall be at an institution of Manager's selection. Periodically, Manager may transfer excess funds from the operating bank account into the interest bearing bank account(s).

**5. INITIATE LEGAL PROCEEDINGS** When necessary, Manager may, with the Association's Board of Directors approval, initiate and pursue legal proceedings in suits for collection of delinquent owner fees. All expenses incurred in collection of money owed to the Association shall be the responsibility of the Association and may be paid from the operating account of the Association by Manager. In addition, Manager may assess a collection fee payable by the Association to Manager and charged back to the delinquent owner to compensate Manager for the time and expense incurred in collecting past due accounts.

**6. MAINTENANCE AND REPAIRS** Manager shall perform maintenance and repairs in the ordinary course of operating the Property. No single expenditure for these purposes shall exceed \$1,500 (Maintenance repair limit) without prior approval of the Association. If the Association's written approval is requested by Manager, it shall be promptly tendered by the Association. It is understood that all maintenance and repair expenses shall be paid from the operating account of the Association by Manager. In order to prevent damage or injury to persons or property or otherwise pursue the legitimate interests of the Association, Manager may make expenditures for maintenance and repairs which exceed the aforementioned Maintenance Repair Limit without approval in which event the Association will be promptly notified of such expenditures.

**7. SERVICE CONTRACTS** Manager may enter into service contracts for the cleaning, maintenance, or repair of the Property with Association approval. Contract expenses shall be paid from the operating account of the Association by Manager.

**8. INSURANCE**

(a) **Association's Insurance.** At the direction of the Board, Manager shall contract in the name of the Association the insurance coverage required by the Association's governing documents and by the Board. Manager shall notify the Board of the policy's expiration no sooner than 120 days prior to the date of the expiration and no later than 60 days prior to the date of expiration and promptly (no later than two business days) upon obtaining knowledge of any cancellation prior to the expiration date. Manager shall also be responsible for filing, processing and negotiating claims; reviewing the status and scope of coverage; making recommendations, from time to time, as to the adequacy of coverage; adjusting all claims arising under the Association insurance policies subject to the provisions of the Association's governing documents; and receiving on behalf of the Association all insurance proceeds, subject to the provisions of such governing documents. The cost of all insurance obtained hereunder shall be an expense of the Association.

(b) **Manager's Insurance.**

(i) **Fidelity Bonds.** Manager shall procure and maintain throughout the term of this Agreement a fidelity bond or similar insurance coverage in an amount not less than \$500,000. The coverage shall protect the Association and the Board from and against any loss of money or of the personal property belonging to the Association or for which the Association is legally liable, occasioned by any dishonest or fraudulent acts committed on or after the date hereof by the Manager or any of its officers, directors, agents or employees handling the Association funds or property.

(ii) **Insurance.** Manager shall maintain throughout the term of this Agreement the following insurance coverage: (A) a general liability insurance policy in an amount not less than \$1,000,000; and (B) workers' compensation insurance as required by state law.

**9. TAXES AND OTHER ASSESSMENTS** Real estate taxes, personal property taxes, improvement assessments, and other like charges shall be paid by Association. Manager may pay same from the Association's operating account. Upon the Association's request, Manager shall review and verify assessments, taxes, and other like charges and recommend payment or appeal. Manager may procure the services of property tax analysts in analyzing property tax expenses and/or preparing protests and filing returns relating to such taxes. The Association shall pay the expenses and fees associated with such protests and filings.

**10. FRANCHISE, SALES, AND INCOME TAXES AND AUDITS** Franchise taxes, income taxes, sales taxes, and other like charges shall be paid by the Association. Manager may pay such costs from the Association's operating account. Manager may procure the services of legal and accounting professionals for the preparation of franchise, income, and sales tax filings. In the event the Association is a corporate entity and is not in good standing with the Secretary of State, Manager may retain the services of a professional to take action necessary to bring the Association's corporate entity into good standing with the Secretary of State. Manager may further retain the services of a professional to obtain an exemption from state franchise taxes and the annual filing of a franchise tax return. In the alternative, Manager may provide the aforementioned services to the Association. Fees relating to bringing the Association's corporate entity into good standing and/or obtaining exemptions available to the Association's corporate entity shall be paid by Manager from the Association's operating account. Manager may solicit and retain a professional to prepare an annual audit, or such other periodic audits, as may be approved by the Association. The Association is encouraged to obtain an annual audit.

**11. BOOKS OF ACCOUNT** Manager shall maintain separate books of account for the Association. All entries shall be supported by sufficient documentation to ascertain that said entries are properly and accurately recorded. Manager shall maintain:

- Complete copies of all property reports rendered to Association
- Detailed cash account reconciliations
- Bank statements and supporting documentation of all debits and credits
- Bank account registers
- Explanations of all adjusting journal entries

Manager shall provide to the Association the Manager's standard Chart of Accounts used for classification purposes. All accounting records shall be based on a calendar year unless otherwise required by the governing documents of the Association.

**12. BUDGET** An annual operating budget shall be prepared for the Association and sent to the Association Board of Directors for approval. Manager shall use its best efforts to manage the Property within the approved budget.

**13. ENFORCEMENT OF DECLARATION AND BYLAWS** Manager shall reasonably enforce the Association's Declaration and Bylaws. Enforcement action to be taken by Manager against an owner shall be at the directive and on behalf of the Association's Board of Directors.

**14. MEETINGS** Manager will attend association meetings as requested and as set forth herein.

**15. COSTS TO BE REIMBURSED OR PAID TO MANAGER** During the term of this Agreement, Manager may reimburse or pay itself (or another third party) out of the Association's operating account for management fees, bank charges, owner assessment coupons, statements copies, postage, storage, and office supplies attributable directly to the Association as set forth in Addendum A. All such payments shall be clearly detailed in the books of account described in Section 11 above.

**16. ADDITIONAL SERVICES MANAGER IS WILLING TO PROVIDE** If requested by the Association, Manager will:

- a. Provide ACH (Automated Clearing House) services by drafting Association members' bank accounts for assessments in which case the Association will pay bank charges associated with same.

b. Assist in obtaining/renewing loans for the Association in which event Manager will be paid a fee equal to 1% of the loan amount, however, this only applies to loans in excess of \$25,000.

c. Act as the point of contact for architectural control submission and will provide site inspections to confirm architectural compliance at a rate to be agreed upon between the Association and Manager.

d. Maintain separate proprietary database files at a rate to be agreed upon between the Association and Manager (some associations have very unique, specific databases that they want maintained by the Manager).

e. Provide tax, accounting, and/or administrative fees as outlined in Paragraph 10. Such services will be billed by Manager to the Association at rates to be agreed upon by the parties prior to Manager's undertaking such services.

**17. ASSOCIATION'S COVENANT TO NOT HIRE MANAGER'S PERSONNEL** The Association covenants and agrees not to solicit or hire, directly or indirectly, the personnel of Manager for the purpose of providing management, maintenance, or supervisory services to the Association prior to or subsequent to the termination of this Agreement for a period of two (2) years. This covenant represents part of Manager's consideration for the services to be provided under this Agreement. This covenant includes the event of the Managers' personnel taking a new or existing position with one of Manager's competitors, moving to a new company and/or creating a new company, then the Association hiring that new company or newly created company.

**18. ASSOCIATION'S RIGHT TO AUDIT** The Association shall have the right to conduct an audit, at the Association's expense, of the Association's books and records maintained by Manager. Should errors in record keeping be discovered by the Association, Manager shall correct such errors within a reasonable time after discovery. Manager shall inform the Association in writing of the action taken to correct such errors.

**19. FINAL ACCOUNTING** Upon termination of this Agreement for any reason whatsoever, Manager shall deliver to Association within thirty (30) days after termination, the following:

- A final accounting, reflecting income, expenses and ending cash balance,
- The balance of any money of Association under Manager's control, and
- Unpaid bills for which the Association is responsible.

If, subsequent to termination, operating funds are not sufficient to pay Property obligations, the Association will be directly responsible for payment of same and will make payment within five (5) days from date of notice of such insufficiency.

**20. COMPENSATION** Manager shall pay itself the management fee, reimbursements, and other costs described in this Agreement and as set forth in Addendum A from the Association's operating account. Manager shall bill members of the Association directly for Resale Certificates, Transfer Fees, and/or Mortgagee Questionnaires; however, if such payments are erroneously paid to the Association, then Manager may deposit such funds into the operating account of the Association and may pay itself from the operating account of the Association.

**21. COMPLIANCE WITH BUILDING REGULATIONS** Manager assumes no responsibility for compliance of any building, structure or equipment on the Property with the requirements of any statute, ordinance, law, code, rule or regulation of any governmental body, public authority or official thereof having jurisdiction. Manager shall notify the Association promptly, or forward to

the Association, any complaints, warnings, notices or summonses received by it relating to such matters. The Association represents that to the best of its knowledge that the buildings, structures and equipment on the Property comply with all such requirements. The Association authorizes Manager to disclose ownership of the Property to any such officials.

**22. NOTICES, ETC.** All notices, demands, exhibits, consents and reports provided for in this Agreement shall be in writing and shall be given to the Association or Manager at the address set forth herein or such other address as they may from time to time specify.

For purposes of notification, the addresses for Association and Manager are:

**Association**

Hillside on the Lake HOA  
c/o M/I Homes Inc. of Dallas  
405 State Highway 121 BYP Suite A-210  
Lewisville, Texas 75067  
Attn: Elizabeth Perriton

**Manager**

Guardian Association Management, LLC.  
12890 Hillcrest Road  
Suite 106  
Dallas, Texas 75230  
Attn: David Garrett

**23. MISCELLANEOUS PROVISIONS** (a) Except otherwise provided in this Agreement, the Association's consents and approvals may be verbal or may be in writing and may be given only by the Association or its duly authorized representative. (b) Any and all amendments, additions or deletions to this Agreement shall be in writing. (c) Manager represents and warrants that it is qualified and licensed, to the extent required by law, to manage real estate and perform all obligations assumed to Manager hereunder; and (d) everything done by Manager under the provisions of this Agreement shall be done as an independent contractor retained by the Association, whose sole duty shall be to perform the obligations contained herein.

**24. INDEMNITY AND HOLD HARMLESS:**

A. Indemnification by the Manager. Manager shall indemnify, protect, defend and hold harmless the Association, its officers, directors and its members from and against any and all claims, demands, losses, costs, expenses, settlements, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, and attorney's fees and disbursements (even if incident to any appeals) ("Claims"), arising out of or caused by the negligence, willful misconduct, or bad faith of Manager, its agents, employees or subcontractors, in the performance or omission of Manager's duties hereunder or by a breach by Manager of the terms or conditions contained herein.

B. Indemnification by the Association. The Association shall indemnify, defend, and hold harmless Manager and its successors and assigns, and their partners, affiliates, officers, stockholders, directors, employees and agents from and against any and all Claims (as defined above) in which it may become involved by reason of being or having been Manager hereunder; provided, such indemnification shall not extend to any action, suit, or other proceeding arising directly or indirectly in connection with any negligence, willful misconduct, or bad faith of Manager or its employees, agents or subcontractors or by a breach by the Association of the terms or conditions contained herein.



**THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

**25. FORCE MAJEURE** The obligations of the parties are subject to force majeure, and neither Party shall be in default under this Agreement if failure or delay in performance is caused by strike, labor disputes, power fluctuations, surges or failures, acts of God, fire, flood, adverse weather conditions, ordinances, laws, regulations, restrictions, condemnation or exercise of rights of eminent domain, war, terrorism or civil disorder, or any other cause beyond the reasonable control of either Party.

**26. GOVERNING LAW AND VENUE AND WAIVER OF JURY TRIAL** This Agreement shall be governed by, and constructed under and in accordance with the laws of the State of Texas. Venue for any legal action or arbitration arising out of this Agreement shall be in Dallas County, Texas, and the Association and the Manager waive the right to sue or be sued elsewhere. The Parties waive their right to a jury trial.


**27. COMPLETE AGREEMENT** This Agreement, together with all Addenda attached hereto and made part thereof, supersedes and takes the place of any and all previous agreements entered into between the parties hereto.

**28. SEVERABILITY CLAUSE** If any provision of this agreement shall be determined to be valid and unenforceable to any extent, the remainder of this Agreement other than that which is determined invalid or unenforceable, shall not be affected thereby, and the remaining provisions hereof shall remain in full force and effect.

**EXECUTED** as of the Effective Date.

**THE ASSOCIATION:**

Hillside on the Lake Homeowners' Association, Inc.

  
By: Adam Whitworth

Its: *Vice President of Land Development*

**THE MANAGER:**

Guardian Association Management, LLC

  
By: David Garrett

Its: President

## ADDENDUM A

<b>MANAGEMENT FEE (per entity):</b>	\$800.00 per month
<b>ON-SITE STAFF:</b>	N/A
<b>ADDITIONAL CHARGES:</b>	
One Time Setup Fee for Association:	\$500.00
Copies	\$0.15 per copy
Color Copies:	Color copies, prints or scanned images (producing color copies only) at \$0.75 per item.
Statements/Coupons:	\$2.00 per unit for statements \$5.00 per unit for coupon booklets.
Postage	Current standard rates as charged by the United States Postal Service.
Envelopes:	\$0.15 per envelope – both return and outgoing.
Franchise Tax Report – Accounting Support :	\$50.00 per hour.
Federal Income Tax Extension – (if needed) Accounting Support:	\$50.00 per hour.
Management Certificate -- one time fee: (pursuant to State law Includes State required Registered Agent Form)	\$150.00
Fax:	\$1.00 per page (outgoing only)
1099's:	\$25.00 + \$5.00 per vendor (with a maximum charge of \$100.00).

<b>Meetings:</b>	<b>\$75.00 per hour for attendance at meetings other than Board meetings and annual Association meetings and for attendance after 9:00 p.m. at Board meetings, or any meetings on weekends that are agreed upon to attend.</b>
<b>Community files and supplies:</b>	<b>At cost of supplies</b>
<b>Telephone:</b>	<b>\$25.00 per month – includes long distance &amp; after-hours answering service calls charged back to the company.</b>
<b>Storage of Association Records:</b>	<b>\$25.00 per month if off-site storage is required – subject to change should facility increase price for storage.</b>
<b>Late Notice, Compliance Notice Collection Letter and/or Demand Letter:</b>	<b>\$15.00 per item – charged back to the homeowner account.</b>
<b>Fees Related to further Collection Efforts:</b>	<b>Cost charged for item, billed back to the homeowner account – such as Attorney Fees, lien filing costs, etc.</b>
<b>Establishing and Maintaining the Operating Account at a Bank Selected by Association:</b>	<b>To be determined depending upon the location of the bank and the ability to conduct on-line banking, not to exceed \$25.00 per month</b>
<b>Oversight of extraordinary projects</b>	<b>10% of total cost of project or insurance such as insurance claims or repairs/renovations exceeding a cost of \$5,000.00:</b>
<b>Assisting the Association's Legal Counsel in Preparing for Trials, Mediations or Hearings in any Litigation or Arbitrations Involving the Association or depositions, or attending any trial/deposition/mediation:</b>	<b>\$ 75.00 per hour</b>
<b>Accounting Assistance outside the normal Scope:</b>	<b>\$50.00 per hour</b>

**ADMINISTRATIVE FEES:**

**Billed to individual homeowners, subject to change pursuant to market conditions.**

Status of Dues, Resale Certificate, Lender Questionnaires, Refinance or Related Forms

\$75.00 - \$300.00 (depending on the forms requested - charged to the homeowner)

Transfer of Ownership Record:

\$125.00 – charged to the homeowner

NSF Charge:

\$35.00 per check

**EXECUTED to be effective as of the Effective Date.**

**ASSOCIATION:**

Hillside on the Lake HOA

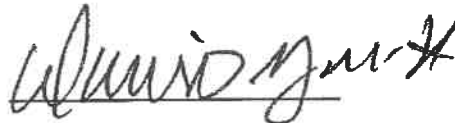


By: Adam Whitworth

Its: Director

**AGENT:**

Guardian Association Management, LLC.



By: David Garrett

Its: President



**HILLSIDE  
2019 BUDGET**

<b>OPERATING FUND</b>		<b>2018</b>	<b>2018</b>	<b>2019</b>	<b>Notes</b>
<b>INCOME:</b>	<b>GL:</b>	<b>Budget 63 lots</b>	<b>Projected 63 lots</b>	<b>Budget 63 lots</b>	
	40000	28,350	28,800	31,185	2019 \$495 per lot * 63
	40010	200	45	45	
	40015	400	-	-	
	40045	350	150	-	
	43000	50	2	10	
	41050		1,127	2	
<b>TOTAL INCOME</b>		<b>29,350</b>	<b>30,134</b>	<b>31,242</b>	
<b>EXPENSES:</b>					
<b>Utilities</b>					
	60000			452	
	60060	2,100	1,000	1,509	
<b>Total Utilities</b>		<b>2,100</b>	<b>1,000</b>	<b>1,961</b>	
<b>Repairs and Maintenance</b>					
	70220	5,850	9,180	7,200	Landscaper \$595.37 a month
	70222	1,000	500	1,000	
	70350	1,250	1,500	1,500	
<b>Total Repairs and Maintenance</b>		<b>8,100</b>	<b>11,180</b>	<b>9,700</b>	
<b>General and Administrative</b>					
	50001	350	425	425	
	50080	400	420	420	
	50270	600	2,000	1,500	legal counsel and collections
	50270	200	200	250	
	50300	800	1,200	1,350	letters, statements, postage etc.
	51000	9,600	9,600	9,600	
	50035	1,500	-	-	
<b>Total General and Administrative</b>		<b>13,450</b>	<b>13,845</b>	<b>13,545</b>	
<b>Common Area Maintenance</b>					
		750		500	
		250	250	473	
	70110		750	600	
<b>Total Community</b>		<b>1,000</b>	<b>1,000</b>	<b>1,573</b>	

<b>Insurance and Taxes</b>						
52010	Prop/GL/D&O Insurance	2,450	2,450	3,063	1.25% increase	
<b>Total Insurance and Taxes</b>		<b>2,450</b>	<b>2,450</b>	<b>3,063</b>		
<b>TOTAL OPERATING EXPENSES</b>		<b>28,600</b>	<b>29,475</b>	<b>31,242</b>		
<b>OPERATING FUND SURPLUS/(DEFICIT) BEFORE RESERVE</b>		<b>2,250</b>	<b>659</b>	<b>1,400</b>		
<b>Reserve Fund Transfers</b>						
43005	Reserve Fund Contribution	1,500		1,400		
41050	Initiation Fee		600			
<b>Total Transfers to Reserves</b>		<b>1,500</b>	<b>600</b>	<b>1,400</b>		
<b>OPERATING FUND SURPLUS/(DEFICIT) AFTER RESERVE</b>		<b>750</b>	<b>59</b>	<b>-</b>		

