

9352

**DECLARATION OF CONDOMINIUM  
FOR**

**BELLA VISTA LIVINGSTON, A CONDOMINIUM**

**Dated: November 8, 2016**

## 1. Definitions

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the following meanings:

A. "Act" shall have the meaning ascribed thereto in the introductory paragraph of this Declaration.

B. "Articles" or "Certificate" mean the Certificate of Formation of the Association, and all amendments thereto.

C. "Assessment" means a share of the funds required for the payment of Common Expenses that from time to time are assessed against any Owner, including Regular Assessments and Special Assessments, dues, fees, charges, interest, costs or any other amounts due to the Association by the Owner or levied against the Unit by the Association.

D. "Association" shall mean Bella Vista Livingston Condominium Owner's Association, Inc., a nonprofit corporation organized pursuant to the Texas Non-Profit Corporation Act, its successors and assigns, of which all Owners shall be members, which corporation shall be the governing and administrative body for all Owners for the protection, preservation, upkeep, maintenance, repair, operation and replacement of the common elements, and the government, operation and administration of the Condominium and the Condominium hereby established.

E. "Balcony" means any balcony or terrace attached or contiguous to the Building and appurtenant to a Unit.

F. "Board" or "Board of Directors" means the Board of Directors of the Association, as established in the Certificate and the Bylaws.

G. "Boat Slip" means an assigned area for docking a boat

H. "Book of Mortgages" shall have the meaning set forth in Paragraph 18.A hereof.

I. "Building(s)" is the improvements to be constructed on the Land containing or which will contain up to five (5) buildings, containing nine (9) Units each to be constructed by Declarant, as shown on the Condominium Plan.

J. "Bylaws" means the Bylaws of the Association attached hereto as Exhibit A and incorporated herein by reference for all purposes, which shall govern the administration of the Association, as such Bylaws may be from time to time hereafter lawfully amended.

K. "Casualty" means a fire, storm, earthquake, flood, natural disaster or other occurrence of any kind or nature, which causes damage or destruction to any part of the Condominium.

L. "Common Elements" means all of the General Common Elements and all of the Limited Common Elements as described in Paragraph 3 hereof (i.e., the Condominium exclusive of the Units).

M. "Common Element Costs" shall have the meaning ascribed thereto in Paragraph 14.C.i hereof.

N. "Common Expenses" shall mean the expenses incurred after the date the first Deed conveying a Unit is recorded in the Real Property Records of Polk County, Texas, for the improvement, maintenance, repair, operation, management and administration of the Condominium; expenses declared Common Expenses either by the provisions of this Declaration or the Bylaws; and all sums lawfully assessed against the Common Elements by the Board. Common Expenses shall include sums assessed to maintain a reserve fund for the repair and replacement of the Common Elements.

O. "Common Expense Fund" shall mean the fund into which Regular Assessments for Common Expenses are collected, and out of which Common Expenses are paid.

P. "Condominium" shall mean the Bella Vista Livingston Condominium, as a condominium established in conformance with the provisions of the Act, including the Land, and improvements, buildings, structures, facilities, fixtures and equipment constructed, placed or erected thereon, and all easements, rights, hereditaments and appurtenances thereto in any wise belonging or appertaining thereto, subject to the reservations herein contained.

Q. "Condominium Documents" means (i) this Declaration; (ii) the Certificate; (iii) the Bylaws; (iv) the Rules and Regulations; and (v) the Condominium Plan.

R. "Condominium Plan" means the plans or plats of the Condominium attached hereto as Exhibit "B", comprised of the following parts:

- i. Part I: a legal description of the Land;
- ii. Part II: a plat of the Condominium showing the location of the Building and related improvements; and
- iii. Part III: a plat of each floor of the Building showing, among other matters, each Unit, its boundaries (horizontal and vertical), area, floor and Unit number, and a plat of each floor of the Building and the location of the parking spaces.

S. "Condominium Unit" means a Unit together with the undivided share of or ownership interest in the Common Elements appurtenant thereto which interest in General Common Elements corresponds to its Percentage of Common Interest Ownership as more particularly described in Paragraph 6.E hereof, together with the rights of that Unit in any Limited Common Elements designated for that Unit, whether exclusively or in conjunction with one or more of the Units.

- T. "Declaration" means this Declaration of Condominium.
- U. "Deed" means each Deed by which Units are conveyed by Declarant to Owners other than Declarant.
- V. "Declarant" means Bella Developments, Inc., its successors and assigns (insofar as any rights or obligations of Declarant are expressly assigned by it in whole, in part or by operation of law), including, but not limited to, a person, firm, corporation, limited liability company, partnership, association, trust or other legal entity, or any combination thereof, who or which acquires all or substantially all of the Units then owned by Declarant, together with its rights hereunder, by conveyance or assignment from Declarant, or by judicial or non-judicial foreclosure, for the purpose of selling such Units to the public.
- W. "Director" means a member of the Board.
- X. "Eligible Mortgagee" means a Mortgagee holding a first lien mortgage on a Unit that has submitted a written request that the Association notify it on any proposed action requiring the consent of a specified percentage of Eligible Mortgagees.
- Y. "First Mortgage" shall mean a mortgage, deed of trust or other Security Interest on a Condominium Unit, which has priority over all other mortgages, deeds of trust or other Security Interests on the Condominium Unit.
- Z. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.
- AA. "General Common Elements" shall mean the undivided interests of all Owners in the Land and all buildings and other improvements thereon except the Units and Limited Common Elements, and shall include, without limiting the generality of the foregoing, all of these items described or referenced in Paragraph 3.A hereof.
- BB. "Bella Vista Livingston" shall mean the Condominium.
- CC. "Land" shall mean 9.31 Acres in Polk County, Texas, as more particularly described in Exhibit B.
- DD. "Limited Common Elements" shall mean those Common Elements which are either limited to and reserved for the exclusive use of one Owner, or limited to and reserved for the common use of more than one, but fewer than all, of the Owners, and shall include, but not be limited to, all of those items described or referenced in Paragraph 3.B hereof.
- EE. "Majority of Unit Owners" means the Owner or Owners of Units whose aggregate undivided Percentages of Common Interest Ownership in the Common Elements is in excess of fifty percent (50%).

FF. "Managing Agent" shall mean any professional manager (whether a person or firm) who contracts with the Board to manage the Condominium for an agreed compensation, which may be \$0.00 (zero).

GG. "Master Policy" means the master insurance policy maintained by the Association pursuant to Paragraph 13 hereof.

HH. "Mortgagee" means a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, recognized institutional-type lender or its loan correspondent, agency of the United States government, person, corporation, limited liability company, partnership, association, trust corporation or other legal entity (including, without limitation, Declarant) which owns, holds, is the beneficiary of or collateral assignee of the beneficiary of a mortgage or deed of trust encumbering a Condominium Unit.

II. "Owner" means a person or persons (or their estate(s), firm, corporation, limited liability company, partnership, association, trust or other legal entity, or any combination thereof) who or which jointly or collectively own aggregate fee simple title to one (1) or more Units, including, without limitation, Declarant, but does not include a person or entity having an interest in a Unit solely as security for an obligation.

JJ. "Percentage of Common Interest Ownership" means the percentage of common interest ownership assigned to each Unit pursuant to Paragraph 6.E hereof.

KK. "Person" means a natural individual, corporation, limited liability company, partnership, trustee, association, personal representative or other legal entity capable of holding title to real estate.

LL. "President" means the President of the Board.

MM. "Regular Assessments" means Assessments which are described in Paragraph 11.A hereof.

NN. "Rules and Regulations" means the Rules and Regulations of the Association, the initial version of which are attached to the Bylaws as Schedule "A," as from time to time amended by the Board in accordance with the provisions of this Declaration and the Bylaws, concerning the use by Owners of the Common Elements and the administration of the Condominium.

OO. "Secretary" means the Secretary of the Board.

PP. "Special Assessments" means Assessments other than those described in Paragraph 11.A hereof.

QQ. "Unit" means one of the separate and individual units of space into which the Building is divided for individual and separate use and ownership, as provided for in the Act and described in this Declaration and the plats attached hereto, including the air space encompassed by the boundaries of the Units, and interior surfaces contained within the demising walls, closed doors and closed windows of the Unit and the structural floor

and ceiling of such Unit as shown on the Condominium Plan, also including all fixtures and improvements therein contained, but not any of the structural components of the Building, and certain other construction and elements thereof or therein which are to be individually and separately owned, as hereinafter defined, described and established in this Declaration, encompassing an enclosed air space and appurtenant Balcony, if any.

RR. "Unit Costs" shall have the meaning ascribed thereto in Paragraph 14.C.ii hereof.

## 2. The Condominium

A. *Units.* The individual Units, more particularly described in Paragraph 6 hereof, are to be used only for the purposes permitted in Paragraph 15.A hereof. Each Owner shall own title in fee simple to his or her Unit and shall have the exclusive right to the use and occupancy of his or her Unit, subject to the provisions of this Declaration. There shall be appurtenant to each Unit:

- i. An undivided share of the General Common Elements corresponding to its Percentage of Common Interest Ownership and the exclusive right to use such Limited Common Elements as are appurtenant to such Unit; and
- ii. Membership of the Owner in the Association.

B. *Development Rights.* Subject to the provisions of Paragraph 6, the Declarant reserves the right to (i) create Units, Common Elements, or Limited Common Elements within the Condominium and (ii) combine or subdivide Units or convert Units into Common Elements.

## 3. Common Elements

The Common Elements of the Condominium are as follows:

A. *General Common Elements.* The General Common Elements consist of:

- i. The Land, including all drives, driveways, sidewalks, outside walkways, security facilities, landscaping, parking areas, pool, recreational area and beach parking areas.
- ii. The foundations, main, common and bearing walls, girders, slabs, beams and columns (including any windows and doors therein), exterior walls to interior of studs, structural and supporting parts of the Building, roofs, ceilings, floors, halls, lobbies, mailroom, mechanical rooms, areas used for storage of maintenance and janitorial equipment and materials, thoroughfares such as stairways, entrances, elevators, exits or communications ways, storage areas, service easements and any other portion of the Building not included within any Unit or designated hereby as a Limited Common Element;
- iii. The elevators and elevator shafts, utilities and, in general, all devices or installations existing for common use by the Owners;

- iv. Parking spaces, which are designated with the words "Loading Area" or "Service Parking" on the Condominium Plan;
- v. The premises, facilities and tangible personal property, if any, used for the common storage, maintenance, operation or repair of the Condominium;
- vi. The fire protection system and security system, and components relating thereto;
- vii. To the extent that they serve more than one Unit, cable receivers, other telephone, cable, video and fiber optic facilities and all equipment appurtenant thereto (if any);
- viii. The components or installation of equipment and materials comprising central services such as electrical power, water, refrigeration, air conditioning and heating equipment or components, reservoirs, waste collection, water tanks and pumps, and all similar devices and installations to the extent or which they serve more than one Unit;
- ix. All other elements necessary to the existence, upkeep and safety of the Condominium including any portion of the Building and the Land not specifically a Unit, appurtenant to a Unit or a Limited Common Element;
- x. All other structures, facilities and equipment not part of or serving the Unit(s) and owned by the Association and located in the Condominium (but specifically excluding all heating ventilation and air conditioning equipment); and
- xi. All replacements and additions to any of the foregoing.

B. *Limited Common Elements.* The Limited Common Elements, being those Common Elements which are hereby designated as reserved for the use by specified Owners to the exclusion of others, consist of the following:

- i. If any air handlers, pipes, ducts, electrical wiring, communication equipment, conduits, chutes, flues, ducts, wires, plumbing fixtures, bearing walls, bearing columns or other fixtures is partially within and partially outside the designated boundaries of a Unit, then the portion serving only that Unit is a Limited Common Element allocated solely to that Unit, and the portion serving more than one Unit or the Common Elements is a part of the General Common Elements;
- ii. Parking spaces and boat slips will be designated by number on the Condominium Plan and assigned as an appurtenance to a Unit;
- iii. Storage cabinets, if any assigned as an appurtenance to a Unit;
- iv. Each Balcony assigned as an appurtenance to a Unit.
- v. A parking space or boat slip may be reallocated by amendment to this Declaration, executed by the Owners whose use of such parking space or boat slip is

or may be directly affected by the reallocation. The Owners executing the amendment shall deliver it to the Association, which shall record it at the expense of the reallocating Owners; and

C. *Use of the Common Elements.* Each Owner shall have the right and non-exclusive easement to use and enjoy the Common Elements, in common with all other Owners, for the purposes for which they are intended and may be required for the purposes of access and ingress and egress to and the use and occupancy and enjoyment of the respective Units owned by such Owners without hindering or encroaching upon the lawful rights of other Owners; provided, however, that the Association may temporarily suspend an Owner's rights under the easement granted herein, other than for ingress and egress, for the failure to pay Assessments or to abide by the Rules and Regulations for use of the Common Elements. Such right to use and enjoy the Common Elements shall extend to each Owner, the members of his and/or her immediate family, the tenants or other lawful occupants of each Unit and their guests, visitors, invitees or permittees, and all such other persons as may be invited or permitted by the Board or its representative to use or enjoy the Common elements or any part thereof. Such right to use the Common Elements shall be subject to and governed by the provisions of the Act and the Condominium Documents. The Common Elements are not subject to partition and any purported conveyance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Unit to which such interest is allocated is void. Each Owner shall be deemed to have an easement in the interest of all other Owners in the Common Elements for the installation, maintenance, repair or replacement of all individually owned fixtures, equipment and appliances which are in any way affixed to, supported by or located in any space or structure constituting part of the Common Elements, and the cost of such installation, maintenance, repair or replacement shall be borne by such Owner. The costs and expenses for the maintenance, repair, upkeep, operation and replacement of the Common Elements shall be a common expense of all Owners in proportion to their respective Percentages of Common Interest Ownership.

D. *Use of Limited Common Elements.* Parking spaces and boat slips, if any, shall be Limited Common Elements for the exclusive use of the Owner of the Unit to which they are appurtenant pursuant to this Declaration but only as and to the extent indicated in the Condominium Plan and/or each Deed. Any conveyance or encumbrances of a Unit shall be deemed to convey or encumber such Unit and all appurtenances thereto as set forth in Paragraph 2 hereof without specifically or particularly referring to any such appurtenances. Parking spaces, if any, designated as guest parking spaces or service parking on the Condominium Plan shall be under the control of the Board which shall promulgate rules and regulations for the use thereof.

Until all of the Units have been conveyed by Declarant, Declarant expressly reserves the right at any time, and from time to time, to prohibit the use of any parking spaces appurtenant to unsold Units.

E. *Transfer of Interest in Common Elements.* Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the



Common Elements will be void unless the Unit to which that interest is allocated is also transferred.

#### 4. Maintenance Responsibilities

##### A. Owner's Responsibilities

i. Each Owner shall bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit or exclusivity serving such Unit; interior surfaces of all perimeter walls; interior surfaces of all structural or load bearing interior walls; interior surfaces of all ceilings and floors (including carpeting, tile, wallpaper, paint or other covering); nonstructural or non-load-bearing interior walls; heating, cooling and ventilation systems; garbage disposals, ranges, refrigerators, dishwashers and any and all other appliances of any nature whatsoever; interior and exterior doors and hardware; interior glass surfaces, window panes, mullions and light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; any decorative features; and any furniture and furnishings. All of the exteriors of the doors and all glass in windows and doors will remain in conformity with the original installation. In particular, the Owner shall have performed (i) the inspections recommended in the Maintenance Manual for the property for which the Owner is responsible for maintenance, and (ii) all necessary maintenance when recommended as a result of these inspections. THE OWNER HEREBY WAIVES ALL CLAIMS IT MIGHT OTHERWISE HAVE AGAINST THE ASSOCIATION, THE DECLARANT, ITS CONTRACTOR AND SUBCONTRACTORS, AND DESIGN CONSULTANTS AND SUBCONSULTANTS WITH RESPECT TO THE PROPERTY IF (A) SUCH INSPECTIONS ARE NOT TIMELY PERFORMED, OR (B) MAINTENANCE IS RECOMMENDED DUE TO THE INSPECTIONS AND THE RECOMMENDATIONS FOR MAINTENANCE ARE NOT IMPLEMENTED. Should an Owner fail to maintain or repair its Unit or any portion of the Limited Common Elements appurtenant to such Unit, the Board may effectuate same and assess the Owner for the cost thereof.

ii. Within thirty (30) days after the date of acquiring an interest in a Unit, the Owner shall provide the Association with: (a) the Owner's mailing address, telephone number and driver's license number, if any; (b) the name and address of the holder of any lien against the Unit and any loan number; (c) the name and telephone number of any Person occupying the Unit other than the Owner or Owners; and (d) the name, address and telephone number of any Person managing the Unit as agent for the Owner. An Owner shall notify the Association within thirty (30) days after the Owner has notice of a change of any of the information set forth in (a) through (d) above, and shall provide that information on request by the Association from time to time.

B. *Common Elements.* The Common Elements shall be maintained in good condition by the Association, subject to reasonable wear and tear and Casualty. The costs and expense for the upkeep and maintenance of the Common Elements shall be a Common Expense of the Owners, and shall be included in the Assessments for the usual

and ordinary costs and expenses for the maintenance, repair, upkeep and operation of the Common Elements, and each Owner shall pay his or her pro-rata share thereof. In particular, the Association shall have performed the inspections recommended in the Maintenance Manual for the property for which the Association is responsible for maintenance, and all necessary maintenance when recommended as a result of these inspections. The Association shall indemnify, defend and hold harmless Declarant, its contractor and subcontractors, and design consultants and subconsultants with respect to all claims made concerning the property as to which such inspections as recommended in the Maintenance Manual are not timely performed, or as to which maintenance is recommended in the Maintenance Manual if the recommendations for maintenance are not implemented.

C. *Utilities.* Each Owner shall bear the cost of any utility service for his or her Unit, which is individually metered and billed directly by the utility company furnishing such service to such Owner. Telephone, electricity, water, and cable television shall be made available to each Unit and shall be individually metered. Except to the extent such costs are borne by each Owner as set forth in the preceding sentence, the cost of common area water, electricity, trash removal and any other utility service shall be a Common Expense. With the exception of common ownership with other Owners, no Owner shall be deemed to own the utilities, which run through his or her Unit and serve one or more other Units.

## 5. Easements and Licenses.

In addition to the easements and licenses recited in Exhibit "C" hereto, the ownership of each Condominium Unit shall be subject to the easements and licenses, which are described in this Section 5.

A. *For Owners.* Subject to such reasonable rules as the Association may from time to time impose, each Owner shall have the following easements to, through and over the Common Elements to the extent necessary for such Owner's maintenance responsibilities:

- i. to paint, remove and replace any finish on the interior surface of any Common Element within his or her Unit;
- ii. to install, repair, maintain, remove and/or replace any plumbing, heating, cooling, lighting, cooking or other fixture or equipment which is a part of his or her Unit or which would become a part thereof when installed in any bearing wall, floor, ceiling or roof; provided, however, that such installation, repair, maintenance, removal and/or replacement shall not impair the structural integrity of the Building, nor shall it adversely affect any adjacent Unit nor shall it alter the external appearance of the Building, nor shall it be visible from the outside of the Building, nor shall it be performed on the roof of the Condominium without the written permission of the Association; and
- iii. to drive and remove nails, screws, bolts and the like into and from bearing walls, floors, ceiling and roof; provided, however, that such action shall not

impair the structural integrity of the Building, nor shall it adversely affect any adjacent Unit, nor shall it alter the exterior appearance of the Building, nor shall it be performed on the roof of the Condominium without the written permission of the Association.

An Owner has an unrestricted right of ingress and egress to his or her Unit, subject to the reasonable rules and regulations promulgated by the Board. Such right of ingress and egress is perpetual and passes with the transfer of ownership of the Unit.

**B. *For Utilities.*** Municipalities and authorized public utilities (or private companies) furnishing services, lines, pipes, wires, conduits, facilities and equipment to the Condominium for common use such as water, electricity, cable television or similar services, and/or telephone shall have access to the Common Elements and each Unit as may be necessary or desirable for the installation, repair, maintenance, removal and/or replacement of such services, and any costs incurred in opening and repairing any wall of the Condominium to install, repair, maintain, remove or replace such authorized services (except as otherwise provided herein) shall be a Common Expense. However, installed utility lines, public or private, shall be considered to be located in a valid easement and may remain in the installed location and be repaired and/or replaced in such location.

**C. *For the Declarant and the Association.*** The Declarant and the Association (and their duly authorized representatives and agents) shall have a reasonable right of entry upon any Unit to (i) make emergency repairs, (ii) enforce the terms of the Condominium Documents, (iii) protect the property rights and welfare of other Owners, (iv) do other work reasonably necessary for the proper maintenance or operation of the Condominium, (v) perform any of the duties and obligations of Declarant and the Association which are set forth in the Condominium Documents, (vi) prevent or terminate waste of water purchased by the Association as a Common Expense, and (vii) perform maintenance and repairs of the Unit that, if not performed, may result in increased damage by water to components of the Condominium that the Association maintains. Except in the event of an emergency, or in the event the Board or its agents are unable to contact any Owner or occupant of a Unit after reasonable effort, such right of entry shall be exercised only in the presence of the Owner or other occupant of the Unit entered. Such right of entry shall be exercised in a manner as to avoid unreasonable interference with the possession, use or enjoyment of the Unit and shall, whenever reasonably possible, be preceded by reasonable notice to the Owner or occupant thereof. In the event any damage is caused by such entry such damage shall be a Common Expense. The Association shall have duplicate keys sufficient to permit access to all sprinklered areas within each Unit if such exist. The Association shall have the right to grant permits, licenses and easements on, over, under and across the Common Elements for utility, access and other purposes reasonably necessary or useful for the proper maintenance, enjoyment and operation of the Condominium.

**D. *For Encroachments.*** If any portion of the Common Elements shall be situated or encroach upon any Unit, or if any Unit shall actually encroach upon any portion of the Common Elements, as the Units and Common Elements actually and physically exist, or as shown by the Condominium Plan, then there shall be deemed to be mutual valid

easements for such encroachments and for the maintenance of same so long as such encroachments exist; provided, however, such easement or easements shall not relieve an Owner of liability in case of the Owner's willful misconduct or failure to adhere to the Condominium Plan. In the event the Building or other structure is totally or partially damaged or destroyed and then repaired, restored or rebuilt, the Owners agree that all encroachments of or upon the Common Elements due to repair or reconstruction shall be permitted and that a valid easement for such encroachments and maintenance thereof shall exist.

## 6. Units.

A. *Designation and Measurement of Units.* On the Condominium Plan, the Units located in the Building are numbered by Unit number as set forth below. In determining dimensions and areas for purposes of establishing the Percentage of Common Interest Ownership assigned to each Unit, each enclosed space in a Unit is measured from: (i) the center line of each Unit's demising walls; (ii) the outside surfaces of interior hallway demising walls; (iii) the outside surfaces of exterior bearing walls (including all glass and glass substitutes), (iv) the interior surface of all other walls; (v) the interior surfaces of finished, unpainted floors and ceilings; but (vi) excluding all General Common Elements and all Limited Common Elements appurtenant to such Unit except those Common Elements which consist of chutes, flues, ducts, wires, conduits, bearing walls, bearing columns, or any other fixture to the extent located within the designated boundaries of a Unit determined as set forth above.

B. *Description of Units.* Each Unit shall consist of the following portions of the Building: (i) the interior surface of each Unit's perimeter walls; (ii) the interior surface of the ceiling; (iii) the upper surface of the concrete floor of each Unit; (iv) the interior surface (including all glass or glass substitutes) of the windows and doors set in each Unit's perimeter walls; (v) the interior surface of each Balcony appurtenant to a Unit; (vi) any and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting part of the interior surfaces of (i) through (v) above; (vii) the air space enclosed within the area described and delimited in (i) through (v) above; (viii) any and all walls, ceilings, floors, partitions, dividers, fixtures and improvements wholly within such air space (but excluding any pipes, ducts, wires, cables, conduits, bearing beams or supports contained within such walls, ceilings, floors, partitions and dividers, or between chase walls or within such air space as per Paragraph 3.A hereof); and (ix) all plumbing, heating, ventilating, air conditioning, lighting, cooking and other fixtures and equipment wholly within a Unit and serving only such Unit (exclusive of pipes, ducts, wires, cables or conduits located within such air space as per Paragraph 3.B hereof).

C. *Approximate Measurements.* It is expressly stipulated, and each and every Owner, his or her heirs, devisees, legal and personal representatives, and successors and assigns accepting title to a Condominium Unit subject to this Declaration acknowledge that the square footage, size and linear dimensions of each Unit (as shown on the Condominium Plan), and each area constituting any part of the Common Elements as set out and shown in this Declaration or the plans and documents attached hereto, are

approximate and are shown for descriptive purposes only and do not necessarily reflect or represent the precise percentage of square footage of any specific portion of the Condominium, and that Declarant does not warrant, represent or guarantee that any Unit actually contains the square footage, size and linear dimensions and elevation reflected thereon or herein. Each Owner further acknowledges that he or she shall have had full opportunity and is under a duty to inspect and examine his or her Unit prior to the purchase thereof and agrees that the Unit is purchased as actually and physically existing, and expressly waives any claim or demand of any kind which he or she may have against Declarant or any person whomsoever by reason of any difference, shortage or discrepancy between such Owner's Unit as actually and physically existing and as reflected on the Condominium Plan.

D. *Boundaries of Units.* In interpreting deeds, mortgages, deeds of trust and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Units or of any Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be the boundaries, regardless of settling, rising, or lateral movement of the Building, and regardless of variances between the boundaries shown on the Condominium Plan and those of the Building.

E. *Percentage of Common Interest Ownership.* The Percentage of Common Interest Ownership assigned to each Unit shall be 1/45<sup>th</sup> which is equal to approximately 2.22%.

Each Percentage of Common Interest Ownership in the Common Elements so allocated pursuant to the foregoing paragraph was assigned by Declarant to the designated Unit solely for purposes of this Declaration and, regardless of any other matter, such Percentage of Common Interest Ownership shall remain fixed and constant and the same cannot be changed except by the written consent of each and every Owner and Mortgagee of such Unit, duly executed, acknowledged and filed for record as a partial amendment to this Declaration. The ownership interests in the Common Elements shall be undivided interests and the Common Elements shall remain undivided and shall not be the object of an action for partition or division of the ownership, so long as such ownership interests are suitable in the context of a condominium; and, in any event, all Mortgagees must be paid prior to the bringing of an action for partition, or the consent of all Mortgagees to such action must be obtained. The percentage of the Common Elements allocated to each Unit shall not be separated from such Unit or separately sold, conveyed, encumbered or otherwise separately disposed of, and each interest in the Common Elements shall follow the respective Unit to which it is allocated, and shall be deemed to be conveyed and/or encumbered with its respective Unit to which it is allocated even though the description in the instrument of conveyance or encumbrance shall refer only to the Unit.

## **7. Association Management**

Membership in the Association and voting by Owners shall be in accordance with Bylaws of the Association and the following provisions:

A. *Members.* Upon becoming an Owner, each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his or her ownership ceases for any reason, at which time his or her membership in the Association shall also automatically cease, and no other person or entity shall be entitled to membership in the Association, except as expressly provided herein or in the Bylaws. No Owner shall be required to pay any consideration whatsoever solely for his or her membership in the Association.

B. *Transfer of Membership.* The share of an Owner in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his or her Unit. Upon any transfer of ownership of any Unit, the new Owner acquiring or succeeding to such ownership interest shall likewise automatically succeed to such membership in the Association.

C. *Votes.* Except as otherwise provided herein or in the Bylaws, each Unit shall be entitled to (1) one vote, the value of which shall equal the total of the Percentages of Common Interest Ownership assigned to the Units owned by such Owner as set forth in this Declaration; provided, however, that any Owner who has been given notice by the Board or by the President that he or she is in violation of the Condominium Documents, whether by virtue of delinquency in payment of Assessments or otherwise, shall not be entitled to vote at any meeting of the Association (unless otherwise required by the Act) until such default has been cured.

D. *Who Can Vote.* No Owner, other than Declarant and those who purchased from Declarant, shall be entitled to vote at any meeting of the Association until such Owner has presented evidence of ownership of a Condominium Unit to the Association (and written proxy if voting by proxy). The vote of each Owner may only be cast by such Owner or by a written proxy given by such Owner to his or her duly authorized representative. If title to a Unit shall be in the name of two (2) or more Owners, any one (1) of such Owners may vote as the Owner at any meeting of the Association and such vote shall be binding on such other Owners who are not present at such meeting unless written notice to the contrary has been received by the Association, in which case the unanimous action of all such Owners (in person or by proxy) shall be required to cast their vote as Owners. If two (2) or more of such Owners are present at any meeting of the Association, then unanimous action shall be required to cast (1) one vote as Owners. Declarant or its representative may exercise all the votes allocated to the unsold Units while same are owned by Declarant.

## **8. Association Administration and Management**

A. *Books and Records.* The Association or Managing Agent shall keep or cause to be kept detailed books and records showing all expenditures and receipts of the administration of the Condominium which shall specify the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Association and the Owners. Such books and records shall be open for inspection by Owners during reasonable working hours on weekdays and may be audited annually by qualified independent auditors in accordance with generally accepted accounting

principles within ninety (90) days after the end of any fiscal year of the Condominium, or as soon thereafter as practicable. Unless the Board shall determine otherwise, the fiscal year of the Association shall be the calendar year. The cost of such audit shall be an expense of the administration of the Condominium, and copies of any such audit shall be made available to all Owners.

B. *Mortgagee Access to Books and Records.* A Mortgagee shall, upon written request, be entitled to: (i) inspect the Condominium Documents and the books and records of the Condominium, (ii) receive, free of charge, an annual financial statement of the Condominium, as soon as the same is available to the Owners, (iii) written notice of all meetings of the Association, and (iv) be permitted to designate a representative to attend all meetings of the Association.

C. *Association Records.* In addition to the financial records described in Paragraph 8.A, the Association or Managing Agent shall keep or cause to be kept: (i) the plans and specifications used to construct and/or renovate the Condominium; (ii) the condominium information statement and any amendments thereto; (iii) the name and address of each Owner; (iv) voting records, proxies and correspondence relating to amendments to the Declaration; and (v) minutes of meetings of the Association and the Board of Directors. All financial and other records of the Association shall be available at its principal office during normal business hours and with reasonable notice for examination and any proper purpose by an Owner and/or the Owner's authorized agent and holders, insurers and guarantors of any first mortgages.

D. *Association Costs and Expenses.* All costs incurred by the Association, including, but not limited to, any costs (including attorneys' fees) incurred in satisfaction of any liability arising herein, caused by or in connection with the Association's operation, maintenance or use of the Condominium, shall be an Association expense. All sums received by the Association, including, but not limited to, all sums received as proceeds of, or pursuant to, any policy of insurance carried by the Association, shall be the receipts of the Association.

E. *Bylaws.* The governance and administration of the Condominium shall be in accordance with the Bylaws which have been initially adopted by Declarant as sole Owner of the Condominium, and which are attached hereto as Exhibit "A." The Bylaws may be amended by Declarant as hereafter provided and from time to time by the Association in accordance with the provisions thereof.

F. *Administration by Association/Managing Agent.* The affairs of the Condominium shall be administered by the Association. Unless otherwise expressly stated in this Declaration or the Bylaws, the Association, acting through its board of directors, may:

- i. adopt and amend the Bylaws;
- ii. adopt and amend budgets for revenues, expenditures, and reserves, and collect Assessments from Owners;

- iii. borrow money, but not in excess of \$25,000;
- iv. hire and terminate Managing Agents and other employees, agents, and independent contractors, provided that any agreement for professional management of the Condominium, or any other contract providing for services of the Declarant, may not exceed three (3) years and must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less prior written notice;
- v. institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Condominium; Condominium;
- vi. make contracts and incur liabilities relating to the operation of the
- vii. regulate the use, maintenance, repair, replacement, modification, and appearance of the Condominium;
- viii. adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of Units and Common Elements, to the extent the regulated actions affect Common Elements or other Units;
- ix. cause additional improvements to be made as a part of the Common Elements;
- x. acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except Common Elements;
- xi. acquire, lease, encumber, exchange, sell, or convey a Unit;
- xii. grant easements, leases, licenses, and concessions through or over the Common Elements;
- xiii. impose and receive payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Owners;
- xiv. impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given, reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations;
- xv. adopt and amend rules regulating the collection of delinquent Assessments and the application of payments;
- xvi. adopt and amend rules regulating the termination of utility service to a Unit, the Owner of which is delinquent in the payment of an Assessment that is used, in whole or in part, to pay the cost of that utility;
- xvii. impose reasonable charges for preparing, recording, or copying declaration documents, resale certificates, or statements of unpaid Assessments;



xviii. enter a Unit for bona fide emergency purposes when in its opinion conditions present an imminent risk of harm or damage to the Common Elements, another Unit, or the occupants;

xix. assign its right to future income, including the right to receive Regular Assessments, but only to the extent this Declaration so provides;

xx. suspend the voting privileges of or the use of certain Common Elements by an Owner delinquent for more than thirty (30) days in the payment of Assessments;

xxi. Purchase insurance and fidelity bonds it considers appropriate or necessary;

xxii. exercise any other powers conferred by this Declaration, the Certificate or Bylaws;

xxiii. exercise any other powers that may be exercised in the State of Texas by a corporation of the same type as the Association;

xxiv. exercise any other powers necessary and proper for the government and operation of the Association; and

xxv. Any of the duties, powers and functions of the Board may be delegated to the Managing Agent.

G. *Board of Directors.* The affairs of the Association shall be managed by a Board of Directors. Such members of the Board of Directors shall serve without pay or compensation (except as provided in the Bylaws), for such term as specified in the Bylaws.

H. *Declarant Control of the Association.* There shall be a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, shall have the rights as set out herein. Subject to the following provisions, the period of Declarant control shall terminate on the earlier of: (1) one-hundred twenty (120) days after the date on which Declarant sells 75% of the Units; or (2) the date on which Declarant surrenders such control, in writing, to the Association. Until such time as Declarant has sold 50% of the Units, there shall be three (3) directors, appointed by Declarant, and those directors shall appoint and remove officers. After Declarant has sold 50% of the Units, Declarant shall remove one of such directors, and the Owners shall elect one director who shall assume that position, until the first meeting of the Owners. Not later than the date on which Declarant has surrendered control of the Association, the Declarant shall remove the remaining two directors appointed by Declarant, and the Owners shall hold their initial meeting to elect two new directors to assume those positions effective as of the date of the election, as well as the third director. The newly constituted Board of Directors shall elect the officers of the Association before the 31st day after the date of their election by the Owners. Notwithstanding anything herein to the

contrary, the initial directors appointed by Declarant may be elected as directors by the Owners.

I. *Termination of Contracts and Leases of Declarant.* The Association may terminate, without penalty, contracts or leases between the Association and the Declarant or an affiliate of Declarant if: (i) the contract or lease is entered into by the Association when the Association is controlled by the Declarant; (ii) the Association terminates the contract or lease before the first anniversary of the date a Board of Directors elected by the Owners takes office; and (iii) the Association gives at least ninety (90) days' notice of its intent to terminate the contract or lease to the other party.

J. *Management Certificate.* The Association shall record in the Office of the County Clerk of Polk County, Texas, a certificate, signed and acknowledged by an officer of the Association, stating: (i) the name of the Condominium, (ii) the name of the Association, (iii) the location of the Condominium, (iv) the recording date of this Declaration, and (v) the mailing address of the Association, or the name and mailing address of the Managing Agent. The Association shall record an updated management certificate within thirty (30) days after the date the Association has notice of a change in any of the information set forth in (i) through (v) above as set forth in the recorded management certificate.

K. *Resale Certificate.* In connection with the sale of any Unit (other than a sale by Declarant), the Association shall furnish to the selling Owner or the Owner's agent, within ten (10) days after the date of receiving a written request from the Owner, a resale certificate containing the following information: (i) the current operating budget of the Association; (ii) any right of first refusal or other restraint contained in the Declaration that restricts the right to transfer a Unit; (iii) the amount of the periodic Regular Assessments and the unpaid Regular Assessments or Special Assessments currently due and payable by the selling Owner; (iv) other unpaid fees or amounts payable to the Association by the selling Owner; (v) capital expenditures, if any, approved by the Association for the next twelve (12) months; (vi) the amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the Association for a specified project; (vii) any unsatisfied judgments against the Association; (viii) the nature of any pending suits against the Association; (ix) whether the Board of Directors has knowledge that any alterations or improvements to the Unit or the Limited Common Elements assigned to that Unit violate the Declaration, the Bylaws or the Rules and Regulations; (x) whether the Board of Directors has received notice from a governmental authority concerning violations of health or building codes with respect to the Unit, the Limited Common elements assigned to that Unit, or any other portion of the Condominium; (xi) the remaining term of any leasehold estate that affects the Condominium and the provisions governing an extension or renewal of the lease; (xii) the name, mailing address, and telephone number of the Managing Agent, if any; and (xiii) such other information as the Association may deem appropriate. The Association shall not be liable to a selling Owner or such Owner's prospective purchaser for delay or failure to furnish a resale certificate, and an officer or agent of the Association is not liable for a delay or failure to furnish a resale certificate unless the officer or agent willfully

refuses to furnish the resale certificate or is grossly negligent in not furnishing the resale certificate. In the event that a properly executed resale certificate incorrectly states the total of delinquent sums owed by the selling Owner to the Association, without affecting the rights of the association against the seller, the purchaser shall not be liable for payment of additional delinquencies that are unpaid on the date the resale certificate is prepared and that exceed the total sum stated in the resale certificate; provided, however, in no event shall a resale certificate affect: (i) the Association's right to recover debts or claims that arise or become due after the date the certificate is prepared; or (ii) the Association's lien on a Unit securing payment of future Assessments.

L. *Restrictions on Alienation of Common Elements.* Notwithstanding any other provision of this Declaration, the Association may not seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, or any part thereof, by act or omission, without first receiving the unanimous prior written approval thereof by all Owners of Units and the First Mortgagees of all Units. Nothing in this paragraph shall limit the authority of Declarant or the Association to grant an easement for use by any public utilities or for any other public purpose(s) consistent with the intended use of the Common Elements by the Condominium.

M. *Required Owner Information upon Purchase of a Unit.* Within thirty (30) days after the date of acquiring an interest in a Unit, the Owner shall provide the Association with: (a) the Owner's mailing address, telephone number and driver's license number or federal employer identification number, if any; (b) the name and address of the holder of any lien against the Unit and any loan number; (c) the name and telephone number of any Person occupying the Unit other than the Owner and Owner's; and (d) the name, address and telephone number of an Person managing the Unit as agent for the Owner. An Owner shall notify the Association within (30) days after the Owner has notice of a change of any of the information set forth in (a) through (d) above, and shall provide that information on request by the Association from time to time.

## 9. Meetings of Owners

A. *First Meeting.* The first meeting of Owners shall be held not later than one hundred twenty (120) days following the conveyance by Declarant of more than seventy-five percent (75%) of the Units to parties other than the Declarant. Until the first meeting of Owners, the affairs of the Association shall be managed by the first Board named in the Certificate or their successors, and during such period it shall have the right to exclusively represent, act as and constitute the Board of Directors, and shall have the right to exclusively exercise and perform all of the rights, powers, authority, functions and duties herein or in the Act or Bylaws given to the Association or the Board.

B. *Annual Meetings.* Following the first meeting of Owners, there shall be an annual meeting of Owners at which the Board, or a portion thereof, shall be elected, and other meetings as provided for herein or in the Bylaws. Special meetings of Owners shall be called by the President, a majority of the Directors or any individual Owner or collection of Owners having twenty percent (20%) of the Percentages of Common Interest Ownership entitled to be cast at such special meeting. Notice of time, place and

subject matter of all meetings shall be given to each Owner or to the individual representative designated by such Owner.

## 10. Directors

A. *Number of Directors.* The number of Directors shall be as set forth in the Bylaws. Any expansion or subsequent contraction [to not less than three (3)] of the number of Directors shall be effected by an amendment to the Bylaws. The Directors of the initial Board of Directors must not be an Owner (including any replacement Directors selected by Declarant prior to the first meeting of Owners). Notwithstanding anything stated herein or in the Bylaws, such Board and any replacement Directors selected by Declarant may remain or be reelected as Directors following the first meeting of Owners. Notwithstanding anything contained herein to the contrary, this Paragraph 10 may not be amended without the prior written consent of Declarant, until one hundred twenty (120) days following the conveyance by Declarant of more than seventy-five percent (75%) of the Units to parties other than the Declarant.

B. *Terms of Directors.* At the first meeting of Owners as defined in Paragraph 9.A, one (1) Director shall be elected for a term of three (3) years, one (1) Director shall be elected for a term of two (2) years and one (1) Director shall be elected for a term of one (1) year. Thereafter, at the annual meeting of Owners, the Owners shall elect a Director to fill the position of the Director whose term has expired at the time of the annual meeting. Such Director shall serve for a term of years as set forth in the Bylaws.

C. *Election of Officers.* The officers of the Association shall be elected by the Board.

D. *Indemnity of Board.* The Association shall indemnify each member of the Board and each of its officers against expenses and liabilities (including the cost and expenses of defending against any such alleged liability) as and to the extent set forth in the Bylaws. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which a Director, officer, or employee may be entitled by law or under any Bylaw, agreement, vote of members or otherwise.

E. *Authority of Officers.* The Board may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association whether or not a Director or such officer is interested in the transaction (as and to the extent set forth in the Bylaws). Such authority may be general or confined to specific instances. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or agent of the Association and in such manner as shall, from time to time, be determined by resolution of the Board. All funds of the Association shall be deposited, from time to time, to the credit of the Association in such banks; trust companies or other depositories as the Board may select.

## 11. Assessments

A. *Regular Monthly Assessments for Common Expenses.* There shall be monthly assessments (the "Regular Assessments") of each Owner for payments to the Common Expense Fund. **Both Regular Assessments and Special Assessments shall be equally assessed, on a per Unit Basis and NOT computed based on the individual Owner's Percentage of Common Interest Ownership.** The Regular Assessments shall commence as to each Owner on the date of delivery of a Deed to the Condominium Unit from Declarant to the purchaser thereof, and Regular Assessments shall be due on the first (1st) day of each subsequent calendar month thereafter, without notice.

B. *Common Expenses, Assessments.* Each Owner shall be bound and obligated and agrees to pay, as assessments therefore are made during his tenure of ownership, (i) his or her pro-rata part and share of the utilities and the expenses of administration, maintenance, repair, upkeep, protection, replacement, and operation of the Common Elements, (ii) assessments made by the Board of Directors and/or the Association, and (iii) any other expenses lawfully agreed to by the Association or the Board, as authorized by the Act, this Declaration or the Bylaws, all of which expenses are included in the term "Common Expenses." The Board of Directors shall be responsible for levying and collecting Special Assessments and Regular Assessments for the Common Expenses.

C. *Reserves for Assessments.* The Board shall establish an annual budget in advance for each fiscal year and such budget shall project all Common Expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, and may include a reasonable allowance for contingencies and reserves. Such reserves may include, without limitation, an adequate reserve fund for the maintenance, repair and replacement of those Common Elements that must be replaced on a periodic basis, and shall be payable in regular installments fixed by the Board rather than by Special Assessments. The Assessments for each year shall be established by the adoption of an annual budget by the Board. Copies of the budget shall be delivered to each Owner, although the delivery of a copy of the budget to each Owner shall not affect the liability of any Owner for any existing or future Assessments. Should the Board at any time determine, in the sole discretion of the Board, that the Assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Condominium in any fiscal year (including a deficiency resulting from the nonpayment of Assessments by certain Owners) or in the event of a casualty loss, then the Board shall have the authority at any time and from time to time to levy an additional Assessment in an amount it shall deem to be necessary for that purpose. Upon purchasing a Unit, the Owner will deliver to the Association an amount equal to one (1) month's Assessments, which will be added to the replacement reserve.

### D. Assessments

i. *Special Assessments.* Special Assessments may be made by the Board at any time, and from time to time, to meet other needs or requirements of the Association and the Condominium including, but not limited to, Special Assessments for costs of capital improvements. However, any Special Assessment equal to the

product of Five-Thousand Dollars (\$5000.00) multiplied by the factor equal to the percentage of the individual condominium ownership (i.e. 2.22% = .022) against any Owner, whether in one sum or in total, during any calendar year (except for repair or replacement following casualty, as contemplated in Paragraph 14.B, as to which no Owner approval shall be necessary), shall not be levied without the prior approval of either said Owner or more than fifty percent (50%) of the Percentages of Common Interest Ownership of all Owners. Notice of Special Assessments shall be sent by the Association to each Owner. The due date of any Special Assessments shall be the due date specified by the Association in such notice; provided, however, that such due date shall in no event be less than thirty (30) days subsequent to such notice.

E. *Assessments as Capital Contributions.* Assessments levied by the Association against each Owner pursuant to this Paragraph 11.E which are expended on capital expenditures, or which are set aside as a reserve for future repairs of improvements within the Condominium (whether or not such repairs or improvements would otherwise be considered capital in nature pursuant to Section 263 of the Internal Revenue Code of 1986, as amended, the "Code"), shall be treated as capital contributions by such Owner to the Association and shall be shown on the books of the Association as such. The Association may elect to be governed by the provisions of Section 528 of the Code for a taxable year by filing Form 1120-H (U.S. Income Tax Return for Home Owners Association) if such election would allow the Association to reduce its federal income tax liability or related expense for such taxable year. The provisions of this Paragraph may be amended by a majority of the Board if in the sole discretion of the Board, such action is necessary to conform to any change in the Code, or any Treasury regulation or ruling promulgated thereunder. Notwithstanding anything contained in this Declaration to the contrary, any amendment to this Paragraph 11.E duly authorized by the Board shall not require the consent of any Owner or Mortgagee.

F. *Computation and Apportionment of Assessments.* Except as otherwise provided in this Declaration, all Assessments levied against Owners to cover expenses of the Association and the Condominium shall be computed and apportioned among and paid by Owners in accordance with the Percentage of Common Interest Ownership assigned to such Owner's Unit without increase or decrease for the existence of any rights with respect to the use, existence or lack of existence of Limited Common Elements appurtenant to such Unit. The amount of Common Expenses assessed against each Unit shall be the debt and obligation of the Owner of said Unit at the time the Assessment is made, and the subsequent transfer of his or her ownership of said Unit shall not terminate the outstanding obligation. Assessments shall be due and payable at such times, as the Association shall determine, commencing (as to Owners other than Declarant) on the date of delivery of a Deed to a Condominium Unit from Declarant to the purchaser thereof. After the initial period set forth in Paragraph 11.G, Declarant shall bear all Assessments levied against Units owned by Declarant in accordance with the aggregate Percentage of Common Interest Ownership assigned thereto.

G. *Payments by Declarant in Lieu of Assessments.* From the date of the initial Assessment until the period of Declarant's control terminates, as set forth in Paragraph 8.H, the Declarant shall periodically pay to the Association the amount equal to all Actual Operating Expenses (as hereinafter defined) of the Association, less the Actual Operating Expense portion of the Assessments attributable to Owners other than the Declarant. For purposes of this Paragraph 11.G, the term "Actual Operating Expenses" shall mean those expenses reasonably necessary for the normal maintenance and operation of the Condominium in order to provide the level and quality of services set forth in the budget initially prepared by Declarant

H. *Default for Failure to Pay Assessments.* An Owner shall be in default for failure to pay a Regular Assessment or a Special Assessment if the same, or any part thereof, is not paid to the Association in full on or before ten (10) days after the due date for such payment, and such Owner shall be subject to a late fee as determined by the Board. Regular Assessments and Special Assessments in default shall bear interest at the lesser of the maximum lawful rate or the rate of eighteen percent (18%) per annum from the date due until paid. Each Owner shall be, and remain, personally liable for the payment of all Regular Assessments and Special Assessments which may be levied against such Owner by the Association in accordance with the Condominium Documents, and any unpaid Regular Assessments and Special Assessments, together with late fees and accrued interest thereon, owed with respect to a Condominium Unit may, at the option of the Association, be collected out of the sale proceeds of such Condominium Unit in accordance with the Act. No successor in title to a Unit shall be deemed to have assumed personal liability for any obligation to pay Regular Assessments or Special Assessments which were due and owing at the time of conveyance to such successor unless such successor agreed to assume such obligation, but this shall not affect or impair the validity of the lien hereinafter provided for. In addition, to the extent permitted by law, Declarant hereby grants to the Association, without recourse, a lien against each Condominium Unit in accordance with Section 51.002, Property Code, Vernon's Texas Code Ann., as the same may be amended from time to time, to secure the payment of any Regular Assessment, Special Assessment, or any other amount which may be levied hereunder, which lien may be enforced by power of sale as provided in such Section 51.002, and the expenses incurred in connection therewith, including late fees, interest, costs and attorneys' fees, shall be chargeable to the Owner in default. In no event shall the Association foreclose a lien securing the payment of Assessments consisting solely of fines. Each Owner, by acceptance of the Deed to his or her Condominium Unit, agrees that the Association and its designated agents have the authority, right and power to enforce the above-described liens for Assessments by all legal methods available for the enforcement of liens, including nonjudicial foreclosure pursuant to Section 51.002 of the Texas Property Code, as amended. Such liens shall be subordinate, secondary and inferior to: (i) assessments, liens and charges in favor of the State of Texas and any political subdivision thereof for taxes that are due and unpaid on such Condominium Unit; (ii) any First Mortgage filed for record prior to the date payment of such Assessment for Common Expenses became due and payable provided they become due and payable prior to the date the holder of the First Mortgage acquires title to the Condominium Unit; and (iii) all liens securing any loan (including loans made by Declarant) made to a purchaser for any part of the purchase

price of any Unit when such Unit is purchased from Declarant. The Board or Managing Agent may, but shall not be obligated to, elect to prepare and execute a notice of assessment (a "Notice of Assessment") which sets forth the amount of the unpaid indebtedness, the name of the Owner, and a description of the Condominium Unit, and may record the Notice of Assessment in the Real Property Records of Polk County, Texas. Notice of an unpaid Regular Assessment, Special Assessment or any other amount and such lien in favor of the Association, may, but need not necessarily, be recorded in the Real Property Records of Polk County, Texas. Recordation of this Declaration shall be deemed constructive notice of the inception and creation of the lien described above. The lien for Common Expenses herein provided for may be enforced by the Association by foreclosure of and on the Condominium Unit owned by the defaulting Owner, without prejudice and subject to the aforesaid prior and superior liens, in the same manner as nonjudicial foreclosures under mortgages on real property located in the State of Texas; provided, however, at any time prior to the foreclosure sale, the Owner of the Condominium Unit to be sold at such foreclosure sale may avoid foreclosure by paying all amounts due to the Association. No foreclosure suit or sale thereunder shall affect or impair any of the prior liens above mentioned. The Board of Directors or any person authorized by it, acting on behalf of the Association, shall have power to bid on the Condominium Unit being foreclosed at the foreclosure sale, and to acquire, hold, lease, mortgage or convey the same on behalf of the Association; provided, however, the Owner of the Condominium Unit purchased by the Association at the foreclosure sale may redeem the Condominium Unit within ninety (90) days after the date of the foreclosure sale in accordance with Section 82.1 13(g) of the Act. All funds realized from any foreclosure sale shall be applied first to the costs and expenses of filing and prosecuting the foreclosure, including all trustee's and attorneys' fees, and then towards payment of the indebtedness, and the remainder, if any, shall be paid over to the Owner or Owners as their interest may appear. In the event the proceeds realized from the foreclosure sale, applied as aforesaid, shall be insufficient to pay off and discharge the whole amount of the assessments sued on, then the purchaser acquiring title to such Condominium Unit at such foreclosure sale, whoever he or she may be, other than the Owner sued, shall not be liable for the deficiency, but such deficiency shall be deemed a Common Expense, collectible from all Owners, including the purchaser at the foreclosure sale, on a pro-rata basis as in the case of other Common Expenses. The defaulting Owner shall remain personally liable to the other Owners paying such deficiency, and the Association may pursue recovery of such deficiencies from the defaulting Owner.

I. *Additional Remedies.* The Association may, in addition to its rights under Paragraph 11.H above and the Act, enforce collection of delinquent Assessments by suit at law for a money judgment, and the expenses incurred in collecting unpaid Assessments, including interest, costs and attorneys' fees shall be chargeable to the Owner in default. The Board may resolve that an Owner in default shall not be entitled to vote at any meeting of the Association so long as such default is in existence, unless otherwise provided in the Act.

J. *No Exemptions from Liability for Common Expenses.* No Owner may be exempt from liability for his or her contribution toward the Common Expenses of the Association



and the Condominium by waiver of the use or enjoyment of any of the Common Elements or any part thereof, by reason of any grievance against the Association, Declarant, or any other Owner, or by the abandonment of such Owner's Condominium Unit or his or her interest therein.

K. *Statement of Assessments.* The Association or its representative shall, upon payment to the Association of a reasonable fee as set by the Board from time to time, furnish to any prospective purchaser or Mortgagee of any Unit, at the written request of the Owner, a written statement as to the amount of the assessments for Common Expense which have become due and are unpaid up to a given date with respect to the Unit to be sold or mortgaged; and, in the case of a sale, the purchaser shall not be liable nor shall the Unit purchased be liable or subject to any lien for any unpaid assessment which has become due and is not shown on such statement for the period of time covered thereby; however, the selling Owner shall remain liable for same and in case of his or her failure or refusal to pay, then the same shall be collectible from all other Owners on a pro-rata basis in proportion to their ownership interest in the Common Elements, and they shall have recourse against the selling Owner; but in the event of a Mortgagee, then the unpaid assessments not shown on the statement for the period of time covered thereby shall remain the obligation of the Owner mortgaging his or her Unit, but the assessment liens securing same as provided for in this Declaration shall be and remain inferior and secondary to the mortgage and liens held by the Mortgagee to whom or for whose information the statement was furnished.

L. *Common Expense Fund.* The Common Expense Fund shall be based upon the aggregate sum which the Board shall from time to time determine is to be paid by all of the Owners to defray estimated Common Expenses.

M. *Failure to Provide Notice of Regular Assessments.* In the event of a failure of the Board to issue the annual notice setting forth the amount of the Regular Assessments, the Regular Assessments then in effect shall continue until the Board issues a new notice of Regular Assessments, and said failure shall not be deemed a waiver of any of the provisions of this Paragraph 11.M nor shall it operate to release any Owner from his or her obligations to pay the assessments provided for hereunder.

N. *Notice to Owners.* Notwithstanding anything to the contrary contained in this Declaration, before the Association may charge an Owner for property damage for which such Owner is liable, or levy a fine for violation of this Declaration, the Bylaws or Rules and Regulations, the Association shall give such Owner a written notice that:

- i. describes the violation or property damage and states the amount of the proposed fine or damage charge;
- ii. states that not later than the 30th day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or damage charge;
- iii. allows the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding year;

iv. the above-described notice may be given by the Association delivering a copy of the notice to an occupant of the Unit. In addition, the Association shall give notice of a levied fine or damage charge to the Owner within thirty (30) days after the date of levy.

## 12. Obligations of Owners and Owner Action

Without limiting the obligations of an Owner, each Owner shall: (i) pay all Assessments, late fees, interest, and other charges properly levied by the Association against the Owner or the Owner's Unit, and shall pay all Regular Assessments without demand by the Association; (ii) comply with this Declaration, the Bylaws, the Rules and Regulations, and any amendments thereto; (iii) pay for damage to the Condominium caused by the negligence or willful misconduct of the Owner, an occupant of the Owner's Unit, or the Owner's or occupant's family, guests, employees, contractors, agents or invitees; and (iv) be liable to the Association for violations of the Declaration, the Bylaws, the Rules and Regulations, and any amendments thereto, by the Owner, an occupant of the Owner's Unit, or the Owner's or occupant's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorneys' fees, whether or not suit is filed. Without limiting the other legal rights of any Owner or the Association, legal action may be brought by the Association, in its sole discretion, on behalf of two (2) or more Owners as their respective interests may appear with respect to any cause of action relating to the Common Elements appurtenant to more than one Condominium Unit. All costs incurred by the Association as a result of such legal action shall be borne in their entirety by the Association.

## 13. Insurance

A. *Owner's Insurance.* Each Owner shall be responsible, at his or her cost and expense, for his or her own personal insurance on the contents of his or her Unit (specifically including glass and windows appurtenant to the Unit) and his or her additions and improvements thereto, and his or her decorations and furnishings and personal property therein to the extent not covered by the insurance obtained by the Association, as well as his or her personal liability to the extent not covered by the liability insurance for all of the Owners which may be obtained by the Association as a Common Expense.

B. *Association's Insurance.* The Association shall purchase and maintain policies of insurance and fidelity bond coverage in accordance with the requirements of the Act and the requirements of the Federal Home Loan Mortgage Corporation, as they may be amended from time to time. To the extent not inconsistent with the foregoing, the Association shall obtain and continuously keep in effect, to the extent reasonably available, the Master Policy of fire and extended coverage, vandalism, malicious mischief and liability insurance, and, if required by law or deemed necessary or desirable by the Board, worker's compensation insurance, with respect to the Condominium and the Association's administration thereof in accordance with the following provisions:

i. *Parties Covered.* The Master Policy shall be purchased by the Association for the benefit of the Association, Managing Agent (if any), and each and every Owner and their respective Mortgagees, as their interests may appear (subject to the provisions of the Condominium Documents and the Act), the cost of which shall be a Common Expense, and provision shall be made for the issuance of appropriate mortgagee endorsements to Mortgagees.

ii. Coverage

a) To the extent such insurance is reasonably available, the Buildings and all Common Elements shall be insured against fire, vandalism and malicious mischief, and other perils covered by a standard extended coverage endorsement (with appropriate endorsement to cover fixtures, installations or additions comprising a part of the Buildings within the unfinished and finished interior surfaces of the perimeter walls, floors and ceilings of individual Units initially installed (originally constructed finishes and surface), or replacements thereof, in accordance with the original plans and specifications for the Condominium, specifically referring to and including the interior walls of each Unit and originally constructed finishes and surfaces), in an amount equal to the replacement cost thereof, excluding the costs of excavations, foundations and footings, as determined annually by the Board. The Board may obtain an appraisal in determining insurable value and the cost thereof shall be an expense of the Association. The Association may, in its sole discretion, elect to carry insurance to cover such other perils as from time to time shall be customarily covered with respect to buildings and improvements similar in construction, location and use.

b) The Association shall also maintain, to the extent reasonably available, commercial general liability insurance, including medical payments insurance, in an amount determined by the Board of Directors, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and shall contain, if available, cross-liability endorsements or appropriate provisions for the benefit of Owners, individually and as a group, Directors, and Managing Agent (if any) insuring each insured against liability to each other insured.

c) If the property insurance and/or the liability insurance described above are not reasonably available, the Association shall cause notice of that fact to be delivered or mailed to all Owners and Mortgagees.

d) The property and liability insurance policies obtained by the Association shall provide that: (a) each Owner is an insured Person under the policy with respect to liability arising out of such Owner's Percentage of Common Interest Ownership or membership in the Association; (b) the insurer waives its right to subrogation under the policy against an Owner or the Association; (c) no action or omission of an Owner, unless within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(d) if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy shall provide the primary insurance; and (e) the insurer issuing the policy may not cancel or refuse to renew the policy less than thirty (30) days after written notice of the proposed cancellation or nonrenewal has been mailed to the Association.

e) The Association shall also carry, if available, fidelity coverage against dishonest acts on the part of Directors, Owners, the Managing Agent (if any), security officers, and any other person (including volunteers, with an appropriate endorsement if required) handling funds belonging to or administered by the Association. Such fidelity coverage shall be for not less than \$100,000.

f) *Deductible.* The Master Policy may have a deductible of not more than \$10,000.00 per occurrence

iii. *Premiums.* All premiums for insurance purchased by the Association shall be included in the Association's budget in accordance with Paragraph 11.C hereof, except that the amount of increase over such premiums occasioned by the use, misuse, occupancy or abandonment of a Unit or the Common Elements by an Owner shall be assessed only against such Owner.

iv. *Proceeds of Insurance.* Proceeds of all insurance policies owned by the Association shall be payable to the Association, shall be deposited by the Association in a federally insured bank, shall be held in a separate account and shall be distributed to the Association, Owners and their Mortgagees (subject to the provisions of the Condominium Documents and the Act) as their interests may appear; provided, however, whenever repair or reconstruction of the Condominium shall be required as provided in Paragraph 14 hereof, the proceeds any insurance received by the Association as a result of any loss requiring repair or reconstruction under this Declaration shall be administered by the Association and shall be applied to such repair or reconstruction, save and except for any claims the Association may have against any Owner for payment of the deductible on any insurance claim.

v. *Appointment of Attorney-in-Fact.* Each Owner, by acceptance of a deed or other instrument of conveyance from Declarant or from any Owner or grantor resulting in ownership of a Condominium Unit, shall be deemed to appoint the Association as his or her true and lawful attorney-in-fact (which shall be deemed to be an irrevocable power of attorney coupled with an interest and not voidable due to the incapacity or disability of an Owner) to act in connection with all matters concerning the maintenance of the Master Policy and the destruction, repair or obsolescence of the Condominium, in whole or in part. Without limiting the generality of the foregoing, the Association, by and through its President or Vice President, shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to collect proceeds, to institute and prosecute litigation or arbitration, to pay all costs associated with its activities as Common Expenses (to the extent the proceeds received from such insurance are not adequate to pay such costs), to administer the distribution of such

proceeds in connection with any reconstruction or repair, to distribute any remaining proceeds to Owners and their Mortgagees (subject to the provisions of the Condominium Documents and the Act) as their interests may appear, to execute releases of liability, and to execute all documents and to do all things on behalf of the Owners and the Condominium as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters (other than exercising any voting rights in determining whether to repair or reconstruct). The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit (except to the extent available by endorsement as herein provided) or covering the liability of any Owner for occurrences not caused by or connected with the Association's operation, maintenance or use of the Condominium.

vi. *Priority as to Proceeds.* Notwithstanding anything contained herein to the contrary, no provision contained herein or in the Condominium Documents shall give an Owner or any other party priority over any Mortgagee with respect to the distribution of proceeds of insurance to which such Owner or other party would not otherwise be entitled.

vii. *Waiver of Subrogation.* The Association and the Owners shall use their best efforts to see that all insurance carried by an Owner or the Association shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against Owners or the Association and the respective tenants, servants, agents, and guests of Owners or the Association, as the case may be, and the Association and the Owners, by their acceptance or recordation of a Deed, hereby waive any and all claims and rights of subrogation against each other to the extent of any damage or injury for which insurance is required to be maintained under this Declaration.

#### **14. Termination of Condominium; Reconstruction or Repair; Condemnation.**

##### *A. Termination of Condominium Project*

The Condominium shall continue indefinitely unless and until it is terminated as provided in this Declaration or by agreement of the Owners holding at least eighty percent (80%) of the votes in the Association (other than those held by the Declarant, or any other Declarant or builder) or First Mortgagees holding eighty percent (80%) of the First Mortgages (based on one vote for each First Mortgage held). The agreement of the Owners or First Mortgagees to terminate (and, if the Condominium is to be sold, the terms of sale) must be evidenced by their execution of a Termination Agreement (or a ratification thereof) in the same manner as a deed, by the requisite number of Owners and First Mortgagees. The Termination Agreement and all ratification thereof must be recorded in the Real Property Records of the County of Polk and is effective only upon recordation. After the recording of the Termination Agreement, the Condominium may be sold, and the Association, on behalf of the Owners, may contract for such sale, on the terms set forth in the Termination Notice. The Association has all power necessary and appropriate to effect

the sale and until the sale has concluded and the proceeds have been distributed the Association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to the Owners and lienholders as their interest may appear, in accordance the provisions set forth below: Unless otherwise specified in the Termination Agreement, until title to the Project has been transferred pursuant to a sale, each Owner and its successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the Unit. During the period of that occupancy, each Owner and the Owner's successors in interest remain liable for all assessments and other obligations imposed upon the Owners by the Act or this Declaration. Following termination of the Condominium, the proceeds of any sale of real estate, together with any insurance proceeds (if the termination occurs in connection with a damage or destruction) and the assets of the Association are held by the Association as trustee for the Owners and the holders of the liens on the Condominium Units as their interest may appear. If the Condominium is not to be sold following termination, on termination title to the Condominium vests in the Owners as tenants in common in proportion to their respective interests, and liens on the Units shift accordingly. While the tenancy in common exists, an Owner and the Owner's successors in interest have an exclusive right to occupy the portion of the Project that formerly constituted the Owner's Unit.

i. The respective interests of the Owners are as follows:

a) except as provided in subparagraph b) immediately below, the respective interests of the Owners are the fair market values of their Units, interest in the General Common Elements, and any Limited Common Elements before termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Owners and becomes final unless disapproved within thirty (30) days after distribution by Owners holding at least twenty-five percent (25%) of the total votes in the Association. The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Condominium Unit by the fair market value of all Condominium Units;

b) if any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the proportionate interest of each Owner shall be their Common Interest Ownership immediately before termination.

ii. The proceeds available for distribution to the holders of interests in the Condominium Units after a termination shall be allocated to each Condominium Unit in accordance with its proportionate interest as provided above and each Condominium Unit's share of such proceeds shall be deposited into a separate account identified by the Condominium Unit designation and the name of the Owner and First Mortgagee thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of such account, without contribution from one account to another, toward payment of the liens encumbering the Condominium Unit represented by such separate account, in the following order: (a) for the payment of taxes and special assessment liens in favor of

any assessing entity; (b) for the payment of any Association common expense assessments which take priority over the lien of a First Mortgage; (c) for the payment of the lien of any First Mortgage; (d) for the payment of unpaid Association common expense assessments, other assessments, charges and fees, and all cost, expenses and fees incurred by the Association, including customary expenses of sale; (e) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and (f) the balance remaining, if any, shall be paid to the Owner(s) of the Condominium Unit.

**B. *Damage or Destruction. Repair and Reconstruction.*** "Repair and Reconstruction" of the improvements, as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Condominium Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Building's original architectural plan and scheme, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration, or replacement, in accordance with the provisions hereinafter set forth:

i. Any loss covered by the property insurance policy maintained by the Association must be adjusted with the Association, and the insurance proceeds will be paid to the Association or an insurance trustee designated for such purpose and not to the holder of any Security Interest. The insurance trustee or the Association shall hold such insurance proceeds in trust for the Owners and lienholders as their interest may appear. Subject to the provisions of subparagraph ii. immediately below, the proceeds must be disbursed first to the repair or restoration of the damaged property, and the Association. Owners and lienholders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated in accordance with Paragraph 14.A, in either of which events the surplus shall be distributed as provided in Paragraph 14.A.ii. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submission of claims, and such other matters of claims adjustment. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the improvements. Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

ii. Any portion of the Building for which insurance is required under this Declaration must be repaired or replaced promptly by the Association unless (a) the Condominium is terminated in accordance with Paragraph 14.A, in which case the provisions of that Paragraph apply or (b) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety.

**C. *Estimates.*** As soon as possible after the occurrence of a casualty which causes damage to any part of the Condominium *for* which the Association has insurance

coverage, the Association shall obtain reliable and detailed cost estimates of the following:

- i. The cost of restoring all damage caused by the casualty to the Common Elements (collectively, the "Common Element Costs"); and
- ii. The cost of restoring that part of the damage caused by the Casualty to each Unit which is or would be covered by insurance held by the Association, without regard to the policy limits of such insurance (collectively, the "Unit Costs").

**D. Adding Assessments.** If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a Special Assessment. Such Special Assessment (to be known as an "Allocation Assessment") shall be assessed against all Condominium Units in accordance with Paragraph 11.D hereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the aforesaid Allocation Assessment. Notwithstanding the foregoing, the Association shall have authority to assess negligent Unit Owners causing any loss all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of repair and reconstruction.

**E. Owner's Responsibilities.** Each Owner shall be responsible for the reconstruction, repair or replacement of the interior of his or her Unit, including, but not limited to, furniture, furnishings, floor coverings, wall coverings, window shades, draperies, interior walls, decorative light fixtures, all appliances located therein, and other items of personal property within the Unit. Each Owner shall also be responsible for the costs not otherwise covered by insurance carried by such Owner or the Association for any reconstruction, repair or replacement of any portion of the Condominium necessitated by his or her negligence or misuse, or the negligence or misuse by his or her family, tenants, guests, agents, servants, employees or contractors, as determined by the Board, in its sole discretion (whether or not a Special Assessment is made against other Owners initially to cover such costs). In the event damage to all or any part of the interior of an Owner's Unit is covered by insurance held by the Association for the benefit of such Owner, then such Owner shall, subject to the provisions above, begin construction or repair of such damage upon receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association and such Unit's First Mortgagee to supervise, approve or disapprove such reconstruction or repair during the course thereof. In the event damage to all or any part of the interior of any Owner's Unit is not covered by insurance held by the Association for the benefit of such Owner, then such Owner shall, subject to the provisions above, begin reconstruction or repair of his Unit within sixty (60) days after the date of such damage, subject to the right of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof.



**F. *Obsolescence.*** Owners holding at least sixty-seven percent (67%) of the votes in the Association (other than those held by the Declarant, any other developer or builder) or First Mortgagees holding sixty-seven percent (67%) of the First Mortgages (based on one vote for each First Mortgage held) may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction thereof. If a plan for renewal or reconstruction is adopted, notice of such plan shall be recorded in Real Property Records of Montgomery County, Texas, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a Common Expense, whether or not they have previously consented to the plan of renewal and reconstruction. The aforesaid Common Expense assessment for the renewal and reconstruction of the Common Elements shall be a debt of each Owner and a lien on its Condominium Unit, and may be enforced and collected as provided in Paragraph 11 hereof.

**G. *Condemnation.*** If at any time during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Condominium shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Paragraph 0 shall apply:

ii. All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award," shall be payable to the Association.

ii. In the event that the entire Condominium is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board the same as if there had been a termination of the Condominium Project under Paragraph 14.A; provided, however, that if a standard different from the value of the Condominium as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Paragraph 14.A hereof.

iii. Subject to the rights of First Mortgagees provided in this Declaration, in the event that less than the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in accordance with this Paragraph 14.C.iii. As soon as practicable, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (a) the total amount allocated to taking of or injury to the Common Elements (less any portion used for restoration or repair of the remaining Common Elements) shall be

apportioned among the Owners in accordance with the Common Interest Ownership assigned to each Unit (but the portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition); (b) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned and which in the sole judgment of the Association were damaged; (c) the respective amounts allocated to the taking of or damage to a particular Unit, and to the improvements an Owner has made within his Condominium Unit, shall be apportioned to the particular Unit involved; and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by the judicial decree. Notwithstanding anything to the contrary contained in this Declaration except the preceding sentence, the allocation of the Condemnation Award to each affected Unit shall be based on the comparative values of the affected Units as they existed immediately prior to the condemnation, using such evidence of the appraised values as is then available, including, but not limited to, recent MAI appraisals of the affected property or comparable property. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Paragraph 14.B hereof.

iv. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Paragraph 14.B hereof.

v. If a Unit is acquired by eminent domain or part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the Owner(s) thereof shall automatically cease to be a member(s) of the Association, shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same and the award will include compensation to the Owner for that Unit and its undivided interest in the Common Elements whether or not any Common Elements are acquired. The Condemnation Award as to each such completely taken Condominium Unit shall be paid into a separate account and disbursed, as soon as practicable, to the Owner of such Condominium Unit and its First Mortgagee in the same manner as provided in Paragraph 14.A hereof. Upon acquisition, unless the decree otherwise provides, that Unit's undivided interest in the Common Elements shall be reallocated to the remaining Units in proportion to the respective Common Elements of those Units before the taking. Any remnant of a Unit remaining after a part of a Unit is taken pursuant to this subsection (5) is thereafter a Common Element.

vi. Except as provided in subsection (5) above, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the

reduction in value of the Unit and its undivided interest in the Common Elements whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, the Unit's interest in the Common Elements shall be reduced and determined by dividing the square footage of the remainder of the Unit by the total square footage of all Units in the Project after the trucing, but the Unit's vote and share of assessments for common expenses shall remain the same. The reallocation of Common Elements pursuant to this Section shall be confirmed by an Amendment to this Declaration prepared, executed and recorded by the Association.

*H. Notice to First Mortgagees.* In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, any First Mortgagee shall be entitled to timely written notice of any such damage or destruction at the address appearing in the Book of Mortgages, and no provision hereof shall entitle an Owner or any other party to the priority granted to such First Mortgagee with respect to the distribution of any insurance proceeds attributable thereto. In the event any Unit or portion thereof, or the Common Elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, any First Mortgagee shall be entitled to timely written notice of any such proceeding or proposed acquisition at the address appearing in the Book of Mortgages, and no provision hereof shall entitle an Owner or any other party to the priority granted to such First Mortgagee with respect to the distribution of the proceeds of any award or settlement attributable thereto.

## **15. Restrictions on Use**

The Board may and is authorized to, from time to time, institute, invoke, amend, and terminate nondiscriminatory Rules and Regulations which the Board may deem necessary or convenient to insure compliance with the general guidelines of this Declaration. In that regard, the following restrictions, covenants and conditions are placed upon each Unit in the Condominium as a general plan or scheme of restrictions for the benefit of each Unit.

### *A. Permitted Uses of Units*

i. After the initial sale or transfer by Declarant, the primary use of each Unit shall be for residential purposes only, with occupancy not to exceed two (2) adult persons per bedroom, unless higher occupancy is mandated by public agencies that enforce compliance with the familial status protection of the Fair Housing Act. Unit may not be used for any commercial or business purpose other than for a home office for which there is no vehicular or walk-in traffic and no visible evidence of a commercial or business purpose.

ii. Notwithstanding the generality of the foregoing, so long as Declarant owns any of the Units which are for sale, Declarant and its employees, representatives and agents may maintain business, leasing and/or sales offices, sales models and other sales facilities within the Condominium as Declarant shall deem appropriate. In addition, Declarant or its nominees may temporarily use the Common Elements and unsold Units to facilitate the construction of the Building.

**B. *Alterations, Additions and Improvements***

i. No alterations of any portion of the Common Elements or additions or improvements thereon shall be made by any Owner without the prior written approval of the Board of Directors or the Association. No Owner shall make any structural modification or substantial improvement to or alteration of or to his or her Unit, except in a manner authorized in writing by the Board or the Association. In that respect, to the extent deemed necessary by the Board, all payment and performance bonds required by the Association or Declarant, names of all contractors, subcontractors and other parties which will be involved therewith, plans, specifications, mechanical and engineering drawings and renderings for any proposed structural modification or substantial alteration, improvement to or modification of a Unit must be submitted, no less than thirty (30) days prior to the date of commencement of such work, by such Owner to the Board for review and approval. The Board may impose such specifications and requirements as it may reasonably deem necessary in connection therewith, and has the right to approve or deny any of such alterations, additions, modifications or improvements, or the contractors, subcontractors or other personnel performing same, so that, among other reasons, the quality, integrity and safety of the Condominium can be promoted and in order to insure that the alterations, additions, improvements and modifications (a) are consistent and compatible with the existing Building and (b) do not encourage or involve a violation of the Condominium Documents. In addition, the Board shall cause the Association to notify the applicable Owner that all alterations, additions, improvements and modifications shall be subject to any and all applicable governmental requirements. In the event any Owner constructs or causes to be constructed any alteration, addition, improvement or other modification to his or her Unit which encroaches on any Common Element or any other Unit, the Board may require such Owner, at his or her sole cost and expense, to remove such encroachment and to restore and repair any damage caused by same or attributable thereto. No approval by the Board of any such alterations, additions, modifications or improvements, or the plans, specifications, mechanical and engineering drawings and renderings, or the contractors, subcontractors or other personnel performing same, will be or constitute any representation or warranty by the Board as to the adequacy or sufficiency thereof, or of the compliance of same with any applicable laws, codes or ordinances. All alterations, additions, modifications or improvements must be performed in a prompt, diligent and professional manner, must comply with the plans, specifications, mechanical and engineering drawings and renderings submitted to the Board (with any requisite changes, additions, modifications or alterations thereto (which may be imposed by the Board)), and must comply with all applicable codes, ordinances, laws and regulations applicable thereto.

ii. No Owner shall erect antennae, aerials, awnings or other exterior attachments, or place any reflective material in the windows of a Unit or on the Balcony thereof. Except as expressly provided herein, no Unit shall be altered, remodeled, subdivided or converted into more than one dwelling unit. All windows

in a Unit shall have draperies, blinds or shutters installed and shall be subject to the Rules and Regulations. No window covering may be of a color which does not correspond to the color of the exterior of the Condominium.

iii. No Owner shall install colored lights or light fixtures presenting the same effect, which are visible from outside the Building.

iv. Holiday decorations, including lights, which are visible from outside a Unit may not be put up more than thirty (30) days prior to a national or religious holiday and must be removed within ten (10) days after such holiday.

v. No Owner shall make any alteration or modification involving plumbing, electricity and fire protection systems, and/or heating, ventilating, air conditioning Systems, or the mechanical or structural systems within such Owner's Unit or the Common Elements, without first ensuring that any proposed alteration or modification complies with all applicable governmental requirements, submitting plans and specifications therefor and the name, address and telephone number of any contractor to the Association and securing the prior written approval of the Association. Such prior written approval is required to insure that the alterations or modifications: (i) are consistent and compatible with the existing Building, and (ii) do not encourage or involve a violation of the Condominium Documents.

vi. Other than appliances in the kitchens of Units, no apparatus for cooking is allowed to be used in any Unit or on any balcony appurtenant thereto, including but not limited to barbeque pits, grills, smokers, open flame fire pits, or deep fryers.

vii. No Owner shall enclose or make any alteration or modification of any nature whatsoever to such Owner's Balcony, which shall alter the external appearance of the Balcony. The furnishings on each Balcony shall be subject to the approval of the Association so as to insure a uniform appearance of the Building. No objects or things shall be stored on a Balcony and no item shall be placed temporarily on or hung from a Balcony, which shall impair the uniform appearance of the Building. No outside clothes or drying lines shall be installed or permitted to be installed from a Balcony or the Common Elements. In addition to the restrictions on use set out above, all balconies must be kept in a neat and orderly manner. No more than four (4) plants may be kept on a balcony at any one time, and all such plants must be contained within the balcony. Any furniture placed on a balcony must be kept clean and in good condition.

viii. No Owner may alter the floor assembly, which is designed to mitigate sound transmission, without approval of the Board and, in the Board's sole discretion, certification by a qualified engineer that such alternative floor system has equal or greater sound transmission mitigation properties (as measured by the STC Rating of the alternative floor system). Any wood, tile or other hard surface flooring within a Unit shall have such sub-flooring as the Association may require to insure that such wood, tile or other hard surface flooring shall not create a nuisance or disturbance to other Owners.

ix. Notwithstanding anything herein to the contrary, the Board's failure to approve or deny an Owner's request for alterations, additions, modifications, or improvements within thirty (30) days of the Board's receipt of the same shall constitute a denial of such request.

**C. Leases.**

i. *Rules and Regulations for Leasing.* Prior to the leasing of any Unit, each Owner must comply with the provisions of this Section.

ii. *Form and Content of Proposed Lease Agreements.*

- a) Any and all lease or rental agreements must be in writing.
- b) Units may be leased only in their entirety; no fraction may be leased.
- c) No more than four (4) persons may reside in any leased Unit at one time.
- d) No transient lessee may be accommodated therein.
- e) Each Lease shall specify, by name, those persons intending to occupy the unit pursuant to the Lease.
- f) All leases must be for a term not less than six (6) months.
- g) Any lease of a Unit in the Condominium shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees the if such language is not expressly contained therein, then, such language shall be incorporated into such lease by virtue of the existence of this covenant. Any lessee, by occupancy in a Unit, agrees to the applicability of this covenant and incorporation of this covenant and following language into the lease:
  - h) Lessee acknowledges that certain promises made to Lessor are made for the benefit of Condominium Association, Inc. (the "Association") relating the Association ("Bylaws") and Rules and Regulations of the Association ("Rules"). In order to enforce the provisions of this Agreement made for the Association's benefit, Lessee agrees and acknowledges, and Lessor authorizes, that in the event of Lessee's breach or violation of any of the provisions of the Declaration, Bylaws, or Rules, as they may be amended from time to time, such breach shall constitute a breach or violation of the Lease and the Lessee shall be default thereunder, and the Association shall be authorized (but not obligated), without joinder or authorization from the Owner of the Unit, to take any and all action against the Lessee available at law or equity, including, but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by the Lessee, including the eviction of the Lessee by forcible entry and detainer action brought by the Association. Failure by

the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

i) Lessee shall comply strictly with all provisions of the Declaration, Bylaws and Rules as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family, guests and invitees in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges that the violation by Lessee or any of the parties described for whose conduct Lessee is responsible to control of any provision in the Declaration, Bylaws or Rules shall constitute a default under this lease.

j) It shall be the obligation of the Owner to provide the lessee of such Owner's unit with copies of the Declaration, Bylaws and Rules prior to entry into any lease covering such unit; such copies to be made available to such Owners and Lessees for such purpose by the Association for reproduction cost.

iii. *Remedies of the Association*

a) The Owner of the Unit shall be jointly and severally liable with the lessee of his Unit for any and all violations of the Declaration, Bylaws and Rules, for any fines levied against any such lessee by the Association, for any attorneys' fees, costs, court costs, or other amounts incurred as a result of any violation and for damages to the Condominium including, without limitation, the Common Elements or Building, caused by such lessee. Provided, however, that an Owner shall not be liable for, or responsible for any criminal acts of such lessee.

b) Further, in the event the Association proceeds to evict a lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Unit and the Owner thereof, such being deemed hereby as an expense which benefits the leased Unit and the owner thereof.

c) The Association shall have the authority to enforce any violations of the Declaration, or Rules and Regulations by appropriate judicial relief, including injunctions and suit for damages. In any such lawsuit, the Association shall be entitled to reasonable attorney's fees and costs.

D. *Offensive Activities.* No unlawful, noxious or offensive activity shall be conducted or carried on in any Unit, or upon the Common Elements or anywhere else in the Condominium, nor shall anything be done therein or thereon which may be or become an annoyance or a nuisance to other Owners or the neighborhood or cause unreasonable noise or disturbance to others, or which shall interfere in any manner with any Owner's quiet enjoyment of his or her Unit. No Owner shall do or permit anything to be done or keep anything or permit anything to be kept in his or her Unit or on the Common Elements that would increase the rate of or invalidate the coverage afforded by insurance on the Condominium. No Owner shall store any environmentally hazardous, dangerous, explosive or inflammable liquids or other like materials either in his or her Unit or upon the Common Elements.

E. *Signage.* No signs of any type may be placed in the windows or on the balcony of any Unit, except as follows: (1) one "For Sale" or "For Rent" sign may be placed in a window of a Unit, provided that the sign is no more than eight square feet in area; (2) one political sign supporting any candidate for election or other matter subject of a vote of the general population may be placed in a window of a Unit, provided that any such sign may not be put up more than sixty (60) days before the election or other vote, and must be removed within ten (10) days after the election or other vote. No Owner may make use of more than two political signs at any one time. Provided, however, that nothing contained herein shall be deemed to prohibit or restrict in any manner the right of Declarant to construct and maintain such promotional signs and other sales aids on any portion of the Condominium (other than Units which have been sold) which, in the reasonable judgment of the Declarant are necessary or helpful for its sales program.

F. *Pets/Animals*

i. An Owner may keep domestic animals such as birds, fish, dogs, and cats within a Unit as provided in the Bylaws. All animals shall be registered with the Association in such manner as it shall require and shall have the care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary condition. Any Owner who causes any animal to be brought or kept upon the premises of the Condominium shall always keep such animal on a leash (if not within such Owner's Unit), and shall indemnify and hold the Association harmless from and against any loss, damage, cost or liability which the Association may sustain as a result of the presence of such animal on the premises, whether or not the Association has given its permission. The Association may levy a fine, not to exceed One Hundred and No/100 Dollars (\$100.00) per occurrence or per day (as the case may be), for violations of this provision. Notwithstanding the generality of the foregoing, if after (i) three (3) violations of this provision, and/or violations of the Rules concerning pets (ii) ten (10) days' prior written notice to the Owner of such animal, if such Owner can be located, and (iii) an opportunity for such Owner to have a hearing before the Board, such animal is found to be in violation of this Paragraph 15.F. The Owner of such animal shall give such animal to whomever such Owner desires (not within the Condominium), failing which such animal may be taken from such Owner and given to the Polk County Animal Service Center. If such Owner cannot be located, such animal may be given to the Polk County Animal Service Center. Should the Board elect to disallow all keeping of pets or any type of pets in any Unit or elect to further restrict or expand the rights and obligations set forth herein regarding pets, it may do so by enacting Rules outlining such changes and conditions.

ii. No animals, snakes, livestock, or poultry of any kind shall be raised, bred, or kept in the Condominium, except that non-dangerous dogs, cats, or other common household pets may be kept, provided they are not kept, bred, or maintained for commercial purposes. No more than three (3) common household pets will be permitted in the Condominium. If common household pets are kept, such pets must be restrained and confined on the Owner's Lot. It is the pet owner's responsibility to keep the outside clean and free of pet debris. Pets must be on a



leash when away from the condominium. At no time shall any animal be kept, bred, or maintained in the condominium which is deemed to be inherently dangerous in the sole and exclusive opinion of the Association, nor any animal which is trained and/or utilized for fighting. For purposes of this paragraph, the breeds of dogs commonly known as pit bull terriers, Dobermans, and Rottweilers full or mixed are presumptively deemed to be inherently dangerous. Any pet kept by unit owner which acts in a threatening manner to another property owner, their family or invited guests or another pet shall be prohibited and not permitted to be kept on any lot.

G. *Storage/Refuse/Obstructions.* The Common Elements shall not be used for storage of supplies, personal property, garbage or refuse of any kind (except common garbage receptacles, storage spaces which are Limited Common Elements, storage buildings or other similar structures which may from time to time be placed upon the Common Elements at the discretion of the Declarant or the Board). Stairs, entrances, hallways, sidewalks, drives and parking areas shall not be obstructed in any way nor shall unauthorized persons or animals play therein or thereon or use such areas for other than their intended purposes. In general, no activities shall be conducted nor conditions maintained by any Owner either in his or her Unit or upon the Common Elements, which detracts from the uniform appearance of the Condominium.

H. *Maintenance.* Each Owner shall maintain his or her Unit and any Limited Common Elements appurtenant thereto in a clean, safe and sanitary condition. Each Owner shall also use due care to avoid damaging any of the Common Elements, including, but not limited to, telephone, water, gas, cable, television, plumbing, power or other utility systems throughout the Condominium and each Owner shall be responsible for his or her negligence or misuse of any of the Common Elements or his or her own facilities resulting in damage to the Common Elements.

I. *Compliance with Laws.* Each Owner shall promptly and fully comply with all applicable laws, rules, ordinances, statutes, regulations, or requirements or any governmental agency or authority with respect to the occupancy and use of his or her Unit.

J. *No Right of First Refusal.* Any Owner (including Declarant) may sell, transfer or otherwise convey such Owner's Condominium Unit free from, and such sale, transfer or other conveyance shall not be subject to, any right of first refusal or any similar restriction in favor of the Association.

K. *Vehicles: Parking Spaces.* Vehicles not in operating condition shall not be parked, repaired or stored (on blocks or otherwise) within the Condominium. Without limitation, vehicles shall be deemed not to be in operating condition if same have expired or missing license tags and/or inspection stickers, or are incapable of being driven due to mechanical condition of any kind. Boats, trailers, campers, motor homes, recreational vehicles, trucks (other than standard-size pick-up trucks), and the like shall not be parked within the Condominium in areas designated for passenger vehicles. No noisy or smoky vehicles may be operated on the Condominium. No vehicles may be parked in the

driveway of the Condominium. No motorcycles without mufflers shall be permitted in the Condominium. No go-carts or mini-bikes may be ridden within the Condominium.

L. *Guest Parking.* No persons, other than Owners, may park in the covered parking spaces within the Condominium.

M. *Fireworks.* The use or discharge of firearms, firecrackers or fireworks is expressly prohibited within or from the Condominium.

N. *Garage Sales.* No garage sale, tag sale, estate sale or other type of sale of property is allowed within the Condominium.

O. *Business and Sales Office.* None of the restrictions contained in this Paragraph 15.0 shall apply to the, management, sales and/or leasing office or offices, sales and/or leasing model Units, or signs or billboards (advertising sales/leasing of Units), if any, of Declarant during the sales and/or leasing period of the Condominium (it being understood that Declarant may maintain a sales/leasing office in the Condominium and one or more sales/leasing model Units in the Condominium during such period and the number, size, location and relocation of such offices and models shall be entirely within the discretion of Declarant) or of the Association in furtherance of its power and purposes set forth herein and in the Condominium Documents, as the same may be amended from time to time, including, without limitation, the power of the Association to own a Unit for the use and enjoyment of a resident manager of the Condominium.

P. *Garbage, Trash and Rubbish.* All garbage, trash, rubbish and other waste shall be regularly removed from the Condominium and shall not be allowed to accumulate thereon. No garbage, trash, rubbish, waste, or waste bins or receptacles therefor shall be permitted to remain on any portion of the Common Elements, except on those days specifically scheduled for collection thereof and in areas specifically designated therefor. All garbage, trash, rubbish and other waste shall be kept only in sanitary containers. Notwithstanding anything to the contrary contained in this Declaration, Owner and Owner's contractors, subcontractors, agents, employees and other parties involved in any construction to or on such Owner's Unit shall confirm that any and all refuse, waste, trash, garbage, rubbish, remains, scraps, and other materials and supplies which are brought onto the Condominium by such parties, or any of them, is removed, at such Owner's expense, at such times, manners and locations as may be required by the Association or the Managing Agent (if any).

Q. *Vehicle Prohibitions.* In an effort to minimize damage to the Bella Vista roadways, all 18-wheeler trucks and other multi-axel vehicles will be prohibited from entering through the gate of the Bella Vista Condominium site. All moving, delivery and maintenance vehicles must be single axle. In addition, as stated above, the riding of mini-bikes or go-carts within the condominium site is also prohibited.

## 16. Sale and Ownership

A. *Condominium.* The elements of each Condominium Unit shall be inseparable, and may be sold, assigned, leased, devised or encumbered only as a single condominium unit.

B. *Deed/Description of Unit.* Every deed, lease, mortgage, deed of trust, will or other instrument may legally describe a Condominium Unit by its identifying Unit number followed by the words "the Bella Vista Livingston" and reference to the volume and beginning page number of the Condominium Records of Polk County, Texas, in which this Declaration is recorded. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit but also the Common Elements appurtenant thereto. The initial Deeds conveying each Condominium Unit to each Owner may contain reservations, restrictions, exceptions and exclusions which Declarant deems to be consistent with and in the best interests of all Owners (including Declarant) and the Association.

C. *Capacity of Owners.* A Condominium Unit may be held and owned by more than one person in any real property relationship recognized under the laws of the State of Texas.

## 17. Uniform Applicability of Condominium Documents.

In general, each Owner shall be subject to all the rights and duties assigned to Owners in general under the terms of the Condominium Documents. To the extent there are unsold Units owned by Declarant, Declarant shall enjoy the same rights and assume the same duties as any other Owner would as they relate to each individual unsold Unit. So long as Declarant owns one or more Units, Declarant shall be subject to the provisions of the Condominium Documents.

## 18. Mortgages and Mortgagee Protections

A. *Book of Mortgages.* Any Owner who mortgages his or her interest in a Condominium Unit shall, within ten (10) days after the execution of such mortgage, give notice to the Association in writing of the name and address of his or her Mortgagee and of any eligible insurer, guarantor, or collateral assignee of his or her Mortgagee, and the amount secured by the mortgage, and the Association shall maintain such information in a book (the "Book of Mortgages") entitled "Mortgages of Condominium Units." The Book of Mortgages shall be separately maintained by the Association or by a person designated by the Association. Each Owner shall, in the same manner, notify the Association as to the release or discharge of any such mortgage.

B. *Notices to Mortgagees.* The Association shall, at the written request of any Mortgagee, insurer, guarantor, or collateral assignee of a Mortgagee appearing in the Book of Mortgages, notify such Mortgagee, insurer, guarantor, or collateral assignee of a Mortgagee of: (i) any unpaid assessments due from the Owner of such Condominium Unit to the Association, (ii) the name of each company insuring the Condominium under the Master Policy and the amounts of the coverages thereunder, and of any lapse,

cancellation or material modification thereof, (iii) any monetary default by an Owner, (iv) the Association's intent to foreclose its lien in accordance with Paragraph 11.H, (v) any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders, and (vi) any casualty to, or taking of, either a material portion of the Condominium or the Condominium Unit securing its loan.

C. *Effect on Mortgagees.* Any First Mortgagee, upon foreclosure of its lien on a Condominium Unit, or upon acceptance of a deed in lieu of foreclosure thereon, shall not be required to pay any unpaid assessments owing thereon which accrue after the date of recordation of its First Mortgage and prior to the acquisition of title to such Condominium Unit by any such First Mortgagee, but shall be liable for such unpaid assessments accruing from and after the date that such First Mortgagee or its assignee acquires title to such Condominium Unit. Any assessment lien created or claimed hereunder as to any Condominium Unit shall be subject and subordinate to the rights of any holder of any duly recorded First Mortgage upon such Condominium Unit made in good faith and of value as to assessments due and payable after the date of recordation of such mortgage and prior to the date such First Mortgagee acquires title to such Condominium Unit. Except as expressly set forth herein, no lien created under the provisions of this Declaration shall in any way defeat, invalidate or impair the rights of any First Mortgagee under any such duly recorded First Mortgage unless such First Mortgagee thereunder shall expressly subordinate its interest, in writing, to such lien.

D. *Subordination Agreements.* Notwithstanding anything contained in this Declaration to the contrary, the Association may, upon the affirmative vote of Owners entitled to vote and holding in the aggregate more than fifty percent (50%) of the Percentages of Common Interest Ownership assigned to all Units, execute a subordination agreement or agreements to extend the benefits of the two preceding paragraphs to mortgages, deeds of trust and Mortgagees not otherwise entitled thereto

E. *Binding on Mortgagees.* No breach of any provision of this Declaration shall impair or invalidate the lien of any duly recorded mortgage or deed of trust made in good faith and for value encumbering one (1) or more Condominium Units; provided, however, that all the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall be binding upon and effective against any person who acquires title to or any beneficial interest in any Condominium Unit by way of foreclosure or otherwise.

F. *Financial Statements.* To the extent, the Association does not have an audited financial statement; any First Mortgagee shall have the right to have an audited financial statement prepared at its own expense.

G. *Working Capital Requirements.* Declarant may establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services. If created, each Unit's share of the working capital fund may be collected from each Owner either at the time the sale of the Unit is closed or when control of the Condominium is transferred to the Owners, whichever is earlier. Any amounts paid into

the working capital fund shall not be considered as advance payments of regular Common Expense assessments.

H. *Use of Working Capital.* Declarant shall not use working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association. Upon the sale of any unsold Unit, Declarant shall be entitled to reimburse itself for any funds it paid to the Association for any unsold Unit's share of the working capital funds by using funds collected at closing when the Unit is sold.

## 19. Boundaries.

In the event that any portion of a Unit or a Common Element changes boundaries and thereby encroaches upon another Unit or Common Element due to the shifting, settling or moving of the Building(s), such changed boundaries shall be deemed to constitute the boundaries of the Units and the Common Elements so affected.

## 20. Amendments and Modifications

A. *Amendments.* No purported amendment of any Condominium Document or any action or inaction of the Association shall:

i. vacate, waive, revoke, abandon or terminate (other than by fire or other casualty or a taking of all Units by condemnation) the Condominium or the Declaration;

ii. be deemed to have changed the Percentage of Common Interest assigned to any Unit, except as provided in Paragraph 14 or Paragraph 20.B or Paragraph 20.D hereof, or the dimensions or boundaries of any Unit (including, without limitation, any change resulting from subdivision or partition), except pursuant to Paragraph 19 hereof; or

iii. be deemed to have changed or amended any material provision of the Condominium Documents (with the express exception of the provisions of the Bylaws which may be amended in accordance therewith or unless such change or amendment is done pursuant to Paragraphs 20.B or 20.D) including, but not limited to, voting rights, Assessments, reserves, insurance or fidelity bonds, rights to use of or interests in, or sale or transfer (apart from the Units to which they relate), abandonment, partition, subdivision or encumbrance of the Common Elements (the granting by the Association of easements for public utilities or other public purposes consistent with the intended use of the Common Elements not being deemed a transfer within the meaning of the foregoing) the Common Elements, responsibility for the maintenance and repair of the Condominium, expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium, convertibility of Units into Common Elements or vice versa, leasing of Units, imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey such Owner's Condominium Unit, or any other provision which is for the express

benefit of any Mortgagee, insurer or guarantor of any first mortgage or deed of trust secured by a lien on any Condominium Unit, including, without limitation, provisions concerning the disposition of insurance proceeds and condemnation awards;

iv. unless: (a) as to item ii. above, all Owners or Eligible Mortgagees vote pursuant to Paragraph 6.E, above, for such action at a meeting of the Association duly called and reflected in an instrument to such effect duly recorded in the Real Property Records of Polk County, Texas; or (b) as to items i. and iii. above, Owners (other than Declarant) holding in the aggregate at least sixty-seven percent (67%) of the Percentages of Common Interest Ownership assigned to all Units (other than those owned by Declarant) and Eligible Mortgagees which represent at least sixty-seven percent (67%) of the votes of Units that are subject to mortgages held by Eligible Mortgagees vote or otherwise agree to such action at a meeting of the Association duly called and reflected in an instrument to such effect duly recorded in the Real Property Records of Polk County, Texas; provided, however, unanimity of each Owner and each Eligible Mortgagee shall be required to the extent set forth in the Act and that no amendment shall discriminate against any Owner or against any Unit or against any group or class of Owners or Units without the prior written consent of such Owners, nor shall any amendment make any change in the provisions herein, relating to insurance and/or repair or reconstruction in the event of casualty or damage without the prior written consent of all Eligible Mortgagees secured by a lien upon one (1) or more of the Units affected. In addition, the Limited Common Elements and the provisions of this Declaration relating to the right to use the Limited Common Elements may not be altered without the consent of each affected Owner and the Eligible Mortgagee, if any, holding a mortgage lien on such Unit.

B. *Notice of Meeting at Which Amendment May Be Adopted.* Neither the Association nor the Board shall meet to adopt an amendment or other change to the Declaration, Certificate of Formation, Bylaws, or Rules of the Association unless the Association or Board has given to each Owner a document showing the specific amendment or other change that would be made to the Declaration, Certificate, Bylaws or Rules. The notice of amendment or change shall be given to each unit owner not more than twenty (20) days or less than ten (10) days preceding the date of the meeting. The notice shall be considered to have been given to the unit owner on the date the information was personally delivered to the unit owner, as shown by a receipt signed by the unit owner, or on the date shown by postmark on the information after it is deposited in the US Mail with a proper address and postage paid.

C. *Subdivision of Units.* Except as provided in Paragraph 20.D hereof, no Unit shall be subdivided or partitioned unless: (i) the Owner of such Unit, (ii) the Eligible Mortgagee, if any, holding a mortgage lien on such Unit and (iii) the Association agrees to such subdivision by an instrument to such effect duly recorded in the Real Property Records of Polk County, Texas. In the event of a subdivision pursuant to this Paragraph 20.C, the Owner so dividing a Unit shall bear all costs and expenses of

amending this Declaration to reflect the same. The Association may not subdivide or partition any Unit unless it otherwise has a legal right to subdivide or partition said Unit and the Association has received the approval of Owners holding at least sixty-seven percent (67%) of the Common Interest Ownership assigned to all Units (other than those owned by the Declarant, any other developer or builder) or that of First Mortgagees holding sixty-seven percent (67%) of the First Mortgages (based on one vote for each First Mortgage held).

D. Approval by Mortgagees of Amendments. Any Mortgagee who receives by certified or registered mail, with a "return receipt" requested, a written request to approve an amendment, modification or supplement hereto, and who does not deliver or post to the Association a negative response within thirty (30) days thereafter, shall, to the extent permitted by the Act, be deemed to have approved such request.

E. Amendments by Declarant. Notwithstanding the generality of the foregoing, and notwithstanding anything in this Declaration to the contrary, Declarant expressly retains the right and shall at all times have the right, to the extent permitted by the Act, to amend this Declaration without the consent or approval of any other person in order to:

i. Correct survey or other errors made herein prior to the first meeting of Owners;

ii. change the Percentage of Common Interest Ownership assigned to, and the dimensions of, Units owned by Declarant so long as such changes do not affect the Percentage of Common Interest Ownership assigned to, or the dimensions of, the Units not owned by Declarant;

iii. make this Declaration comply with the mandatory provisions of the Act, if it be deficient in any such respect, or, as long as Declarant owns any Unit which has not been occupied, conform this Declaration to the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration or the Veterans Administration, with respect to condominium documentation; and

iv. Change the assignment and allocation of parking spaces or boat slips which are assigned to Units owned by Declarant;

v. Each by written instrument to such effect executed by Declarant, only and duly recorded in the Real Property Records of Polk County, Texas.

vi. The right of Declarant to change the Percentage of Common Interest ownership assigned to, and the dimensions of, Units owned by Declarant shall include, without limitation, the following rights: (a) to physically combine the space within one (1) Unit with the space within one (1) or more laterally or vertically adjoining Units; (b) to combine a part of the space within one (1) or more laterally or vertically adjoining Units; (c) to combine a part of the space within one (1) Unit with part of the space within one (1) or more laterally or vertically adjoining Units; (d) to divide into separate Units the space of one (1) or more Units; and (e) to

modify or remodel one (1) or more Units into larger or smaller Units, or any combination thereof. In any such event, Declarant may construct, alter, relocate or remove any walls or floors or do any other work, which may be necessary to complete such combination, division, modification or remodeling. Such combined, divided, modified and remodeled Units shall be subject to the terms and provisions of this Declaration, and the total of the Percentages of Common Interest Ownership assigned to all Units as they may be adjusted by Declarant as provided above, shall continue to equal one hundred percent (100%).

vii. Declarant expressly retains the right to make such amendments without permission of the Association or any other person or entity, whether said amendment or amendments occur before or after the Association takes over administration of the Condominium. Each Owner, by acceptance of a deed covering his or her Unit, authorizes and empowers Declarant, as such Owner's agent and attorney-in-fact for said purposes only, to execute deliver and record any such amendment or amendments either in the name of Declarant, or in the name and as the act of such Owner and all other Owners, and this power and authorization shall be irrevocable.

## 21. Taxation

A. *Of Units after Separate Assessment.* Each Unit shall be assessed and taxed for all purposes as a separate parcel of real estate entirely independent of the Building, and independent of the Condominium or the Common Elements thereof, and each Owner shall be solely responsible for the payment of all taxes, municipal claims, charges and assessments of nature whatsoever assessed against such Unit. The valuation of the General Common Elements and the Limited Common Elements shall be assessed separately to each Owner in accordance with his or her Percentage of Common Interest Ownership in the Common Elements. Such payment shall be made prior to the due date of such taxes, municipal claims, charges and assessments.

B. *Of Units Prior to Separate Assessment.* Prior to the time the respective taxing authorities shall have assessed and taxed each Unit as a separate parcel of real estate as provided above, any such taxes, municipal claims, charges and assessments assessed against the Condominium as a whole shall be a Common Expense.

## 22. Remedies

In the event any default is made by any Owner under the Act, this Declaration, the Bylaws or the Rules or Regulations, the Board or the Association or their representative shall have all of the rights and remedies which may be provided by the Act, this Declaration, or the Bylaws or which may be available at law or in equity, and may prosecute any action or other proceeding against any defaulting Owner and/or Owners for enforcement of any lien or to enforce compliance with the matter with respect to which default has been made, by Injunctive relief or otherwise, or for the collection of any sums, debts, or damages in default or arising from any default. The Board or its authorized representative shall be further empowered and authorized to correct and cure any matter in default and to do whatever



may be necessary for such purpose. All expenses incurred in connection with any such action or proceeding shall be a part of the Common Expenses of this Condominium and collectible from each Owner as in the case of other Common Expenses.

## 23. Miscellaneous

A. *Effect of Acceptance or Recordation of a Deed.* The acceptance or recordation of a Deed to a Condominium Unit or the entering into occupancy of a Unit shall constitute an agreement by the Owner and his or her tenants, servants, visitors or occupants that: (i) this Declaration and the Condominium Documents, as they may be amended from time to time, and all items affecting title to the Land are accepted, agreed to and ratified by the Association and each such Owner, tenant, visitor, servant or occupant, and their respective heirs, executors, administrators, successors, legal representatives, assigns, purchasers, grantees, mortgagees and all others having or claiming an interest in any Unit, and all of such provisions shall be deemed to be covenants running with the land to bind any person having at any time any interest or estate in such Condominium Unit, as though such provisions were cited and stipulated in each and every Deed to a Condominium Unit, and (ii) violations of the terms of the Condominium Documents by any such person shall be deemed to be a substantial violation of the duties of the Owner.

B. *Severability, Interpretation.* If any provision of this Declaration or the Bylaws, or any section, sentence, paragraph, clause, phrase or word, or the application thereof in any circumstance shall be invalid or unenforceable, the validity or enforceability of the remainder of the Condominium Documents and the application of any such provisions, section, sentence, paragraph, clause, phrase, or word in any other circumstance shall not be affected thereby. If anything in the Condominium Documents shall be susceptible to two or more interpretations, then the interpretation which shall most nearly be in accord with the intent of the Act, and the general purposes and intent of the Condominium Documents, shall govern.

C. *No Waiver.* No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

D. *Separation of Estates.* The separate and common estates created by this Declaration shall continue until this Declaration is terminated in the manner and to the extent as is provided herein.

E. *No Gift or Dedication.* Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Land or the Building to the public or for any public use.

F. *Mechanic's and Materialmen's Liens.* No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of an Owner or his or her agent or his or her contractor or subcontractor shall be the basis for the filing of a lien against The Condominium or the Unit of any other Owner not expressly consenting to or requesting the same, or against the Common Elements. Each Owner shall indemnify and hold harmless the Condominium and each of the other Owners from and

against any loss, cost or expense in connection with construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

G. *Security.* THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. NEITHER SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGES BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. THE ASSOCIATION DOES NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES, OR OTHER SECURITY SYSTEMS (IF ANY ARE PRESENT) WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. THE ASSOCIATION IS NOT AN INSURER AND EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND ACKNOWLEDGES THAT THE ASSOCIATION HAS MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS THE ASSOCIATION, ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

H. *Exhibits.* All exhibits, attachments, annexed instruments and addenda referred to herein, if any, shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

I. *Notices*

i. Unless otherwise stated herein, notices to the Board or the Association provided for in the Act, this Declaration or the Bylaws shall be in writing and shall be addressed to the Board or the Association at the address of the Board, the Association or their respective representatives which may be established from time to time and of which the Owners shall be notified. Notice to the Owners may be sent to the mailing address of their respective Units or to such other address, which any Owner may in writing designate, by notice thereof to the Board, the Association or their respective representatives.

ii. Any notice which is required to be sent, given or delivered pursuant to the terms of this Declaration, the Bylaws or the Rules and Regulations shall be deemed sent, given and delivered on the earlier of (i) the date actually received, or (ii) three (3) business days after deposit for delivery by the U.S. Postal Service,

postage prepaid, certified or registered mail, return receipt requested mailed in accordance with this Paragraph 23.I; or (iii) the date personally delivered, or as shown by a receipt signed by the recipient..

J. *Omissions.* In the event of the omission from the Condominium Documents of any word, sentence, clause, provision or stipulation which shall be necessary for the accomplishment of the intent and purposes hereof or any part hereof, then such omitted matter shall be applied by inference and/or by reference to the Act.

K. *Captions and Exhibits.* Captions used in the various articles and sections of this Declaration are for convenience only and they are not intended to modify or affect the meaning of any of the substantive provisions hereof.

L. *Use of Number and Gender.* Wherever used herein and unless the content shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular and the use of any gender shall include all genders.

M. *Conflicting or Inconsistent Provisions.* If at any time, a provision of the Rules and Regulations or Bylaws, as then existing, conflicts with or is inconsistent with the provisions of this Declaration, the provisions of this Declaration shall control. If at any time, a provision of the Rules and Regulations conflicts with or is inconsistent with the provisions of the Bylaws, the provision of the Bylaws shall control.

N. *Governing Law.* THE CONDOMINIUM DOCUMENTS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THE CONDOMINIUM SHALL BE IN POLK COUNTY, TEXAS.


**IN WITNESS WHEREOF**, Declarant has caused this Declaration to be executed the day and year first written above.

DECLARANT:

BELLA DEVELOPMENTS, INC.

a Texas Corporation

BY:

  
\_\_\_\_\_  
PETE GARLAND, its President

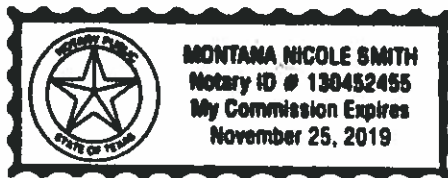
STATE OF TEXAS §

§

COUNTY OF POLK §

BEFORE ME, the undersigned authority, on this day, personally appeared PETE GARLAND, the President of Bella Developments, Inc. in his capacity as President of this Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same on behalf of the Declarant.

SWORN TO AND SUBSCRIBED on this 8<sup>th</sup> day of NOVEMBER, 2016



Montana Smith  
Notary Public- State of Texas

**Exhibit "A"**

**BYLAWS OF**

**Bella Vista Livingston Condominium Owner's Association, Inc.**

**(A Texas Non-Profit Corporation)**

**ARTICLE I**

**NAME; DEFINITION**

Section 1.01. Name. The name of this corporation shall be Bella Vista Livingston Condominium Owner's Association, Inc. (hereinafter called the "Association").

Section 1.02. Definitions. All capitalized terms used herein shall have the meanings ascribed to such terms in the Declaration as defined in the instrument to which these Bylaws are attached.

**ARTICLE II**

**OFFICES**

Section 2.01. Registered Office. The registered office of the Association shall be as designated with the Secretary of State of the State of Texas, as it may be changed from time to time.

Section 2.02. Other Offices. The Association may also have offices at such other places both within and without the State of Texas as the Board of Directors may from time to time determine or the business of the Association may require.

**ARTICLE III**

**PURPOSES**

Section 3.01. Purposes. The purpose or purposes for which the Association is organized are: primarily to provide an organization consisting of the owners of the real estate subdivision and property known as the Bella Vista Livingston, A Condominium (the "Subdivision"), as such subdivision is more particularly described in the Declaration of Restrictive Covenants of Bella Vista Livingston Condominium Owner's Association, Inc. filed in the Official Public Records of Real Property of Polk County, Texas, at Clerk's File No. \_\_\_\_\_ as may be subsequently modified and amended (the "Declaration"), and otherwise generally:

(1) To promote the health, safety and welfare of the owners of the Condominium;

(2) to exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in these Bylaws and created under and through the Declaration;

(3) to fix, levy, collect and enforce payment of any charges or assessments as set forth in the Bylaws and in the Declaration;

(4) to pay all expenses incidental to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(5) to borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(6) to have and to exercise any and all powers, rights, and privileges which a corporation organized under the Texas Non-Profit Corporation Act (or any successor statute) by law may now or hereafter have or exercise; and

(7) to exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration.

Section 3.02. Parties. All present or future Owners, tenants, future Residents, or any other person who might use in any manner the Property or any portion thereof are subject to the provisions and any regulations set forth in these Bylaws. The mere acquisition, lease or rental of all or any portion of a Unit or the mere act of occupancy of all or any portion of the Unit will signify that these Bylaws are accepted, approved, ratified, and will be complied with.

#### **ARTICLE IV MEMBERSHIP**

Section 4.01. Membership. Each and every Owner shall automatically become, and must remain a Member in Good Standing of the Association (as defined in Section 4.02) during such Owner's period of ownership of such Unit or portion thereof. Such membership shall be appurtenant to each Unit, or portion thereof, and may not be severed from or held separately therefrom. The membership of a person or entity in the Association shall terminate automatically whenever such person or entity ceases to be an Owner, except that such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Association or the Declaration during the period of ownership, nor impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

Section 4.02. Member in Good Standing. A Member of the Association shall at all times remain a Member in Good Standing of the Association. A Member shall not be in "Good Standing" if such person or entity is (i) in violation of these Bylaws, the Declaration or any rule, regulation or resolution promulgated by the Board; or (ii) delinquent in the full, complete and timely payment of any regular assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectable under the terms of these Bylaws, the Declaration or any rule or regulation promulgated by the Board.

The Board shall have sole responsibility and authority for determining the Good Standing status of any Member at any time, and shall make such determination with respect to all Members prior to a vote being taken by the Association on any matter. Any Member not conforming with the provisions of this Section shall be declared by the Board to be not a Member in Good Standing and shall be disqualified from voting on matters before the

Association until such time as Member in Good Standing status is attained and so declared by the Board.

**Section 4.03. Voting Rights in the Association.** Only Members in Good Standing shall be entitled to vote, and voting membership shall be decreased by the number of Members who are not Members in Good Standing to determine the votes entitled to be cast for the purpose of establishing a quorum, such determination of the total number of Members in Good Standing to be as of the date of which a vote is taken.

The Association shall have two (2) classes of voting membership until such time as the Declarant owns no more Units in the Subdivision: the Unit Owners and Bella Developments, Inc., a Texas corporation (the "Declarant"). Each Unit Owner shall be entitled to one (1) vote on each matter with respect to which the Members are entitled to vote pursuant to these Bylaws or Declaration for each Unit for which they are the Owner; provided, however, that in no case shall there be more than one vote be cast with respect to any Unit. If for any Unit there is more than one Owner, the vote for such Unit shall be exercised by the Owners, among themselves, as they may determine and advise the Association in writing prior to the meeting at which the vote is to be cast. In the absence of such agreement or advice, the vote for such Unit shall be suspended if more than one Member seeks to exercise it. The Declarant is entitled to three (3) votes for each Unit owned by the Declarant on each matter with respect to which the Members are entitled to vote pursuant to this Declaration or the By-Laws of the Association. Upon the Declarant conveying its last Unit in the Subdivision, all Unit Owners (even Units subsequently acquired by Declarant) shall have one (1) vote per Unit.

**Section 4.04. Cumulative Voting.** At all meetings of the Association voting shall not be cumulative.

**Section 4.05. Majority.** As used in these Bylaws the term a "Majority" shall mean fifty- one percent (51%). Except where otherwise specifically provided herein, in the Certificate of Formation or under applicable law, any action of the Members shall be deemed approved and adopted if a Majority of Members present at a duly called meeting of the Members at which a quorum is present vote for such action.

**Section 4.06. Quorum.** Twenty-five percent (25%) or more of the Members in Good Standing shall constitute a quorum for voting on matters brought before the Association at meetings of Members called by the Board. The Members in Good Standing present at a duly organized meeting may continue to transact business until adjournment.

**Section 4.07. Proxies.** Each Member entitled to vote at a meeting of Members or to express consent or dissent to action in writing without a meeting, may authorize another person or persons to act for him by proxy. Proxies for use at any meeting of Members shall be filed with the Secretary, or such other officer as the Board of Directors may from time to time determine by resolution, prior to or at the time of such meeting. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the secretary of the meeting who shall also decide all questions with respect to the validity of

such proxies, the qualification of voters, and the acceptance or rejection of votes. However, no proxy shall be valid for a period greater than eleven (11) months.

## **ARTICLE V ASSOCIATION RESPONSIBILITIES AND MEETINGS OF MEMBERS**

**Section 5.01. Association Responsibilities.** The Members shall constitute the Association which will have all the powers and duties of administering and enforcing the covenants, conditions and restrictions including, without limitation, all those set forth in these Bylaws, the Declaration and any rule, regulation or resolution promulgated by the Board, through a Board of Directors. In the event of any dispute or disagreement between any Members relating to the Property, or any questions of interpretation or application of the provisions of these Bylaws, the Declaration or rule, regulation or resolution promulgated by the Board, such dispute or disagreement shall be submitted to the Board. The determination of such dispute or disagreement by the Board shall be binding on each and all such Members, subject to the right of Members to seek other remedies provided by law after determination by the Board.

**Section 5.02. Place of Meeting.** Meetings of the Association shall be held at such suitable place, convenient to the Members, as the Board may determine.

**Section 5.03. Annual Meetings.** There shall be an annual meeting of the Members of the Association to be held on such specific date and at such reasonable place and time as may be designated by written notice of the Board or by written notice signed by Owners having one-fifth (1/5th) of the total votes outstanding, delivered or mailed not less than twenty-one (21) days prior to the date fixed for said meeting, to all Members if given by the Board and to all other Members if given by said Members. At such meetings, there shall be elected by ballot of the Members a Board of Directors. The Members may also transact such other business of the Association as may properly come before them.

**Section 5.04. Special Meetings.** It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon a petition signed by at least thirty percent (30%) of Members in Good Standing and having been presented to the Secretary of the Association. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business except as stated in the notice shall be transacted at a special meeting. Any such meetings shall be held after the first annual meeting and shall be held within thirty (30) days after receipt by the President of such resolution or petition.

**Section 5.05. Notice of Meetings.** It shall be the duty of the Secretary or Assistant Secretary of the Association to mail or hand deliver a notice to each Member at the address set forth for such Member in the Association's records of each annual or special meeting, stating the purpose thereof as well as the time and place it is to be held, to each Member entitled to vote at such meeting, at least fifteen (15) days prior to such meeting for a special meeting, and at least twenty-one (21) days prior to such meeting for an annual meeting. The mailing or hand delivery of a notice in the manner provided in this paragraph shall be considered notice served.



Section 5.06. Order of Business. The order of business at all meetings of the Members shall be as follow

- (a) roll call and certifying proxies;
- (b) proof of notice of meeting or waiver of notice;
- (c) reading and disposal of unapproved minutes;
- (d) reports of officers;
- (e) reports of committees;
- (f) election of directors;
- (g) unfinished business;
- (h) new business; and
- (i) adjournment.

Section 5.07. Meeting Procedures. Notwithstanding the foregoing, the Board may adopt and promulgate such other and further procedures as it may deem appropriate to carry out fairly the spirit and intention of these Bylaws without undue cost, expense or inconvenience. The Board is authorized to employ its notice and voting procedures whatever devices and procedures become available from time to time as the result of technological advances and improvements in communication.

## **ARTICLE VI BOARD OF DIRECTORS**

Section 6.01. Number and Qualification. The affairs of this Association shall be governed by a Board of Directors consisting of at least three (3) individuals who need not be Members. The terms for the initial directors of the Association shall be staggered so that the term of one director will expire at the second annual meeting of the Association, the term of a second director will expire at the third annual meeting of the Association and the term of the third director will expire at the fourth annual meeting of the Association. Except for the terms of the initial Directors as set forth in the immediately foregoing sentence, each Director shall serve a term of two (2) years.

The powers of the Association shall be exercised by or under the authority of, and the business and affairs of the Association shall be managed under the direction of, the Board of Directors.

Each Director shall hold office for the term for which he or she is elected and thereafter until his or her successor shall have been elected and qualified, or until his or her earlier death, resignation or removal.

**Section 6.02. Powers and Duties.** The powers and duties of the Board of Directors shall include the rights, powers and authorization granted to the Association in the Declaration.

**Section 6.03. No Waiver of Rights.** The omission or failure of the Association, the Board or any Member to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations or other provision of the Declaration, the Bylaws or the rules and regulations adopted pursuant thereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Board of Directors shall have the right to enforce the same thereafter.

**Section 6.04. Quorum; Required Vote for Director Action.** Unless otherwise required by law or provided in the Certificate of Formation or these Bylaws, a Majority of the total number of Directors fixed by, or in the manner provided in, the Certificate of Formation or these Bylaws shall constitute a quorum for the transaction of business of the Board of Directors and the act of a Majority of the Directors present at a meeting of which a quorum is present shall be the act of the Board of Directors.

**Section 6.05. Meetings; Order of Business.** Meetings of the Board of Directors may be held at such place or places as shall be determined from time to time by resolution of the Board of Directors. At all meetings of the Board of Directors business shall be transacted in such order as shall from time to time be determined by the resolution of the Board of Directors.

Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**Section 6.06. Vacancies.** Vacancies in the Board of Directors caused by death, resignation or disqualification, i.e., by any reason other than the removal of a Director by a vote of the Association, shall be filled by vote of the Majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association held for such purpose.

Any person becoming a director due to a vacancy shall be of the same class of director as the person creating such vacancy, and such new director shall serve for the remainder of the term of the director creating such vacancy.

**Section 6.07. Annual Meetings.** The annual meeting of the Board of Directors shall be held at a time and place designated by the resolution of the Board of Directors.

**Section 6.08. Regular Meetings.** Regular meetings of the Board of Directors shall be held at such times and places as shall be designated from time to time by resolution of the Board of Directors. Notice of such regular meetings shall not be required.

**Section 6.09. Special Meetings.** Special meetings of the Board of Directors may be called by the President or, on the written request of any two Directors, by the Secretary, in each case on at least twenty-four (24) hours personal, written, telegraphic, cable or wireless notice to each Director. Such notice, or any waiver thereof pursuant to Section 10.3 hereof, need not state the purpose or purposes of such meeting, except as may otherwise be required by law or provided for by the Certificate of Formation or these Bylaws.

**Section 6.10. Compensation.** Directors, as such, shall not receive any salary or compensation for their services as Directors; provided, that nothing contained herein shall be construed to preclude any Director from receiving compensation which is not excessive for personal services (rendered in other than a "Director" capacity) which are reasonable and necessary in carrying out the Association's purposes.

**Section 6.11. Presumption of Assent.** A Director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

**Section 6.12. Action by Written Consent or Telephone Conference.** Any action permitted or required by the Texas Non-Profit Corporation Act, as may be amended from time to time (the "TNPCA"), the Certificate of Formation or these Bylaws to be taken at a meeting of the Board of Directors or any committee designated by the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by all the members of the Board of Directors or committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting and may be stated as such in any document or instrument filed with the Secretary of State, and the execution of such consent shall constitute attendance or presence in person at a meeting of the Board of Directors or any such committee, as the case may be. Subject to the requirements of the TNPCA, the Certificate of Formation or these Bylaws for notice of meetings, unless otherwise restricted by the Certificate of Formation, members of the Board of Directors, or members of any committee designated by the Board of Directors, may participate in and hold a meeting of the Board of Directors or any committee of Directors, as the case may be, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**Section 6.13. Proxies.** A Director may vote in person or by proxy executed in writing by the Director. No proxy shall be valid after three (3) months from the date of its

execution. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law.

## **ARTICLE VII COMMITTEES**

**Section 7.01. Designation; Powers.** The Board of Directors, by resolution adopted by a Majority of the Board of Directors, may designate from among its members one or more committees, each of which shall be comprised of one or more of its members, and may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the Board of Directors, replace absent or disqualified members at any meeting of that committee. Any such committee, to the extent provided in such resolution or in the Certificate of Formation or Bylaws shall have and may exercise all of the authority of the Board of Directors, subject to the limitations set forth in the TNPCA or below.

No committee of the Board of Directors shall have the authority of the Board of Directors in reference to:

- (1) amending the Certificate of Formation;
- (2) amending, altering or repealing the Bylaws of the Association or adopting new Bylaws of the Association;
- (3) filling vacancies in the Board of Directors;
- (4) filling vacancies in or designating alternate members of any such committee;
- (5) filling any directorship to be filled by reason of an increase in the number of Directors;
- (6) electing or removing officers of the Association or members or alternate members of any such committee;
- (7) fixing the compensation of any member or alternate members of such committee; or
- (8) altering or repealing any resolution of the Board of Directors that by its terms provides that it shall not be amendable or repealable.

**Section 7.02. Procedure; Meetings; Quorum.** Any committee designated pursuant to Section 7.01 of this Article shall choose its own chairperson and secretary, shall keep regular minutes of its proceedings and report the same to the Board of Directors when requested, shall fix its own rules or procedures, and shall meet at such times and at such place or places as may be provided by such rules, or by resolution of such committee or of the Board of Directors. At every meeting of any such committee, the presence of a Majority of all the members thereof shall constitute a quorum, and the affirmative vote of a Majority of the members present shall be necessary for the adoption by it of any resolution.

Section 7.03. Dissolution. The Board of Directors may dissolve any committee at any time, unless otherwise provided in the Certificate of Formation or these Bylaws.

## **ARTICLE VIII OFFICERS**

Section 8.01. Number, Titles and Term of Office. The officers of the Association shall be a President, a Treasurer and a Secretary and such other officers as the Board of Directors may from time to time elect or appoint, including, without limitation, one or more Vice Presidents (any one or more of whom may be designated Executive Vice President or Senior Vice President), one or more Assistant Treasurers and one or more Assistant Secretaries. Each officer shall hold office until his or her successor shall be duly elected and shall qualify or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same person, except the same person may not hold the offices of President and Secretary at the same time.

Section 8.02. Salaries. Officers may not receive salaries for their services. An officer, however, may serve the Association in any other capacity and receive compensation for those services. Any compensation that the Association pays to an officer will be reasonable and commensurate with the services performed, after being approved by the Board.

Section 8.03. Removal. Any officer or agent or member of a committee elected or appointed by the Board of Directors may be removed, either with or without cause, by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 8.04. Vacancies. Any vacancy occurring in any office of the Association may be filled by the Board of Directors.

Section 8.05. Powers and Duties of the President. The President shall be the chief executive officer of the Association unless the Board of Directors designates another officer as chief executive officer. Subject to the control of the Board of Directors, the President shall have general executive charge, management and control of the properties, business and operations of the Association with all such powers as may be reasonably incident to such responsibilities; he or she may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Association; and he or she shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him or her by the Board of Directors.

Section 8.06. Vice Presidents. The Vice President(s), if any, shall perform such duties and have such powers as the Board of Directors may from time to time prescribe. In addition, in the absence of the President, or in the event of his/her inability or refusal to act, (i) a Vice President designated by the Board of Directors or (ii) in the absence of such designation, the Vice President who is present and who is senior in terms of time as a Vice President of the Association, shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President;

provided that he or she shall not preside at meetings of the Board of Directors unless he or she is a Director.

Section 8.07. Treasurer. The Treasurer, if any, shall have responsibility for the custody of all the funds and securities of the Association, and he or she shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him or her by the Board of Directors. He or she shall perform all acts incident to the position of Treasurer subject to the control of the chief executive officer and the Board of Directors; and the Treasurer shall, if required by the Board of Directors, give such bond for the faithful discharge of his or her duties in such form as the Board of Directors may require.

Section 8.08. Assistant Treasurers. Each Assistant Treasurer, if any, shall have the usual powers and duties pertaining to his or her office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him or her by the chief executive officer or the Board of Directors or the Treasurer. The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability or refusal to act.

Section 8.09. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors in books provided for that purpose; he or she shall attend to the giving and serving of all notices; he or she may in the name of the Association affix the seal (if any) of the Association to all contracts of the Association and attest thereto; he or she may sign with the other appointed officers all certificates for shares of capital stock of the Association; he or she shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection of any Director upon application at the office of the Association during business hours; he or she shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him or her by the chief executive officer or the Board of Directors; and he or she shall in general perform all duties incident to the office of Secretary, subject to the control of the chief executive officer and the Board of Directors.

Section 8.10. Assistant Secretaries. Each Assistant Secretary, if any, shall have the usual powers and duties pertaining to his or her office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him or her by the chief executive officer or the Board of Directors or the Secretary. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability or refusal to act.

## **ARTICLE IX INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS**

Section 9.01. Right to Indemnification. Subject to the limitations and conditions as provided in this Article IX, each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or

proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "proceeding"), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Association or while a Director or officer of the Association is or was serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Association to the fullest extent permitted by the TNPCA, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Association to provide broader indemnification rights than said law permitted the Association to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article IX shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. TO THE FULLEST EXTENT PERMITTED BY THE TNPCA AND OTHER APPLICABLE LAW, THE INDEMNITY REQUIRED HEREUNDER SHALL APPLY TO ACTS AND OMISSIONS INVOLVING THE ACTIVE, PASSIVE, SOLE OR CONCURRENT NEGLIGENCE OF THE PARTIES TO BE INDEMNIFIED. The rights granted pursuant to this Article IX shall be deemed contract rights, and no amendment, modification or repeal of this Article IX shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article IX could involve indemnification for negligence or under theories of strict liability.

**Section 9.02. Advance Payment.** The right to indemnification conferred in this Article IX shall include the right to be paid or reimbursed by the Association the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 9.01 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Association of a written affirmation by such person of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article IX and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified persons not entitled to be indemnified under this Article IX or otherwise.

**Section 9.03. Indemnification of Employees and Agent.** The Association, by adoption of a resolution of the Board of Directors, may indemnify and advance expenses to an employee or agent of the Association to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article IX; and, the Association may indemnify and advance expenses to persons who are

not or were not Directors, officers, employees or agents of the Association but who are or were serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article IX.

Section 9.04. Appearance as a Witness. Notwithstanding any other provision of this Article IX, the Association shall pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding at a time when he or she is not a named defendant or respondent in the proceeding.

Section 9.05. Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article IX shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to this Article IX may have or hereafter acquire under any law (common or statutory), provision of the Certificate of Formation of the Association or these Bylaws, agreement, or otherwise.

Section 9.06. Insurance. At the discretion of the Board of Directors, the Association may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Association would have the power to indemnify such person against such expense, liability or loss under this Article IX.

Section 9.07. Savings Clause. If this Article IX or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Association shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article IX as to costs, charges and expenses (including attorney's fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article IX that shall not have been invalidated and to the fullest extent permitted by applicable law.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

Section 10.01 Fiscal Year. The fiscal year of the Association shall be such as established from time to time by the Board of Directors.

Section 10.02. Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Association. The Secretary shall have charge of the seal (if any). If and when so directed by the Board of Directors, duplicates of the seal may be kept and used by the Treasurer, if any, or by any Assistant Secretary or Assistant Treasurer.



**Section 10.03. Notice and Waiver of Notice.** Whenever any notice is required to be given by law, the Certificate of Formation or these Bylaws, except with respect to notices of special meetings of Directors (with respect to which the provisions of Section 6.09 apply), said notice shall be deemed to be sufficient if given (a) by telecopy, (b) by deposit of same in a post office box in a sealed prepaid wrapper addressed to the person entitled thereto at his or her address as it appears on the records of the Association or (c) by personal delivery, and such notice shall be deemed to have been given on the day of such transmission, mailing or personal delivery, as the case may be.

Whenever notice is required to be given by law, the Certificate of Formation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

**Section 10.04. Decisions without Meeting.** Any decision required or permitted to be made at a meeting of the Members, or the Board of Directors or any committee of the Association may be made without a meeting. A decision without a meeting may be made if a written consent to the decision is signed by all the persons entitled to vote on the matter. The original signed consents will be placed in the Association minute book and kept with the corporate records.

Furthermore, if the Certificate of Formation authorize action with less than unanimous consent, action may be taken without a meeting when there are signed written consents by the number of Members, Directors, or committee members whose votes would be necessary to take action at a meeting at which all such persons entitled to vote were present and voted. Each written consent must be signed and bear the date of signature of the person signing it. A telegram, telex, email, cablegram, or similar transmission by a member, director, or committee member, or a photographic, facsimile, or similar reproduction of a signed writing, will be treated as an original being signed by the member, director, or committee member. Notwithstanding the foregoing, no action may be taken with less than unanimous consent without a meeting, unless all Members, Directors or committee members, as the case may be, who are entitled to vote on such matter, are notified in writing at least five (5) days prior to such action being taken.

Consents must be delivered to the Association. A consent signed by fewer than all Members, Directors, or committee members is not effective to take the intended action unless the required number of consents are delivered to the Association within sixty (60) days after the date that the earliest dated consent was delivered to the Association. Delivery must be made by hand, or by certified or registered mail, return receipt requested. The delivery may be made to the Association's registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent, or an officer or agent having custody of books in which the relevant proceedings are recorded.

The Association will give prompt notice of the action taken to persons who do not sign consents. If the action taken requires documents to be filed with the Secretary of State, the filed documents will indicate that these written consent procedures were followed to authorize the action and filing.

**Section 10.05. Resignations.** Any Director, member of a committee or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, of the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

**Section 10.06. Facsimile Signatures.** In addition to the provisions for the use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Association may be used whenever and as authorized by the Board of Directors.

**Section 10.07. Books and Records.** The Association shall keep books and records of account and shall keep minutes of the proceedings of its Board of Directors and each committee of its Board of Directors. The Association shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of the original issuance of shares issued (if any) by the Association and a record of each transfer of those shares that have been presented to the Association for registration of transfer. Any books, records, and minutes may be in written form in any other form capable of being converted into written form within a reasonable time.

**Section 10.08. Notice of Lien or Suit.** Upon the Association's request, an Owner shall notify the Association of every lien or encumbrance upon his Unit or subdivided portion thereon, other than for taxes and assessments, and notice of every writ or other proceeding which may affect the title to his Unit or subdivided portion thereon (if permitted), and such notice shall be given within five (5) days after the Owner has knowledge thereof.

**Section 10.09. Mechanic's Lien.** Each Owner agrees to indemnify and to hold each of the other Owners harmless from any and all claims of mechanic's liens filed against other portions of the Property for labor, materials, services or other products incorporated in the Owner's Unit

## **ARTICLE XI AMENDMENTS**

**Section 11.01. Amendments.** These Bylaws may be altered, amended, or repealed, and new bylaws may be adopted only by a Majority vote of all of the Members in Good Standing of the Association (not a Majority of any quorum). Notwithstanding anything to the contrary contained herein, the notice of any meeting at which these Bylaws are altered, amended, or repealed, or at which new bylaws are adopted, will include the text of the proposed Bylaw provisions as well as the text of any existing provisions proposed to be altered, amended, or repealed.

Alternatively, the notice may include a fair summary of those provisions. In addition, notwithstanding the foregoing, any technical or other amendment necessary to correct typographical errors may be effected by the Board of Directors without the need for a meeting or vote of the Members.

**ARTICLE XII  
EVIDENCE OF OWNERSHIP, REGISTRATION OF MAILING ADDRESS AND  
DESIGNATION OF VOTING REPRESENTATIVE**

Section 12.01. Proof of Ownership. Any person, on becoming an Owner, shall furnish to the Board of Directors a true and correct copy of the original or a certified copy of the recorded instrument vesting that person with an interest or ownership in a Unit, which copy shall remain in the files of the Association.

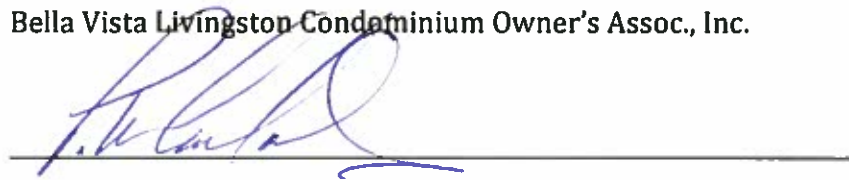
Section 12.02. Registration with the Association. Each Owner shall provide to the Association, and thereafter revise and update, the following information: (a) the full name and address of the Owner; (b) the business address and telephone numbers of the Owner; (c) the description and license plate number of each automobile owned or used by the Owner and brought within the Subdivision; (d) the name, address and telephone numbers of other individuals who can be contacted (in the event that Owner cannot be located) in the case of an emergency; and (e) the names and method of contacting each Resident that is not an Owner.

**ARTICLE XIII  
CONFLICTING OR INVALID PROVISIONS**

Section 13.01. Conflicting or Invalid Provisions. Notwithstanding anything contained herein to the contrary, should all or part of any Article of these Bylaws be in conflict with the provisions of the Texas Non-Profit Corporation Act or any other Texas law, such Act or law shall control; and should any part of these Bylaws be invalid or inoperative for any reason, the remaining parts, so far as is possible and is reasonable, shall be valid and operative.

Adopted by the Board of Directors, effective \_\_\_\_\_, 2016

Bella Vista Livingston Condominium Owner's Assoc., Inc.



Its \_\_\_\_\_

## Schedule A to Bylaws

### DEFINITIONS

The following terms shall have the following respective meanings (unless the context otherwise clearly indicates or prohibits such meaning):

1. **Common Areas.** "Common Areas" shall mean and refer to: (a) all private streets, private driveways, private sewer and water lines and any other utility lines or facilities shared by the Subdivision; (b) any areas reserved for or granted to the Subdivision by easement or otherwise for access to areas owned or used by the Subdivision; (c) any areas for which the Subdivision has obtained or assumed the right and obligation of maintenance, including, without limitation, streets, gatehouse, drainage ways, pedestrian walkways and landscaped medians, together with all improvements located on such areas; and (d) landscape facilities, including, without limitation, landscape irrigation systems serving the Common Area, lighting facilities, signage, and street furniture, if any, installed in the Common Area, but excluding driveway or parking area lighting and street furniture installed or to be installed by Owners on their respective Lot, all of which are for the common use, enjoyment and benefit of the Subdivision.
2. **Declarant,** Bella Development, Inc., a Texas Corporation, and its successors and assigns.
3. **Owner.** An "Owner" shall mean and refer to each and every person or entity who or which is a record owner of a fee or undivided fee interest in any Unit; however, the word "Owner" shall not include a person or entity who holds a bona fide lien or interest in a Unit as security for the performance of any obligation including, without limitation, any purchase money loan.
4. **Unit.** A "Unit" shall mean and refer to any building or portion of a building situated in any building which is designed and intended for use and occupancy as an attached single-family residence.
5. **Resident.** A "Resident" shall mean and refer to (i) each Owner residing in his Unit; (ii) each person residing in a Unit who is a bona fide lessee of the Owner of such Unit; and (iii) each person lawfully domiciled in a Unit, other than an Owner or a bona fide lessee.

#### A. COMPLIANCE

A-1. **Compliance.** Each Owner and occupant shall comply with the provisions of this Declaration. Each Owner additionally shall be responsible for compliance with this Declaration by the occupants of Owner's Unit, and Owner's families, invitees, tenants, agents, employees, or contractors. Use of "Owner" or "Resident" in this Declaration shall be deemed to include and apply to the Owner of a Unit and to all persons for whom the owner is responsible.

A-2. Waiver. Certain circumstances may warrant waiver or variance of this Declaration, an Owner must make written application to the remaining Owners for such waiver or variance. If the remaining Owners deem the waiver or variance warranted, such Owners may condition its approval, which must be in writing to be effective.

## **B. OBLIGATIONS OF OWNERS AND RESIDENTS**

B-1. Safety. Each Resident is solely responsible for his or her own safety and for the safety, well-being and supervision of his or her guests and any person on the Subdivision to whom the Resident has a duty of care, control, or custody.

B-2. Damage. Each Owner is responsible for any loss or damage to Owner's Unit, other Units, the personal property of other Residents of their guests, or to the Common Areas and improvements, if such loss or damage is caused by the Owner or by any person for whom the Owner is responsible. Each Owner shall close all exterior windows and doors when necessary to avoid possible damage from storms or the elements. All damage to the Subdivision caused by construction or repair activities within an Owner's Unit, or by the moving of any article therefrom or by the carrying of any article thereto, shall be paid for by the Owner responsible for such construction or repair activities or the presence of such article.

B-3. Residents Must Insure. Each Resident is solely responsible for insuring his or her personal property in the Unit, including Owner's furnishings, automobile, and personal property. Personal property placed in or on the Subdivision shall be solely at the risk of the owner of such personal property. Each Resident is also solely responsible for such Resident's liability third parties for occurrences within the Resident's Unit.

B-4. Risk Management. No Resident shall permit anything to be done or kept in his or her Unit or the Common Areas which will result in the cancellation of insurance on any Unit, or any part of the Common Areas, or which may be, in violation of any law.

B-5. Reimbursement for Enforcement. An Owner shall promptly reimburse any other Owners for any expenses incurred by such Owners in enforcing the Declaration against the Owner, his or her Unit, or persons for whom the Owner is responsible.

B-6. Reimbursement for Damage. An Owner shall promptly reimburse the other Owners for the cost of damage to the Subdivision caused by the negligent or willful conduct of the Owner of the persons for whom the Owner is responsible

## **C. OCCUPANCY STANDARDS**

C-1. Numbers. A Unit may be occupied by no more than two (2) persons per bedroom unless higher occupancy is mandated by applicable law.

C-2. Occupancy Defined. Occupancy of a Unit for purposes of this Declaration, shall mean occupancy of at least 30 continuous days or 60 noncontinuous days in any 12 month period.

C-4. Leases or Rentals. All tenants shall observe all of the terms and provisions of this Declaration, and each lease shall contain a provision that the lease shall automatically be terminated upon tenant's violation of this Declaration.

**D. GENERAL USE AND MAINTENANCE OF UNIT**

D-1. Residential Use. Each Unit must be used solely for residential use, and may not be used for business, professional, commercial or manufacturing purposes. This restriction shall not prohibit a Resident from using his or her Unit for a limited business purpose, provided that: (i) such use is incidental to the Unit's primary Residential use; (ii) such use conforms to all applicable laws and ordinances; and there is no external evidence of such use. In no event shall such limited business use unreasonably interfere with the quiet enjoyment of the other Owners of their Units or involve the sale of goods or merchandise.

In addition, consultation with clients or customers at or in a Unit shall not be permitted. Notwithstanding the foregoing, the use of a Unit for the maintenance of a personal or professional library; for the keeping of personal business or professional records of accounts; or for the handling of personal business or professional telephone calls or correspondence shall not be deemed to be in violation of these provisions.

D-2. Annoyance. No Unit may be used in any way that: (i) may reasonably be considered annoying to occupants of neighboring Units; (ii) may be calculated to reduce the desirability of the Subdivision as a residential community; (iii) may endanger the health or safety of other Residents; or (iv) may violate law or any provision of the Declaration.

D-3. Maintenance. Each Owner, at his or her sole cost and expense, shall maintain the interior in a clean, safe and sanitary condition. Each Owner shall also use due care to avoid damaging any of the Common Areas, including, but not limited to telephone, water, gas, cable, television, plumbing, power or other utility systems throughout the Subdivision and each Owner shall be responsible for his or her negligence or misuse of any of the Common Areas or his or her own facilities resulting in damage to the Common Areas or to the exterior of any of the Units.

D-4. Patio/Balcony/Terrace. Each Resident shall keep his or her Unit and patio, balcony, or terrace in a good state or cleanliness, taking care that the cleanliness of his or her patio, balcony, or terrace does not annoy or inconvenience other Residents. No plants shall be watered on a balcony or terrace such that water overflows onto any other Unit's patio, balcony, terrace, or the exterior surface of the Subdivision. No animal shall be fed on or from any balcony or terrace. Each Owner shall be responsible and liable for any item which falls or is thrown from such Owner's patio, balcony, or terrace by any person for whom the Owner is responsible. A patio/balcony/terrace may not be enclosed or used for storage purposes.

D-5 Glass. Each Owner, at his or her sole cost and expense, shall promptly repair and replace any broken or cracked glass in his or her Unit's windows and doors.

D-6 Air Conditioning Equipment. Each Owner, at his or her own cost and expense, shall maintain, repair, and replace the heating and cooling equipment/system serving his or her Unit, including the outside compressor.

D-7 Combustibles. No Owner shall use or permit to be brought into or stored in the Subdivision (including within a Unit) any flammable oils or fluids such as gasoline (other than inside the sealed gas tank of a vehicle in the Unit's garage), kerosene, naphtha, benzene, or other explosives or articles deemed extra hazardous to life, limb, or property without in each case obtaining the prim written consent of the other Owners.

D-8 Barbeque Grills. The use of outdoor grills is subject to the following restrictions

(i) open fires must be supervised at all times; (ii) gas tanks must be properly used and maintained; (iii) no flames may be higher than the cooking surface; and (iv) a grill may not be used near combustible materials; provided, however, that an: such usage must be in full compliance and accord with the Polk County fire code.

D-9 Report Malfunctions. A Resident shall immediately report to adjacent Owners h i or her discovery of any leak, break, or malfunction in any portion of his or her Unit or the adjacent Common Areas for which the other Owners have a maintenance responsibility. The failure to report promptly a problem may be deemed negligence by the Resident, who may be liable for any additional damage caused by the delay.

D-10 Boat Slips: All boat slip covers must be English Brown in color from John Boyle and Company or Equal.

## **E. GENERAL USE AND MAINTENANCE OF COMMON AREAS**

E-1. Intended Use. Every area and facility in the Subdivision may be used only for its intended and obvious use. For example, walkways, sidewalks and driveways are to be used exclusively for purposes of access, not for social congregation or recreation except with the consent of the other Owners. The Common Areas shall not be used for storage of supplies, personal property, garbage or refuse of any kind, nor shall the Common Areas or Balconies be used in any way for the drying, shaking or airing of clothing or other items. No Owner shall do any act or place any object in his or her Unit which would create a structural hazard or endanger the structure of the Unit or adjacent Units.

E-2. Grounds. Residents may not use or abuse the landscaped areas, lawns, beds, and plant materials on the Common Areas. The following are expressly prohibited: digging, planting, pruning, and climbing.

E-3. Abandoned Items. No item or object of any type shall be stored, placed or maintained anywhere on the Common Areas.

## **F. COMMUNITY ETIQUETTE**

F-1. Courtesy. Each Resident shall endeavor to use his or her Unit and the Common Areas in a manner calculated to respect the rights and privileges of the other Residents.

**F-2. Annoyance.** No unlawful, noxious or offensive activity shall be conducted or carried on in any Unit, or upon the Common Areas or anywhere else in the Unit, nor shall anything be done therein or thereon which may be or become an annoyance or a nuisance to other Owners or the neighborhood or cause unreasonable noise or disturbance to others, or which shall interfere in any manner with any Owner's quiet enjoyment of his or her Unit.

**F-3. Noise and Odors.** Each Resident shall exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb Residents of other Units. The use of discharge of firearms, firecrackers or fireworks is expressly prohibited within or from the Unit or the Common Areas or the Driveway Easement.

**F-4. Reception Interference.** Each Resident shall avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephone, cable or electronic reception of any other Unit.

**F-5. Compliance with Law.** Residents may not use the Unit for unlawful activities. Residents shall comply with applicable laws and regulations of the United States and of the State of Texas, and with ordinances, rules, and regulations of Polk County and the City of Livingston, Texas. A Resident who violates this provision shall hold the other Owners and Residents harmless from all fines, penalties, costs and prosecutions for the Resident's violation or noncompliance.

## **G. ARCHITECTURAL CONTROL**

**G-1. Alterations, Additions and Improvements.** No alterations of any portion of the Common Areas or additions or improvements thereon or of any portion of the Unit visible from the exterior of the Unit shall be made by any Owner without the prior written approval of the Declarant for so long as the Declarant owns any Unit, or the majority of the other Owners, if Declarant no longer owns a Unit in the Subdivision, if formed, or a majority of the other Owners. Further, any alterations within a residence that includes electrical or plumbing modifications and/or wall changes must be submitted in writing for approval by the Declarant or other Owners as the case may be. No Owner shall make any structural modification to his or her Unit. At no time will construction of a permanent nature covering an exterior window or a portion of a window be allowed. Unit owners shall be responsible for any and all glass breakage.

**G-2. Prohibited Acts.** No person may:

- a. Post or inscribe signs, notices, or advertisements on the Common Areas or in a Unit if visible from outside his Unit, including "For Sale" or "For Lease" signs (except for professionally prepared broker's "For Sale" signs).
- b. Place or hang an object in, on, from, or above any window, balcony, terrace, or patio that detracts from the appearance of the Unit, including any poster, banner or flag.



- c. Hang, shake, or otherwise display linens, clothing, towels, rugs, shoes, mops, bedding, bicycles, grilles or other similar items from windows, doors, balconies, patios, or fences.
- d. Erect or install exterior horns, lights, speakers, aerials, antennas, or other transmitting or receiving equipment, or cause anything to protrude through an exterior wall or roof, without the prior written consent of the other Owners (provided, however, that Television and other aerial antennas, including, without limitation, 18" satellite dishes, may be attached to an, Unit; however, such antenna's location shall be restricted to the rear of the Unit or to the rear of the roof ridge line, gable or centerline of the U nit as to be hidden from sight when viewed from fronting the street).
- e. Place decorations on exterior walls, windows, or doors, or on the general Common Areas.

**G-3. Window Treatments.** An Owner may install window treatments inside his or her Unit, at his or her sole expense, provided:

- a. Any window treatment, including drapes, blinds, shades, or shutters, must be clear or white or off-white when viewed from outside the Unit;
- b. Aluminum foil and reflective window treatments, and cardboard or other solid materials are expressly prohibited; and
- c. Window treatments must be maintained in good condition, and must be removed or replaced if they become stained, tom, damaged.

**G-4. Owner Approval.** To obtain the other Owner's written consent for a modification, an Owner must submit to the other Owners complete plans and specifications showing the nature, kind, shape, size, materials, colors, and location for all proposed work, and any other information reasonably requested by the other Owners. The other Owners' failure to respond to the Owner's written request within 30 days after it receives such request shall be construed as no objection to the proposed changes.

**G-5. Construction and Contractor Rules.** Outside contractors are at the Subdivision at the invitation of the respective Unit Owner. Contractors are required to abide by the following rules and regulations so that Owners and other Residents are not unduly disturbed by work-related activities.

**HOURS.** Working hours are Monday-Friday, 8:30 am-4:30 pm. Contractors may arrive on the property no earlier than 8:00 am to prepare for work and must have cleaned up and have departed the premises no later than 5:00 pm.

**DAMAGES.** Contractors are responsible and liable for any damage to the Common Areas and will be required to restore the damaged areas to their original condition.

**NOXIOUS ODORS.** The use of paints, chemicals or solvents that cause noxious or unpleasant odors to enter or other units is prohibited.

**TRASH.** All trash and debris is to be completely removed from the property by the contractor. Dumpsters and trash containers present on the property are NOT to be used for construction trash.

**APPLIANCES.** Unit appliances are not to be used by contractors for any reason. Kitchen sinks, bathtubs, toilets, etc. are not to be used for washing painting equipment or disposal of any construction materials.

**INSURANCE.** All contractors performing work in the Subdivision must obtain and have in full force and effect the following insurance:

<u>Insurance Provided by Contractor</u>	<u>Minimum Limits</u>
<b>A. Coverage of Liability</b>	
1. Worker's Compensation and Occupational Diseases Employer's Liability	Statutory Limits
2. Contractors' Comprehensive General Liability Insurance including Contractors Protective Liability, Completed Operations Liability and Broad Form Contractual Liability)	\$500,000
a. Comprehensive General Liability	
(1) Bodily Injury	\$500,000 each occurrence \$500,000 aggregate
(2) Broad Form Property Damage	\$100,000 each occurrence \$100,000 aggregate
(3) Personal Injury	\$500,000 aggregate
b. Comprehensive Automobile Liability Insurance to include non-owner, hired or rented vehicles as well as owned vehicles:	
(1) Bodily Injury	250,000 each person \$500,000 each occurrence
(2) Property Damage	\$100,000 each occurrence

**B.** If Owner is not named as an additional insured, Contractor shall obtain and deliver to Owner a waiver of subrogation by the carrier of the insurance referred to above for any claims whatsoever that it may have in connection therewith against Owner.

**C.** Each policy of insurance required to be purchased and maintained by Contractor and each certificate of insurance required to be furnished by said contractor

shall provide that the insurance provided or evidenced thereby shall not be changed or canceled except upon 30 days' written notice to Owner.

Should an Owner contemplate major repair or additions requiring approval from the other Owners a contractor must furnish insurance as evidenced above. A copy of this Certificate of Insurance must be delivered to the other Owners prior to commencement of work and such other Owners shall be named as additional insureds.

For minor repairs or additions, such as carpet laying, fixture hanging, light painting, floor polishing, etc., it is understood that small contractors may not carry extensive insurance coverage. In this instance, the Unit Owner may furnish the other Owners with evidence of personal liability coverage of at least \$1,000,000 of General Liability. This insurance policy is readily obtainable, very inexpensive, and permits the insured to hire small contractors. It is understood that the Resident assumes all responsibility for such employees, including any damages to the Common Areas caused by workers in the Unit Owner's employ

#### **H. VEHICLE RESTRICTIONS**

**H-1. Permitted Vehicles.** For purposes of this Declaration, vehicles include automobiles, motorcycles, motorized bikes, passenger trucks, small vans, and similar passenger vehicles. All vehicles must be parked in a Unit's closed garage or parking space, and no vehicles may be parked in the Common Areas. Boats, trailers, campers, motor homes, recreational vehicles, commercial vehicles, trucks (other than standardized pick-up trucks which may be parked in a garage with the door closed), and bikes shall not be parked within the Subdivision, including within a Unit's garage. No noisy or smoky vehicles may be operated on the Subdivision. No motorcycles without mufflers shall be permitted in the Subdivision.

**H-2. Repairs.** Washing, repairs, restoration, or maintenance of vehicles is prohibited except for emergency repairs, and then only to the extent necessary to enable movement of the vehicle out of the Subdivision to a repair facility.

**H-3. Guest Vehicle Parking.** Parking for guests for any Owner or Resident shall be allowed to park guest parking spaces, and they shall be available to bona-fide guests (but not to construction workers) on a first-come, first-served basis.

**H-4. No Obstruction.** No vehicle may be parked in a manner that interferes with (read) access to any entrance to or exit from the Subdivision or any Unit. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Subdivision.

**H-5. Nuisances.** Each vehicle shall be muffled and shall be maintained and operated to minimize noise, odor, and oil or other fluids emissions in the Common Areas. No Resident shall cause or permit the blowing of a horn of any vehicle in which such Resident or his or her guest or family shall be occupants while in the Common Areas or Easements. No vehicle may be kept on the Subdivision if the other Owners deem to be unsightly, inoperable, inappropriate, or otherwise in violation of this Declaration.

## **I. TRASH DISPOSAL**

I-1. General Duty. Residents shall not litter Common Areas, shall endeavor to keep the Subdivision clean, and shall dispose of all refuse in receptacles. No garbage, trash, rubbish, waste, or waste bins or receptacles therefore shall be permitted to remain on any portion of the Common Areas, except on those days specifically scheduled for collection thereof and in areas specifically designated therefore. All garbage, trash, rubbish, and other waste shall be kept only in sanitary containers.

Initially, each Resident shall put all trash into a container. Each Resident shall place such container in front of the Units for pickup each trash day.

I-2. Hazards. Resident may not store trash inside or outside his or her Unit in a manner that encourages vermin, causes odors, or may permit the spread of fire. Before discarding coals, ashes, logs, or other materials used in barbeque grills or fireplaces, a Resident shall ensure that the debris is thoroughly cold.

I-3. Excess Trash. Residents shall arrange privately for removal of discarded furnishings or any unusually large volume of debris. Owner and Owner's contractors, subcontractors, agents, employees and other parties involved in any construction to or on such Owner's Unit shall confirm that any and all refuse, waste, trash, garbage, rubbish, remains, scraps and other materials and supplies which are brought onto the Unit by such parties, or any of them, is removed at such Owner's expense.

## **J. PETS**

J-1. Subject to Rules. A Resident may not keep or permit on the Unit a pet or animal of any kind, at any time, except as permitted by this Declaration.

J-2. Permitted Pets. A Resident may keep up to three (3) small domestic animals such as birds, fish, dogs and cats within a Unit. All animals kept within the Unit shall be registered with the other Owners in such manner as it shall require, may not be kept or bred for any commercial purpose and shall have the care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary condition. Permitted house pets also include specially trained animals that serve as physical aids to handicapped Residents, regardless of the animal's size or type.

J-3. Prohibited Animals. No Resident may keep a dangerous or exotic animal, a pit bull terrier, Doberman, Rottweiler, either full or mixed breed, a trained attack dog, vicious dog, or any other animal deemed by the other Owners to be a potential threat to the well-being of people or other animals. No animal or house pet may be kept, bred, or maintained for a commercial purpose.

J-4. Indoors/Outdoors. A permitted pet must be maintained inside the Unit or on the ground floor patio. No pet shall be allowed, kept or fed on or from a balcony, or terrace. No pet is allowed on Common Areas unless carried or leashed. No pet may be leashed to any stationary object on the Common Areas.

J-5. Disturbance. Pets shall be kept in a manner that does not disturb another Resident's rest or peaceful enjoyment of his or her Unit or the Common Areas No pet shall be permitted to bark, howl whine, screech, or make other loud noises for extended for repeated periods of time.

J-6. Damage. Each Resident is responsible for any property damage, injury, or disturbance his or her pet may cause or inflict. Each Resident shall compensate any person injured by his or her pet. Any Resident who keeps a pet on the Subdivision shall be deemed to have indemnified and agreed to hold harmless the other Owners and Residents, from any loss, claim, or liability of any kind or character whatever resulting from any action of his or her pet or arising by reason of keeping or maintaining such pet on the Subdivision.

J-7. Pooper Scooper. No Resident may permit his or her pet to relieve itself on the Subdivision. Each Resident is responsible for the removal of his or her pet's wastes from the Common Areas.

J-8. Removal. If after (i) three (3) violations of this provision, (ii) ten (10) days' prior written notice to the Owner of such animal, if such Owner can be located, and (iii) an opportunity for such Owner to have a hearing before the other Owners, such animal is found to be in violation of this Section, the Owner of such animal shall remove the animal from the Subdivision, failing which such animal may be taken from such Owner and given to the Society for the Prevention of Cruelty to Animals or another county run shelter. If such Owner cannot be located, such animal may be given to the local Humane society or shelter.

## **K. MISCELLANEOUS**

K-1. Security. The Declarant may, but shall not be obligated to, maintain or support certain activities within or around the Unit designed to make the Unit less attractive to intruders than it otherwise might be. The Declarant, its directors, committees, members, agents, and employees, shall not in any way be considered an insurer or guarantor of security within the Unit, and shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner, Resident, guest, and invitee on the Unit assumes all risk for loss or damage to his or her property on the Unit. The Declarant expressly disclaims and disavows any and all representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security systems, equipment or measures recommended, installed or undertaken within the Subdivision.

K-2. Mailing Address. An Owner who receives mail at any address other than the address of his or her Unit shall be responsible for maintaining with the other Owners his or her current mailing address. Notifications of change of name or change of address should be clearly marked as such. All notices required to be sent to Owners by the other Owners shall be sent to an Owner's most recent address as shown on the records of the other Owners. If an Owner falls to provide a forwarding address, the address of that Owner's Unit shall be deemed effective for purposes of delivery. Any notice required or permitted to be given hereunder to any Owner shall be deemed to have been properly delivered and

received when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Owner of a Unit at the time of such mailing or may be given by personal delivery.

**K-4. Amendment.** This Declaration is expressly subject to change, modification, termination or extension by means of amendment at any time and from time to time with the express written consent of the Owners of at least seventy-five percent (75%) of the Units. All Amendments shall be recorded in the Real Property Records of Polk County, Texas, and shall be effective as of the date they are recorded.

**K-5. Properties Subject to this Amendment.** All of the property described in the Subdivision Plat, including all Condos therein, are expressly made subject to this Declaration. Additional property may become subject to this Declaration by annexing such person's or entity's Units.

**K-6. Conflict with Zoning and Other Laws.** In the event, any restriction, covenant or condition contained herein conflicts with or differs from any zoning, building or development ordinance, or any other applicable law, that may from time to time may be in existence, the more restrictive of the two shall apply.

**K-7. Enforcement.** This Declaration may be enforced by any Owners. Enforcement of this Declaration may be by a proceeding by law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of a new lien created by this Declaration; but failure of any Owner to enforce any conveyance, restriction or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party.

**K-8. Validity and Severability.** Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on any Unit. Invalidation of any provision of this Declaration or any portion thereof by a judgment or court order shall not affect any of the other provisions or conveyances herein contained which shall remain in full force and effect.

**EXHIBIT "B"**  
**FIELDNOTE DESCRIPTION**  
**ESTHER CLARK, A-160, POLK COUNTY, TEXAS**  
**8.946 ACRES**  
**BELLA DEVELOPMENTS, INC.**

Being 8.946 acres of land situated in the Esther Clark Survey, A-160, Polk County, Texas, and being the same land called 8.96 acres described in deed to Bella Developments, Inc. recorded in Volume 2017, Page 312 of the Polk County Official Records, and this 8.946 acre tract being more particularly described by metes and bounds as follows:

**BEGINNING** at a point representing the southeast corner of said called 8.96 acres located in the centerline of F. M. Highway No. 3186 as described in Dedication of Right of Way recorded in Volume 16, Page 27 of the Commissioner's Court Minutes of said Polk County, from said point a 5/8" iron rod found for reference bears S 78° 52' 59" W 39.81 ft.;

**THENCE** S 78° 52' 59" W, along the south line of said called 8.96 acres, at 39.81 ft. pass a 5/8" iron rod found for reference, at 40.07 ft. pass the west right of way line of said F. M. Highway No. 3186, same being the northeast corner of the called 3.0 acres described in deed to James Kiffer and Jeanette Kiffer recorded in Volume 1450, Page 43 of said Official Records, and continuing along the common line between said called 8.96 acres and said Kiffer called 3.0 acres, at 497.28 ft. pass a 5/8 " iron rod found for reference and in all a total distance of 501.73 ft. to the west common corner between said tracts, located on the east line of the called 12.31 acres described as "Fee Tract E-37" in Judgement granted to Trinity River Authority of Texas recorded in Volume 240, Page 779 of the Polk County Deed Records (same being the Fee Taking Line of Lake Livingston), said point being the southwest corner of the herein described 8.946 acre tract;

**THENCE** along the common line between said called 8.96 acres and said Trinity River Authority of Texas called 12.31 acres as follows:

N 70° 33' 00" W 224.27 ft.,  
 N 15° 28' 00" W 77.57 ft.,  
 N 42° 58' 00" E 186.94 ft.,  
 S 82° 12' 00" E 135.96 ft.,  
 N 37° 29' 00" W 138.42 ft.,  
 N 47° 41' 00" E 80.81 ft.,  
 N 43° 02' 00" W 231.44 ft.,  
 N 38° 58' 00" E 221.37 ft. and  
 S 85° 45' 00" W 50.54 ft. to a point representing the west

common corner between said called 8.96 acres and the residue of the Reserved Area of Stowaway Bay as described in deed to Polk County Freshwater Supply District No. 2 recorded in Volume 1853, Page 658 of said Official Records;

**THENCE** N 59° 54' 00" E, along the north line of said called 8.96 acres and the south line of said lands described in Polk County Freshwater Supply District No. 2 deed, at 5.25 ft. pass a 1/2" iron

Page 2 of 2  
8.946 Acres

rod set for reference, at 224.92 ft. pass a 1/2" iron rod found for reference marking the southeast corner of said Stowaway Bay and the southeast corner of said Polk County Freshwater Supply District No. 2 lands, and in all a total distance of 265.12 ft. to a point located in the centerline of said F. M. Highway No. 3186 representing the northeast corner of said called 8.96 acres, same being the west line of Lot 13 of Stanford Shores, a subdivision in said Polk County, as shown on the map or plat thereof recorded in Volume 12, Page 25 of the Polk County Plat Records;

THENCE S 35° 51' 00" E 179.68 ft. along the centerline of said F. m. Highway No. 3186, same being the common line between said called 8.96 acres and said Stanford Shores subdivision, to the P.C. of a curve in said centerline;


THENCE 267.08 ft. along the centerline of said F. M. Highway No. 3186, same being the east line of said of said called 8.96 acres, common in part with the west line of said Stanford Shores subdivision, in a southeasterly direction in a curve to the right, having a central angle of 21° 22' 00", the radius being 716.20 ft. and the chord bears S 25° 10' 00" E 265.54 ft. to the P.T. of said curve;

THENCE S 14° 29' 00" E 433.59 ft. along the centerline of said F. M. Highway No. 3186, same being the east line of said of said called 8.96 acres, to the place of beginning and containing within these bounds 8.946 acres of land.

Bearings for this survey based on deed call for the north line of the called 8.96 acres described in deed recorded in Volume 2017, Page 312 of the Polk County Official Records.


The above description was prepared from an actual and accurate survey made on the ground under my supervision in October, 2016, and same is true and correct to the best of my knowledge.

**JOHNSON and SONS** Texas Surveying Firm Registration No. 10194222  
1435 Providence Road Livingston, Texas 77351 Ph: 936-328-7039

  
Earline McLeod, RPLS  
No. 5774, Texas



FILED FOR RECORD  
2016 NOV -9 PM 4:59


  
SHELANA HOCK  
POLK COUNTY CLERK



STATE OF TEXAS )  
COUNTY OF POLK )  
I, SHELANA HOCK hereby certify that the instrument was FILED in the file number sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records in Volume and Page of the named RECORDS OF Polk County, Texas as stamped hereon by me.

NOV 09 2016



  
SHELANA HOCK  
COUNTY CLERK  
POLK COUNTY, TEXAS