RP-2016-80476
02/29/2016 ER $332.00

AFTER RECORDING RETURN TO:

ROBERT D. BURTON, ESQ.
WINSTEAD PC
401 CONGRESS AVE., SUITE 2100
AUSTIN, TEXAS 78701

# ELYSON
# MASTER COVENANT
## *[RESIDENTIAL]*

*Harris County, Texas*



**Declarant**: **NASH FM 529, LLC,** a Delaware limited liability company

# ELYSON
# MASTER COVENANT
## *[RESIDENTIAL]*

TABLE OF CONTENTS

Page

Page

# ELYSON
# MASTER COVENANT
## *[RESIDENTIAL]*

This Elyson Master Covenant *[Residential]* (the "**Covenant**") is made by **NASH FM 529, LLC**, a Delaware limited liability company (the "**Declarant**"), and is as follows:

## R E C I T A L S:

**A.** Declarant is the present owner of certain real property located in Harris County, Texas, as more particularly described on Exhibit "A", attached hereto (the "**Property**").

**B.** Declarant desires to create a uniform plan for the development, improvement, and sale of the Property and to act as the "Declarant" for all purposes under this Covenant.

**C.** Portions of the Property may be made subject to this Covenant upon the Recording of one or more Notices of Applicability pursuant to *Section 9.5* below, and once such Notices of Applicability have been Recorded, the portions of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Covenant, and the Development in turn will be comprised of separate Development Areas (as defined below) which will be governed by and subject to separate Development Area Declarations (as defined below) in addition to this Covenant.

**No portion of the Property is subject to the terms and provisions of this Covenant until a Notice of Applicability is Recorded. A Notice of Applicability may only be Recorded by Declarant.**

**PROPERTY VERSUS DEVELOPMENT VERSUS DEVELOPMENT AREA**

| | |
|---|---|
| **"Property"** | **Described on Exhibit "A". This is the land that may be made subject to this Covenant, from time to time, by the Recording of one or more Notices of Applicability. Declarant has no obligation to add all or any portion of the Property to this Covenant.** |
| **"Development"** | **This is the portion of the Property that has been made subject to this Covenant through the Recording of a Notice of Applicability.** |
| **"Development Area"** | **This is a portion of the Development. Each Development Area may be made subject to a Development Area Declaration.** |

**D.** This Covenant serves notice that upon the further Recording of one or more Notices of Applicability, portions of the Property identified in such notice or notices will be subject to the terms and provisions of this Covenant.

**NOW, THEREFORE**, it is hereby declared that: (a) those portions of the Property as and when made subject to this Covenant by the Recording of a Notice of Applicability will be held,

sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; and (b) each contract or deed conveying those portions of the Property which are made subject to this Covenant will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Covenant uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Covenant, the text will control.

## ARTICLE 1
## DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Covenant will have the meanings hereinafter specified:

"**Applicable Law**" means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Development, and any other applicable building codes, zoning restrictions, permits and ordinances adopted by a Governmental Entity (defined below), which are in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes, ordinances and regulations specifically referenced in the Documents are "Applicable Law" on the effective date of the Document, and are not intended to apply to the Development if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

"**Assessment**" or "**Assessments**" means assessments imposed by the Association under this Covenant.

"**Assessment Unit**" has the meaning set forth in *Section 5.9*.

"**Association**" means Elyson Residential Association, Inc., a Texas nonprofit corporation, which will be created by the Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Covenant. The failure of the Association to maintain its corporate charter does not affect the existence or legitimacy of the Association, which derives its authority from this Covenant, the Certificate, the Bylaws, and Applicable Law.

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

"**Bulk Rate Contract" or "Bulk Rate Contracts**" means one or more contracts which are entered into by the Association for the provision of services of any kind or nature to the Lots and/or Condominium Units. The services provided under Bulk Rate Contracts may include, without limitation, patrol services, trash pick-up services, propane service, natural gas service,

landscape services and any other services of any kind or nature which are considered by the Board to be beneficial to the Development. Each Bulk Rate Contract must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

"**Bylaws**" mean the Bylaws of the Association as adopted and as amended from time to time.

"**Certificate**" means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

**"Commercial Lot"** means a Lot, if any, within the Development, other than Common Area or Special Common Area, which is designated by the Declarant for business or commercial use. Business or commercial use shall include, but shall not be limited to, all office, retail, wholesale, manufacturing, and service activities, and may also be deemed to include multi-family, duplex and apartment housing of various densities. A Commercial Lot, for the purpose of this Covenant, may also include a Lot on which a residential condominium will be impressed.

"**Common Area**" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including any property or facilities held by the Declarant for the benefit of the Association or its Members. Declarant reserves the right, from time to time and at any time, to designate by written instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon such designation, the portion of the Property identified in the written instrument will be considered Common Area for the purpose of this Covenant. Common Area also includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public.

"**Community Manual**" means the community manual, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the Development. The Community Manual may include the Bylaws, Rules and other policies governing the Association. The Community Manual may be amended or modified, from time to time, by a Majority of the Board. Until expiration or termination of the Development Period, any amendment or modification to the Community Manual must be approved in advance and in writing by the Declarant.

"**Condominium Unit**" means an individual unit, including any common element assigned thereto, within a condominium regime, if any, established within the Development. A Condominium Unit may be designated by the Declarant in a Recorded instrument for residential, commercial or live/work purposes.

"**Declarant**" means **NASH FM 529, LLC,** a Delaware limited liability company. Notwithstanding any provision in this Covenant to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any person. Declarant may also, by Recorded written instrument, permit any other person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Covenant.

"**Design Guidelines**" means the standards for design and construction of Improvements, landscaping and exterior items proposed to be placed on any Lot or Condominium Unit, and adopted pursuant to *Section 6.4.2* as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Development. The Elyson Residential Reviewer may adopt, and amend from time to time, the Design Guidelines applicable to the Development or any Development Area, or any portion thereof. The Design Guidelines may be Recorded as a separate written instrument or may be incorporated into a Notice of Applicability or Development Area Declaration by exhibit or otherwise. Until expiration or termination of the Development Period, any amendment or modification to the Design Guidelines must be approved in advance and in writing by the Declarant.

"**Development**" refers to all or any portion of the Property made subject to this Covenant by the Recording of a Notice of Applicability.

"**Development Area**" means any part of the Development (less than the whole), which Development Area may be subject to a Development Area Declaration in addition to being subject to this Covenant.

"**Development Area Declaration**" means, with respect to any Development Area, the separate instrument containing covenants, restrictions, conditions, limitations and/or easements, to which the property within such Development Area is subjected.

"**Development Period**" means the period of time beginning on the date when this Covenant has been Recorded, and ending seventy-five (75) years thereafter, unless earlier terminated by a Recorded written instrument executed by the Declarant. Declarant may terminate the Development Period by a Recorded written instrument executed by the Declarant. The Development Period is the period of time in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property and the Development, or the right to direct the size, shape and composition of the Property and the Development. The Development Period is for a term of years and does not require that Declarant own any portion of the Property or the Development.

"**Documents**" means, singularly or collectively, as the case may be, this Covenant, the Certificate, Bylaws, the Community Manual, the Design Guidelines, any Development Area Declaration, any Notice of Applicability, as each may be amended from time to time, and any

Rules, policies or procedures promulgated by the Association pursuant to this Covenant or any Development Area Declaration, as adopted and amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is part of a Document. See Table 1 for a summary of the Documents.

"**Elyson Residential Reviewer**" means the party holding the rights to approve Improvements within the Development and shall be Declarant or its designee until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the rights of the Elyson Residential Reviewer will automatically be transferred to the ACC appointed by the Board, as set forth in *Section 6.2* below.

"**Governmental Entity**" means (a) a public improvement district created pursuant to Chapter 372, Subchapter B of the Texas Local Government Code; (b) a municipal utility district created pursuant to Article XVI, Section 59 of the Constitution of Texas and/or Chapters 49 and 54, Texas Water Code; (c) any other similarly constituted quasi-governmental entity created for the purpose of providing benefits or services to the Development; or (d) any other regulatory authority with jurisdiction over the Development.

"**Homebuilder**" refers to any Owner (other than Declarant) who is in the business of constructing single-family residences and acquires all or a portion of the Property to construct single-family residences for resale to third parties.

"**Improvement**" means any and all physical enhancements and alterations to the Development, including, but not limited to, grading, clearing, removal of trees, site work, utilities, landscaping, irrigation, trails, hardscape, exterior lighting, alteration of drainage flow, drainage facilities, detention/retention ponds, water features, fences, walls, signage, and every structure, fixture, and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, awnings and exterior air conditioning equipment or fixtures.

"**Individual Assessments**" means assessments levied against the Lots and/or Condominium Units as described in *Section 5.7*.

"**Lot**" means any portion of the Development designated by Declarant in a Recorded written instrument or as shown as a subdivided lot on a Plat other than Common Area, Special Common Area, and shall include both Commercial Lots and Residential Lots. A Lot, for the purpose of this Covenant, may also include a Lot on which a condominium will be impressed creating Condominium Units.

"**Majority**" means more than half.

"**Manager**" has the meaning set forth in *Section 3.5.8*.

"**Maximum Number of Lots**" means the maximum number of Lots that may be created and made subject to the terms and provisions of this Covenant. The Maximum Number of Lots for the purpose of this Covenant is six thousand (6,000). Until expiration or termination of the Development Period, Declarant may unilaterally increase or decrease the Maximum Number of Lots by Recorded written instrument.

"**Members**" means every person or entity that holds membership privileges in the Association.

"**Mortgage**" or "**Mortgages**" means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot or Condominium Unit.

"**Mortgagee**" or "**Mortgagees**" means the holder(s) of any Mortgage(s).

"**Notice of Applicability**" means the Recorded notice executed by the Declarant for the purpose of adding all or any portion of the Property to the terms and provisions of this Covenant in accordance with *Section 9.5* below. A Notice of Applicability may also subject a portion of the Property to a previously Recorded Development Area Declaration.

**"Occupant"** means any resident, occupant, or tenant of a Lot or Condominium Unit other than an Owner.

"**Owner**" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot or Condominium Unit and in no event shall mean any Occupant. Mortgagees who acquire title to a Lot or Condominium Unit through a deed in lieu of foreclosure or through foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

"**Plat**" means a Recorded subdivision plat of any portion of the Development, and any amendments thereto.

"**Property**" means all of that certain real property described on Exhibit "A", attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 9.3* and *Section 9.4* of this Covenant.

**"Record, Recording, Recordation and Recorded"** means recorded in the Official Public Records of Harris County, Texas.

"**Residential Developer**" refers to any Owner, other than the Declarant, who acquires undeveloped land, one or more Lots, or any other portion of the Property for the purposes of development for and/or resale to a Homebuilder.

"**Residential Lot**" means a portion of the Development, designated by Declarant in a Recorded written instrument or as shown as a subdivided lot on a Plat, other than Common Area and Special Common Area, which is intended solely for single-family residential use.

"**Rules**" means any instrument, however denominated, which may be adopted by the Declarant as part of the Community Manual or subsequently adopted by the Board for the regulation and management of the Development, including any amendments to those instruments. Any amendment to the Rules or Community Manual must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

"**Service Area**" means a group of Lots and/or Condominium Units designated as a separate Service Area pursuant to this Covenant for purpose of receiving benefits or services from the Association which are not provided to all Lots and Condominium Units. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot or Condominium Unit may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.4*.

"**Service Area Assessments**" means assessments levied against the Lots and/or Condominium Units in a particular Service Area to fund Service Area Expenses, as described in *Section 5.6*.

"**Service Area Expenses**" means the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reserve for operations and capital repairs and replacements.

"**Special Common Area**" means any interest in real property or improvements which benefits certain Lot(s), Condominium Unit(s) or one or more portion(s) of, but less than all, of the Development, which is designated by Declarant in a Notice of Applicability, a Development Area Declaration or in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant) as Special Common Area for the exclusive use of and/or the obligation to pay Special Common Area Assessments by the Owners of such Lot(s), Condominium Unit(s) or portion(s) of the Development attributable thereto, and is or will be conveyed to the Association or as to which the Association will be granted rights or obligations, or otherwise held by the Declarant for the benefit of the Association, as further set forth in *Section 2.5*.

"**Special Common Area Expenses**" means the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace Special Common Area, which may include a reserve for operations and capital repairs and replacements.

"**Special Common Area Assessments**" means assessments levied against the Lots and/or Condominium Units as described in *Section 5.5*.

"**Voting Group**" has the meaning set forth in *Section 9.6* below.

| TABLE 1: DOCUMENTS | |
|---|---|
| **Covenant**<br>(Recorded) | Creates obligations that are binding upon all present and future owners of Property made subject to the Covenant by the Recording of a Notice of Applicability. |
| **Notice of Applicability**<br>(Recorded) | Describes the portion of the Property being made subject to the terms and provisions of the Covenant and any applicable Development Area Declaration. |
| **Development Area Declaration**<br>(Recorded) | Includes additional covenants, conditions and restrictions governing portions of the Development. |
| **Certificate of Formation**<br>(Filed with Secretary of State and Recorded) | Establishes the Association as a not-for-profit corporation under Texas law. |
| **Bylaws**<br>(Recorded) | Governs the Association's internal affairs, such as elections, meetings, etc. |
| **Community Manual**<br>(Recorded) | Establishes Rules and policies governing the Association and the Development. |
| **Design Guidelines**<br>(if adopted, Recorded) | Governs the standards for the construction of Improvements and modifications thereto. |
| **Rules**<br>(if adopted, Recorded) | Rules regarding the use of property, activities, and conduct within the Development. The Rules may be included within the Community Manual. |



## ARTICLE 2
## GENERAL RESTRICTIONS

**2.1 General.**

2.1.1 Conditions and Restrictions. All Lots and Condominium Units within the Development to which a Notice of Applicability has been Recorded in accordance with *Section 9.5*, will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Documents. **NO PORTION OF THE PROPERTY WILL BE SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT UNTIL A NOTICE OF APPLICABILITY HAS BEEN RECORDED.**

2.1.2 Compliance with Applicable Law and Documents. Compliance with the Documents is mandatory. However, compliance with the Documents is not a substitute for compliance with Applicable Law. Please be advised that the Documents do not purport to list or describe each requirement, rule, or restriction which may be applicable to a Lot or a Condominium Unit located within the Development. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot or Condominium Unit. Furthermore, an approval by the Elyson Residential Reviewer should not be construed by the Owner that any Improvement complies with the terms

and provisions of all encumbrances which may affect the Owner's Lot or Condominium Unit. The Association, each Owner, Occupant or other user of any portion of the Development must comply with the Documents and Applicable Law, as supplemented, modified or amended from time to time.

2.2 **Incorporation of Development Area Declarations**. Upon Recordation of a Development Area Declaration such Development Area Declaration will, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Covenant, to the extent not in conflict with this Covenant, but will apply only to portions of the Property made subject to the Development Area upon the Recordation of one or more Notices of Applicability. To the extent of any conflict between the terms and provisions of a Development Area Declaration and this Covenant, the terms and provisions of this Covenant will control.

2.3 **Conceptual Plans**. All master plans, site plans, brochures, illustrations, information and marketing materials related to the Property or the Development (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. **The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property or the Development may include uses which are not shown on the Conceptual Plans.** Neither Declarant, a Residential Developer, nor any Homebuilder or other developer of any portion of the Property or the Development makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property or the Development and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans or any statement made by the Declarant or any of Declarant's representatives regarding proposed land uses, or proposed or planned Improvements, in making the decision to purchase any land or Improvements within the Property or the Development. Each Owner who acquires a Lot or Condominium Unit within the Development acknowledges development will extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

2.4 **Provision of Benefits and Services to Service Areas**.

2.4.1 Declarant, in a Notice of Applicability Recorded pursuant to *Section 9.5* or in any written Recorded notice, may assign Lots and/or Condominium Units to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots and/or Condominium Units in addition to those which the Association generally provides to the Development. During the Development Period, Declarant may unilaterally amend any Notice of Applicability or any written Recorded notice, to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed

against the Lots and/or Condominium Units within the Service Area as a Service Area Assessment.

2.4.2 In addition to Service Areas which Declarant may designate, until expiration or termination of the Development Period, any group of Owners may petition the Board to designate their Lots and/or Condominium Units as a Service Area for the purpose of receiving from the Association: (a) special benefits or services which are not provided to all Lots and/or Condominium Units; or (b) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots and/or Condominium Units within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot and/or Condominium Units among all Service Areas receiving the same service). If approved by the Board, the Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots and/or Condominium Units within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise determined by to the Board. The cost and administrative charges associated with such benefits or services will be assessed against the Lots and/or Condominium Units within such Service Area as a Service Area Assessment. After expiration or termination of the Development Period, the Board may discontinue or modify benefits or services provided to a Service Area.

**2.5 Designation of Special Common Areas**. Until the expiration or termination of the Development Period, Declarant may designate, in a Notice of Applicability, a Development Area Declaration or in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant), any interest in real property or improvements which benefits certain Lot(s), Condominium Unit(s) or one or more portion(s) of but less than all of the Development as Special Common Area, for the exclusive use of and/or the obligation to pay Special Common Area Assessments by the Owners of such Lot(s), Condominium Unit(s) or portion(s) of the Development attributable thereto, and is or will be conveyed to the Association or as to which the Association will be granted rights or obligations, or otherwise held by the Declarant for the benefit of the Association. The Notice of Applicability, Development Area Declaration, or other Recorded written notice designating such Special Common Area will identify the Lot(s), Condominium Unit(s) or portion(s) of the Development assigned to such Special Common Area and further indicate whether the Special Common Area designated therein is for the purpose of the exclusive use and the payment of Special Common Area Assessments by the Owner(s) thereof, or only for the purpose of paying Special Common Area Assessments attributable thereto, but not also for exclusive use. By way of illustration and not limitation, Special Common Area might include such things as private drives and roads, entrance facilities and features, monumentation or signage, walkways or

landscaping, which may or may not be exclusively used by the Owners paying the attributable Special Common Area Assessments therefor. All costs associated with maintenance, repair, replacement, and insurance of such Special Common Area will be assessed as a Special Common Area Assessment against the Owners of the Lots and/or Condominium Units to which the Special Common Area is assigned.

## ARTICLE 3
## ELYSON RESIDENTIAL ASSOCIATION, INC.

**3.1 Organization.** The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate nor the Bylaws will, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Covenant.

**3.2 Membership.**

3.2.1 Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot or Condominium Unit that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot or Condominium Unit, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot or Condominium Unit.

3.2.2 Easement of Enjoyment – Common Area. Every Member of the Association will have a right and easement of enjoyment in and to all of the Common Area which easement will be appurtenant to and will pass with the title to such Member's Lot or Condominium Unit, subject to the following restrictions and reservations:

(i) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to cause such Improvements and features to be constructed upon the Common Area;

(ii) The right of the Association to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due or for any period during which such Member is in violation of any provision of this Covenant;

(iii) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Common Area to any Governmental Entity;

(iv) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Common Area;

(v) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;

(vi) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to promulgate Rules regarding the use of the Common Area and any Improvements thereon; and

(vii) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

3.2.3 Easement of Enjoyment – Special Common Area. Each Owner of a Lot or Condominium Unit which has been assigned use of Special Common Area in a Notice of Applicability, Development Area Declaration, or other Recorded instrument, will have a right and easement of enjoyment in and to all of such Special Common Area for its intended purposes, and an access easement, if applicable, by and through such Special Common Area, which easement will be appurtenant to and will pass with title to such Owner's Lot or Condominium Unit, subject to *Section 3.2.2* above and subject to the following restrictions and reservations:

(i) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to cause such Improvements and features to be constructed upon the Special Common Area;

(ii) The right of Declarant during the Development Period to grant additional Lots or Condominium Units use rights in and to Special Common Area in a subsequently Recorded Notice of Applicability, Development Area Declaration, or Recorded instrument;

(iii) The right of the Association to suspend the Member's rights to use the Special Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such Member is in violation of any provision of this Covenant;

(iv) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Special Common Area;

(v) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Special Common Area to any Governmental Entity;

(vi) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Special Common Area and, in furtherance thereof, mortgage the Special Common Area;

(vii) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to promulgate Rules regarding the use of the Special Common Area and any Improvements thereon; and

(viii) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

3.3 **Governance**.The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in the Documents to the contrary, until one hundred and twenty (120) days after seventy-five percent (75%) of the Maximum Number of Lots have been made subject to the terms and provisions of this Covenant and have been conveyed to Owners other than the Declarant or a builder in the business of constructing homes who purchased the Lots from the Declarant for the purpose of selling completed homes built on the Lots, Declarant will appoint and remove all members of the Board and officers of the Association. Within one hundred and twenty (120) days after seventy-five percent (75%) of the Maximum Number of Lots have been made subject to the terms and provisions of this Covenant and have been conveyed to Owners other than the Declarant or a builder in the business of constructing homes who purchased the Lots from the Declarant for the purpose of selling completed homes built on the Lots, the Board will call a meeting of Members of the Association for the purpose of electing one-third of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant may appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period. The individuals elected to the Board at the Initial Member Election Meeting shall be elected for a one (1) year term and shall serve until his or her successor is elected or he or she is replaced in accordance with the Bylaws.**

**3.4 Voting Allocation.** The number of votes which may be cast for election of members to the Board (except as provided by *Section 3.3*) and on all other matters to be voted on by the Members will be calculated as set forth below.

3.4.1 Residential Lot. Each Owner of a Residential Lot will be allocated one (1) vote for each Residential Lot so owned. In the event of the re-subdivision of any Residential Lot into two or more Residential Lots: (a) the number of votes to which such Residential Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Residential Lot resulting from such re-subdivision, *e.g.*, each Residential Lot resulting from the re-subdivision will be entitled to one (1) vote; and (b) each Residential Lot resulting from the re-subdivision will be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Residential Lots for purposes of construction of a single residence thereon, votes and Assessment Units (allocated pursuant to *Section 5.9* below) will continue to be determined according to the number of original Residential Lots contained in such consolidated Residential Lot. Nothing in this Covenant will be construed as authorization for any re-subdivision or consolidation of Residential Lots, such actions being subject to the conditions and restrictions of the Elyson Residential Reviewer.

3.4.2 Commercial Lot or Condominium Unit. Each Commercial Lot and Condominium Unit will be allocated that number of votes set forth in the Notice of Applicability attributable to such Commercial Lot or Condominium Unit. Declarant will determine such number of votes in its sole and absolute discretion. Declarant's determination regarding the number of votes applicable to each Commercial Lot or Condominium Unit will be final, binding and conclusive. The Notice of Applicability may include a provision with an alternative vote allocation in the event all or a portion of a Commercial Lot is submitted to the condominium form of ownership. Declarant, in its sole and absolute discretion, and a Majority of the Board, after the expiration or termination of the Development Period, may modify and amend (which modification and amendment may be effected after Declarant's conveyance of any Commercial Lot or Condominium Unit to any person not affiliated with Declarant) the number of votes previously assigned to a Commercial Lot or Condominium Unit if the actual use of the Commercial Lot or Condominium Unit or Improvements actually constructed on the Commercial Lot or Condominium Unit differs from the anticipated use of the Commercial Lot or Condominium Unit or Improvements contemplated to be constructed thereon at the time the notice allocating votes thereto was originally Recorded. In the event of a modification to the votes allocated to a Commercial Lot or Condominium Unit, Declarant or the Board, as applicable, will Record an amended Notice of Applicability setting forth the revised allocation of Assessment Units attributable to the Commercial Lot or Condominium Unit.

3.4.3 Declarant. In addition to the votes to which Declarant is entitled by reason of *Section 3.4.1* and *Section 3.4.2*, for every one (1) vote outstanding in favor of any

other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to the Declarant pursuant to this Section and shall be considered a Member for the purpose of casting such votes, and need not own any portion of the Development as a pre-condition to exercising such votes.

3.4.4 Co-Owners. Any co-Owner may cast the vote for the Lot or Condominium Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Lot or Condominium Unit protests to the Secretary prior to the close of balloting. In the absence of a majority agreement, the Lot's or Condominium Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently. In no event will the vote for a Lot or Condominium Unit exceed the total votes to which such Lot or Condominium Unit is otherwise entitled pursuant to this *Section 3.4*.

**3.5 Powers**. The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this Covenant. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

3.5.1 Rules. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, Rules, policies, the Bylaws and the Community Manual, as applicable, which are not in conflict with this Covenant, as it deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Association. Any Rules, policies, the Bylaws and the Community Manual and any modifications thereto, proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

3.5.2 Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to protect the Association and carry out the Association's functions.

3.5.3 Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Documents available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours in accordance with Applicable Law.

3.5.4 Assessments. To levy and collect Assessments and to determine Assessment Units, as provided in *Article 5* below.

3.5.5 Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot or into any Condominium Unit for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area, Improvement or other facility or removing any item to conform to the Documents. The expense incurred by the Association in connection with the entry upon any Lot or into any Condominium Unit and the removal or maintenance and repair work conducted therefrom, thereon or therein will be a personal obligation of the Owner of the Lot or the Condominium Unit so entered, will be deemed an Individual Assessment against such Lot or Condominium Unit, will be secured by a lien upon such Lot or Condominium Unit, and will be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Documents. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Documents; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot or Condominium Unit, other than Common Area or Special Common Area, in enforcing this Covenant before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) or Condominium Unit(s) has been obtained. **EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 3.5.5* (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION RESULTED FROM THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

3.5.6 Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

3.5.7 Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-

way or mortgages, out of, in, on, over, or under any Common Area or Special Common Area for the purpose of constructing, erecting, operating or maintaining the following:

(i) Parks, parkways or other recreational facilities or structures;

(ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;

(iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;

(iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(v) Any similar improvements or facilities.

Until expiration or termination of the Development Period, any grant or conveyance under this *Section 3.5.7* must be approved in advance and in writing by the Declarant. In addition, the Association (with the advance written approval of the Declarant during the Development Period) and the Declarant are expressly authorized and permitted to convey easements over and across Common Area or Special Common Area for the benefit of property not otherwise subject to the terms and provision of this Covenant.

3.5.8 Manager. To retain and pay for the services of a person or firm (the "**Manager**"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including the Common Area, Special Common Area, and/or any Service Area, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

3.5.9 Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, patrol services, gardening, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, canals, and lakes and all other utilities, services, repair and maintenance for any portion of the Development or Property.

3.5.10 Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board

is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Documents or as determined by the Board.

3.5.11 Construction on Common Area and Special Common Area. To construct new Improvements or additions to Common Area and Special Common Area, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

3.5.12 Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain the Development, any Common Area, Special Common Area, Service Area, Improvement, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

3.5.13 Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Association hereunder must be approved in advance and in writing by the Declarant.

3.5.14 Authority with Respect to the Documents. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Documents. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 3.5.14* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

3.5.15 Membership Privileges. To establish Rules governing and limiting the use of the Common Area, Special Common Area, Service Area, and any Improvements thereon. All Rules governing and limiting the use of the Common Area, Special Common Area, Service Area, and any Improvements thereon must be approved in advance and in writing by the Declarant during the Development Period.

3.5.16 Relationships with Governmental Entities and Tax Exempt Organizations. To create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area, Special Common Area, or Service Area to Governmental Entities or non-profit, tax-exempt organizations. The Association may contribute money, real or personal property, or services to such entity. Any such contribution shall be a common expense to be included in the Assessments levied by the Association and included as a line item in the Association's annual budget.

**3.6 Common Area and Special Common Area.** The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property.

Declarant may transfer or convey to the Association interests in real or personal property within or for the benefit of the Development, or the Development and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. In addition, Declarant may reserve from any such property easements for the benefit of the Declarant, any third party, and/or property not otherwise subject to the terms and provisions of this Covenant. Such property will be accepted by the Association and thereafter will be maintained as Common Area or Special Common Area, as applicable, by the Association for the benefit of the Development and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request during the Development Period, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association, as determined in the sole and absolute discretion of the Declarant. Declarant and/or its assignees may construct and maintain upon portions of the Common Area and/or the Special Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Development, including, but not limited to, business offices, signs, model homes, visitor centers, and sales offices. Declarant and/or its assignees shall have an easement over and across the Common Area and/or the Special Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

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

3.8 **Insurance.** The Board may purchase and maintain, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against such person or incurred by such person in their capacity as an director, officer, committee

member, employee, servant or agent of the Association, or arising out of the person's status as such, whether or not the Association would have the power to indemnify the person against such liability or otherwise.

**3.9 Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 3.5* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are the owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments (Regular, Special, Service Area, Special Common Area, or Individual, as the case may be) against such Owner's Lot or Condominium Unit. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Covenant with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot or Condominium Unit which is reserved under the terms and provisions of this Covenant. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or Occupant of such Owner's Lot or Condominium Unit) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or Occupant of such Owner's Lot or Condominium Unit) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

**3.10 Community Services and Systems.** The Declarant, or any affiliate of the Declarant with the Declarant's consent, during the Development Period, and the Board, with the Declarant's consent during the Development Period, is specifically authorized, but not required, to install, provide, maintain and furnish, or to enter into contracts with other persons to install, provide, maintain and furnish, central telecommunication receiving and distribution systems (*e.g.* cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware,

and software, to serve all or any portion of the Development ("**Community Services and Systems**"). The Community Services and Systems, including any fees or royalties paid or revenue generated therefrom, shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant and neither the Association nor any Owner shall have any interest therein. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Services and Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any individual or entity. Any or all of such services may be provided either: (a) directly through the Association and paid for as part of the Assessments; or (b) directly by Declarant, any affiliate of Declarant, or a third party, to the Owner who receives the services. In the event the Declarant, or any affiliate of the Declarant, elects to provide any of the Community Services and Systems to all or any portion of the Development, the Declarant or affiliate of the Declarant may enter into an agreement with the Association with respect to such services. In the event Declarant, or any affiliate of the Declarant, enters into a contract with a third party for the provision any Community Services and Systems to serve all or any portion of the Development, the Declarant or the affiliate of the Declarant may assign any or all of the rights or obligations of the Declarant or the affiliate of the Declarant under the contract to the Association or any individual or entity. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Services and Systems as the Declarant or the Board, as applicable, determines appropriate. Each Owner acknowledges that interruptions in Community Services and Systems and services will occur from time to time. The Declarant and the Association, or any of their respective affiliates, board members, officers, employees and agents, or any of their successors or assigns shall not be liable for, and no Community Services and Systems user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Services and Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

**3.11 Protection of Declarant's Interests**. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots or Condominium Units owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. Unless otherwise agreed to in advance and in writing by the Declarant, the Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

**3.12 Administration of Common Area**. The administration of the Common Area, Special Common Area and Service Area by the Association shall be in accordance with the provisions of Applicable Law and the Documents, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently

required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any Governmental Entity having regulatory jurisdiction over the Common Area, Special Common Area or Service Area or by any title insurance company selected by Declarant to insure title to any portion of such areas.

## ARTICLE 4
## INSURANCE

**4.1 Insurance.** Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot or Condominium Unit. The Association will not maintain insurance on the Improvements constructed upon any Lot or Condominium Unit. The Association may, however, obtain such other insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the Assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

**ARE YOU COVERED?**

**The Association will not provide insurance which covers an Owner's Lot, a Condominium Unit, or any Improvements or personal property located on a Lot or within a Condominium Unit.**

**4.2 Restoration Requirements.** In the event of any fire or other casualty, the Owner will either: (a) unless otherwise approved by the Elyson Residential Reviewer, promptly commence the repair, restoration and replacement of any damaged or destroyed Improvements to their same exterior condition existing prior to the damage or destruction thereof within one hundred and eighty (180) days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion; or (b) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Development within sixty (60) days after the occurrence of such damage. Unless otherwise approved by the Elyson Residential Reviewer, any repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials substantially the same to those originally used in the Improvements damaged or destroyed, as determined by the Elyson Residential Reviewer, in its sole and absolute discretion. To the extent that the Owner fails to commence repair, restoration, replacement, or the removal of debris, within the time period required in this *Section 4.2*, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and the costs incurred by the Association will be levied as an Individual Assessment against such Owner's Lot or Condominium Unit; provided, however, that if the Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the

Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) will be levied as an Individual Assessment chargeable to the Owner's Lot or Condominium Unit. **EACH OWNER HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 4.2*, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

**4.3 Restoration - Mechanic's and Materialmen's Lien.** Each Owner whose structure is repaired, restored, replaced or cleaned-up by the Association pursuant to the rights granted under this *Article 4*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, replacement or clean-up of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, replacement, or clean-up exceeds any insurance proceeds allocable to such repair, restoration, replacement, or clean-up which are delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration, replacement, or clean-up such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

## ARTICLE 5
## COVENANT FOR ASSESSMENTS

**5.1 Assessments.**

5.1.1 Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 5* will be levied against each Lot and Condominium Unit in amounts determined pursuant to *Section 5.9* below. The total amount of Assessments will be determined by the Board in accordance with the terms of this *Article 5*.

5.1.2 Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot or Condominium Unit against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon and each such Condominium Unit (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article. Unless the Association elects otherwise

(which election may be made at any time), each residential condominium association established by a condominium regime imposed upon all or a portion of the Development Area will collect all Assessments levied pursuant to this Covenant from Condominium Unit Owners within such condominium regime. The condominium association will promptly remit all Assessments collected from Condominium Unit Owners to the Association. If the condominium association fails to timely collect any portion of the Assessments due from the Owner of the Condominium Unit, then the Association may collect such Assessments allocated to the Condominium Unit on its own behalf and enforce its lien against the Condominium Unit without joinder of the condominium association. The condominium association's right to collect Assessments on behalf of the Association is a license from the Association which may be revoked by written instrument at any time, and from time to time, at the sole and absolute discretion of the Board.

5.1.3 Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots and Condominium Units for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

5.1.4 Commencement of Assessments. Assessments will commence as to a particular Lot on the first day of the month after the Lot has been made subject to the terms and provisions of this Covenant. If Assessments are due and payable less frequently than once per month, e.g., quarterly or annually, Assessments will be prorated based on the number of months remaining during the billing period.

**5.2 Maintenance Fund.** The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Covenant. The funds of the Association may be used for any purpose authorized by the Documents and Applicable Law.

**5.3 Regular Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association ("**Regular Assessments**") which sets forth: (a) an estimate of expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Covenant, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Documents; and (b) an estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, but excluding (c) the operation, maintenance, repair and management costs and expenses associated with any Service Area and Special Common Area. Regular Assessments sufficient to pay such estimated expenses will then be levied at the level set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding. If the sums collected prove

inadequate for any reason, including nonpayment of any Assessment by an Owner, the Association may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

**5.4 Special Assessments.** In addition to the Regular Assessments provided for above, the Board may levy special assessments (the "**Special Assessments**") whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Documents. The amount of any Special Assessments will be at the sole discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Special Common Area. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. Any Special Assessments levied by the Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Special Common Area will be levied against all Owners who have been assigned the obligation to pay Special Common Area Assessments based on Assessment Units. All Special Assessments will be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

**5.5 Special Common Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget covering the estimated expenses to be incurred by the Association to operate, maintain, repair, or manage any Special Common Area. The budget will be an estimate of the amount needed to operate, maintain, repair and manage such Special Common Area including a reasonable provision for contingencies and an appropriate replacement reserve. The level of Special Common Area Assessments will be set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding. If the sums collected prove inadequate for any reason, including non-payment of any Assessment by an Owner, the Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All such Special Common Area Assessments will be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

**5.6 Service Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year. The total amount of Service Area Assessments will be allocated either: (a) equally among Lots or Condominium Units within the Service Area; (b) based on Assessment Units assigned to Lots or Condominium Units within the Service Area; or (c) based on the benefit received among all Lots and Condominium

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

**5.7 Individual Assessments.** In addition to any other Assessments, the Board may levy an Individual Assessment against an Owner and the Owner's Lot or Condominium Unit, which may include, but is not limited to: (a) interest, late charges, and collection costs on delinquent Assessments; (b) reimbursement for costs incurred in bringing an Owner or the Owner's Lot or Condominium Unit into compliance with the Documents; (c) fines for violations of the Documents; (d) transfer-related fees and resale certificate fees; (e) fees for estoppel letters and project documents; (f) insurance deductibles; (g) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Occupants of the Owner's Lot or Condominium Unit; (h) common expenses that benefit fewer than all of the Lots or Condominium Units, which may be assessed according to benefit received; and (i) fees or charges levied against the Association on a per-Lot or per-Condominium Unit basis.

**5.8 Working Capital Assessment**. Each Owner (other than Declarant) will pay a one-time working capital assessment to the Association in such amount, if any, as may be determined by the Declarant, until expiration or termination of the Development Period, and the Board thereafter. The working capital assessment hereunder will be due and payable to the Association by the transferee immediately upon each transfer of title to the Lot or Condominium Unit, including upon transfer of title from one Owner of such Lot or Condominium Unit to any subsequent purchaser or transferee thereof. Such working capital assessment need not be uniform among all Lots or Condominium Units, and the Declarant or the Board, as applicable, is expressly authorized to establish a working capital assessments of varying amounts depending on the size, use and general character of the Lots or Condominium Units. The working capital assessment may be used to discharge operating expenses or capital expenses, as determined from time to time by the Board. The levy of any working capital assessment will be effective only upon the Recordation of a written notice, signed by the Declarant or a duly authorized officer of the Association, setting forth the amount of the working capital assessment and the Lots or Condominium Units to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital assessment: (a) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (b) transfer to, from, or by the Association; (c) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who is a Homebuilder or a Residential Developer will not be subject to the working capital assessment. In the event of any dispute regarding the application of the working capital assessment to a particular Owner, Declarant, until expiration or termination of the Development Period, will determine application of an exemption in its sole and absolute discretion. The working capital assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 5* and will not be considered an advance payment of such Assessments. The Declarant during the Development Period, and thereafter

the Board, will have the power to waive the payment of any working capital assessment attributable to a Lot or Condominium Unit (or all Lots and Condominium Units) by the Recordation of a waiver notice or in the Notice of Applicability, which waiver may be temporary or permanent.

**5.9 Amount of Assessment.**

5.9.1 Assessments to be Levied. The Board will levy Assessments against each "**Assessment Unit**" (as defined in *Section 5.9.2* below). Unless otherwise provided in this Covenant, Assessments levied pursuant to *Section 5.3* and *Section 5.4* will be levied uniformly against each Assessment Unit. Special Common Area Assessments levied pursuant to *Section 5.5* will be levied uniformly against each Assessment Unit allocated to a Lot or Condominium Unit that has been assigned the obligation to pay Special Common Area Assessments for specified Special Common Area. Service Area Assessments levied pursuant to *Section 5.6* will be levied either: (a) equally among Lots or Condominium Units within the Service Area; (b) based on Assessment Units assigned to Lots or Condominium Units within the Service Area; or (c) based on the benefit received among all Lots and Condominium Units in the Service Area.

5.9.2 Assessment Unit. Each Residential Lot will constitute one "**Assessment Unit**" unless otherwise provided in *Section 5.9.3*. Each Commercial Lot and Condominium Unit will be allocated that number of "Assessment Units" set forth in the Notice of Applicability attributable to such Commercial Lot or Condominium Unit. Declarant will determine such Assessment Units in its sole and absolute discretion. Declarant's determination regarding the number of Assessment Units applicable to each Commercial Lot or Condominium Unit will be final, binding and conclusive. The Notice of Applicability may include a provision with an alternative Assessment Unit allocation in the event all or a portion of a Commercial Lot is submitted to the condominium form of ownership. Declarant, in its sole and absolute discretion, and a Majority of the Board, after the expiration or termination of the Development Period, may modify and amend (which modification and amendment may be effected after Declarant's conveyance of any Commercial Lot or Condominium Unit to any person not affiliated with Declarant) the number of Assessment Units previously assigned to a Commercial Lot or Condominium Unit if the actual use of the Commercial Lot or Condominium Unit or Improvements actually constructed on the Commercial Lot or Condominium Unit differ from the anticipated use of the Commercial Lot or Condominium Unit or Improvements contemplated to be constructed thereon at the time the notice allocating Assessment Units thereto was originally Recorded. In the event of a modification to the Assessment Units allocated to a Commercial Lot or Condominium Unit, Declarant or the Board, as applicable, will Record an amended Notice of Applicability setting forth the revised allocation of Assessment Units attributable to the Commercial Lot or Condominium Unit.

5.9.3 Residential Assessment Allocation. Declarant, in Declarant's sole and absolute discretion, may elect to allocate more than one Assessment Unit to a Residential Lot. An allocation of more than one Assessment Unit to a Residential Lot must be made in a Notice of Applicability. Declarant's determination regarding the number of Assessment Units applicable to a Residential Lot pursuant to this *Section 5.9.3* will be final, binding and conclusive.

5.9.4 Declarant Exemption. Notwithstanding anything in this Covenant to the contrary, no Assessments will be levied upon Lots or Condominium Units owned by Declarant.

5.9.5 Other Exemptions. Declarant may, in its sole discretion, elect to: (a) exempt any un-platted or unimproved portion of the Development, Lot or Condominium Unit from Assessments; (b) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Development, Lot or Condominium Unit; or (c) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Development, Lot or Condominium Unit. In the event Declarant elects to delay or reduce Assessments pursuant to this Section, the duration of the delay or the amount of the reduction will be set forth in a Recorded written instrument. Declarant may terminate, extend or modify any delay or reduction set forth in a previously Recorded instrument by the Recordation of a replacement instrument. Declarant or the Board may also exempt any portion of the Development which is dedicated and accepted by a Governmental Entity from Assessments.

**5.10 Late Charges.** If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be a charge upon the Lot or Condominium Unit owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot or Condominium Unit; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

**5.11 Owner's Personal Obligation for Payment of Assessments.** Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Condominium Unit will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1½% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

**5.12 Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 5* is, together with late charges as provided in *Section 5.10* and interest as provided in *Section 5.11* and all costs of collection, including attorney's fees, are secured by the continuing Assessment lien granted to the Association pursuant to *Section 5.1.2* above, and will bind each Lot and Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot or Condominium Unit, except only for (a) tax and governmental assessment liens; (b) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot or Condominium Unit in question; and (c) home equity loans or home equity lines of credit which are secured by a second mortgage lien or Recorded second deed of trust lien; provided that, in the case of subparagraphs (b) and (c) above, such Mortgage was Recorded, before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an authorized officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice may be signed by an officer of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Covenant will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have pursuant to Applicable Law and under this Covenant, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 5.12*, the Association will upon the request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for

which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release may be signed by an officer of the Association and Recorded. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such 12-day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable services, provided through the Association and not paid for directly by an Owner or occupant to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Any utility or cable service will not be disconnected or terminated on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot or Condominium Unit will not relieve the Owner of such Lot or Condominium Unit or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot or Condominium Unit and on the date of such conveyance Assessments against the Lot or Condominium Unit remain unpaid, or said Owner owes other sums or fees under this Covenant to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot or Condominium Unit, and such sums will be paid in preference to any other charges against the Lot or Condominium Unit other than liens superior to the Assessment liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot or Condominium Unit which are due and unpaid. The Owner conveying such Lot or Condominium Unit will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Condominium Unit also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot or Condominium Unit to a third party.

**5.13 Exempt Property.** The following area within the Development will be exempt from the Assessments provided for in this Article:

(i) The Common Area and the Special Common Area; and

(ii) Any portion of the Development owned by Declarant.

No portion of the Property will be subject to the terms and provisions of this Covenant, and no portion of the Property (or any owner thereof) will be obligated to pay Assessments hereunder unless and until such Property has been made subject to the terms of this Covenant by the Recording of a Notice of Applicability in accordance with *Section 9.5* below.

**5.14 Fines and Damages Assessment.**

5.14.1 Board Assessment. The Board may assess fines against an Owner for violations of the Documents which have been committed by an Owner, an Occupant or an Owner's or Occupant's guests, agents or invitees pursuant to the *Fine and Enforcement Policy* contained in the Community Manual. Any fine and/or charge for damage levied in accordance with this Section shall be considered an Individual Assessment pursuant to this Covenant. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area, Special Common Area, Service Area, or any Improvements caused by the Owner, the Occupant or their guests, agents, or invitees. The Manager shall have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Documents and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

5.14.2 Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot or Condominium Unit is, together with interest as provided in *Section 5.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.1.2* of this Covenant. Unless otherwise provided in this Section, the fine and/or damage charge shall be considered an Assessment for the purpose of this Article and shall be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this Article.

## ARTICLE 6
## ELYSON RESIDENTIAL REVIEWER

**6.1 Architectural Control By Declarant**. During the Development Period, neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Until expiration of the Development Period, the Elyson Residential Reviewer is Declarant or its designee. No Improvement constructed or caused to be constructed by the Declarant will be subject to the terms and provisions of this *Article 6* and need not be approved by the Elyson Residential Reviewer.

6.1.1 Rights Reserved. Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of the Elyson Residential Reviewer, which approval may be granted or withheld in its sole discretion. In reviewing and acting on an application for approval, the Elyson Residential Reviewer may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf.

6.1.2 Delegation. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to an architectural control committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (a) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (b) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Neither Declarant nor the Elyson Residential Reviewer is responsible for: (a) errors in or omissions from the plans and specifications submitted to the Elyson Residential Reviewer; (b) supervising construction for the Owner's compliance with approved plans and specifications; or (c) the compliance of the Owner's plans and specifications with Applicable Law.

**6.2 Architectural Control by Association**. Until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through an architectural control committee (the "**ACC**") will assume jurisdiction over architectural control and will have the powers of the Elyson Residential Reviewer hereunder.

6.2.1 ACC. The ACC will consist of at least three (3) but no more than seven (7) persons appointed by the Board. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Occupants, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

6.2.2 Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified in this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (a) errors in or omissions from the plans and specifications submitted to the ACC; (b) supervising construction for the Owner's compliance with approved plans and specifications; or (c) the compliance of the Owner's plans and specifications with Applicable Law.

**6.3 Prohibition of Construction, Alteration and Improvement**. No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the Elyson Residential Reviewer. The Elyson Residential Reviewer has the right but not the duty to evaluate every

aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Development. Unless otherwise provided in the Design Guidelines, an Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement located on such Owner's Lot or within such Owner's Condominium Unit, provided that such action is not visible from any other portion of the Development or Property.

**6.4 Architectural Approval.**

6.4.1 Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to plat, re-subdivide or consolidate Lots or Condominium Units, a proposal for such plat, re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the Elyson Residential Reviewer together, with any review fee which is imposed by the Elyson Residential Reviewer in accordance with *Section 6.4.2*. No plat, re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot or Condominium Unit, until the plans and specifications for the proposed Improvement have been approved in writing by the Elyson Residential Reviewer. The Elyson Residential Reviewer reserves the right to adopt preconditions or requirements for the approval of contractors proposed by the Owner to construct the Improvements. The Elyson Residential Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or other tests that may be required by the Elyson Residential Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Elyson Residential Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Elyson Residential Reviewer, in its sole discretion, may require. Site plans must be approved by the Elyson Residential Reviewer prior to the clearing of any Lot or Condominium Unit, or the construction of any Improvements. The Elyson Residential Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the plat, re-subdivision or consolidation of any Lot or Condominium Unit on any grounds that, in the sole and absolute discretion of the Elyson Residential Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds. Notwithstanding any provision to the contrary in this Covenant, the Elyson Residential Reviewer may issue an approval to Homebuilders or a Residential Developer for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval otherwise set forth in this Covenant.

6.4.2 Design Guidelines. The Elyson Residential Reviewer will have the power, from time to time, to adopt, amend, modify, or supplement the Design Guidelines which may apply to all or any portion of the Development. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Covenant, the terms and provisions of this Covenant will control. In addition, the Elyson Residential Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Covenant. Such charges will be held by the Elyson Residential Reviewer and used to defray the administrative expenses and any other costs incurred by the Elyson Residential Reviewer in performing its duties

hereunder. The Elyson Residential Reviewer will not be required to review any plans until a complete submittal package, as required by this Covenant and the Design Guidelines, is assembled and submitted to the Elyson Residential Reviewer. The Elyson Residential Reviewer will have the authority to adopt such additional or alternate procedural and substantive rules and guidelines not in conflict with this Covenant (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

6.4.3 Approval of Regulatory Submission Item. Each Owner is further advised that prior to submitting any application, variance or special use permit, plat, drainage plans, building or site plan, expressly including any amendments to a preliminary plan or a development plan (a "**Regulatory Submission Item**") required to be submitted by an Owner to a Governmental Entity for approval or issuance of a permit, as applicable, the Owner must first obtain approval from the Elyson Residential Reviewer of the Regulatory Submission Item (the "**Preliminary Regulatory Approval**"). Any Preliminary Regulatory Approval granted by the Elyson Residential Reviewer is conditional and no Improvements may be constructed in accordance with the Regulatory Submission Item until the Owner has submitted to the Elyson Residential Reviewer a copy of the Regulatory Submission Item approved by the Governmental Entity and the Elyson Residential Reviewer has issued to the Owner a "Notice to Proceed". In the event of a conflict between the Regulatory Submission Item approved by the Elyson Residential Reviewer and the Regulatory Submission Item approved by the regulatory authority, the Owner will be required to resubmit the Regulatory Submission Item to the Elyson Residential Reviewer for approval. Each Owner acknowledges that no Governmental Entity has the authority to modify the terms and provisions of the Documents applicable to all or any portion of the Development.

6.4.4 Elyson Residential Reviewer Approval of Project Names. Each Owner is advised that the name used to identify the Development Area or any portion thereof for marketing or identification purposes must be approved in advance and in writing by the Elyson Residential Reviewer.

6.4.5 Failure to Act. In the event that any plans and specifications are submitted to the Elyson Residential Reviewer as provided herein, and the Elyson Residential Reviewer fails to either approve or reject such plans and specifications for a period of sixty (60) days following such submission, the plans and specifications will be deemed disapproved.

6.4.6 Variances. The Elyson Residential Reviewer in its sole and absolute discretion may grant variances from compliance with any of the provisions of the Documents. All variances must be evidenced in writing and, if Declarant has assigned

its rights to the ACC, must be approved by the Declarant until expiration or termination of the Development Period, a Majority of the Board, and a Majority of the members of the ACC. Each variance must also be Recorded; provided, however, that failure to Record a variance will not affect the validity thereof or give rise to any claim or cause of action against the Elyson Residential Reviewer, Declarant, the Board or the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in the Documents will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of the Documents for any purpose, except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of the Documents.

6.4.7 Duration of Approval. The approval of the Elyson Residential Reviewer of any final plans and specifications, and any variances granted by the Elyson Residential Reviewer will be valid for a period of one hundred and eighty (180) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and eighty (180) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Elyson Residential Reviewer, and the Elyson Residential Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 6.4.7* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

6.4.8 No Waiver of Future Approvals. The approval of the Elyson Residential Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Elyson Residential Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Elyson Residential Reviewer.

6.4.9 Non-Liability of Elyson Residential Reviewer. NEITHER THE DECLARANT, THE BOARD NOR THE ELYSON RESIDENTIAL REVIEWER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ELYSON RESIDENTIAL REVIEWER'S DUTIES UNDER THIS COVENANT.

## ARTICLE 7
## MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots or Condominium Units within the Development. The provisions of this Article apply to the Covenant and the Bylaws of the Association.

**7.1 Notice of Action.** An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot or Condominium Unit to which its Mortgage relates (thereby becoming an "**Eligible Mortgage Holder**"), will be entitled to timely written notice of:

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

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

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

**7.2 Examination of Books.** The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

**7.3 Taxes, Assessments and Charges.** All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Lots or Condominium Units and not to any other portion of the Development.

## ARTICLE 8
## EASEMENTS

**8.1 Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third-party prior to any portion of the Property becoming subject to this Covenant are incorporated herein by reference and made a part of this Covenant for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said

easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of developing the Property and the Development.

**8.2 Common Area or Special Common Area Right of Ingress and Egress.** Declarant, its agents, employees, successors and designees will have a right of ingress and egress over and the right of access to the Common Area or Special Common Area to the extent necessary to use the Common Area or Special Common Area and the right to such other temporary uses of the Common Area or Special Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with construction and development of the Property or the Development.

**8.3 Bulk Rate Services; Community Services and Systems Easement.** The Development shall be subject to a perpetual non-exclusive easement for the installation, maintenance and repair, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly install, provide, maintain and furnish Community Services and Systems and the facilities pertinent and necessary to the same, and provide and maintain services available through any Bulk Rate Contract, which easement shall run in favor of Declarant and the Association.

**8.4 Roadway and Utility Easements.** Declarant hereby reserves for itself and its assigns a perpetual non-exclusive easement over and across the Development for: (a) the installation, operation and maintenance of utilities and associated infrastructure to serve the Development, the Property, and any other property owned by Declarant; (b) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Development, the Property, and any other property owned by Declarant; (c) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Development, the Property, and any other property owned by Declarant, and (d) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, or other areas to serve the Development, the Property, and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (a) through (d) of this *Section 8.4*. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, Special Common Area, or a Service Area.

**8.5 Subdivision Entry and Fencing Easement**. Declarant reserves for itself and the Association, an easement over and across the Development for the installation, maintenance, repair or replacement of fencing and subdivision entry facilities which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the fencing and/or subdivision entry facilities to which the easement reserved hereunder applies. Declarant may designate all or any portion of the fencing and/or subdivision entry facilities as Common Area, Special Common Area, or a Service Area.

8.6 **Landscape, Monumentation and Signage Easement**. Declarant hereby reserves an easement over and across the Development for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the landscaping, monumentation, or signage to which the easement reserved hereunder applies. Declarant may designate all or any portion of the landscaping, monumentation, or signage as Common Area, Special Common Area, or a Service Area.

8.7 **Shared Amenities Reciprocal Easements.** Certain portions of the Property or adjacent land (the **"Commercial Development"**) will developed for commercial uses and made subject to a separate commercial covenant and governed by a separate commercial property owners association (the **"Commercial Association"**). The Commercial Association may share certain amenities, including drainage improvements, signage, monumentation, open space and landscaping (the **"Shared Amenities"**) with the Association. Declarant reserves the right to grant and convey easements to the owner(s) of the Commercial Development and/or the Commercial Association over and across Common Area, Special Common Area, or any portion of the Development which may be necessary or required to utilize and/or maintain the Shared Amenities. Declarant reserves the right to (a) grant the owners of the Commercial Development the right to access and/or use the Shared Amenities, as applicable, located within the Development; (b) require the Commercial Association to participate in performing the maintenance of the Shared Amenities located within the Development; (c) require the Association and the Commercial Association to share in the expenses associated with the use and maintenance of the Shared Amenities; and (d) enter into a shared amenities and cost allocation agreement (the **"Shared Amenities Agreement"**) by and on behalf of the Association, to govern the rights and responsibilities of both the Association and the Commercial Association in regard to use and maintenance of the Shared Amenities, to allocate costs for the operation, maintenance and reserves for the Shared Amenities between the Association and the Commercial Association and to grant reciprocal easements for access and use of the Shared Amenities. Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay any fee allocated under the Shared Amenities Agreement to the Association as an Assessment to be levied and secured by a continuing lien on the Lot or Condominium Unit in the same manner as any other Assessment and Assessment lien arising under *Article 5* of the Covenant.

8.8 **Easement for Special Events**. The Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over the Common Area and Special Common Area, for the purpose of conducting educational, cultural, artistic, musical and entertainment activities; and other activities of general community interest at such locations and times as the Declarant or the Association, in their reasonable discretion, deem appropriate. Members of the public may have access to such events. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot or Condominium Unit subject to this Covenant acknowledges and agrees that the exercise of this

easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and any Occupants to take no action, legal or otherwise, which would interfere with the exercise of such easement.

**8.9 Easement for Maintenance of Drainage Facilities.** Declarant may grant easements for the benefit of a Governmental Entity or third party for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of certain drainage facilities that may be constructed to convey and receive stormwater runoff within the Development. From time to time, Declarant may impress upon certain portions of the Development, for the benefit of a Governmental Entity or third party, additional easements for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of other drainage facilities that convey and receive stormwater runoff as set forth in one or more declarations, agreements or other written instruments as the same shall be recorded in the Official Public Records of Harris County, Texas.

## ARTICLE 9
## DEVELOPMENT RIGHTS

**9.1 Development.** It is contemplated that the Development will be developed pursuant to a plan, which may, from time to time, be amended or modified by the Declarant in its sole and absolute discretion. Declarant reserves the right, but will not be obligated, to designate Development Areas, and to create and/or designate Lots, Condominium Units, Voting Groups, Common Area, Special Common Area, and Service Areas and to subdivide all or any portion of the Development and Property. As each area is conveyed, developed or dedicated, Declarant may Record one or more Development Area Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Any Development Area Declaration may provide its own procedure for the amendment thereof.

**9.2 Special Declarant Rights.** Notwithstanding any provision of this Covenant to the contrary, at all times, Declarant will have the right and privilege: (a) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots and Condominium Units in the Development; (b) to maintain Improvements upon Lots, including the Common Area and Special Common Area, as sales, model, management, business and construction offices or visitor centers at no charge; and (c) to maintain and locate construction trailers and construction tools and equipment within the Development. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance.

**9.3 Addition of Land.** Declarant may, at any time and from time to time, add additional lands to the Property and, upon the Recording of a notice of addition of land, such land will be considered part of the Property for purposes of this Covenant, and upon the further Recording of a Notice of Applicability meeting the requirements of *Section 9.5* below, such added lands will be considered part of the Development subject to this Covenant and the terms,

covenants, conditions, restrictions and obligations set forth in this Covenant, and the rights, privileges, duties and liabilities of the persons subject to this Covenant will be the same with respect to such added land as with respect to the lands originally covered by this Covenant. Such added land need not be contiguous to the Property. To add lands to the Property, Declarant will be required only to Record, a notice of addition of land (which notice may be contained within any Development Area Declaration affecting such land) containing the following provisions:

(i) A reference to this Covenant, which reference will state the document number or volume and page wherein this Covenant is Recorded;

(ii) A statement that such land will be considered Property for purposes of this Covenant, and that upon the further Recording of a Notice of Applicability meeting the requirements of *Section 9.5* of this Covenant, all of the terms, covenants, conditions, restrictions and obligations of this Covenant will apply to the added land; and

(iii) A legal description of the added land.

**9.4 Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw from the Property, including the Development, and remove and exclude from the burden of this Covenant and the jurisdiction of the Association any portion of the Development. Upon any such withdrawal and removal, this Covenant and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development withdrawn. To withdraw lands from the Development hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

(i) A reference to this Covenant, which reference will state the document number or volume and page number wherein this Covenant is Recorded;

(ii) A statement that the provisions of this Covenant will no longer apply to the withdrawn land; and

(iii) A legal description of the withdrawn land.

**9.5 Notice of Applicability**. Upon Recording, this Covenant serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this Covenant and any applicable Development Area Declaration. This Covenant and any applicable Development Area Declaration will apply to and burden a portion or portions of the Property upon the Recording of a Notice of Applicability describing such Property by a legally sufficient description and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants conditions, restrictions and

obligations of this Covenant and any applicable Development Area Declaration. To be effective, a Notice of Applicability must be executed by Declarant, and the property included in the Notice of Applicability need not be owned by the Declarant if included within the Property. Declarant may also cause a Notice of Applicability to be Recorded covering a portion of the Property for the purpose of encumbering such Property with this Covenant and any Development Area Declaration previously Recorded by Declarant (which Notice of Applicability may amend, modify or supplement the restrictions, set forth in the Development Area Declaration, which will apply to such Property). To make the terms and provisions of this Covenant applicable to a portion of the Property, Declarant will be required only to cause a Notice of Applicability to be Recorded containing the following provisions:

(i) A reference to this Covenant, which reference will state the document number or volume and page number wherein this Covenant is Recorded;

(ii) A reference, if applicable, to the Recorded Development Area Declaration applicable to such portion of the Property (with any amendment, modification, or supplementation of the restrictions set forth in the Development Area Declaration which will apply to such portion of the Property);

(iii) A statement that all of the provisions of this Covenant will apply to such portion of the Property;

(iv) A legal description of such portion of the Property; and

(v) If applicable, a description of any Special Common Area or Service Area which benefits the Property and the beneficiaries of such Special Common Area or Service Area.

**NOTICE TO TITLE COMPANY**

**NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT AND THIS COVENANT DOES NOT APPLY TO ANY PORTION OF THE PROPERTY UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PROPERTY AND REFERENCING THIS COVENANT HAS BEEN RECORDED.**

**9.6 Voting Groups**. Declarant may designate Voting Groups consisting of one or more Development Areas, or portions thereof, for the purpose of electing members of the Board. The purpose of Voting Groups is to provide groups with dissimilar interests the opportunity to be represented on the Board. Voting Groups may be established by the Declarant until expiration or termination of the Development Period. Once Voting Groups are

established, then each Owner of a Lot or Condominium Unit shall only vote on the slate of candidates assigned to their Voting Group.

9.6.1 Voting Group Designation. Declarant shall establish Voting Groups, if at all, by Recording a written instrument identifying the Development Areas, or portions thereof, within each Voting Group (the "**Voting Group Designation**"). The Voting Group Designation will assign the number of members of the Board which the Voting Group is entitled to exclusively elect.

9.6.2 Amendment of Voting Group Designation. The Voting Group Designation may be amended unilaterally by the Declarant at any time prior to the expiration or termination of the Development Period. After expiration or termination of the Development Period, the Board shall have the right to Record or amend such Voting Group Designation upon the vote of a Majority of the Board. Neither Recordation nor amendment of such Voting Group Designation shall constitute an amendment to this Covenant, and no consent or approval to modify the Voting Group Designation shall be required except as stated in this paragraph.

9.6.3 Single Voting Group. Until such time as Voting Groups are established, all of the Development shall constitute a single Voting Group. After a Voting Group Designation is Recorded, any and all portions of the Development which are not assigned to a specific Voting Group shall constitute a single Voting Group.

**9.7 Assignment of Declarant's Rights.** Notwithstanding any provision in this Covenant to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, reservations and duties hereunder.

**9.8 Notice of Plat Recordation.** Declarant may, at any time and from time to time, Record a notice of plat recordation (a "**Notice of Plat Recordation**"). A Notice of Plat Recordation is Recorded for the purpose of more clearly identifying specific Lots subject to the terms and provisions of this Covenant after portions of the Property are made subject to a Plat. Unless otherwise provided in the Notice of Plat Recordation, portions of the Property included in the Plat identified in the Notice of Plat Recordation, but not shown as a residential Lot on such Plat, shall be automatically withdrawn from the terms and provisions of this Covenant (without the necessity of complying with the withdrawal provisions set forth in this Section). Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this Declaration.

## ARTICLE 10
## GENERAL PROVISIONS

**10.1 Term.** Upon the Recording of a Notice of Applicability pursuant to *Section 9.5*, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Covenant will run with and bind the portion of the Property described in such notice, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Covenant is Recorded, and continuing through and including January 1, 2090, after which time this Covenant will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this *Section 10.1* to the contrary, if any provision of this Covenant would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**10.2 Eminent Domain.** In the event it becomes necessary for any Governmental Entity to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Covenant is in effect, the Board is hereby authorized to negotiate with such Governmental Entity for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Unit. In the event any proceeds attributable to acquisition of Special Common Area are paid to Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Unit.

**10.3 Amendment.** This Covenant may be amended or terminated by the Recording of an instrument executed and acknowledged by: (a) Declarant acting alone; or (b) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. No

amendment will be effective without the written consent of Declarant during the Development Period.

**10.4 Enforcement**. The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Covenant. Failure to enforce any right, provision, covenant, or condition granted by this Covenant will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Declarant or the Association to enforce the terms and provisions of the Documents shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE DOCUMENTS.**

**10.5 No Warranty of Enforceability.** Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Covenant. Any Owner acquiring a Lot or Condominium Unit in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Lot or Condominium Unit, agrees to hold Declarant harmless therefrom.

**10.6 Higher Authority.** The terms and provisions of this Covenant are subordinate to Applicable Law. Generally, the terms and provisions of this Covenant are enforceable to the extent they do not violate or conflict with Applicable Law.

**10.7 Severability.** If any provision of this Covenant is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Covenant, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

**10.8 Conflicts.** If there is any conflict between the provisions of this Covenant, the Certificate, the Bylaws, or any Rules adopted pursuant to the terms of such documents, or any Development Area Declaration, the provisions of this Covenant will govern.

**10.9 Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

**10.10 Acceptance by Grantees.** Each grantee of a Lot, Condominium Unit, or other real property interest in the Development, by the acceptance of a deed of conveyance, and each

subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Covenant or to whom this Covenant is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Development, and will bind any person having at any time any interest or estate in the Development, and will inure to the benefit of each Owner in like manner as though the provisions of this Covenant were recited and stipulated at length in each and every deed of conveyance.

**10.11 Damage and Destruction**.

10.11.1 Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 10.11.1*, means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty.

10.11.2 Repair Obligations. Any damage to or destruction of the Common Area or Special Common Area will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

10.11.3 Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area or Special Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Special Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

10.11.4 Special Assessment for Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board may levy a Special Assessment, as provided in *Article 5*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

10.11.5 Special Assessment for Special Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board may levy a Special Assessment, as provided in *Article 5*, against all Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

10.11.6 Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

10.11.7 Proceeds Payable to Owners Responsible for Special Common Area. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Special Common Area, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

**10.12 No Partition.** Except as may be permitted in this Covenant or amendments thereto, no physical partition of the Common Area or Special Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless all or the portion of the Development in question has been removed from the provisions of this Covenant pursuant to *Section 9.4* above. This *Section 10.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Covenant.

**10.13 View Impairment.** Neither the Declarant, the Elyson Residential Reviewer, the ACC, nor the Association guarantee or represent that any view over and across the Lots, Condominium Units, or any open space within the Development will be preserved without impairment. The Declarant, the Elyson Residential Reviewer, the ACC and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area or Special Common Area) will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

**10.14 Safety and Security.** Each Owner and Occupant of a Lot or Condominium Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to

promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Development, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Occupants of such Owner's Lot or Condominium Unit that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Development assumes all risks of personal injury and loss or damage to property, including any residences or Improvements constructed upon any Lot or Condominium Unit and the contents thereof, resulting from acts of third parties.

**10.15 Public Use Improvements**. Certain improvements, physical assets and areas within the Property will be open for the use and enjoyment of the public and may include, by way of example, greenbelts, trails and paths, parks, roads, sidewalks and medians.

**10.16 Water Quality Facilities**. Portions of the Development may include one or more water quality facilities, sedimentation, drainage and detention facilities, ponds or related improvements which serve all or a portion of the Development, the Property, or additional land (collectively, the "**Facilities**"). Declarant hereby reserves for itself and its assigns a perpetual non-exclusive easement over and across the Development for the installation, maintenance, repair or replacement of the Facilities. The Facilities may be designated by the Declarant in a written notice Recorded to identify the particular Facilities to which the easement reserved hereunder applies, or otherwise dedicated to the public or applicable governmental authority (which may include retention of maintenance responsibility by the Association), conveyed and transferred to any applicable Governmental Entity or conveyed and transferred to the Association as Common Area, Special Common Area or a Service Area. If the Facilities are designated or conveyed or maintenance responsibility reserved or assigned to the Association as Common Area, Special Common Area or a Service Area, the Association will be required to maintain and operate the Facilities in accordance with Applicable Law, or the requirements of any applicable Governmental Entity.

**10.17 Notices.** Any notice permitted or required to be given to any person by this Covenant will be in writing and may be delivered either personally or by mail, or as otherwise provided in this Covenant or required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Association for

the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

## ARTICLE 11
## DISPUTE RESOLUTION

**11.1 Agreement to Encourage Resolution of Disputes Without Litigation.**

11.1.1 Bound Parties. Declarant, the Association and its officers, directors, and committee members, Owners and all other parties subject to this Covenant ("**Bound Party**", or collectively, the "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in *Section 11.1.2*, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 11.2* in a good faith effort to resolve such Claim.

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

(i) Claim relating to the rights and/or duties of Declarant under the Documents; or

(ii) Claims against the Declarant relating to the design or construction of Improvements on the Common Areas or Lots.

**11.2 Claims Process**. In the event the Association or a Lot Owner asserts a Claim, as a precondition to providing the Notice defined in *Section 11.3*, initiating the mandatory dispute resolution procedures set forth in this *Article 11*, or taking any other action to prosecute a Claim, the Association or a Lot Owner, as applicable, must:

11.2.1 Independent Report on the Condition. Obtain an independent third-party report (the "**Condition Report**") from a licensed professional engineer which: (a) identifies the Improvements subject to the Claim including the present physical condition of the Improvements; (b) describes any modification, maintenance, or repairs to the Improvements performed by the Lot Owner(s) and/or the Association; (c) provides specific and detailed recommendations regarding remediation and/or repair of the Improvements subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Association or a Lot Owner and paid for by the Association or a Lot Owner, as applicable, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or a Lot Owner in the Claim. As a precondition to providing the Notice described in *Section 11.3*, the Association or Lot Owner must provide at least ten (10) days prior written notice of the inspection to each

party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Condition Report, the specific Improvements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Condition Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in *Section 11.3*, the Association or the Lot Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Condition Report.

11.2.2 Claims by Association – Owner Meeting and Approval. If the Claim is brought by the Association, obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in *Section 11.3*, initiate the mandatory dispute resolution procedures set forth in this *Article 11*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a special meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (a) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (b) a copy of the Condition Report; (c) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the claim (the "**Engagement Letter**"); (d) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not to proceed with the Claim; (e) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (f) an estimate of the impact on the value of each Lot and Improvements if the Claim is prosecuted and an estimate of the impact on the value of each Lot and Improvements after resolution of the Claim; (g) an estimate of the impact on the marketability of each Lot and Improvements if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each Lot and Improvements during and after resolution of the Claim; (h) the manner in which the Association proposes to fund the cost of prosecuting the Claim; (i) the impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party. The notice required by this paragraph must be prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 11.3*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

**11.3 Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (a) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (b) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (c) what Claimant wants Respondent to do or not do to resolve the Claim; and (d) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 11.4* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 11.4* to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 11.4* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in *Section 11.5* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 11.5* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) a true and correct copy of the Condition Report; (b) a copy of the Engagement Letter; (c) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Improvements which form the basis of the Claim; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 11.2.2* above; and (e) and reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice.

**11.4 Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action.

**11.5 Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five

(5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Section 11.5*.

**11.6 Termination Of Mediation**. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

**11.7 Binding Arbitration-Claims**. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 11.7*.

11.7.1 Governing Rules. If a Claim has not been resolved after Mediation as required by *Section 11.4*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 11.7* and the rules and procedures of the American Arbitration Association ("**AAA**") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Harris County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this *Section 11.7*, this *Section 11.7* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) one arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) one arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

11.7.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 11.7* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (a) exercising self-help remedies (including set-off rights); or (b) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

11.7.3 Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 11.7*.

11.7.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this *Section 11.7* but subject to *Section 11.8* below; provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (a) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (b) conclusions of law that are erroneous; (c) an error of federal or state law; or (d) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

11.7.5 Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Harris County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the

arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

**11.8 Allocation Of Costs.** Notwithstanding any provision in this Covenant on the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

**11.9 General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

**11.10 Approval & Settlement.** The Association must levy a Special Assessment to fund the estimated costs of arbitration, including estimated attorney's fees, conducted pursuant to this *Article 11* or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

*[SIGNATURE PAGE FOLLOWS]*

EXECUTED to be effective on the date this instrument is Recorded.

**DECLARANT:**

**NASH FM 529, LLC,**
a Delaware limited liability company

By: _____
Name: Alan F. Bauer
Title: Authorized Signatory

THE STATE OF TEXAS §
§
COUNTY OF Harris § §

This instrument was acknowledged before me on this 9th day of February, 2016, by Alan F. Bauer, Authorized Signatory of Nash FM 529, LLC, a Delaware limited liability company, on behalf of said limited liability company.

_____
Notary Public, State of Texas

(seal)

KATHLEEN JUNE HAWN
Notary Public, State of Texas
Comm. Expires 06-09-2018
Notary ID 814886-3

RP-2016-80476

## CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the lien created by a Deed of Trust recorded as Document No. 20120601198 in the Official Public Records of Harris County, Texas (the "**Lien**"), securing a note of even date therewith, executes this Covenant solely for the purposes of (a) evidencing its consent to this Covenant, and (b) subordinating the Lien to this Covenant, both on the condition that the Lien shall remain superior to the Assessment Lien in all events.

NASH FINANCING, LLC,
a Delaware limited liability company

By: _____
Printed Name: Koji Yamada
Title: Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )
COUNTY OF San Diego )

On this 10 day of February, 2016 before me K. Paxton (notary public), personally appeared Koji Yamada, (print name), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (notary public)

K. PAXTON
COMM. # 2053146
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
MY COMM. EXP. MAR. 29, 2018

(NOTARY SEAL)

# EXHIBIT "A"
# DESCRIPTION OF PROPERTY

## TRACT I:

Being a tract or parcel containing 1,188.05 acres of land, being 551.39 acres in Section 31, Block 2 of the H. & T.C.R.R. Company Survey, Abstract Number 446 and 634.26 acres in the A.R. Connell Survey, Abstract Number 1387 (Section 48, Block 2 of the H. & T.C.R.R. Company Survey), Harris County, Texas; said 1188.05 acres being out of and a portion of a called 1192.5996 acre tract (Tract 1) of land conveyed to ARO Partners described in Harris County Clerk's File (H.C.C.F.) Number H658369 and all of the called 1.0 acre tract of land reconveyed and released to David Rorick Jr. in H.C.C.F Numbers K465088 and K193038; Save and Except a 2.417 acre tract granted to Houston Lighting and Power Company (H.L. & P. Co.) under Harris County Clerk's File Number H492415; said 1,188.05 acre tract of land being more particularly described as follows (Bearings are referenced to the Texas State Plane Coordinate System, South Central Zone, NAD 83.);

BEGINNING at a Mag Spike set to replace a 3/8-inch iron rod found August 31, 2004 in the centerline of Stockdick – School Road (variable width) at its intersection with the centerline of Beckendorf Road (variable width) for the common east corner of the George Spencer Survey, Abstract Number 1388 and said H. & T.C.R.R. Company Survey, Abstract Number 446, and the southeast corner of the herein described tract;

THENCE, South 87°52'17" West, a distance of 5,282.64 feet along the south line of the H. & T.C.R.R. Company Survey, Abstract Number 446, common with the north line of said George Spencer Survey, and the centerline of Beckendorf Road to a 5/8-inch iron rod found at the centerline intersection of Beckendorf Road and Peek Road (80.00 feet wide – however, no conveyances of record dedicate R.O.W. for public use in fee or easement) and being the southwest corner of H. & T.C.R.R. Company Survey, Abstract Number 446, the northwest corner of said George Spencer Survey, the northeast corner of the H. & T.C.R.R. Company Survey, Abstract Number 440 and a 156.432 acre tract of record under H.C.C.F. Number V829107, and the southeast corner of the said A.R. Connell Survey;

THENCE, South 87°54'14" West, along the south line of said A.R. Connell Survey, common with the north line of the H. & T.C.R.R. Company Survey, Abstract Number 440, and the centerline of Beckendorf Road, a distance of 5,280.00 feet to a 5/8-inch iron rod set with plastic cap stamped "Terra Surveying" at the southwest corner of said A.R. Connell Survey, the northwest corner of the H. & T.C.R.R. Company Survey, Abstract Number 440, the northeast corner of the William Salyars Survey, Abstract Number 1532, the southeast corner of the H. & T.C.R.R. Company Survey, Abstract Number 444, and the southeast corner of a called 158.039 acre tract of record under H.C.C.F. Number W288492; from said 5/8-inch iron rod a found 1-1/2 inch iron pipe bears North 19°13'52" W - 12.03 feet and a found 3/4 -inch iron pipe bears North 77°46'02" West - 27.60 feet;

THENCE, North 02°13'25" West, a distance of 5,220.81 feet along the common west line of said A.R. Connell Survey, and the east line of the H. & T.C.R.R. Company Survey, Abstract Number 444 and the east line of said called 158.039 acre tract to a point in the south R.O.W. line of F.M. 529 as established by the conveyance of a 4.495 acre tract to the State of Texas for additional R.O.W. along F.M. 529, of record under Volume 5313, Page 528, H.C.D.R. (establishing 120.00 feet R.O.W.), from said point a 5/8-inch iron rod found disturbed bears North 21°19'22" East – 0.47 feet;

THENCE, North 88°20'41" East, a distance of 137.19 feet (called 149.68 feet) along said south R.O.W. line of F.M. 529 to a Texas Department of Transportation (TxDOT) Disk found for an angle point;

THENCE, North 87°55'41" East, along the south R.O.W. line of F.M. 529, a distance of 5,051.08 feet (called 5,049.80 feet) to a TxDOT Disk found for the northwest end of a cut-back line;

THENCE, South 46°49'01" East, along said cut-back line a distance of 130.67 feet (called 130.26 feet) to a 5/8-inch iron rod found in the west R.O.W. line of Peek Road for the southeast end of said cut-back line;

THENCE, North 87°55'19" East, along the south R.O.W. line of F.M. 529, passing at 30.00 feet a 3/4-inch iron rod found in the centerline of Peek Road (80.00 feet wide, however, no conveyances dedicate

R.O.W. in fee or easement), and in the common east line of said A.R. Connell Survey and the west line of the H. & T.C.R.R. Company Survey, Abstract Number 446, and continuing in all a distance of 69.00 feet to a 5/8-inch iron rod found in the east R.O.W. line of Peek Road for the southwest end of a cut-back line;

THENCE, South 46°49'01" East, along said cut-back line a distance of 133.67 feet (called 130.28 feet) to a 5/8-inch iron rod found in the west R.O.W. line of Peek Road for the southeast end of said cut-back line;

THENCE, North 87°55'19" East, along the south R.O.W. line of F.M. 529, passing at 30.00 feet a ¾-inch iron rod found in the centerline of Peek Road (60.00 feet wide, however, no conveyances dedicate R.O.W. in fee or easement), and in the common east line of said A.R. Connell Survey and the west line of the H. & T.C.R.R. Company Survey, Abstract Number 446, and continuing in all a distance of 69.00 feet to a 5/8-inch iron rod found in the east R.O.W. line of Peek Road for the southwest end of a cut-back line;

THENCE, North 42°55'19" East, a distance of 132.40 feet to a TxDOT concrete monument found in the south R.O.W. line of F.M. 529, as established by the conveyance of a 3.087 acre tract conveyed to the State of Texas for additional R.O.W. along F.M. 529 (Freeman Road) of record in Volume 6313, Page 535, H.C.D.R for the northeast end of said cut-back line, from which a found 5/8-inch iron rod bears South 29°44'59" East 0.37 feet;

THENCE, North 87°56'32" East, a distance of 4,722.87 feet along the south R.O.W. line of F.M. 529 to a TxDOT Disk found marking the northwest corner of a called 5.322 acre tract conveyed to the County of Harris as recorded under H.C.C.F Number 20090407248 and for the northeast end of a cut-back line;

THENCE, South 47°51'28" East, along the west line of said called 5.322 acre tract and along said cut-back line, a distance of 71.70 feet to a TxDOT Disk found marking the southeast end of said cut-back line and the beginning of a non-tangent curve to the left;

THENCE, Southerly, continuing along the west line of said called 5.322 acre tract, a distance of 413.72 feet along the arc of said curve to the left, having a radius of 1,073.74 feet, a central angle of 22°04'38" and a chord which bears South 16°02'24" East, 411.17 feet to a TxDOT Disk found marking the end of said curve at a point of tangency;

THENCE, South 27°04'42" East, continuing along the west line of said called 5.322 acre tract, a distance of 338.71 feet to a TxDOT Disk found marking the beginning of a tangent curve to the right;

THENCE, Southerly, continuing along the west line of said called 5.322 acre tract, a distance of 454.28 feet along the arc of said curve to the right, having a radius of 1,041.74 feet, a central angle of 24°58'32" and a chord which bears South 14°35'18" East, 450.61 feet to a TxDOT Disk found marking the southwest corner of said called 5.322 acre tract at the end of said curve at a point of non-tangency and being in the west R.O.W. line of Stockdick School Road, (width varies - however, no conveyances of record dedicate R.O.W. for public use in fee or easement);

THENCE, North 87°53'05" East, along the south line of said called 5.322 acre tract, a distance of 29.19 feet to a to a Mag Spike set in the common east line of the aforementioned H. & T.C.R.R. Company Survey, Abstract Number 446 and the west line of the H. & T.C.R.R. Company Survey, Abstract Number 423 and in the centerline of Stockdick School Road;

THENCE, South 02°04'14" East, a distance of 63.43 feet along said common survey line to a Mag Spike set at the northeast corner of an 18.000 acre tract conveyed to Santa Catalina School of record under H.C.C.F. Number F392543;

THENCE, South 87°55'46" West, a distance of 1,188.00 feet along the north line of said 18.000 acre tract to a 5/8-inch iron rod found with plastic cap stamped "Terra Surveying" at the northwest corner of said 18.000 acre tract;

THENCE, South 02°04'14" East, passing at 660.00 feet the southwest corner of said Santa Catalina School Tract common with the northwest corner of an 18.000 acre tract owned by San Domenico School, of record under H.C.C.F. Number F392544, passing at 1,320.00 feet the southwest corner of said San Domenico School tract common with the northwest corner of an 18.000 acre tract owned by Fernando Garza, et ux, of record under H.C.C.F. Number U430529, passing at 1,980.00 feet the southwest corner

of said Garza tract common with the northwest corner of a 9.000 acre tract owned by Marcus Beatty, of record under H.C.C.F. Number S461729, passing at 2,310.00 feet the southwest corner of said Beatty tract common with the northwest corner of a 9.0000 acre tract owned by John Harris Burke, et al, of record under H.C.C.F. Number U031234, and continuing in all, a distance of 2,640.00 feet to a 1/2-inch iron rod found at the southwest corner of said Burke tract;

THENCE, North 87°58'46" East, 1,186.03 feet along the south line of said Burke tract to a Mag Spike set in the aforementioned common survey line and centerline of Stockdick School Road;

THENCE, South 02°04'14" East, a distance of 1,314.62 feet along said common survey line and the centerline of Stockdick School Road to the POINT OF BEGINNING and containing 1,188.05 acres of land, more or less.

**SAVE AND EXCEPT**, 2.417 acre tract granted to Houston Lighting and Power Company (H.L. & P. Co.) under Harris County Clerk's File Number H492415, said 2.417 acre tract being more particularly described as follows:

COMMENCING at a Mag Spike set to replace a 3/8-inch iron rod found August 31, 2004 in the centerline of Stockdick – School Road (variable width) at its intersection with the centerline of Beckendorf Road (variable width) for the common east corner of the George Spencer Survey, Abstract Number 1359 and said H. & T.C.R.R. Company Survey, Abstract Number 446;

THENCE, South 87°52'17" West, along the south line of the H. & T.C.R.R. Company Survey, Abstract Number 446, common with the north line of said George Spencer Survey, and the centerline of Beckendorf Road, a distance of 3,692.79 feet to a point;

THENCE, North 13°47'43" West, a distance of 30.03 feet to a point in the north R.O.W. line of said Beckendorf Road for the southwest corner of a 40 feet wide Houston Lighting and Power Company easement as recorded in H.C.C.F. Number H492414 for the southeast corner and POINT OF BEGINNING of the herein described tract;

THENCE, South 87°52'17" West, along said north R.O.W. line, a distance of 306.33 feet to a point for the southwest corner of the herein described tract;

THENCE, departing said north R.O.W., North 13°47'43" West, a distance of 329.00 feet to a point for the northwest corner of the herein described tract;

THENCE, North 76°12'17" East, a distance of 300.00 feet to a point in the west line of said 40 feet wide easement for the northeast corner of the herein described tract;

THENCE, South 13°47'43" East, along said west line, a distance of 381.94 feet to the POINT OF BEGINNING and containing 2.417 acres of land.

SAVE AND EXCEPT, 6 Directors Lots for Harris County Municipal District Number 457 out of the A.R. Connell Survey, Abstract Number 1387, each lot containing 0.0367 acre (1,600 square feet) as recorded under H.C.C.F. Numbers Z137152, Z137156, Z137159, Z137162 and Z137164 and SAVE AND EXCEPT, 6 Directors Lots for Harris County Municipal District Number 458 out of the H. & T.C.R.R. Company Survey, Abstract Number 446, each lot containing 0.0367 acre (1,600 square feet) as recorded under H.C.C.F. Numbers Z137168, Z137171, Z137174, Z137178 and Z137181 for a total NET Acreage of 1,185.27 acres, more or less.

# SAVE AND EXCEPT FROM TRACT I:

**TRACT I-A**, BEING THAT CERTAIN 31.50 ACRE ELYSON CAMPUS TRACT OF LAND;

**TRACT I-B**, BEING THAT CERTAIN 128.71 ACRE ELYSON CAMPUS TRACT OF LAND;

AND,

**TRACT I-C**, BEING THAT CERTAIN 3.907 ACRE WATER PLANT SITE TRACT OF LAND,

EACH BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

*[Said 31.50 acre tract, 128.71 acre tract, and 3.907 acre tract legal descriptions on the following pages]*

**TRACT I-A:**

DESCRIPTION OF A 31.50 ACRE TRACT OF LAND
SITUATED IN THE H. & T.C. R.R. COMPANY SURVEY
BLOCK 2, SECTION 31, ABSTRACT NO. 446
HARRIS COUNTY, TEXAS

BEING a 31.50 acre (1,372,026 square foot) tract of land situated in the H. & T.C. R.R. Company Survey, Block 2, Section 31, Abstract No. 446 of Harris County, Texas and being a portion of a called 1,188.05 acre tract of land (1,185.27 net acres) as described in an instrument to NASH FM 529, LLC filed for record under Harris County Clerk's File Number (H.C.C.F. No.) 20120601195, said 31.50 acre tract of land being more particularly described by metes and bounds as follows:

**COMMENCING** at a "Mag" spike found (Control Monument) for the centerline intersection of Peek Road (60-foot width as occupied on the ground, no deed of record found) and Beckendorff Road (width varies, as occupied on the ground, no deed of record found), same also being in the South line of said called 1,185.27 acre tract;

THENCE, N 87° 52' 17" E, a distance of 1,978.09 feet along and with the centerline of said Beckendorff Road and the South line of said 1,185.27 acre tract to a "Mag" nail set in asphalt for reference;

THENCE, the following courses and distances over and across said 1,185.27 acre tract:

N 02° 07' 43" W, a distance of 160.00 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for reference;

S 87° 52' 17" W, a distance of 96.05 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for reference in the East line of a called 180-foot wide Houston Lighting and Power Company easement described in instruments filed for record under H.C.C.F. No. B531165 and Volume 4791, Page 435 of the Harris County Deed Records (H.C.D.R.);

N 13° 41' 36" W, a distance of 1,554.57 feet along and with the East line of said 180-foot wide Houston Lighting and Power Company easement to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the Southwest corner of the herein described tract and the **POINT OF BEGINNING**;

N 13° 41' 36" W, a distance of 1,139.36 feet along and with the East line of said 180-foot wide Houston Lighting and Power Company easement to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the Northwest corner of the herein described tract;

N 76° 18' 24" E, a distance of 312.97 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the beginning of a tangent curve to the right;

In an Easterly direction, along said curve to the right, a distance of 72.79 feet, having a radius of 1,000.00 feet, a central angle of 04° 10' 13" and a chord which bears N 78° 23' 31" E, 72.77 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for a point of reverse curvature;

In an Easterly direction, along a curve to the left, a distance of 137.15 feet, having a radius of 500.00 feet, a central angle of 15° 42' 59" and a chord which bears N 72° 37' 08" E, 136.72 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for a point of a compound curvature;

In a Northeasterly direction, along said curve to the left, a distance of 517.73 feet, having a radius of 1,045.00 feet, a central angle of 28°23'11" and a chord which bears N 50° 34' 03" E, 512.45 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the point of tangency;

N 36° 22' 28" E, a distance of 46.56 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the North corner of the herein described tract;

S 43° 29' 39" E, a distance of 472.11 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the Northeast corner of the herein described tract;

THENCE, S 03° 10' 27" E, a distance of 947.28 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the Southeast corner of the herein described tract;

THENCE, S 73° 17' 38" W, a distance of 1,082.62 feet to the **POINT OF BEGINNING** and containing 31.50 acres (1,372,026 square feet) of land.

Bearing orientation is based on the Texas Coordinate System, South Central Zone 4204, NAD-83 and is referenced to monuments found as cited herein and as shown on a survey plat of even date prepared by the undersigned in conjunction with this metes and bounds description.

**TRACT I-B:**

DESCRIPTION OF A 128.71 ACRE TRACT OF LAND
SITUATED IN THE H. & T.C. R.R. COMPANY SURVEY
BLOCK 2, SECTION 31, ABSTRACT NO. 446
HARRIS COUNTY, TEXAS

BEING a 128.71 acre (5,606,539 square foot) tract of land situated in the H. & T.C. R.R. Company Survey, Block 2, Section 31, Abstract No. 446 of Harris County, Texas and being a portion of a called 1,188.05 acre tract of land (1,185.27 net acres) as described in an instrument to NASH FM 529, LLC filed for record under Harris County Clerk's File Number (H.C.C.F. No.) 20120601195, said 128.71 acre tract of land being more particularly described by metes and bounds as follows:

**COMMENCING** at a "Mag" spike found (Control Monument) for the centerline intersection of Peek Road (60-foot width as occupied on the ground, no deed of record found) and Beckendorff Road (width varies, as occupied on the ground, no deed of record found), same also being in the South line of said called 1,185.27 acre tract;

THENCE, N 87° 52' 17" E, a distance of 1,978.09 feet along and with the centerline of said Beckendorff Road and the South line of said 1,185.27 acre tract to a "Mag" nail set in asphalt for the Southwest corner of the herein described tract and the **POINT OF BEGINNING**;

THENCE, the following courses and distances over and across said 1,185.27 acre tract:

N 02° 07' 43" W, a distance of 160.00 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner;

S 87° 52' 17" W, a distance of 96.05 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner in the East line of a called 180-foot wide Houston Lighting and Power Company easement described in instruments filed for record under H.C.C.F. No. B531165 and Volume 4791, Page 435 of the Harris County Deed Records (H.C.D.R.);

N 13° 41' 36" W, a distance of 1,379.32 feet along and with the East line of said 180-foot wide Houston Lighting and Power Company easement to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the Northwest corner of the herein described tract;

N 73° 17' 38" E, a distance of 1,076.82 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for a North corner of the herein described tract;

N 88° 13' 41" E, a distance of 1448.79 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner in an East line of said 1,185.27 acre tract and also being in the West line of a called 9 acre tract described in an instrument to Marcus Beatty filed for record under H.C.C.F. No. S 481729;

THENCE, S 02° 04' 14" E, a distance of 457.36 feet along and with an East line of said 1,185.27 acre tract, the West line of said 9 acre tract and the West line of a called 9 acre tract of land described in an instrument to John Burke filed for record under H.C.C.F. No. U031234 to a 5/8-inch iron rod with cap stamped "Terra Surveying" found for a reentrant corner of said 1,185.27 acre tract and the Southwest corner of the last said 9 acre tract;

THENCE, N 87° 55' 46" E, along and with the South line of the last said 9 acre tract and a North line of said 1,185.27 acre tract, at a distance of 1,160.24 feet passing through a 5/8-inch iron rod found in the West occupied right-of-way of Stockdick School Road (No deed of record found, width varies as shown on W.P.A. Project No. 65-1-66-2749 and Harris County ROW Map No. 4750, Nov. 1940) and continuing for a total distance of 1,188.00 feet to a "Mag" spike found in asphalt (Control Monument) in the centerline of said Stockdick School Road for the most Easterly Northeast corner of the herein described tract, a Northeast corner of said 1,185.27 acre tract and from which a railroad spike found in asphalt bears S 87° 12' E, 1.92 feet;

THENCE, S 02° 04' 14" E, a distance of 1,314.76 feet along and with an East line of said 1,185.27 acre tract and the centerline of said Stockdick School Road to a "Mag" spike found (Control Monument) in asphalt for the Southeast corner of the herein described tract, the Southeast corner of said 1,185.27 acre tract and being the centerline intersection of said Stockdick School Road and said Beckendorff Road and from which a found 5/8-inch iron rod with Texas Department of Transportation aluminum cap bears N 44° 28' W, 40.33 feet, a found 5/8-inch iron rod with Texas Department of Transportation aluminum cap bears S 80° 38' E, 30.72 feet, a found cotton picker spindle spike bears S 01° 37' E, 7.33 feet, a found nail and shiner bears S 02° 39' E, 40.09 feet and a found 1/2-inch iron rod bears S 42° 42' W, 42.75 feet;

THENCE, S 87° 52' 17" W, a distance of 3,304.55 feet along and with the centerline of said Beckendorff and the South line of said 1,185.27 acre tract to the **POINT OF BEGINNING** and containing 128.71 acres (5,606,539 square feet) of land.

Bearing orientation is based on the Texas Coordinate System, South Central Zone 4204, NAD-83 and is referenced to monuments found as cited herein and as shown on a survey plat of even date prepared by the undersigned in conjunction with this metes and bounds description.

**TRACT 1-C:**

HCMUD 171 WATER PLANT PHASE 1
PLAT DESCRIPTION
3.907 ACRES

NOVEMBER 3, 2014
JOB NO. 2733-00

DESCRIPTION OF A 3.907 ACRE TRACT OF LAND SITUATED
IN THE A.R. CONNELL SURVEY, ABSTRACT NO. 1387
HARRIS COUNTY, TEXAS

BEING a 3.907 acre (170,191 square foot) tract of land situated in the A.R. Connell Survey, Abstract No. 1387 of Harris County, Texas and being a portion of a called 1,188.05 acre tract of land as described in an instrument to Nash FM 529 LLC recorded under Harris County Clerk's File Number (H.C.C.F. No.) 20120601195, said 3.907 acre tract of land described by metes and bounds as follows:

**COMMENCING** at a 5/8-inch iron rod found at the intersection of the south right-of-way line of F.M. 529 (120 feet wide) as described in an instrument recorded under H.C.C.F. No. C282787 and the west right-of-way line of Peek Road (60 feet wide, as occupied), same being an angle point in the north line of said 1,188.05 acre tract from which a 5/8-inch iron rod found at the intersection of the south right-of-way line of said F.M. 529 and the as occupied east right-of-way line of said Peek Road bears, N 87° 39' 01" E, 60.00 feet;

THENCE, S 01° 53' 18" E, a distance of 1,763.55 feet along and with the occupied west right-of-way line of said Peek Road and over and across said 1,188.05 acre tract to a point for a tie;

THENCE, S 70° 53' 40" W, a distance of 485.42 feet continuing over and across said 1,188.05 acre tract to the most easterly corner and **POINT OF BEGINNING** of the herein described tract, same being the most southerly corner of a called 4.1 acre Drill Site described in an instrument recorded under H.C.C.F. No. 20070111942;

THENCE, continuing over and across said 1,188.05 acre tract the following courses and distances:

S 47° 51' 07" W, a distance of 450.73 feet to the most southerly corner of the herein described tract same being the beginning of a non-tangent curve to the left from which its center bears S 42°56'26" W, 830.00 feet;

In a northwesterly direction, along said curve to the left, a distance of 313.51 feet, having a radius of 830.00 feet, a central angle of 21°38'30" and a chord which bears N 57°52'49" W, 311.65 feet to a point of tangency;

N 68° 42' 04" W, a distance of 9.70 feet to the most easterly corner of the herein described tract;

N 39° 47' 40" E, a distance of 545.54 feet to the most northerly corner of the herein described tract, same being the most westerly corner of said Drill Site;

S 42° 03' 39" E, a distance of 385.12 feet along and with the southwest line of said Drill Site to the **POINT OF BEGINNING** and containing 3.907 acres (170,191 square feet) of land.

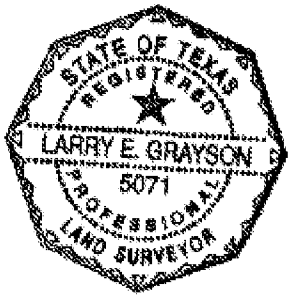
EXHIBIT A – TRACT I

HCMUD 171 WATER PLANT PHASE 1
PLAT DESCRIPTION
3.907 ACRES

NOVEMBER 3, 2014
JOB NO. 2733-00

Bearing orientation is based on the Texas Coordinate System, South Central Zone 4204, NAD-83 and is referenced to monuments found along the south right-of-way of Farm to Market 529 as cited herein.

The above description is for the purpose of securing a title report and is not to be used as fee conveyance.




Larry E. Grayson RPLS No. 5071
Brown & Gay Engineers, Inc.
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Houston, Texas 77042
Telephone: (281) 558-8700
TBPLS Licensed Surveying Firm No. 10106500

**TRACT II:** [*306.17 acre tract, 627.64 acre tract, 308.10 acre tract, and 556.35 acre tract – legal descriptions as follows]*

DESCRIPTION OF A 306.17 ACRE TRACT OF LAND SITUATED
IN THE H. & T.C.R.R. COMPANY SURVEY BLOCK 2, SECTION 49
ABSTRACT NUMBER 441
HARRIS COUNTY, TEXAS

BEING a 306.17 acre tract of land situated in the H. & T.C.R.R. Company Survey Block 2, Section 49, Abstract No. 441, Harris County, Texas and being a portion of a tract of land described as the West One-Half of Section 49, Block 2, H. & T.C.R.R. Company Survey, Abstract No. 441 (called 320 acres) land as described in an instrument to Charles Randall Freeman and Barbara Lynn Steele Freeman filed for record under Harris County Clerk's File Number (H.C.C.F. No.) N488897, save and except a portion of a called 1.381 acre tract of land described in an instrument to the State of Texas filed for record under H.C.C.F. No. C261187, said 306.17 acre tract of land being more particularly described by metes and bounds as follows:

**BEGINNING** at a 1/2-inch iron rod found (Control Monument) found in the intersection of Longenbaugh Road and Porter Road (60-foot width, as occupied, no deed found) for the Northwest corner of said 320 acre tract, being the Southeast corner of Section 57 of the H. &T.C.R.R. Company Survey Block 2, Abstract No. 443, the Northeast corner of Section 58 of the H. & T.C.R.R. Company Survey Block 2 (George Spencer Survey, Abstract No. 1368), the Southwest corner Section 50 of the of the H. &T.C.R.R. Company Survey Block 2, (J.E. Garrett Survey, Abstract No. 1396) and the Northeast corner of said Section 49, same also being the Northeast corner of a called 556.35 acre tract of land described in an instrument to Nash FM 529 LLC filed for record under H.C.C.F. No. 201303221346, and from which a railroad spike found (Control Monument) in the centerline of said Longenbaugh Road and Katy-Hockley Cut-Off Road (60-foot width) for the Northwest corner of said 556.35 acre tract bears S 87° 51' 45" W, 5,286.01 feet;

THENCE, N 87° 59' 00" E, a distance of 2,660.92 feet along and with the centerline of said Longenbaugh Road, being the North line of said 320 acre tract, the North line of said Section 49 and the South line of said Section 50 to a "Mag" nail set for the Northeast corner of the herein described tract and the Northwest corner of a called 104.6253 acre tract described in an instrument filed for record under H.C.C.F. No. J071598 and from which a 1/2-inch iron rod in asphalt bears N 12° 32' E, 2.20';

THENCE, S 01° 57' 36" E, along and with the East line of said 320 acre tract and the West line of said 104.6253 acre tract, at a distance of 27.52 feet passing through a found 5/8-inch iron rod and continuing for a total distance of 5,239.21 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner in the North right-of-way line of Farm-to-Market Road 529 (H.C.C.F. No. C261187, Vol. "M", Page 229-234, Commissioner Court Minutes) (120-foot width) same being in the North line of said 1.381 acre tract and from which a 5/8-inch iron rod found bears N 01° 58' W, 2.20 feet;

THENCE, S 87° 55' 40" W, along and with the North right-of-way line of said Farm-to-Market Road 529, and the South line of the herein described tract, a distance of 1,770.07 feet to 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner;

THENCE, N 02° 02’ 45” W, a distance of 665.00 feet over and across said 320 acre tract to a 1/2-inch iron pipe with cap stamped “Brown & Gay” set for corner;

THENCE, S 87° 55' 40" W, a distance of 883.00 feet over and across said 320 acre tract to a “Mag” nail set in the West line of said 320 acre tract, the East line of said 556.35 acre tract and being in the centerline of said Porter Road;

THENCE, N 02° 02' 45" W, along and with the West line of said 320 acre tract, the East line of said 556.35 acre tract and the centerline of said Porter Road a distance of 4,576.78 feet to the **POINT OF BEGINNING** and containing 306.17 acres of land.

Bearing orientation is based on the Texas State Plane Coordinate System, South Central Zone 4204, NAD-83 and is referenced to monuments found along the centerline of Longenbaugh Road as cited herein and as shown on a survey plat of even date prepared by the undersigned in conjunction with this metes and bounds description.

DESCRIPTION OF A 627.64 ACRE TRACT OF LAND
SITUATED IN SECTION 69 OF BLOCK 2, OF THE H. & T.C.R.R. COMPANY
SURVEY ABSTRACT NO. 459 AND SECTION 70, BLOCK 2 OF THE H. & T.C.R.R.
COMPANY SURVEY (J.E. CABANISS SURVEY, ABSTRACT NO. 1470)
HARRIS COUNTY, TEXAS

BEING a 627.64 acre tract of land situated in Section 69, Block 2 of the H. & T.C.R.R. Company Survey, Abstract No. 459 and J.E. Cabaniss Survey, Abstract 1470 which is out of Section 70, Block 2 of the H. & T. C.R.R. Company Survey and being the remainder of a called 400 acre tract of land described in an instrument to Jesse L. Freeman filed for record under Volume 1212, Page 482 of the Harris County Deed Records, a portion of the Northeast 1/4, the Southeast 1/4 and Southwest 1/4 of said Section 69 and a called 3.44 acre tract of land described in Harris County Clerk's File No. U390807, same also being all of those certain tracts of land described in an instrument to Lynell Freeman, Trustee of the Freeman Family Trust recorded under Harris County Clerk's File Number (H.C.C.F. No.) U390809 and U390807, excluding the portion of said tracts lying within the right-of-way of Farm-to-Market Road 529 and Katy-Hockley Cut-Off Road, said 627.64 acre tract of land being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8-inch iron rod with cap stamped "JNS Engineers" (Control Monument) found for the Northeast corner of a called 1.401 acre tract of land described in an instrument to Harris County filed for record under H.C.C.F. No. X290296 and being in the South line of a called 215.658 acre tract of land described in an instrument to Harris County filed for record under H.C.C.F. No. W075836, same being the Northwest corner of the remainder of said 400 acre tract;

THENCE, N 87° 59' 43" E, a distance of 2,556.81 feet along and with the South line of said 215.658 acre tract and the North line of the remainder of said 400-acre tract to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner in the West right-of-way line of said Katy-Hockley Cut-Off Road (60-foot width, West 10-feet Volume 826, Pg. 539, Harris County Deed Records) and from which a 3/4-inch iron pipe found disturbed bears N 87° 59' 43" E, 1.16 feet;

THENCE, S 02° 06' 22" E, a distance of 7,769.66 feet along and with the West right-of-way line of said Katy-Hockley Cut-Off Road (60-foot width) to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner in North right-of-way line of Farm-to-Market Road 529 (width varies) (H.C.C.F. No. C351486 & C261186) and from which a found 4"x4" concrete monument bears N 43° 07' E, 1.27 feet;

THENCE, S 43° 07' 01" W, a distance of 133.21 feet along the Northwest cut-back line of the intersection of said Katy-Hockley Road and Farm-to-Market Road 529(120-foot width) to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner in the North right-of-way line of said Farm-to-Market Road 529;

THENCE, S 87° 53' 30" W, a distance of 5,045.90 feet along and with the North right-of-way line of said Farm-to-Market Road 529 to a 4"x4" concrete monument found (Control Monument) for the Southeast corner of the Northeast cut-back of the intersection of said Farm-to-Market Road 529 and Katy-Hockley Road;

THENCE, N 47° 06' 59" W, a distance of 135.29 feet along and with the Northeast cut-back line of the intersection of said Farm-to-Market Road 529 and Katy-Hockley Road to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner in the East right-of-way line of said Katy-Hockley Road (60-foot width) and from which a found concrete monument bears S 40° 50' E, 3.13 feet;

THENCE, S 02° 01' 40" E, a distance of 125.65 feet along and with the East right-of-way line of said Katy-Hockley Road to a point for corner in the North line of a 30-foot strip of land described in Volume "M", Page 229-234 of the Harris County Commissioner's Court Minutes;

THENCE S 87° 53' 30" W, a distance of 30.00 feet along and with the North line of said 30-foot strip to a point for corner in the centerline of said Katy-Hockley Road (60-foot width);

THENCE, N 02° 01' 40" W, a distance of 2,616.67 feet along and with the centerline of said Katy-Hockley Road and the West line of the Southwest 1/4 of said Section 69 to a 5/8-inch iron rod found in asphalt for the Northwest corner of the Southwest 1/4 of said Section 69, same also being the Southwest corner of called 1.00 acre tract of land described in an instrument filed for record under H.C.C.F. No. D748274;

THENCE, N 88° 02' 19" E, along and with the North line of the Southwest 1/4 of said Section 69, the South line of said 1.00 acre tract and the South line of a called 158.167 acre tract described in an instrument filed for record under H.C.C.F. No. 20110061749, at distance of 30.00 feet pass a 1/2-inch iron pipe with cap stamped "Brown & Gay" set in the East right-of-way line of said Katy-Hockley Road, 313.00 feet pass the Southeast corner of said 1.0 acre tract and a Southwest corner of said 158.167 acre tract and continuing for a total distance of 2,645.41 feet to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the Northeast corner of the Southwest1/4 of said Section 69, the Southwest corner of the Northeast 1/4 of said Section 69, the Northwest corner of the Southeast 1/4 of said Section 69, same also being the Southeast corner of said 158.167 acre tract;

THENCE, N 02° 01' 40" W, a distance of 2,642.89 feet along and with the East line of said 158.167 acre tract and the West line of the Northeast 1/4 of said Section 69 to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the Northwest corner of the Northeast 1/4 of said Section 69, same being the Northeast corner of said 158.167 acre tract, the most Southerly Southwest corner of said J.E. Cabaniss Survey, Abstract No. 1470, the Southeast corner of a called 75.308 acre tract of land described in an instrument filed for record under H.C.C.F. No. T291060, the Southeast corner of the G.H. Holley Survey, Abstract 1480 and the most Southerly Southwest corner of said 400 acre tract of land described in an instrument to Jesse L. Freeman filed for record under Volume 1212, Page 482 of the Harris County Deed Records;

THENCE, N 02° 03' 53" W, along and with the West line of said 400 acre tract and the East line of said 75.308 acre tract, at a distance of 1,322.59 feet pass the Northeast corner of said 75.308 acre tract and the Southeast corner of a called 53.142 acre tract of land described in an instrument filed for record under H.C.C.F. No. X139859 and continuing along and with the West line of said 400 acre tract and the East line of said 53.142 acre tract for a total distance of 1,535.40 feet to a 5/8-inch iron rod found (disturbed) for the Southwest corner of said called 1.401 acre tract of land;

THENCE N 87° 56' 07" E, a distance of 55.00 feet along and with the South line of said 1.401 acre tract to a 5/8-inch iron rod with cap stamped "JNS Engineers" found (Control Monument) for the Southeast corner of said 1.401 acre tract;

THENCE, N 02° 03' 53" W, a distance of 1,109.98 feet along the East line of said 1.401 acre tract to the **POINT OF BEGINNING** and containing 627.64 acres of land.

Bearing orientation is based on the Texas Coordinate System, South Central Zone 4204, NAD-83.

A survey titled "LAND TITLE SURVEY OF 1,492.09 ACRES OF LAND SITUATED IN BLOCK 2, H. & T. C. R.R. CO. SURVEY SECTION 69, ABSTRACT NO. 459, SECTION 57, ABSTRACT NO. 443 J.E. CABANISS SURVEY (SECTION 70, ABSTRACT NO. 1470) GEORGE SPENCER SURVEY (SECTION 58, ABSTRACT NO. 1368) HARRIS COUNTY, TEXAS" has been prepared in conjunction with this metes and bounds description.

DESCRIPTION OF A 308.10 ACRE TRACT OF LAND
SITUATED IN SECTION 57, BLOCK 2
OF THE H. & T. C.R.R. COMPANY SURVEY, ABSTRACT NO. 443
HARRIS COUNTY, TEXAS

BEING a 308.10 acre tract of land situated in Section 57, Block 2 of the H. & T. C.R.R. Company Survey, Abstract 443, Harris County, Texas and being the remainder of a called 328.97 acre tract of land described in instruments filed for record under Harris County Clerk's File Number (H.C.C.F. No.) U390810 and X913891 and a portion of a called 1.0 acre tract of land described in an instrument to Harold L. Freeman and wife, Lynell Freeman filed for record under H.C.C.F. No. J087863, excluding the portion of said tracts lying within the right-of-way of Katy-Hockley Cut-Off Road, said 308.10 acre tract of land being more particularly described by metes and bounds as follows:

**BEGINNING** at a 3/4-inch iron pipe (Control Monument) found in the East right-of-way line of Katy-Hockley Cut-Off Road (60-foot width, the East 10-feet being described in Vol. 833, Pg. 348 and Volume 832, Pg. 1 of the Harris County Deed Records), the North line of said 328.97 acre tract and a South line of called 50.000 acre tract of land described in an instrument to Felix Jegede filed for record under H.C.C.F. No. 20060183947, said 3/4-inch iron pipe also being N 89° 28' 02" E, 30.00 feet from the Northwest corner of said 328.97 acre tract and the most Westerly Southwest corner of said called 50.000 acre tract;

THENCE, N 89° 28' 02" E, along and with a South line of said 50.000 acre tract and the North line of said 328.97 acre tract, a distance of 2,606.63 feet to a 1/2-inch iron rod found the most Northerly Northeast corner of said 328.97 acre tract and a reentrant corner of said 50.000 acre tract;

THENCE, S 02° 19' 14" E, a distance of 1,320.59 feet along and with an East line of said 328.97 acre tract and a West line of said 50.000 acre tract to a 1/2-inch iron rod found for a Southwest corner of said 50.000 acre tract and a reentrant corner of said 328.97 acre tract;

THENCE, N 88° 28' 35" E, a distance of 1,271.46 feet along and with a North line of said 328.97 acre tract and a South line of said 50.000 acre tract to a 2-inch iron pipe found for the Northwest corner of a called 55.557 acre tract of land described in an instrument to Poarch/Swinbank Limited Partnership filed for record under H.C.C.F. No. Z064160, same being the most Easterly Northeast corner of the herein described tract;

THENCE, S 02° 05' 40" E, a distance of 1,475.48 feet along and with the East line of said 328.97 acre tract and the West line of said 55.557 acre tract to a 2-inch iron pipe found for the Southwest corner of said 55.557 acre tract and the Northwest corner of a called 9.316 acre tract of land described in an instrument to Rose E. Price and David A. Price filed for record under H.C.C.F. No. X561406;

THENCE, S 07° 16' 57" W, along and with the West line of said 9.316 acre tract, at distance of 1,068.19 feet pass through a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for reference in the North right-of-way line of Longenbaugh Road (60-foot width) and continuing for a total distance of 1,098.60 feet to a point for corner in the centerline of said Longenbaugh Road, same being in the South line of said Section 57 and in the North line of Section 58, Block 2 of the H. & T.C.R.R. Company Survey (George Spencer Survey), Abstract No.1368;

THENCE, S 87° 51' 45" W, a distance of 3,702.47 feet along the centerline of said Longenbaugh Road, the South line of said Section 57 and the North line of said Section 58 to a point for corner from which a railroad spike found in the centerline of said Katy-Hockley Cut-Off Road and said Longenbaugh Road for the Northeast corner of Section 69 Block 2 of the H. & T.C.R.R. Company Survey Abstract No. 459, same being the Southwest corner of Section 57, Block 2 of the H. & T.C.R.R. Company Survey, Abstract No. 443, the Northwest corner of Section 58, Block 2 of the H.& T. C. R.R. Company Survey (George Spencer Survey), Abstract No. 1368 and the Southeast corner of the J.E. Cabaniss Survey, Abstract No. 1470 which is out of Section 70, Block 2 of the H. & T.C.R.R. Company Survey bears N 87° 51' 45" W, 30.00 feet (Control Monument);

THENCE, N 02° 06' 22" W, along and with the East right-of-way line of said Katy-Hockley Cut-Off road, at a distance of 30.00 feet passing through a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for reference and continuing for a total distance of 3,966.47 feet to the **POINT OF BEGINNING** and containing 308.10 acres of land.

Bearing orientation is based on the Texas Coordinate System, South Central Zone 4204, NAD-83.

A survey titled "LAND TITLE SURVEY OF 1,492.09 ACRES OF LAND SITUATED IN BLOCK 2, H. & T. C. R.R. CO. SURVEY SECTION 69, ABSTRACT NO. 459, SECTION 57, ABSTRACT NO. 443 J.E. CABANISS SURVEY (SECTION 70, ABSTRACT NO. 1470) GEORGE SPENCER SURVEY (SECTION 58, ABSTRACT NO. 1368) HARRIS COUNTY, TEXAS" has been prepared in conjunction with this metes and bounds description.

DESCRIPTION OF A 556.35 ACRE TRACT OF LAND
SITUATED IN SECTION 58, BLOCK 2 OF THE H. & T. C.R.R. COMPANY SURVEY
(GEORGE SPENCER SURVEY) ABSTRACT NO. 1368
HARRIS COUNTY, TEXAS

BEING a 556.35 acre tract of land situated in Section 58, Block 2 of the H. & T.C.R.R. Company Survey (George Spencer Survey), Abstract No.1368 of Harris County, Texas and being a portion of a called 240 acre tract of land described in an instrument to Jesse Freeman filed for record under Volume 599, Page 501 of the Harris County Deed Records (H.C.D.R.), said 240 acres also described in an instrument to Harold Lee Freeman, Trustee, filed for record under Harris County Clerk's File No. (H.C.C.F. No.) R096787 and a portion of a called 320 acre tract of land described in an instrument to Jesse Freeman filed for record under Volume 3515, Page 383 H.C.D.R., said 320 acre tract also described in an instrument filed for record under H.C.C.F. No. P110457, excluding the portion of said tracts lying within the right-of-way of Farm-to-Market Road 529 and Katy-Hockley Cut-Off Road, said 556.35 acre tract of land being more particularly described by metes and bounds as follows;

**BEGINNING** at a 4"x4" concrete monument (Control Monument) found in the North right-of-way line of Farm-to-Market Road 529 (H.C.C.F. No.C254043) (120-foot width) for the South corner of the Northwest cut-back of the intersection of Farm-to- Market Road 529 (H.C.C.F. No. C254043) and Porter Road;

THENCE, S 88° 19' 38" W, a distance of 1,847.77 feet along and with the North right-of-way line of said Farm-to-Market Road 529 (120-foot width) to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for an angle point;

THENCE, S 87° 54' 38" W, a distance of 677.08 feet along and with the North right-of-way line of said Farm-to-Market Road 529 to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner in the West line of said 320 acre tract, same being the Southeast corner of a called 72.792 acre tract of land described in an instrument to FM 529 Cut Off Ltd. filed for record under Harris County Clerk's File Number (H.C.C.F. No.) 20070284854 and from which a 5/8-inch iron rod with cap stamped "Kalkomey Surveying" bears S 01°51' 46" E, 0.60 feet;

THENCE, N 01° 51' 46" W, a distance of 1,223.28 feet along and with the East line of said 72.792 acre tract and the West line of said 320 acre tract to a 5/8-inch iron rod with cap stamped "Kalkomey Surveying" found for the Northeast corner of said 72.792 acre tract and the Southeast corner of said 240 acre tract;

THENCE, S 88° 32' 00" W, a distance of 2,605.40 feet along and with the North line of said 72.792 acre tract and the South line of said 240 acre tract to a 1/2-inch iron rod with cap stamped "Brown & Gay" set for corner in the East right-of-way line of said Katy-Hockley Cut-Off Road (60-foot width, East 10-feet Vol. 832, Pg. 4, Harris County Deed Records) and from which a 5/8-inch iron rod with cap stamped "Kalkomey Surveying" bears N 88° 32' E, 0.95 feet;

THENCE, N 02° 06' 22" W, along and with the East right-of-way line of said Katy-Hockley Cut-Off Road, at a distance of 3,940.55 passing through a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner at the intersection of the East right-of-way line of said Katy-Hockley Cut-Off Road and the South right-of-way line of Longenbaugh Road (60-foot width) and continuing for a total distance of 3,970.55 to a point for corner in the centerline of said Longenbaugh Road and from which a railroad spike found in the centerline of said Katy-Hockley Cut-Off Road and said Longenbaugh Road for the Northeast corner of Section 69 Block 2 of the H. & T.C.R.R. Company Survey Abstract No. 459, same being the Southwest corner of Section 57, Block 2 of the H. & T.C.R.R. Company Survey, Abstract No. 443, the Northwest corner of Section 58, Block 2 of the H.& T. C. R.R. Company Survey (George Spencer Survey), Abstract No. 1368 and the Southeast corner of the J.E. Cabaniss Survey, Abstract No. 1470 which is out of Section 70, Block 2 of the H. & T.C.R.R. Company Survey bears N 87° 51' 45" W, 30.00 feet (Control Monument);

THENCE, N 87° 51' 45" E, along and with the South line of said Section 57 and the North line of said Section 58 a distance of 5,256.01 feet to a 1/2-inch iron rod found (Control Monument) in the intersection of Longenbaugh Road and Porter Road (60-foot width) and being the Southeast corner of said Section 57, the Northeast corner of said Section 58, the Southwest corner of Section 50 (J.E. Garrett Survey, A-1396) and the Northeast corner of Sec. 49 (H&T.C.R.R. Co. Survey A-441) and from which a bolt found in asphalt bears S 86° 46' 45" W, 30.07 feet;

THENCE, S 02° 02' 45" E, a distance of 5,270.90 feet along and with the centerline of said Porter Road, the East line of said Section 58 and the West line of said Section 49 to a point for corner in the North line of a 30-foot strip of land described in Volume "M", Page 229-234 of the Harris County Commissioner's Court Minutes;

THENCE S 88° 19' 38"W, a distance of 30.00 feet along and with the North line of said 30-foot strip to a point for corner in the West right-of-way line of said Porter Road;

THENCE N 02° 02' 45" W, a distance of 125.12 feet along the West right-of-way line of said Porter Road a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for corner and being the North end of the Northwest cut-back corner at the intersection of Farm-to-Market Road 529 (H.C.C.F. No. C254043) and Porter Road, a from which 4x4-inch broken concrete monument bears S 38° 36' 25" W, 3.63 feet;

THENCE, S 43° 18' 01" W, a distance of 134.45 feet along and with the Northwest cut-back at the intersection of Farm-to-Market Road 529 and Porter Road to the **POINT OF BEGINNING** and containing 556.35 acres of land.

Bearing orientation is based on the Texas Coordinate System, South Central Zone 4204, NAD-83.

A survey titled "LAND TITLE SURVEY OF 1,492.09 ACRES OF LAND SITUATED IN BLOCK 2, H. & T. C. R.R. CO. SURVEY SECTION 69, ABSTRACT NO. 459, SECTION 57, ABSTRACT NO. 443 J.E. CABANISS SURVEY (SECTION 70, ABSTRACT NO. 1470) GEORGE SPENCER SURVEY (SECTION 58, ABSTRACT NO. 1368) HARRIS COUNTY, TEXAS" has been prepared in conjunction with this metes and bounds description.

**TRACT III:**

DESCRIPTION OF A 18.00 ACRE TRACT OF LAND SITUATED
IN THE H.&T.C.R.R. CO. SURVEY BLOCK 2, SECTION 31
ABSTRACT NUMBER 446, HARRIS COUNTY, TEXAS

BEING an 18.00 acre (784,080 square foot) tract of land situated in the H. & T. C.R.R. Company Survey, Block 2, Section 31 Abstract No. 446 of Harris County, Texas and being all of a called 18 acre tract of land as described in a conveyance to Santa Catalina School filed for record under Harris County Clerk's File Number (H.C.C.F. No.) F392543, said 18.00 acre tract of land being more particularly described by metes and bounds as follows:

**COMMENCING** at a 5/8-inch iron rod with aluminum cap (Control Monument) stamped "Texas Department of Transportation" found for the Southwest corner of a called 5.322 acre tract of land described in an instrument to the County of Harris filed for record under H.C.C.F. No. 20090407248, same also being in the West right-of-way line of Stockdick School Road (No deed of record found width varies, as occupied) same also being in an East line of a called 1,188.05 acre tract of land described in an instrument to Nash FM 529 LLC filed for record under H.C.C.F. No. 20120601195;

THENCE N 87° 53' 05" E, a distance of 29.01 feet along and with the South line of said 5.322 acre tract and a North line of said 1,188.05 acre tract to a railroad spike found in asphalt in Stockdick School Road for the Southeast corner of said 5.322 acre tract and a Northeast corner of said 1,188.05 acre tract;

THENCE S 02° 04' 14" E, a distance of 63.43 feet along and with an East line of said 1,188.05 acre tract to a 60D nail with shiner stamped "Terra Surveying" found (Control Monument) in asphalt in Stockdick School Road for the **POINT OF BEGINNING,** same being the Northeast corner of the herein described 18.00 acre tract and a Southeast corner of said 1,188.05 acre tract;

THENCE, S 02° 04' 14" E, a distance of 660.00 feet along and with the East line of said 18 acre tract to a Mag Nail for the Southeast corner of said 18 acre tract and the Northeast corner of a called 18 acre tract of land described in an instrument to San Domenico School filed for record under H.C.C.F. No. F392545;

THENCE, S 87° 55' 46" W, a distance of 1,188.00 feet along and with the South line of said 18 acre to Santa Catalina School tract and the North line of said 18 acre San Domenico School tract to a 1/2-inch iron pipe with cap stamped "Brown & Gay" set for the Southwest corner of said 18 acre to Santa Catalina School tract and the Northwest corner of said 18 acre San Domenico School tract;

THENCE, N 02° 04' 14" W, a distance of 660.00 feet along and with the West line of said 18 acre Santa Catalina School tract and an East line of said 1,188.05 acre tract to a 5/8-inch iron rod with cap stamped "Terra Surveying" (Control Monument) found for the Northwest corner of said 18 acre Santa Catalina School tract and a reentrant corner of said 1,188.05 acre tract;

THENCE, N 87° 55' 46" E, a distance of 1,188.00 feet along and with the North line of said 18 acre Santa Catalina School tract and a South line of said 1,188.05 acre tract to the **POINT OF BEGINNING** and containing 18.00 acres (784,080 square feet) of land.

Bearing orientation is based on the Texas State Plane Coordinate System, South Central Zone 4204, NAD-83 and is referenced to monuments as cited herein and as shown on a survey plat of even date prepared by the undersigned in conjunction with this metes and bounds description.

RP-2016-80476

# Pages 81

02/29/2016 07:58 AM

e-Filed & e-Recorded in the

Official Public Records of

HARRIS COUNTY

STAN STANART

COUNTY CLERK

Fees $332.00

RP-2016-80476

RECORDERS MEMORANDUM
This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.

COUNTY CLERK
HARRIS COUNTY, TEXAS