

# **MCKINNEY CROSSING CONDOMINIUMS**

## **I. Governance**

- 1) RECORDED [KB Home] McKinney Crossing Condominiums - Development Area Declaration of Condominium Regime
- 2) RECORDED [KB Home] McKinney Crossing Condominiums - Notice of Applicability

## **II. Corporate**

- 1) Filed - McKinney Crossing Condominium - Certificate of Formation
- 2) Executed [KB Home] McKinney Crossing Condominiums - Organizational Consent
- 3) RECORDED [KB Home] McKinney Crossing Condominiums - Community Manual
- 4) RECORDED [KB Home] McKinney Crossing Condominiums - Management Certificate



*Dana DeBeauvoir*

Dana DeBeauvoir, County Clerk  
Travis County, Texas

Apr 21, 2021 11:47 AM Fee: \$490.00

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\*Electronically Recorded\*



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**DEVELOPMENT AREA DECLARATION OF  
CONDOMINIUM REGIME FOR  
MCKINNEY CROSSING CONDOMINIUMS  
(A Residential Condominium in Travis County, Texas)**

Declarant: **KB HOME LONE STAR INC.**, a Texas corporation

THE PROPERTY SUBJECT HERETO IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF THAT CERTAIN MCKINNEY CROSSING MASTER COVENANT [RESIDENTIAL], RECORDED UNDER DOCUMENT NO. 2020027954 IN THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

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## DEVELOPMENT AREA DECLARATION OF CONDOMINIUM REGIME FOR MCKINNEY CROSSING CONDOMINIUMS

**KB HOME LONE STAR INC.**, a Texas corporation ("**Declarant**"), is the owner of certain real property located in Travis County, Texas, as more particularly described on Exhibit "A", attached hereto and incorporated herein, together with all Improvements thereon and all easements, rights, and appurtenances thereto (the "**Land**"). The Land is hereby submitted to the terms and provisions of the Texas Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating McKinney Crossing Condominiums.

**A.** Pursuant to that one certain Notice of Applicability of McKinney Crossing Master Covenant [Residential], recorded under Document No. 2021021409 in the Official Public Records of Travis County, Texas, the Land is subject to the terms and provisions of that certain McKinney Crossing Master Covenant [Residential], recorded under Document No. 2020027954 in the Official Public Records of Travis County, Texas (the "**Master Covenant**").

**B.** The Master Covenant permits the Declarant to file Development Area Declarations applicable to specific Development Areas, as those terms are used and defined in the Master Covenant, which shall be in addition to the covenants, conditions, and restrictions of the Master Covenant.

A Development Area is a portion of the McKinney Crossing residential development which has actually been made subject to the terms and provisions of the Master Covenant and a Development Area Declaration. This Declaration constitutes a Development Area Declaration under the Master Covenant. A Development Area Declaration includes specific restrictions which apply to the Development Area. In order to determine what restrictions apply to your Unit, you must consult the terms and provisions of the Master Covenant, the terms and provisions of any notice of applicability covering your Unit, and this Declaration.

**C.** Declarant intends for this Declaration to serve as one of the Development Area Declarations permitted under the Master Covenant and desires that the Land described and identified herein shall constitute one of the Development Areas which is permitted, contemplated and defined under the Master Covenant.

**D.** Declarant desires to create upon the Land a residential community and carry out a uniform plan for the improvement and development of the Land for the benefit of the present and future owners thereof.

**E.** Declarant desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Land to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Land, and each owner thereof, which shall be in addition to the covenants, conditions, and restrictions set forth in the Master Covenant.

**NOW, THEREFORE**, it is hereby declared that: (i) the Land will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, including the representations and reservations of Declarant, set forth on Appendix "A", attached hereto, which will run with the Land and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; (ii) each contract or deed which may hereafter be executed with regard to the Land, or any portion thereof, shall 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; and (iii) this Declaration shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Covenant. In the event of a conflict between the terms and provision of this Declaration and the Master Covenant, the terms of the Master Covenant will control.

## **ARTICLE 1**

### **DEFINITIONS**

Unless otherwise defined in this Declaration, terms defined in Section 82.003 of the Act have the same meaning when used in this Declaration. The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1 **"Act"** means Chapter 82 of the Texas Property Code, the Texas Uniform Condominium Act, as it may be amended from time to time.

1.2 **"Applicable Law"** means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes and ordinances specifically referenced in the Documents are "Applicable Law" on the date of the Document, and are not intended to apply to the Property 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.

1.3 **"Assessment"** means any charge levied against a Unit or Owner by the Association, pursuant to the Documents, the Act, or Applicable Law, including but not limited to Regular Assessments, Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments as defined in *Article 6* of this Declaration.

1.4 **"Association"** means McKinney Crossing Condominium Community, Inc., a Texas non-profit corporation, the Members of which shall be the Owners of Units within the Regime. The term "Association" shall have the same meaning as the term "property owners association" in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, the Act, and Applicable Law.

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

- 1.6 **"Building"** means a residential dwelling constructed within a Unit.
- 1.7 **"Bylaws"** mean the bylaws of the Association, as they may be amended from time to time.
- 1.8 **"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.
- 1.9 **"City"** means the City of Austin, Texas, a home rule municipality located in Travis County, Texas.
- 1.10 **"Common Element"** means all portions of the Property save and except the Units. All Common Elements are **"General Common Elements"** except if such Common Elements have been allocated as **"Limited Common Elements"** by this Declaration for the exclusive use of one or more but less than all of the Units.
- 1.11 **"Common Expense"** or **"Common Expenses"** means the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Regime, including but not limited to those expenses incurred for the maintenance, repair, replacement and operation of the Common Elements.
- 1.12 **"Community Manual"** means the community manual, if any, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the Regime. The Community Manual may include the Bylaws and Rules and policies governing the Association as the Board determines to be in the best interest of the Association, in its sole and absolute discretion. The Community Manual may be amended, from time to time, by a Majority of the Board; provided, however, that during the Development Period, any amendment to the Community Manual must be approved in advance and in writing by the Declarant.
- 1.13 **"Declarant"** means **KB HOME LONE STAR INC.**, a Texas corporation. Notwithstanding any provision in this Declaration 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 and duties under this Declaration 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 Declaration.
- 1.14 **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix "A" of this Declaration. The duration of the Declarant Control Period shall expire upon and shall not exceed the date that is the earlier to occur of (i) one hundred and twenty (120) days after title to seventy-five percent (75%) of the maximum Units that may be created hereunder have been conveyed to Owners other than Declarant; or (ii) five (5) years after the date this Declaration is Recorded.
- 1.15 **"Declaration"** means this document, as it may be amended from time to time.
- 1.16 **"Development Period"** means the five (5) year period beginning on the date this Declaration is Recorded, during which Declarant has certain rights as more particularly described

on Appendix "A", attached hereto, including rights related to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period by Recording a notice of termination.

During the Development Period, Appendix "A" has priority over the terms and provisions of this Declaration.

1.17 **"Documents"** mean, singly or collectively as the case may be, this Declaration, the Plat and Plans, attached hereto as Attachment "1", the Certificate, Bylaws, the Community Manual, and the Rules of the Association, as each may be amended from time to time. An appendix, attachment, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.18 **"Fence Maintenance Services"** means the repair and maintenance of the Perimeter Fencing.

1.19 **"General Common Elements"** mean Common Elements which are not Limited Common Elements. General Common Elements refer to those portions of the Property that are designated as "GCE", "General Common Element", "General Common Area", "Common Area", or by the notation "General Common Elements", "GCE", "General Common Area", "Common Area", or "Common Areas" on Attachment "1", attached hereto.

1.20 **"Improvement"** means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, Buildings, outbuildings, storage sheds, patios, recreational facilities, swimming pools, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.21 **"Limited Common Elements"**, if any, mean those portions of the Property reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are designated as "LCE", or "Limited Common Elements", or "Limited Common Areas" on Attachment "1", attached hereto and as provided in *Section 5.3* of this Declaration.

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

1.23 **"Master Association"** means the McKinney Crossing Master Community, Inc., a Texas non-profit corporation.

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

1.25 **"Master Plan Documents"** means that certain Master Covenant; the Certificate of Formation of the Master Association, the Bylaws of the Master Association, the Community Manual

as defined and adopted pursuant to the Master Covenant, and the Notice of Applicability of McKinney Crossing Master Covenant [Residential], recorded under Document No. 2021021409 in the Official Public Records of Travis County, Texas.

1.26 **“McKinney Crossing Reviewer”** means the architectural control committee created pursuant to the Master Covenant to establish architectural guidelines, to review and approve plans for the construction of Improvements upon the Property, and to carry out its duties as set forth in the Master Covenant.

1.27 **“Member”** means a member of the Association, each Member being an Owner of a Unit, unless the context indicates that member means a member of the Board or a member of a committee of the Association.

1.28 **“Mortgagee”** means a holder, insurer, or guarantor of a purchase money mortgage secured by a Recorded senior or first deed of trust lien against a Unit.

1.29 **“Occupant”** means any Person, including any Owner, tenant or otherwise having a right to occupy or use all or any portion of a Unit for any period of time.

1.30 **“Owner”** means a holder of Recorded fee simple title to a Unit. Declarant is the initial Owner of all Units. Mortgagees who acquire title to a Unit through a deed in lieu of foreclosure or through judicial or non-judicial 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.

1.31 **“Perimeter Fencing”** means the fencing located along or near the perimeter of the Regime, including the fencing located along the back boundary of the Units.

1.32 **“Person”** means any individual or entity having the legal right to hold title to real property.

1.33 **“Plat and Plans”** means the plat and plans attached hereto as Attachment “1”, as changed, modified, or amended in accordance with this Declaration.

1.34 **“Property”** means certain real property located in Travis County, Texas, as more particularly described on Exhibit “A” attached hereto and incorporated herein, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and includes every Unit and Common Element thereon.

1.35 **“Record, Recordation, Recorded and Recording”** means filing the referenced instrument or document in the Official Public Records of Travis County, Texas.

1.36 **“Regime”** means the Property, Units, General Common Elements, and Limited Common Elements that comprise the condominium regime established under this Declaration.

1.37 **“Rules”** means rules and regulations of the Association adopted in accordance with the Documents or the Act. The initial Rules may be adopted by Declarant (as part of the Community Manual, or otherwise) for the benefit of the Association.

1.38 “**Underwriting Lender**” means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Administration (FHA) Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), or the Veterans Administration. Use of the term “Underwriting Lender” in this Declaration, and the specific instructions listed in this definition, may not be construed as a limitation on an Owner’s financing options or as a representation that the Property is approved by any specific institution.

1.39 “**Unit**” means a physical portion of the Property designated by this Declaration for separate ownership, the boundaries of which are shown on the Plat and Plans attached hereto as Attachment “1”, as further described in *Section 5.2* of this Declaration.

## ARTICLE 2

### **PROPERTY SUBJECT TO DOCUMENTS**

2.1. **Subject To Documents.** The Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant’s representations and reservations as set forth on Appendix “A”, attached hereto, which run with the Property, bind all Persons having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. **Adjacent Land Use.** Declarant makes no representation of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property.

2.3. **Additional Property.** Additional real property may be annexed into the Regime and subjected to the Declaration and the jurisdiction of the Association with the approval of Owners holding at least sixty-seven percent (67%) of the total votes in the Association, or, during the Development Period, unilaterally by Declarant as permitted in Appendix “A”. Annexation of additional property is accomplished by the Recording of a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may include a description of the Units added to the Regime.

2.4. **Recorded Easements and Licenses.** In addition to the easements and restrictions contained in this Declaration, the Property is subject to all easements, licenses, leases, and encumbrances of record, and as shown on a Recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded easements, licenses, leases, and encumbrances. Each Owner further agrees to maintain any easement that crosses the Owner’s Unit and for which the Association does not have express responsibility.

2.5. **Common Elements.** The Common Elements of the Property consist of all of the Property, save and except the Units. The designation of Common Elements is determined by

this Declaration. The Declarant may install, construct, or authorize certain Improvements on Common Elements in connection with the development of the Property, and the cost thereof is not a Common Expense of the Association. Thereafter, all costs attributable to Common Elements, including maintenance, insurance, and enhancements, are automatically the responsibility of the Association, unless this Declaration elsewhere provides for a different allocation for a specific Common Element. Notwithstanding the foregoing, portions of the Common Elements designated as Master Maintained Areas on the Plat and Plans shall be maintained by the Master Association, rather than the Association, in accordance with *Section 3.13* hereof.

### ARTICLE 3

#### **PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS**

3.1. **General.** In addition to other easements, rights and restrictions established by the Documents, the Property is subject to the easements, rights and restrictions contained in this Article.

3.2. **Owner's Easement of Enjoyment.** Every Owner is granted a right and easement of enjoyment over the General Common Elements and use of Improvements therein, subject to other limitations, rights and easements contained in the Documents. An Owner who does not occupy a Unit delegates this right of enjoyment to the Occupants of his Unit, and is not entitled to use the General Common Elements. In addition, every Owner is granted an easement over the General Common Elements, to the extent necessary, to provide access to an Owner's Unit and for utilities serving the Owner's Unit. The right of access for necessary ingress and egress to an Owner's Unit cannot be suspended by the Board for violations of the Documents or nonpayment of Assessments.

3.3. **Owner's Maintenance Easement.** Each Owner is hereby granted an easement over and across any adjoining Unit and Common Elements to the extent reasonably necessary to maintain or reconstruct such Owner's Unit, subject to the consent of the Board and the consent of the Owner of the adjoining Unit, or the consent of the Board in the case of Common Elements, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Unit or Common Element. Requests for entry into an adjoining Unit must be made to the Board and the Owner of such Unit in advance. The consent of the adjoining Unit Owner will not be unreasonably withheld; however, the adjoining Unit Owner may require that access to its Unit be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Elements for the purpose of maintaining or reconstructing any Unit must be approved in advance and in writing by the Board. The Board may require that access to the Common Elements be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. The Board may require that the Owner abide by additional reasonable rules with respect to use and protection of Units and the

Common Elements during any such maintenance or reconstruction. If an Owner damages an adjoining Unit or Common Element in exercising the easement granted hereunder, the Owner will be required to restore the Unit and/or Common Element to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Board or the Owner of the damaged Unit.

Prior to commencing any work upon a Unit which requires access to, over or through the Common Elements or other Units, the Person performing such work must deliver to the Board, in form satisfactory to the Board:

- (i) releases of the Board and the Association for all claims that such Person may assert in connection with such work;
- (ii) indemnities of the Board and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Elements or other Units;
- (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and
- (iv) all other information and assurances which the Board may reasonably require.

3.4. **Owner's Ingress/Egress Easement.** Each Owner is hereby granted a perpetual easement over the Property, as may be reasonably required, for vehicular and pedestrian ingress to and egress from his Unit or the Limited Common Elements assigned thereto.

3.5. **Owner's Encroachment Easement.** Every Owner is granted an easement for the existence and continuance of any encroachment by his Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a Building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands. The easement granted herein is not intended to permit the continuance of any Improvement installed by an Owner not otherwise approved in advance by the McKinney Crossing Reviewer.

3.6. **Association's Access Easement.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Elements and the Owner's Unit and all Improvements thereon for the following purposes:

- (i) To perform inspections and/or maintenance that is permitted or required of the Association by the Documents or by Applicable Law.
- (ii) To perform maintenance that is permitted or required of the Owner by the Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance.
- (iii) To enforce the Documents.
- (iv) To exercise self-help remedies permitted by the Documents or by Applicable Law.
- (v) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- (vi) To respond to emergencies.
- (vii) To perform any and all functions or duties of the Association as permitted or required by the Documents or by Applicable Law.

3.7. **Utility Easement.** Declarant, during the Development Period, and the Association thereafter, may grant permits, licenses, and easements over the Common Elements for utilities, and other purposes reasonably necessary for the proper operation of the Regime. Declarant, during the Development Period, and the Association thereafter, may grant easements over and across the Units and Common Elements to the extent necessary or required to provide utilities to Units; provided, however, that such easements will not unreasonably interfere with the use of any Unit for residential purposes. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board and may not unreasonably interfere with the use of a Unit for residential purposes. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

**NOTICE**  
**PLEASE READ CAREFULLY THE FOLLOWING PROVISIONS ENTITLED  
 “SECURITY” AND “INJURY TO PERSON OR PROPERTY”. THE PROVISIONS  
 LIMIT THE RESPONSIBILITY OF DECLARANT AND THE ASSOCIATION FOR  
 CERTAIN CONDITIONS AND ACTIVITIES.**

3.8. **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Occupant acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not

providers, insurers, or guarantors of security within the Property. Each Owner and Occupant acknowledges and accepts that it is the sole responsibility of the Owner or Occupant to provide security for their own person and property, and each Owner and Occupant assumes all risks for loss or damage to same. Each Owner and Occupant further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Occupant relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglary, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. **Each Owner and Occupant acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of any failure to provide adequate security or the ineffectiveness of security measures undertaken.**

3.9. **Injury to Person or Property.** Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Occupant or their guests: (i) to supervise minor children or any other Person; (ii) to fence or otherwise enclose any Limited Common Element, General Common Element, or other Improvement; or (iii) to provide security or protection to any Owner, Occupant, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Unit, each Owner agrees that the limitations set forth in this Section are reasonable and constitute the exercise of ordinary care by the Association and Declarant. **Each Owner agrees to indemnify and hold harmless the Association and Declarant, and Declarant's agents from any claim of damages, to Person or property arising out of an accident or injury in or about the Regime to the extent and only to the extent caused by the acts or omissions of such Owner, his tenant, his guests, employees, contractors, or invitees to the extent such claim is not covered by insurance maintained by the Association at the time of such accident or injury.**

3.10. **Easement to Inspect and Right To Correct.** Until the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, or condition that may exist on any portion of the Property, including the Units, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising the easement reserved hereunder, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a utility panel may be warranted by a change of circumstance, imprecise siting, or desire to comply more fully with Applicable Law. This Section may not be construed to create a duty for Declarant or the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant, and the Declarant's architect, engineer, other design professionals, builder, and general contractor an easement of

access and entry over, across, under, and through the Property, including without limitation, all Common Elements and each Unit for the purposes contained in this Section.

3.11. **Parking.** Declarant reserves the right to designate and assign portions of the General Common Elements as parking space(s) for the exclusive use of any Owner. The assignment of parking spaces within the General Common Elements not specifically designated by the Declarant for the exclusive use of an Owner will be under the exclusive control and administration of the Declarant until the expiration or termination of the Development Period. The Association may thereafter assign parking spaces to any Owner or may use such parking spaces in a manner determined by the Board, but subject to any assignment previously made by the Declarant. Any designation and assignment of General Common Elements as parking will be memorialized by a written "assignment of parking" executed by an authorized representative of the Declarant (or the Association upon expiration or termination of the Development Period) which shall identify the parking space(s) and the Unit assigned thereto. Any designation and assignment of General Common Elements as parking shall be made a part of the corporate records of the Association, will be considered an agreement between the Association and such Owner with regard to use of the parking spaces so assigned, and may not be terminated or modified without the consent of the Declarant (or a Majority of the Board if the Development Period has expired or been terminated) and the Owner of the Unit to which the parking space was assigned. Notwithstanding anything to the contrary stated herein, with respect to any handicap parking spaces, such handicap parking spaces shall be assigned subject to the rights of the Declarant, during the Development Period, or the Association thereafter, to require the Owner to whose Unit such handicap parking space has been assigned (herein after, the "**Original Assignee**") to grant a license to use such handicap parking space to another Owner (hereinafter, the "**Disabled Owner**"), provided that: (i) the Disabled Owner (or Occupant) qualifies under Applicable Law to use a handicap parking space in public facilities; (ii) the Disabled Owner provides the Original Assignee with a license to use the Disabled Owner's parking space; and (iii) at such time as the Disabled Owner (or Occupant) no longer qualifies as provided in subsection (i) hereof, the license shall automatically expire and the Original Assignee and the Disabled Owner shall each use their respective, original, assigned parking spaces. Declarant and the Association hereby disclaim any representation or warranty regarding use of the handicap parking spaces in a manner that is contrary to, or in violation of, any Applicable Law.

3.12. **Water Quality Facilities, Drainage Facilities and Drainage Ponds.** The Property includes one or more water quality facilities, sedimentation, drainage and detention facilities, or ponds which serve all or a portion of the Property. Declarant, the Association or their assignees will be obligated to inspect, maintain and administer such water quality facilities, drainage facilities, and drainage ponds in good and functioning condition and repair. Each Owner is advised that the water quality facilities, sedimentation, drainage and detention facilities and ponds are an active utility feature integral to the proper operation of the Regime and may periodically hold standing water. Each Owner is advised that entry into the water

quality facilities, sedimentation, drainage and detention facilities or ponds may result in injury and is a violation of the Rules.

3.13. **Master Maintained Areas and Easement for Access.** The Master Association, by its execution of this Declaration, has accepted responsibility for the maintenance of portions of the Common Elements within the Regime identified on the Plat and Plans (collectively, the “**Master Maintained Areas**”). The Master Association will maintain, repair and replace the Master Maintained Areas. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, hereby grants to the Master Association an easement of access and entry over, across, under and through the Property, including without limitation, the Master Maintained Areas, as may be necessary or convenient for the Master Association to maintain and repair the Master Maintained Areas. The Master Maintained Areas comprise part of the “Common Area” as such term is defined in the Master Covenant. The costs incurred, or estimated to be incurred, by the Master Association to operate, maintain, repair, including replacement reserves, will be discharged through assessment levied by the Master Association in accordance with the Master Covenant. The Declarant during the Development Period, and after expiration of the Development Period the Board, with the advance written consent of the Master Association, may from time to time add to, subtract from, or otherwise modify the Master Maintained Area by amendment to this Declaration and the Plat and Plans attached hereto or by Recording a separate instrument.

#### **ARTICLE 4** **DISCLOSURES**

This Article discloses selective features of the Regime that may not be obvious to potential Owners and Occupants. Because features may change over time, no disclosure in this Article should be relied upon without independent confirmation.

4.1. **Service Contracts.** In connection with construction of the Unit, the Unit may have been wired or fitted for one or more services to be provided by vendors to the Owner on a contract basis, such as intrusion monitoring and cable television. In exchange for such installations, Declarant may have contracted on behalf of the Owner for a period of service to the Owner’s Unit. In that event, whether or not an Owner chooses to use the service, the Owner may be required to pay the Unit’s share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Regular Assessments or Individual Assessments. **However, neither the Declarant nor the Association is the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.**

4.2. **Streets Within the Property.** The streets located outside the Property are public streets and maintained by applicable governmental authorities. Certain streets within the Property are private and are General Common Elements (the "**Private Streets**"), and the Association shall be obligated to maintain the Private Streets, together with street lights and other appurtenances located thereon, as a common expense and payable through Regular Assessments, in a good and functioning condition and in compliance with Applicable Law. The City shall have the power and the authority to judicially enforce the covenants herein requiring the Association to maintain and repair the Private Streets and to assess and collect adequate funds to fund the maintenance and repair of the Private Streets (the "**Private Street Covenants**"). The City is hereby designated as a representative under Section 202.004(b), Texas Property Code, and may enforce the Private Street Covenants by specific performance or other equitable legal remedy in any court of competent jurisdiction, and the City shall have the right to recover any attorneys' fees and other expenses incurred in such judicial enforcement. The City is hereby granted an easement over and across the Private Streets as is necessary and required to enforce the Private Street Covenants. This paragraph shall not create in the City and affirmative duty to police, control, or enforce the Private Street Covenants or to maintain the Private Streets. The Association, acting through the Board has the express authority to adopt, amend, repeal, and enforce the rules, regulations and procedures for use of Private Streets, including but not limited to: (i) identification of vehicles used by Owners, Occupants and their guests; (ii) designation of parking or no-parking areas; (iii) limitations or prohibitions on curbside parking; (iv) removal or prohibition of vehicles that violate applicable Rules; and (v) fines for violations of applicable Rules. Private Streets located within the Property shall provide perpetual access for police and other emergency vehicles, public and private utility maintenance and service personnel, solid waste collection services, the U.S. Postal Service, and government employees in pursuit of their official duties. Access to the Private Streets for the persons and entities referenced in the preceding sentence shall be reasonably provided by the Association.

4.3. **Adjacent Thoroughfares.** The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

4.4. **Zoning.** No representations are made regarding the zoning of adjacent property. The zoning and use of adjacent property may change in the future.

4.5. **Outside Conditions.** Since in every neighborhood there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Property that an Owner or Occupant may find objectionable, and it shall be the sole responsibility of an Owner or Occupant to become acquainted with neighborhood conditions that could affect the Property and the Unit.

4.6. **Concrete.**

4.6.1. **Cracks.** Minor cracks in poured concrete, including foundations, sidewalks, driveways and patios, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and movement.

4.6.2. **Exposed Floors.** This Section applies to Units with exposed concrete floors. This notice is given because some Owners are inexperienced with concrete flooring. In deciding whether, when, and how to fill cracks in exposed concrete floors, an Owner is hereby made aware that the color and texture of the fill material may not match the rest of the concrete floor. On some exposed concrete floors, fill materials make minor cracks more noticeable than if the cracks had been left in their natural state. In addition, an Owner is hereby made aware that any specification for polished concrete does not mean an Owner will be able to actually see his reflection in the floor.

4.7. **Construction Activities.** Declarant will be constructing portions of the Regime and engaging in other construction activities related to the construction of Units and Common Elements. Such construction activities may, from time to time, produce certain conditions within the Regime, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of this Declaration.

4.8. **Moisture.** The Unit may trap humidity created by general use and occupancy. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Occupants, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

4.9. **Encroachments.** Improvements may have been constructed on adjoining lands that encroach onto the Property. Declarant gives no representations or warranties as to property rights, if any, created by any such encroachments.

4.10. **Budgets.** Any budget prepared by or on behalf of the Association is based on estimated expenses only without consideration for the effects of inflation. The estimated expenses reflected on a budget may increase or decrease significantly when the actual expenses become known.

4.11. **Light and Views.** The natural light available to and views from a Unit can change over time due to among other things, additional development and the removal or addition of landscaping. **NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.**

4.12. **Schools.** No representations are being made regarding which schools may now or in the future serve the Unit.

4.13. **Sounds.** No representations are made that the Unit is or will be soundproof.

4.14. **Suburban Environment.** The Property is located in a suburban environment. Land adjacent or near the Property may contain or be developed to contain residential and commercial uses. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains and other generators of sound and vibrations typically found in an urban area. In addition to sound and vibration, there may be odors (from restaurants, food being prepared and dumpsters) and light (from signs, streetlights, other buildings, car headlights and other similar items).

4.15. **Water Runoff.** The Property may be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. In addition, water may pond on various portions of the Property having impervious surfaces.

4.16. **Unit Systems.** No representations are made that the systems in the Unit including, by way of example only, heating and air conditioning, and electrical systems will operate or perform at a level or standard greater than the minimum specifications of the manufacturer.

4.17. **Location of Utilities.** Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

4.18. **Wood.** Natural wood has considerable variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some irregularities will be apparent. Additionally, wood and wood products may be subject to warping, splitting, swelling and/or delamination. Wood floors may require more maintenance than some man-made materials.

4.19. **Stone.** Veins and colors of any marble, slate or other stone in the Unit, if any, may vary drastically from one piece of stone to another. Each piece is different. Marble, granite, slate and other stone can also have chips and shattering veins, which look like scratches. The thickness of the joints between marble, granite, slate and other stone and/or other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble and other stone finishes may be dangerously slippery and Declarant assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use of professionally approved and applied sealant is needed to ensure proper maintenance of the marble, granite, slate and other stone and it is the Owner's responsibility to properly maintain these materials. Marble, granite and other stone surfaces may scratch, chip or stain easily. Such substances, as part of their desirable noise attenuating properties, may flex or move slightly in order to absorb impacts. Such movement may in turn cause grout to crack or loosen or cause some cracking in the stone flooring which may need to be repaired as part of normal home maintenance.

4.20. **Marketing.** Declarant's use of a sales center and/or model residences or reference to other construction by Declarant is intended only to demonstrate the quality of possible finish details, the basic floor plans, and styles of residences available for purchase. The residence may not conform to any model home in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Likewise, any model home is intended only to demonstrate the size and basic architectural features of residences. An individual residence may not conform to the models displayed by Declarant. Declarant may have shown prospective purchasers model homes, floorplans, sketches, drawings, and scale models of homes or the project (collectively "**Promotional Aids**"). Owner understands and agrees that the Promotional Aids are conceptual, subject to change, for display purposes only, and may not be incorporated into the Property or a residence. Declarant retains the right to obtain and use photography of the Property (including any residence) for publication and advertising purposes.

## ARTICLE 5

### **UNITS, LIMITED COMMON ELEMENTS & ALLOCATIONS**

5.1. **Initial Submitted Units and Maximum Number of Units.** The Regime will initially consist of eighty-six (86) Units. During the Development Period, Declarant, as permitted in Appendix "A", has reserved the right to create a maximum of one-hundred (100) Units on the Property and additional property added to the Regime. To add Units to the Regime, Declarant during the Development Period may, from time to time, file an amendment to this Declaration creating such additional Units. To add additional Units to the Regime established by the Declaration, Declarant shall prepare, execute, and Record an amendment to this Declaration and the Plat and Plans which amendment will: (i) assign an identifying number to each new Unit; (ii) reallocate the Common Interest Allocation among all Units then existing within the Regime; (iii) describe any Limited Common Elements, if any, assigned to each new Unit; and (iv) with respect to new Units, include the information required by Section 82.055 and

Section 82.059(b) of the Act. To add additional property to the Regime, Declarant will Record a declaration of annexation, which will include a description of the additional real property. The declaration of annexation may also include a description of the Units added to the Regime if the Declarant elects to create Units upon Recordation of the declaration of annexation OR Declarant may elect to create additional Units or Common Elements on the additional property subsequent to the Recordation of the declaration of annexation. No assurance is given as to the dispersion of new Units, total number of new Units, or size of such Units.

## 5.2. Units.

5.2.1. Unit Boundaries. The boundaries and identifying number of each Unit are shown on the Plat and Plans attached hereto as Attachment "1".

5.2.2. What a Unit Includes. Each Unit includes the spaces and Improvements within the lower, upper, and lateral boundaries defined in *Section 5.2.1.* above, including without limitation the Building, the roof and foundation of the Building, landscaping, driveways, sidewalks, fences, yards, utility lines and meters and all other Improvements located within the Unit. In addition to the Building and the Improvements within the Unit, each Unit also includes Improvements, fixtures, and equipment serving the Building or Unit exclusively, whether located within, outside, or below the Unit, whether or not attached to or contiguous with the Building, including but not limited to any below-grade foundation, piers, retaining walls, fence, or other structural supports; plumbing, septic, and utility lines, pipes, drains, and conduits; landscape irrigation and subterranean components of plant material, including roots of trees on the Unit; and any other below-grade item that serves or supports the Building or Unit exclusively.

5.2.3. Building Size. The space contained within the vertical and horizontal boundaries of the Unit is not related to the size of the Building. A Building may only occupy a portion of a Unit in a location approved in advance by the McKinney Crossing Reviewer.

5.3. Initial Designation and Allocation of Limited Common Elements. Portions of the Common Elements may be allocated as Limited Common Elements on the Plats and Plans, attached hereto as Attachment "1", by use of "LCE" and the identifying number of the Unit to which the Limited Common Element is appurtenant, or by use of a comparable method of designation.

5.4. Subsequent Allocation of Limited Common Elements. A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only in accordance with the Act or the provisions of this Declaration. Declarant has reserved the right as set forth in Appendix "A" of this Declaration, to create and assign Limited Common Elements within the Property.

5.5. **Common Interest Allocation.** The percentage of interest in the Common Elements (the “Common Interest Allocation”) allocated to each Unit is set forth on Attachment “3”, and is assigned in accordance with a ratio of one (1) to the total number of Units. The same formula will be used in the event the Common Interest Allocation is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration. In the event an amendment or notice of annexation to this Declaration is filed which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units, the reallocation will be effective on the date such amendment or notice of annexation is Recorded.

5.6. **Common Expense Liabilities.** The percentage of liability for Common Expenses allocated to each Unit (the “Common Expense Liability”) and levied pursuant to Article 6 is equivalent to the Common Interest Allocation assigned to the Unit in accordance with *Section 5.5*.

5.7. **Votes.** One (1) vote is allocated to each Unit.

## **ARTICLE 6**

### **COVENANT FOR ASSESSMENTS**

6.1. **Regular Assessments.**

6.1.1. **Purpose of Regular Assessments.** Regular assessments are used for Common Expenses related to the recurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- (i) Maintenance, repair, and replacement, as necessary, of the General Common Elements and Improvements, equipment, signage, and property owned by the Association.
- (ii) Maintenance examination and report, as described in *Section 9.4*.
- (iii) Utilities billed to the Association.
- (iv) Services obtained by the Association and available to all Units.
- (v) Taxes on property owned by the Association and the Association’s income taxes.
- (vi) Management, legal, accounting, auditing, and professional fees for services to the Association.

- (vii) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- (viii) Insurance premiums and deductibles.
- (ix) Contributions to reserves.
- (x) Any other expense which the Association is required by Applicable Law or the Documents to pay, or which, in the opinion of the Board, is necessary or proper for the operation and maintenance of the Regime or for enforcement of the Documents.

6.1.2. Annual Budget-Regular. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association for each fiscal year. The budget will take into account the estimated income and Common Expenses of the Association for the year, contributions to reserves, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to each Owner, although failure to receive a budget or budget summary will not affect an Owner's liability for Assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

6.1.3. Basis of Regular Assessments. Regular Assessments will be based on the annual budget. Each Unit will be liable for its allocated share of the annual budget based on the Common Expense Liability allocated to such Unit. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined.

6.2. Supplemental Increases. If, during the course of a year, the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Supplemental increases will be apportioned among the Units in the same manner as Regular Assessments.

6.3. Special Assessments. The Board may levy one or more Special Assessments against all Units for the purpose of defraying, in whole or in part, Common Expenses not anticipated by the annual budget or reserves. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the acquisition of real property must be approved by Owners representing at least a Majority of the votes in the Association. Special Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.4. Utility Assessments. This Section applies to utilities serving the Units and consumed by the Owner and/or Occupants that are billed to the Association by the utility

provider, and which may or may not be sub-metered by or through the Association. The Board may levy a Utility Assessment against each Unit. The Board may allocate the Association's utility charges among the Units by any conventional and reasonable method. The levy of a Utility Assessment may include a share of the utilities for the Common Elements, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or sub-metering services. The Board may, from time to time, change the method of utility allocation, provided the method of allocation is reasonable.

6.5. **Individual Assessments.** The Board may levy an Individual Assessment against an Owner and the Owner's Unit. Individual Assessments may include, but are not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Documents; (iii) fines for violations of the Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and copies of the Documents; (vi) insurance deductibles; (vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, Occupant, or their agents; or (viii) Common Expenses that benefit fewer than all of the Units, which may be assessed according to benefit received as reasonably determined by the Board.

6.6. **Deficiency Assessments.** The Board may levy a Deficiency Assessment against the Units for the purpose of defraying, in whole or in part, the cost of maintenance, repair, and replacement, as necessary, performed by the Association or its permittees if insurance proceeds or condemnation awards prove insufficient. Deficiency Assessments will be apportioned among the Units in the same manner as Regular Assessments.

6.7. **Working Capital Fund.** Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in an amount equal to Three Hundred and Fifty and No/100 Dollars (\$350.00) will be paid by the transferee of the Unit to the Association for the Association's working capital fund. Each working capital contribution will be collected from the transferee of a Unit upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers of a Unit will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent; (iv) any grantee who is the domestic partner or former spouse of the grantor; (v) any grantee that is a wholly-owned entity of the grantor; and (vi) any grantee to whom a Unit is conveyed by a will or through the law of intestacy. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use working capital contributions collected hereunder to pay the operational expenses of the Association until the Declarant Control Period terminates. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any working capital fund contribution

attributable to a Unit (or all Units) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

6.8. **Operational Fund Contribution.** Upon the transfer of a Unit (including both transfers from Declarant to the initial Owner and transfers from one Owner to a subsequent Owner), a fee equal to one (1) month of Regular Assessments will be paid by the transferee of the Unit to the Association for the Association's operational funds. Upon termination of the Development Period (and only at such time), the Board will be permitted to modify any operational fund assessment payable on the transfer of a Unit. Each operational fund contribution will be collected upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the operational fund contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. The operational fund contribution is not a working capital contribution for the purpose of the Act.

6.9. **Due Date.** Regular Assessments are due annually, with monthly installments of the total annual Regular Assessments to be paid on the first calendar day of each month or on such other date or frequency as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Utility, Special, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Utility, Special, Individual, or Deficiency Assessment is given.

6.10. **Reserve Funds.** The Association may maintain reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association. The Association may maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements.

6.11. **Declarant's Right to Inspect and Correct Accounts.** Until expiration of the Development Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts established during the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby

grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control Period and the Development Period.

6.12. **Association's Right to Borrow Money.** The Board is granted the right to borrow money, subject to the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Board is granted the right to encumber, mortgage, or pledge any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred.

6.13. **Limitation of Interest.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to Applicable Law. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by Applicable Law, the excess amount will be applied to the reduction of unpaid applicable Assessments, or reimbursed to the Owner if those Assessments are paid in full.

6.14. **Audited Financial Statements.** The Association shall have an audited financial statement for the preceding full fiscal year of the Association prepared and made available to Owner's upon written request.

## ARTICLE 7

### **ASSESSMENT LIEN**

7.1. **Assessment Lien.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner, and each prospective Owner, is placed on notice that title to such Owner's Unit may be subject to the continuing lien for Assessments attributable to a period prior to the date the Owner purchased its Unit. An express lien on each Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of all Assessments.

7.2. **Superiority of Assessment Lien.** The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for: (i) real property taxes and assessments levied by governmental and taxing authorities; (ii) a Recorded deed of trust lien securing a loan for construction or acquisition of the Unit; (iii) a deed of trust or vendor's lien Recorded before this Declaration; (iv) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Assessment became due; and (v) assessments levied pursuant to the Master Covenant. The Assessment lien is superior to any Recorded

assignment of the rights to insurance proceeds on the Unit unless the assignment is part of a superior deed of trust lien.

7.3. **Effect of Mortgagee's Foreclosure.** Foreclosure of a superior lien extinguishes the Association's claim against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale.

7.4. **Notice and Release.** The lien established hereby for Assessments is created by Recordation of this Declaration, which constitutes record notice and perfection of the lien. No other Recordation of a lien or notice of lien is required. However, the Board may, at its option, cause a notice of the lien to be Recorded. Each lien filed by the Association must be prepared and filed by an attorney licensed to practice law in the State of Texas. If the debt is cured after a notice has been Recorded, the Association will Record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and Recording the notice before granting the release.

7.5. **Power of Sale.** By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any Person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. An appointment must be in writing and may be in the form of a resolution adopted by the Board.

7.6. **Foreclosure of Lien.** The Assessment lien may be enforced by judicial or non-judicial foreclosure. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by Applicable Law. In any foreclosure, the Owner will be required to pay all costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at foreclosure and to acquire, hold, lease, mortgage, and convey same.

## **ARTICLE 8**

### **EFFECT OF NONPAYMENT OF ASSESSMENTS**

8.1. **Generally.** An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent Assessments. From time to time, the Association may delegate some or all of its collection procedures and remedies, as the Board, in its sole discretion, deems appropriate, to the Association's manager, attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other Person for the Board or Association's failure or inability to collect or attempt to collect an Assessment.

The following remedies are in addition to and not in substitution for all other rights and remedies which the Association may have pursuant to the Documents or Applicable Law.

8.2. **Interest.** Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the maximum permitted by Applicable Law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

8.3. **Late Fees.** Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

8.4. **Collection Expenses.** The Owner of a Unit against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager.

8.5. **Suspension of Vote.** Subject to the below-described limitations, if an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right to vote appurtenant to the Unit during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a Member of the Association for the following activities: (i) be counted towards a quorum; (ii) attend meetings of the Association; (iii) participate in discussions at Association meetings; (iv) be counted as a petitioner for a special meeting of the Association; and (v) vote to remove a Board member and for the Board member's replacement. If the number of suspended Members exceeds twenty percent (20%) of the total Members (co-Owners of a Unit constituting one Member), all Members are eligible to vote.

8.6. **Assignment Of Rents.** Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of assessments to the Association. If a Unit's account become delinquent during a period in which the Unit is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount. A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

8.7. **Acceleration.** If an Owner defaults in paying any Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

8.8. **Money Judgment.** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

8.9. **Notice to Mortgagee.** The Association may notify and communicate with any holder of a lien against a Unit regarding the Owner's default in the payment of Assessments.

8.10. **Application of Payments.** The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order: Individual Assessments, Deficiency Assessments, Special Assessments, Utility Assessments, and (lastly) Regular Assessments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the Owner attaches conditions or directions contrary to the Association's policy for applying payments. The policies of the Association may provide that endorsement and deposit of a payment does not constitute acceptance, and that acceptance occurs when payment is posted to the Owner's account.

## ARTICLE 9

### **MAINTENANCE AND REPAIR OBLIGATIONS**

9.1. **Overview.** Generally, the Association maintains the Common Elements (excluding the Master Maintained Areas, if any), and the Owner maintains the Owner's Unit. If any Owner fails to maintain its Unit, the Association may perform the work at the Owner's expense.

9.2. **Association Maintains.** Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a Common Expense, the portions of the Property listed below:

- (i) the General Common Elements and Limited Common Elements serving more than one Unit;
- (ii) any real and personal property owned by the Association but which is not a Common Element;
- (iii) the Perimeter Fencing; and
- (iv) any area, item, easement or service the maintenance of which is assigned to the Association by the Documents.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that: (i) such maintenance responsibility is assigned to an Owner under this Declaration; (ii) such maintenance responsibility is assumed by an Owner and such assumption is

approved by the Board; or (iii) such property is dedicated to any local, state or federal government or quasi-governmental entity; provided, however, that in connection with any such assumption as provided in (ii) or (iii), the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Occupant and the Owner and Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair. If the Association assigns any portion of its maintenance responsibilities to an Owner as permitted by the Documents, the Association will perform any such assigned obligations if not timely performed by the Owner.

The Association shall not be liable for injury or damage to Person or property caused by the elements or by the Owner or Occupant of any Unit or any other Person or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner or Occupant of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner or Occupant of any Unit for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Common Elements or any Unit. The Association shall not be liable to any Owner or Occupant, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under the Documents or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

9.3. **Perimeter Fencing.** The Association will repair, replace and/or maintain the Perimeter Fencing. Accordingly, the Association is hereby granted an easement over and across each Unit to the extent reasonably necessary or convenient for the Association or its designated contractor to perform the maintenance and repair services necessary to maintain the Perimeter Fencing located within or adjacent to a Unit. Access to each Unit is limited to Monday through Friday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual performance of maintenance and repair services on the Perimeter Fencing. If the Association damages any Improvements located within a Unit in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable

period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements. If original construction included sealing and/or staining of the fence then the Association will on a regular cycle of every four to six (4-6) years, at the sole discretion of the Board, cause the Perimeter Fencing to be sealed and/or stained. The cost of all Fence Maintenance Services will be a Common Expense.

9.4. **Inspection Obligations.**

9.4.1. **Contract for Services.** In addition to the Association's maintenance obligations set forth in this Declaration, the Association may contract with or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Regime.

9.4.2. **Schedule of Inspections.** Inspections will take place in accordance with prudent business practices. A Guide to Association's Examination of Common Elements is attached to this Declaration as Attachment "4". The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

9.4.3. **Notice to Declarant.** During the Development Period, the Association shall deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

9.4.4. **Limitation.** The provisions of this *Section 9.4* shall not apply during the Declarant Control Period unless otherwise directed by the Declarant.

9.5. **Owner Responsibility.** Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

- (i) To maintain, repair, and replace the Owner's Unit and any Improvements constructed therein or thereon and any Limited Common Elements exclusively serving the Owner's Unit.
- (ii) To maintain, repair, and replace all portions of the Property for which the Owner is responsible under this Declaration or by agreement with the Association.

- (iii) To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.
- (iv) To be responsible for such Owner's own willful or negligent acts and those of the Owner or the Occupant's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Elements, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.

9.6. **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by the Documents, the dispute will be resolved by the Board. Unit maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this Article that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners.

9.7. **Warranty Claims.** If the Owner is the beneficiary of a warranty against defects of the Common Elements, the Owner irrevocably appoints the Association, acting through the Board, as the Owner's attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to Common Elements.

9.8. **Owner's Default In Maintenance.** If the Board determines that an Owner has failed to properly discharge such Owner's obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at the Owner's expense, which will be levied as an Individual Assessment against the Owner and the Owner's Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice is waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense and levied as an Individual Assessment.

## ARTICLE 10

### **CONSTRUCTION & USE RESTRICTIONS**

10.1. **Approval Required by the McKinney Crossing Reviewer.** PURSUANT TO THE MASTER PLAN DOCUMENTS, ALL "IMPROVEMENTS", AS SUCH TERM IS DEFINED IN THE MASTER PLAN DOCUMENTS, MUST BE APPROVED IN ADVANCE AND IN WRITING BY THE MCKINNEY CROSSING REVIEWER.

10.2. **Variance.** The Property is subject to the restrictions contained in this Article, and subject to the Rules. The Declarant may grant a variance or waiver of a restriction or Rule during the Development Period. The Board, with the Declarant's written consent during the Development Period and the Master Board thereafter, may grant a variance or waiver of a restriction or Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing and executed by the Declarant and/or a Majority of the Board, as applicable. The grant of a variance shall not constitute a waiver or estoppel of the right to deny a variance in other circumstances.

10.3. **Association's Right to Promulgate Rules and Amend Community Manual.** The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The Board is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines. During the Development Period, any modification, amendment, or repeal to the Community Manual or the Rules, and each new policy or Rule, must be approved in advance and in writing by the Declarant.

10.4. **Rules and Regulations.** In addition to the restrictions contained in this Article, each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- (i) Use of Common Elements.
- (ii) Hazardous, illegal, or annoying materials or activities on the Property.
- (iii) The use of Property-wide services provided through the Association.
- (iv) The consumption of utilities billed to the Association.
- (v) The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.
- (vi) The occupancy and leasing of Units.
- (vii) Animals.
- (viii) Vehicles.
- (ix) Disposition of trash and control of vermin, termites, and pests.
- (x) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Occupants.

10.5. **Declarant Privileges.** In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Occupants, as provided in Appendix "A" of this Declaration. Declarant's exercise of a right reserved in this Declaration or as provided in Appendix "A" does not constitute waiver or abandonment of the restriction by the Association.

10.6. **Use of Common Elements.** There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of Declarant (during the Development Period) and the Board thereafter, except as specifically provided herein.

10.7. **Ages Of Occupants.** No person under the age of 18 years may occupy a Unit unless such person lives with an Occupant who is his spouse, parent, legal guardian, or a designee of his parent or legal guardian. Upon request by the Association, an Owner must provide satisfactory proof of the ages and relationships of the Occupants of his Unit.

10.8. **Abandoned Personal Property.** Personal property shall not be kept, or allowed to remain for more than twelve (12) hours upon any portion of the Common Elements, without the prior written consent of the Board. If the Board determines that a violation exists, then, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the disposition of the property within twenty-four (24) hours after the property is removed. Neither the Association nor any board member, officer or agent thereof shall be liable to any Person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

10.9. **Animals - Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for anywhere on the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, snakes or lizards, ferrets, monkeys or other exotic animals). Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals on the Property. If the Rules fail to establish animal occupancy quotas, an Owner or Occupant shall be allowed no more than two (2) household pets in any Unit. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the Rules.

10.10. **Firearms and Fireworks.** The display or discharge of firearms or fireworks on the Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size, and shall also include, without limitation, sling shots, archery, and other projectile emitting devices.

10.11. **Annoyance.** No Unit may be used in any way that: (i) may reasonably be considered annoying to Occupants; (ii) may be calculated to reduce the desirability of the Property as a residential neighborhood; (iii) may endanger the health or safety of Occupants of other Units; (iv) may result in the cancellation of insurance on any portion of the Property; (v) violates any Applicable Law; or (vi) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

10.12. **Appearance.** Both the exterior and the interior of the Improvements constructed within a Unit must be maintained in a manner so as not be unsightly when viewed from the street, Common Elements, or Units. The Board will be the arbitrator of acceptable appearance standards.

10.13. **Declarant Privileges.** In connection with the development and marketing of the Property, as provided in this Declaration and Appendix "A", attached hereto, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Occupants. Declarant's exercise of a right that appears to violate a Rule or a provision of this Declaration does not constitute waiver or abandonment of the Rule or provision of the Declaration.

10.14. **Driveways.** Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access.

10.15. **Garages.** The original garage area of any Building or Improvement constructed within a Unit may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein.

10.16. **Landscaping.** No Person may perform landscaping, planting, or gardening anywhere within the General Common Elements without the prior written authorization of the Board and the McKinney Crossing Reviewer.

10.17. **Occupancy.** The Board may adopt Rules regarding the occupancy of Units. If the Rules fail to establish occupancy standards, no more than 2 persons per bedroom may occupy a Unit, subject to the exception for familial status. The Association's occupancy standard for Occupants who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (*i.e., the fewest people per Unit*) permitted by the U.S. Department of Housing and Urban Development. A Person may not occupy a Unit if the

Person constitutes a direct threat to the health or safety of Occupants, or if the Person's occupancy would result in substantial physical damage to the property of others.

10.18. **Residential Use.** The use of a Unit is limited exclusively to single-family residential purposes and only one single-family residence may be constructed within each Unit. This residential restriction does not, however, prohibit an Occupant from using the Unit for personal business or professional pursuits provided that: (i) the uses are incidental to the use of the Unit as a residential dwelling; (ii) the uses conform to Applicable Law; (iii) there is no external evidence of the business or professional use; (iv) the business or professional use does not entail visits to the Unit by employees of the business or profession or the general public; and (v) the business or professional use does not interfere with Occupants' use and enjoyment of their Units. No portion of a garage serving a Unit may be occupied as a residence at any time by any Person.

10.19. **Signs.** No sign of any kind (including signs advertising Units for sale, for rent or for lease), may be erected, placed, or permitted to remain on the Property unless written approval has been obtained in advance from the McKinney Crossing Reviewer. The McKinney Crossing Reviewer may adopt sign guidelines associated with the erection and display of certain signs which guidelines may govern the location, nature, dimensions, number, and time period a sign may remain on the Property or a Unit. As used in this *Section 10.19*, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The McKinney Crossing Reviewer, acting through the Master Association, may effect the immediate removal of any sign or object which has not been approved in advance by the McKinney Crossing Reviewer.

Notwithstanding the foregoing, a religious item on the entry door or door frame of a Unit (which may not extend beyond the outer edge of the door frame) is permitted, provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches.

10.20. **Fences.** Except for fences constructed by the Declarant, no fence shall be constructed on a Unit without the prior written consent of the McKinney Crossing Reviewer. The height and location of all fences must be approved in advance by the McKinney Crossing Reviewer.

10.21. **Antenna.** Except as expressly provided below, no exterior radio, television or communications antenna or aerial or satellite dish or disc, nor any solar energy system (collectively, an "**Antenna/Dish**"), shall be erected, maintained, or placed on a Unit without the prior written approval of the McKinney Crossing Reviewer.

10.21.1. **Dishes Over One Meter Prohibited.** Unless otherwise approved by the McKinney Crossing Reviewer, an Antenna/Dish which is over one meter in diameter is prohibited within the Regime.

10.21.2. Notification. An Owner or Occupant who wishes to install an Antenna/Dish one meter or less in diameter (a “**Permitted Antenna**”) must submit a written notice to the McKinney Crossing Reviewer, which notice must include the Owner or Occupant’s installation plans for the satellite dish.

10.21.3. One Dish Limitation. Unless otherwise approved by the McKinney Crossing Reviewer, only one Permitted Antenna per Unit is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner must provide written notification to the McKinney Crossing Reviewer. Upon notification, the Owner will be permitted to install an additional Permitted Antenna if a single Permitted Antenna is not sufficient for the reception of an acceptable quality signal and the use of an additional Permitted Antenna results in the reception of an acceptable quality signal.

10.21.4. Permitted Installation Locations – Generally. An Owner or Occupant may erect a Permitted Antenna (after written notification has been provided to the McKinney Crossing Reviewer) if the Owner or Occupant has an exclusive use area in which to install the antenna. An “exclusive use area” is an area in which only the Owner or Occupant may enter and use to the exclusion of all other Owners and Occupants. Unless otherwise approved by the McKinney Crossing Reviewer, the Permitted Antenna must be entirely within the exclusive use area of the Owner’s Unit.

A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Units or the Common Elements, or otherwise be a nuisance to Occupants of other Units or to the Association. A Permitted Antenna exists at the sole risk of the Owner and/or Occupant of the Unit. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the McKinney Crossing Reviewer and the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The McKinney Crossing Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

10.21.5. Preferred Installation Locations. A Permitted Antenna may be installed in a location within the Unit from which an acceptable quality signal can be obtained and where least visible from the street and the Regime, other than the Unit. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the McKinney Crossing Reviewer are as follows:

- (i) Attached to the back of the residence constructed within the Unit, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street; then

- (ii) Attached to the side of the residence constructed within the Unit, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street.

**10.22. Vehicles; Guest Parking.** All vehicles on the Property, whether owned or operated by the Occupants or their families and guests, are subject to this *Section 10.22* and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may prohibit any vehicle from which the Board deems to be a nuisance, unsightly, or inappropriate. The Board may prohibit sales, storage, washing, repairs, or restorations of vehicles on the Property. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Property. The Association may effect the removal of any vehicle in violation of this *Section 10.22* or the Rules without liability to the owner or operator of the vehicle.

**10.23. Solar Energy Device and Energy Efficiency Roofing.** A “Solar Energy Device” means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. “Energy Efficiency Roofing” means shingles that are designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (iii) provide solar generation capabilities.

Approval by the McKinney Crossing Reviewer is required prior to installing a Solar Energy Device or Energy Efficient Roofing. The McKinney Crossing Reviewer is not responsible for: (a) errors in or omissions in the application submitted to the McKinney Crossing Reviewer for approval; (b) supervising the installation or construction to confirm compliance with an approved application; or (c) the compliance of an approved application with governmental codes and ordinances, state and federal laws.

**10.23.1. Approval Application.** To obtain approval of a Solar Energy Device, an Owner shall submit to the McKinney Crossing Reviewer, the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the “Solar Application”). A Solar Application may only be submitted by an Owner unless the Owner’s tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application.

**10.23.2. Approval Process.** The decision of the McKinney Crossing Reviewer will be made in accordance with *Article 6* of the Master Covenant. The McKinney Crossing Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 10.23.3* below **UNLESS** the McKinney Crossing Reviewer makes a written

determination that placement of the Solar Energy Device, despite compliance with *Section 10.23.3*, will create a condition that substantially interferes with the use and enjoyment of the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The McKinney Crossing Reviewer's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Units immediately adjacent to the Owner/applicant's Unit provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this Section when considering any such request.

Each Owner is advised that if the Solar Application is approved by the McKinney Crossing Reviewer, installation of the Solar Energy Device must: (i) strictly comply with the Solar Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Solar Energy Device to be installed in accordance with the approved Solar Application, the McKinney Crossing Reviewer may require the Owner to: (i) modify the Solar Application to accurately reflect the Solar Energy Device installed on the Unit; or (ii) remove the Solar Energy Device and reinstall the device in accordance with the approved Solar Application. Failure to install a Solar Energy Device in accordance with the approved Solar Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of the Master Covenant. Any requirement imposed by the McKinney Crossing Reviewer to resubmit a Solar Application or remove and relocate a Solar Energy Device in accordance with the approved Solar Application shall be at the Owner's sole cost and expense.

10.23.3. Approval Conditions. Unless otherwise approved in advance and in writing by the McKinney Crossing Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

- (i) The Solar Energy Device must be located on the roof of the residence located within the Owner's Unit, entirely within a fenced area of the Owner's Unit, or entirely within a fenced patio located within the Owner's Unit. If the Solar Energy Device will be located on the roof of the residence, the McKinney Crossing Reviewer may designate the location for placement, including requiring that the roof mounted panels not be visible from adjacent streets, unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the Solar Energy Device if installed in the location designated by the McKinney Crossing Reviewer. If the Owner desires to contest the alternate location proposed by the

McKinney Crossing Reviewer, the Owner should submit information to the McKinney Crossing Reviewer which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Unit or patio, no portion of the Solar Energy Device may extend above the fence line.

- (ii) If the Solar Energy Device is mounted on the roof of the principal residence located within the Owner's Unit, then: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

10.23.4. Energy Efficient Roofing. The McKinney Crossing Reviewer will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in *Article 6* of the Master Covenant.

10.24. Rainwater Harvesting Systems. Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed with the advance written approval of the McKinney Crossing Reviewer.

10.24.1. Application. To obtain McKinney Crossing Reviewer approval of a Rainwater Harvesting System, the Owner shall provide the McKinney Crossing Reviewer with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "**Rain System Application**"). A Rain System Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Rain System Application.

10.24.2. Approval Process. The decision of the McKinney Crossing Reviewer will be made in accordance with *Article 6* of the Master Covenant. Any proposal to install a Rainwater Harvesting System on Common Elements must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

10.24.3.Approval Conditions. Unless otherwise approved in advance and in writing by the McKinney Crossing Reviewer, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

- (i) The Rainwater Harvesting System must be consistent with the color scheme of the residence constructed within the Owner's Unit, as reasonably determined by the McKinney Crossing Reviewer.
- (ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.
- (iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed within the Owner's Unit and any adjoining or adjacent street.
- (iv) There is sufficient area within the Owner's Unit to install the Rain water Harvesting System, as reasonably determined by the McKinney Crossing Reviewer.
- (v) If the Rainwater Harvesting System will be installed on or within the side yard of a Unit, or would otherwise be visible from a street, Common Element, or another Owner's Unit, the McKinney Crossing Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 10.24.4* for additional guidance.

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

10.25. **Flags.** An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States

Military ("**Permitted Flag**") and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence ("**Permitted Flagpole**") within a Unit. Only two (2) permitted Flagpoles are allowed per residence. A Permitted Flag on a Permitted Flagpole need not be approved in advance by the McKinney Crossing Reviewer.

Approval by the McKinney Crossing Reviewer is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Unit ("**Freestanding Flagpole**"). The McKinney Crossing Reviewer is not responsible for: (i) errors in or omissions in the application submitted to the McKinney Crossing Reviewer for approval; (ii) supervising installation or construction to confirm compliance with an approved application; or (iii) the compliance of an approved application with governmental codes and ordinances, state and federal laws.

10.25.1.Approval Application. To obtain McKinney Crossing Reviewer approval of any Freestanding Flagpole, the Owner shall provide a request to the McKinney Crossing Reviewer in accordance with *Article 6* of the Master Covenant, including the following information: (a) the location of the flagpole to be installed on the Unit; (b) the type of flagpole to be installed; (c) the dimensions of the flagpole; and (d) the proposed materials of the flagpole (the "**Flagpole Application**"). A Flagpole Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Flagpole Application.

10.25.2.Approval Process. The decision of the McKinney Crossing Reviewer will be made in accordance with *Article 6* of the Master Covenant. Any proposal to install a Freestanding Flagpole on property owned or maintained by the Association or on Common Elements must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 10.25* when considering any such request.

Each Owner is advised that if the Flagpole Application is approved by the McKinney Crossing Reviewer, installation of the Freestanding Flagpole must: (i) strictly comply with the Flagpole Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Freestanding Flagpole to be installed in accordance with the approved Flagpole Application, the McKinney Crossing Reviewer may require the Owner to: (a) modify the Flagpole Application to accurately reflect the Freestanding Flagpole installed on the Unit; or (b) remove the Freestanding Flagpole and reinstall the flagpole in accordance with the approved Flagpole Application. Failure to install a Freestanding Flagpole in accordance with the approved Flagpole Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Section and may subject the Owner to fines and penalties. Any requirement imposed by the McKinney Crossing Reviewer to resubmit a Flagpole Application or remove and relocate a

Freestanding Flagpole in accordance with the approved Flagpole Application shall be at the Owner's sole cost and expense.

10.25.3. Installation, Display and Approval Conditions. Unless otherwise approved in advance and in writing by the McKinney Crossing Reviewer, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

- (i) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per residential Unit, on which only Permitted Flags may be displayed;
- (ii) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;
- (iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');
- (iv) With the exception of flags displayed on Common Elements and any Unit which is being used for marketing purposes by a builder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;
- (v) The display of a flag, or the location and construction of the flagpole must comply with all applicable zoning ordinances, easements and setbacks of record;
- (vi) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the residence;
- (vii) A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;
- (viii) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and
- (ix) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

10.26. **Xeriscaping.** An Owner may submit plans for and install drought tolerant landscaping (“**Xeriscaping**”) upon written approval by the McKinney Crossing Reviewer. All Owners implementing Xeriscaping shall comply with the following:

10.26.1. Application. Approval by the McKinney Crossing Reviewer is required prior to installing Xeriscaping. To obtain the approval of the McKinney Crossing Reviewer for Xeriscaping, the Owner shall provide the McKinney Crossing Reviewer with the following information: (i) the proposed site location of the Xeriscaping on the Owner’s Unit; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the “**Xeriscaping Application**”). A Xeriscaping Application may only be submitted by an Owner unless the Owner’s tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The McKinney Crossing Reviewer is not responsible for: (a) errors or omissions in the Xeriscaping Application submitted to the McKinney Crossing Reviewer for approval; (b) supervising installation or construction to confirm compliance with an approved Xeriscaping Application or (c) the compliance of an approved application with Applicable Law.

10.26.2. Approval Conditions. Unless otherwise approved in advance and in writing by the McKinney Crossing Reviewer, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

- (i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the McKinney Crossing Reviewer. For purposes of this *Section 10.26* “aesthetically compatible” shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner’s plan may be denied if the McKinney Crossing Reviewer determines that: (a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or (b) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner’s Unit.
- (ii) No Owners shall install gravel, rocks or cacti that in the aggregate encompass over twenty percent (20%) of such Owner’s front yard or twenty percent (20%) of such Owner’s back yard.
- (iii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Units, as reasonably determined by the McKinney Crossing Reviewer.

10.26.3.Process. The decision of the McKinney Crossing Reviewer will be made within a reasonable time, or within the time period otherwise required by the Master Covenant. A Xeriscaping Application submitted to install Xeriscaping on Common Elements will not be approved unless approved in advance by the Board.

10.26.4.Approval. Each Owner is advised that if the Xeriscaping Application is approved by the McKinney Crossing Reviewer, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the McKinney Crossing Reviewer may require the Owner to: (a) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (b) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the McKinney Crossing Reviewer to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

10.27. **Wireless Internet Systems**. A wireless Internet communication network ("**WiFi System**") may be installed or otherwise used in a Unit provided precautions are taken to insure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in other portions of the Regime. The Board may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installation of the system that proper precautions are being taken. Notwithstanding the foregoing, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that any WiFi System installed or otherwise used in a Unit will not interfere with, disturb, or intercept other signals, networks, or systems within the Regime. The Association may require that any WiFi System found to cause such problems be terminated.

## **ARTICLE 11**

### **UNIT LEASING**

11.1. **Lease Conditions**. The leasing of Units is subject to the following conditions: (i) no Unit may be rented for transient or hotel purposes or for a period less than six (6) months; (ii) not less than an entire Unit may be leased; (iii) all leases must be in writing and must be made subject to the Documents and the Master Plan Documents; (iv) an Owner is responsible for providing the Owner's tenant with copies of the Documents and the Master Plan Documents and notifying the tenant of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Documents, the Master Plan Documents, and Applicable Law.

11.2. **Provisions Incorporated By Reference Into Lease.** Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the tenant, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

11.2.1. **Compliance with Documents.** The tenant shall comply with all provisions of the Documents and the Master Plan Documents and shall control the conduct of all other Occupants and guests of the leased Unit, as applicable, in order to ensure such compliance. The Owner shall cause all Occupants of the Owner's Unit to comply with the Documents and the Master Plan Documents and shall be responsible for all violations by such Occupants notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the tenant or Occupant violates the Documents or the Master Plan Documents or a Rule for which a fine is imposed, notice of the violation shall be given to the Owner and the tenant and Occupants, and such fine may be assessed against the Owner or the tenant and Occupant. Unpaid fines shall constitute a lien against the Unit.

11.2.2. **Assignment of Rents.** If the Owner fails to pay any Assessment or any other charge against the Unit for a period of more than thirty (30) days after it is due and payable, then the Owner hereby consents to the assignment of any rent received from the tenant during the period of delinquency, and, upon request by the Board, tenant shall pay directly to the Association all unpaid Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by tenant. The tenant need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by tenant shall reduce, by the same amount, tenant's obligation to make monthly rental payments to the Owner.

11.2.3. **Violation Constitutes Default.** Failure by the tenant or the tenant's guests to comply with the Documents, the Master Plan Documents, or Applicable Law is deemed to be a default under the lease. When the Association notifies an Owner of such violation, the Owner will promptly obtain compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association or the Master Association will have the power and right to pursue the remedies of a landlord under the lease or Applicable Law for the default, including eviction of the tenant.

11.2.4. **Association as Attorney-in-Fact.** Notwithstanding the absence of an express provision in the lease agreement for enforcement of the Documents by the Association, each Owner appoints the Association as the Owner's attorney-in-fact, with full authority to act in the Owner's place in all respects, for the purpose of enforcing the

Documents against the Owner's tenants, including but not limited to the authority to institute forcible detainer proceedings, provided the Association gives the Owner at least 10 days' notice, by certified mail, of its intent to so enforce the Documents. In addition, each Owner appoints the Master Association as the Owner's attorney-in-fact, with full authority to act in the Owner's place in all respects, for the purpose of enforcing the Master Plan Documents against the Owner's tenants, including but not limited to the authority to institute forcible detainer proceedings, provided the Master Association gives the Owner at least 10 days' notice, by certified mail, of its intent to so enforce the Master Plan Documents.

11.2.5. Association Not Liable for Damages. The Owner of a leased Unit is liable to the Association or the Master Association, as applicable, for any expenses incurred by either Association in connection with enforcement of the Documents or the Master Plan Documents against the Owner's tenant. Neither the Association nor the Master Association will be liable to the Owner for any damages, including lost rents, suffered by the Owner and related to such enforcement.

## ARTICLE 12 ASSOCIATION OPERATIONS

12.1. Right of Action by Association. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Unit Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 19.1.1* below, relating to the design or construction of a Unit (whether one or more). The foregoing sentence is expressly intended to remove from the power of the Association the right, under Section 82.102 of the Act, to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on behalf of two (2) or more Unit Owners on matters affecting the Regime. This *Section 12.1* may not be amended or modified without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument.

12.2. Board. Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the Association means the Association acting through a Majority of the Board.

12.3. The Association. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a condominium association and a nonprofit corporation organized under Applicable Law, but expressly subject to any limitations on such powers set forth in the Documents. The Association comes into existence on issuance of its corporate charter. The Association will continue to exist until this Declaration is terminated as to all the Property.

12.4. **Name.** A name is not the defining feature of the Association. The Association may operate under any name that is approved by the Board and: (i) Recorded as an assumed name, or (ii) filed with the Secretary of State of Texas as the name of the filing entity. Another legal entity with the same name as the Association, or with a name based on the name of the Property, is not the Association, which derives its authority from this Declaration. The name of the Association is not a trade name.

12.5. **Governance.** Unless the Documents provide otherwise, 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 that purpose. The Association will be administered in accordance with the Documents and Applicable Law. Unless the Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners representing at least a Majority of the total number of votes in the Association, or at a meeting by Owners' representing at least a Majority of the total number of votes in the Association.

12.6. **Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by the Owners holding at least two-thirds (2/3) of the votes allocated to Units and the Secretary of Veterans Affairs or its authorized agent. On the merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration.

12.7. **Membership.** Each Owner is a Member of the Association, ownership of a Unit being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Unit. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at a meeting of the Association. If a Unit is owned by more than one Person, each co-Owner is a Member of the Association and may exercise the membership rights appurtenant to the Unit.

12.8. **Manager.** The Board may delegate the performance of certain functions to one or more managers or managing agents of the Association. To assist the Board in determining whether to delegate a function, a Guide to Association's Major Management & Governance Functions is attached to this Declaration as Attachment "4". The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association and its officers, directors, members, employees, and agents. Rather, the Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board's duties,

responsibilities, or functions. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

12.9. **Books and Records.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of Applicable Law.

12.10. **Indemnification.** The Association indemnifies every officer, director, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a Common Expense, the Association may maintain general liability and directors' and officers' liability insurance to fund this obligation.

12.11. **Obligations of Owners.** Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

12.11.1. **Information.** Within thirty (30) days after acquiring an interest in a Unit, within thirty (30) days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (i) a copy of the Recorded deed by which Owner has acquired title to the Unit; (ii) the Owner's address and phone number; (iii) any Mortgagee's name; (iv) the name and phone number of any Occupant other than the Owner; and (v) the name, address, and phone number of Owner's managing agent, if any.

12.11.2. **Pay Assessments.** Each Owner will pay Assessments properly levied by the Association against the Owner or such Owner's Unit and will pay Regular Assessments without demand by the Association.

12.11.3. **Compliance with Documents.** Each Owner will comply with the Documents as amended from time to time.

12.11.4. **Reimburse for Damages.** Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, an Occupant of the Owner's Unit, or the Owner or Occupant's family, guests, employees, contractors, agents, or invitees.

12.11.5. **Liability for Violations.** Each Owner is liable to the Association for violations of the Documents by the Owner, an Occupant of the Owner's Unit, or the

Owner or Occupant's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

12.12. **Unit Resales.** This Section applies to every sale or conveyance of a Unit or an interest in a Unit by an Owner other than Declarant:

12.12.1. **Resale Certificate.** An Owner intending to sell his Unit will notify the Association and will request a condominium resale certificate from the Association.

12.12.2. **No Right of First Refusal.** The Association does not have a right of first refusal and may not compel a selling Owner to convey the Owner's Unit to the Association.

12.12.3. **Other Transfer-Related Fees.** A number of independent fees may be charged in relation to the transfer of title to a Unit, including but not limited to, fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against Assessments. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the Board to levy transfer-related fees.

12.12.4. **Exclusions.** The requirements of this Section do not apply to the following transfers: (i) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (ii) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (iii) transfer to, from, or by the Association; (iv) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent; (v) a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; (vi) a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (vii) a disposition by a government or a governmental agency.

## ARTICLE 13 **ENFORCING THE DOCUMENTS**

13.1. **Notice And Hearing.** Before levying a fine for violation of the Documents (other than nonpayment of Assessments), the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the

amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30<sup>th</sup>) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine – unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months. The Association may also give a copy of the notice to the Occupant. Pending the hearing, the Association may continue to exercise other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another Person or by a written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearings, provided they are consistent with Applicable Law.

13.2. **Remedies.** The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by Applicable Law, the Association has the following rights to enforce the Documents:

13.2.1. **Nuisance.** The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by Applicable Law against a nuisance, either public or private, is applicable against the violation.

13.2.2. **Fine.** The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Unit if the Owner or Occupant, or the Owner or Occupant's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

13.2.3. **Suspension.** The Association may suspend the right of Owners and Occupants to use General Common Elements (provided that the rights of ingress and egress and utility services are not impaired) for any period during which the Owner or Occupant, or the Owner or Occupant's family, guests, employees, agents, or contractors violate the Documents for a period not to exceed sixty (60) days, unless such rights are suspended for failure to pay Assessments, in which case such rights may be suspended until the Assessments are fully paid. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

13.2.4. **Self-Help.** The Association has the right to enter a Common Element or Unit to abate or remove, using force as may reasonably be necessary, any Improvement, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Association is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of

the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish any Improvement within a Unit without judicial proceedings.

13.2.5. **Suit.** Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

13.3. **Board Discretion.** The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with Applicable Law; (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources; or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

13.4. **No Waiver.** The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter.

13.5. **Recovery of Costs.** The costs of curing or abating a violation are the expense of the Owner or other Person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

13.6. **Release.** Subject to the Association's obligations under this Declaration, except as otherwise provided by the Documents, each Owner hereby releases, acquits and forever discharges the Association, and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns and agrees to hold such Persons harmless of and from any and all claims, damages, liabilities, costs and/or expenses (including reasonable attorneys' fees) relating to the construction of, repair or restoration of, or the sale to the Owners of the Units, or the Common Elements. This release shall release and forever discharge the Association and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns, from all claims and causes of action,

whether statutory or under the common law, known or unknown, now accrued, or that arise in the future.

13.7. **Right of Action by Association.** The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Unit Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 19.1.1* below, relating to the design or construction of a Unit (whether one or more). The foregoing sentence is expressly intended to remove from the power of the Association the right, under Section 82.102 of the Act, to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on behalf of two (2) or more Unit Owners on matters affecting the Regime. This *Section 13.7* may not be amended or modified without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument.

## **ARTICLE 14**

### **INSURANCE**

14.1. **General Provisions.** The broad purpose of this Article is to require that the Property be insured with the types and amounts of coverage that are customary for similar types of properties and that are acceptable to mortgage lenders, guarantors, or insurers that finance the purchase or improvement of Units. The Board will make every reasonable effort to comply with the requirements of this Article.

14.1.1. **Unavailability.** The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

14.1.2. **No Coverage.** Even if the Association and the Owner have adequate amounts of recommended and required insurance coverage, the Property may experience a loss that is not covered by insurance. In such event, the Association is responsible for restoring the Common Elements as a Common Expense, and the Owner is responsible for restoring the Owner's Unit at such Owner's sole expense. This provision does not apply to the deductible portion of an insurance policy.

14.1.3. **Requirements.** The cost of insurance coverage and bonds maintained by the Association is a Common Expense. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns." The loss payee clause should show the

Association as trustee for each Owner and Mortgagee. Policies of property and general liability insurance maintained by the Association must provide that the insurer waives its rights to subrogation under the policy against an Owner. The Association's insurance policies will not be prejudiced by the act or omission of any Owner or Occupant who is not under the Association's control.

14.1.4. Association as Trustee. Each Owner irrevocably appoints the Association, acting through its Board, as such Owner's trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

14.1.5. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give prior written notice, as provided by the Act, to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. The Board will give to Mortgagees, and the insurer will give Mortgagees at least ten (10) days prior written notice of cancellation, termination, expiration, or material modification.

14.1.6. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, and the amount thereof may not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the coverage limits required by this Declaration or an Underwriting Lender. In the event of an insured loss, the deductible is treated as a Common Expense of the Association in the same manner as the insurance premium. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner or Occupant or invitee, then the Board may levy an Individual Assessment against the Owner and the Owner's Unit for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with *Section 13.1* of this Declaration.

14.2. **Property Insurance.** The Association will obtain blanket all-risk insurance if reasonably available, for all Common Elements insurable by the Association. If blanket all-risk insurance is not reasonably available, then at a minimum the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

14.2.1. Common Property Insured. If insurable, the Association will insure: (i) General Common Elements; (ii) Limited Common Elements assigned to more than one (1) Unit; and (iii) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies.

14.2.2. Units Not Insured by Association. In no event will the Association maintain property insurance on the Units. Accordingly, each Owner of a Unit will be obligated to maintain property insurance on such Owner's Unit and any Limited Common Elements assigned exclusively to such Owner's Unit, including any betterments and Improvements constructed within or exclusively serving such Unit, in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. In addition, the Association does not insure an Owner or Occupant's personal property. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND OCCUPANT PURCHASE AND MAINTAIN INSURANCE ON THEIR PERSONAL BELONGINGS.

14.2.3. Endorsements. To the extent reasonably available, the Association will obtain endorsements to its property insurance policy if required by an Underwriting Lender, such as Inflation Guard Endorsement, Building Ordinance or Law Endorsement, and a Special Condominium Endorsement.

14.3. Liability Insurance. The Association will maintain a commercial general liability insurance policy over the Common Elements – expressly excluding the liability of each Owner and Occupant within their Unit – for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

14.4. Worker's Compensation. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of Applicable Law or if the Board so chooses.

14.5. Fidelity Coverage. The Association may maintain blanket fidelity coverage for any Person who handles or is responsible for funds held or administered by the Association, whether or not the Person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to three (3) months of Regular Assessments on all Units. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages.

14.6. Directors and Officers Liability. The Association may maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

14.7. **Other Policies.** The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

## ARTICLE 15

### **RECONSTRUCTION OR REPAIR AFTER LOSS**

15.1. **Subject To Act.** The Association's response to damage or destruction of the Property will be governed by Section 82.111(i) of the Act. The following provisions apply to the extent the Act is silent.

15.2. **Restoration Funds.** For purposes of this Article, "**Restoration Funds**" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Common Elements. All funds paid to the Association for purposes of repair or restoration will be deposited in a financial institution in which accounts are insured by a federal agency. Withdrawal of Restoration Funds requires the signatures of at least two (2) Board members.

15.2.1. **Sufficient Proceeds.** If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damaged or destroyed Common Elements, the Association, as trustee for the Owners, will promptly apply the funds to the repair or restoration.

15.2.2. **Insufficient Proceeds.** If Restoration Funds are not sufficient to pay the estimated or actual costs of restoration as determined by the Board, the Board may levy a Deficiency Assessment against the Owners to fund the difference.

15.2.3. **Surplus Funds.** If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows: If Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by him, and further provided that any Delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board in the Board's sole and absolute discretion.

15.3. **Costs And Plans.**

15.3.1. **Cost Estimates.** Promptly after the loss, the Board will obtain estimates of the cost of restoring the damaged Common Elements. Costs may include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.

15.3.2. Plans and Specifications. Unless otherwise approved by the Board, Common Elements will be repaired and restored substantially as they existed immediately prior to the damage or destruction.

15.4. Owner's Duty to Repair. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of the Improvements constructed on the Owner's Unit, subject to the right of the Association and the McKinney Crossing Reviewer to supervise, approve, or disapprove repair or restoration during the course thereof.

15.5. Owner's Liability For Insurance Deductible. If repair or restoration of Common Elements is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

## ARTICLE 16

### TERMINATION AND CONDEMNATION

16.1. Association As Trustee. Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Property in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Property. As trustee, the Association will have full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration and the Act, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property as permitted by this Declaration or by the Act; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

16.2. Termination. Termination of the terms of this Declaration and the Regime will be governed by Section 82.068 of the Act and *Section 17.4* below.

16.3. Condemnation. The Association's response to condemnation of any part of the Property will be governed by Section 82.007 of the Act. On behalf of Owners, but without their consent, the Board may execute and Record an amendment of this Declaration to reallocate the Common Interest Allocation following condemnation and to describe the altered parameters of the Property. If the Association replaces or restores Common Elements taken by condemnation by obtaining other land or constructing additional Improvements, the Board may, to the extent permitted by Applicable Law, execute and Record an amendment without the prior consent of Owners to describe the altered parameters of the Property and any corresponding change of facilities or Improvements

## ARTICLE 17

### MORTGAGEE PROTECTION

17.1. **Introduction.** This *Article 17* is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. A provision of the Documents requiring the approval of a specified percentage of Mortgagees will be based on the number of Units subject to mortgages held by Mortgagees. For example, “51 percent of Mortgagees” means Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Mortgagees.

17.2. **Notice of Mortgagee.** As provided in this *Article 17*, the Association is required to provide each Mortgagee with written notice upon the occurrence of certain actions as described in *Section 17.7*, or to obtain the approval of Mortgagees in the event of certain amendments to this Declaration as described in *Section 17.8* or the termination of this Declaration as described in *Section 17.4*. To enable the Association to provide the notices and obtain such approval, each Owner must provide to the Association the complete name and address of such Owner’s Mortgagee, including the loan number and such additional information concerning the Owner’s Mortgagee as the Association may reasonably require. In the event an Owner fails to provide the Association with the information required by this *Section 17.2* after the expiration of thirty (30) days after the Association’s written request, the Owner’s failure to provide such information will be considered a violation of the terms and provisions of this Declaration.

17.3. **Amendment.** This Article establishes certain standards for the benefit of Underwriting Lenders, and is written to comply with their requirements and guidelines in effect at the time of drafting. If an Underwriting Lender subsequently changes its requirements, the Board, without approval of Owners or Mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender.

17.4. **Termination.** Termination of the terms of this Declaration and the condominium status of the Regime will be governed by Section 82.068 of the Act, subject to the following provisions. In the event of condemnation of the entire Regime, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees. Any election to terminate this Declaration and the condominium status of the Regime under circumstances other than condemnation of the entire Regime shall require the consent of: (i) Owners representing at least eighty percent (80%) of the total votes in the Association; (ii) Declarant during the Development Period; and (iii) sixty-seven percent (67%) of Mortgagees.

17.5. **Implied Approval.** The approval of a Mortgagee is implied when the Mortgagee fails to respond within sixty (60) days after receiving the Association’s written request for approval of a proposed amendment, provided the Association’s request was delivered by certified or registered mail, return receipt requested.

17.6. **Other Mortgagee Rights.**

17.6.1. **Inspection of Books.** The Association will maintain current copies of the Documents and the Association's books, records, and financial statements. Mortgagees may inspect the Documents and records, by appointment, during normal business hours.

17.6.2. **Financial Statements.** A Mortgagee may have an audited statement prepared at its own expense.

17.6.3. **Attendance at Meetings.** A representative of a Mortgagee may attend and address any meeting which an Owner may attend.

17.6.4. **Management Contract.** If professional management of the Association is required by this Article, the contract for professional management may not require more than ninety (90) days' notice to terminate the contract, nor payment of a termination penalty.

17.6.5. **Audit.** A majority of Mortgagees shall be entitled to demand an audit of the Association's financial records.

17.7. **Notice of Actions.** The Association will send timely written notice to Mortgagees of the following actions:

- (i) Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Unit and any eminent domain proceeding affecting the General Common Elements which would result in a loss of more than ten percent (10%) of the estimated operational and reserve expenses as reflected on the then-current annual budget of the Association.
- (ii) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of the mortgaged Unit.
- (iii) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- (iv) Any proposed action that requires the consent of a specified percentage of Mortgagees.
- (v) Any proposed amendment of a material nature, as provided in this Article.

- (vi) Any proposed termination of the condominium status of the Property or dissolution of the Association at least thirty (30) days prior to the proposed termination or dissolution, as applicable.

17.8. **Amendments of a Material Nature.** A Document amendment of a material nature must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association, and by at least fifty-one percent (51%) of Mortgagees. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS FILED BY THE DECLARANT AS PERMITTED IN APPENDIX "A" ATTACHED HERETO.** A change to any of the provisions governing the following would be considered material (hereafter a "**Material Amendment**"):

- (i) Voting rights.
- (ii) Any method of imposing or determining any charges to be levied against individual unit owners.
- (iii) Assessment liens or the priority of assessment liens.
- (iv) Reserves for maintenance, repair, and replacement of Common Elements.
- (v) Responsibility for maintenance and repairs.
- (vi) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to Appendix "A", or by agreement between Owners (only those Owners and only the Mortgagees holding mortgages against those Units need approve the action).
- (vii) Expansion or contraction of the Regime, or the addition, annexation, or withdrawal of property to or from the Regime.
- (viii) Reduction of insurance requirements.
- (ix) Imposition of any restrictions on the leasing of Units.
- (x) Imposition of any restrictions on Owners' right to sell or transfer their Units.
- (xi) Restoration or repair of the Property, in a manner other than that specified in the Declaration, after any damage or partial condemnation.
- (xii) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

- (xiii) Imposition of a new scheme of regulation or enforcement of exterior maintenance standards, architectural design or exterior appearance of Units other than those specified in the Declaration.

## ARTICLE 18

### AMENDMENTS

18.1. **Consents Required.** As permitted by the Act or by this Declaration, certain amendments to this Declaration may be executed by Declarant acting alone, or by certain Owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association. Notwithstanding any provisions in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) provision of this Declaration that benefits Declarant; (ii) rights, privileges, easements, protections, or defenses of Declarant; or (iii) rights of the Owners or the Association in relationship to Declarant, without the written consent of Declarant attached to and Recorded with such amendment. Notice of any amendment to the Declaration which must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association shall be delivered to each Member in accordance with the Bylaws. All amendments made to the Declaration, Bylaws or Certificate during the Development Period must be approved by the Secretary of Veterans Affairs or its authorized agent prior to Recording such document, if Veterans Affairs has guaranteed any loans secured by Units in the Regime. All Material Amendments made to the Declaration, Bylaws or Certificate and all Extraordinary Actions taken during the Declarant Control Period must be approved by the Secretary of Veterans Affairs or its authorized agent prior to Recording, if Veterans Affairs has guaranteed any loans secured by Units in the Regime. Further, if Veterans Affairs has guaranteed any loans secured by Units in the Regime the Secretary of Veterans Affairs or its authorized agent must consent to any termination of the Declaration, dissolution of the Association (except by consolidation or merger), and any conveyance of Common Elements. In addition, a change to any provision in the Declaration governing the following items (each an “**Extraordinary Action**”) must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association:

- (i) Merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association).
- (ii) Determining not to require professional management if that management is required by the Declaration or the Association.
- (iii) The addition of land to the Declaration if the addition would increase the overall land area then subject to the Declaration by more than ten percent (10%).

- (iv) Abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements with the exception of: (a) granting easements over and across the Common Elements otherwise permitted by this Declaration or the Act; (b) dedicating all or any portion of a Common Element to the extent required by any governing authority or regulatory authority; (c) adjustments to the boundary line of Common Elements if made in accordance with the provisions of this Declaration; or (d) transferring Common Elements pursuant to a merger or consolidation with another entity.
- (v) Using insurance proceeds for purposes other than construction or repair of the insured improvements.
- (vi) Any capital expenditure, other than for the maintenance, operation, repair or replacement of any existing Improvement, if the capital expenditure exceeds more than twenty percent (20%) of the annual operating budget during any period of twelve (12) consecutive months.

18.2. **Amendments Generally.** For amendments requiring the consent of Mortgagees, the Association will send each Mortgagee a detailed description, if not the exact wording, of any proposed amendment. Notwithstanding any provisions in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) provision of this Declaration that benefits the Declarant or the Master Association; (ii) rights, privileges, easements, protections, or defenses of the Declarant or the Master Association; or (iii) rights of the Owners or the Association in relationship to the Declarant without the written consent of the Declarant or the Master Association, as applicable, attached to and Recorded with such amendment. In addition, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) permissible use of a Unit absent the consent of the Owner(s) of the Unit affected by the change in permissible use; or (ii) any license, easement or other contractual rights contained in this Declaration, including, without limitation, any easement, right and license benefiting or in favor of the Declarant without the written consent of the Declarant.

18.3. **Effective.** To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Regime, the name of the Association, and the Recording data of this Declaration and any amendments hereto; (ii) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners and, if required, Mortgagees; provided, however, this subsection (ii) will not apply for amendments prosecuted by Declarant pursuant to any rights reserved by Declarant under this Declaration; and (iii) Recorded.

18.4. **Declarant Rights.** Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Appendix "A". An amendment that may be executed by

Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect the Declarant rights under this Declaration or the Act without Declarant's written and acknowledged consent, which must be part of the Recorded amendment instrument. Because Appendix "A" of this Declaration is destined to become obsolete, beginning five (5) years after the date this Declaration is first Recorded, the Board may restate, rerecord, or publish this Declaration without Appendix "A". The automatic expiration and subsequent deletion of Appendix "A" does not constitute an amendment of this Declaration. This *Section 18.4* may not be amended without Declarant's written and acknowledged consent.

## ARTICLE 19 DISPUTE RESOLUTION

*This Article 19 is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Units, Common Elements, and/or Improvements can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Units, prevent or jeopardize approval of the Units by Underwriting Lenders, and increase strife and tension among the Owners, the Board and the Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Unit and the Common Elements, this Article 19 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, the proposed arrangement between the Association and any inspection company who will prepare the Common Element Report (as defined below) or perform any other investigation or inspection of the Common Elements and/or Improvements related to the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.*

*For the avoidance of doubt, nothing in this Article 19 is intended to limit the Association's right or obligation to obtain inspection services related to the maintenance, repair and physical condition of the Regime pursuant to Section 9.3 of this Declaration provided that such inspection services are not commissioned by the Association in conjunction with a Unit Construction Claim or a Common Element Construction Claim.*

19.1. **Introduction and Definitions**. The Association, the Owners, Declarant, all Persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this *Article 19* by written instrument delivered to the Claimant, which may include, but is not limited to, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Units, Common Elements or any Improvement within, serving, or forming a part of the Regime (individually a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this *Article 19* applies to all

Claims as hereafter defined. This *Article 19* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding one-hundred (100%) of the votes in the Association. As used in this *Article 19* only, the following words, when capitalized, have the following specified meanings:

19.1.1. **"Claim"** means:

- (i) Claims relating to the rights and/or duties of Declarant or its permitted assigns, the Association, or the Master Association, under the Documents or the Act;
- (ii) Claims relating to the acts or omissions of the Declarant, the Board, or the Master Board during any such party's control and administration of the Association and/or Regime, any claim asserted against the McKinney Crossing Reviewer, and any claims asserted against the Declarant, the Master Board, or the Board or a Person serving as a Board member or an officer of the Association or the Master Association, or the McKinney Crossing Reviewer.
- (iii) Claims relating to the design or construction of the Units, Common Elements or any Improvement located within, serving, or forming a part of the Regime; and
- (iv) Claims relating to any repair or alteration of the Units, Common Elements, or any Improvement located within, serving, or forming a part of the Regime, including any Claims related to an alleged failure to perform repairs or for a breach of warranty.

19.1.2. **"Claimant"** means any Party having a Claim against any other Party.

19.1.3. **"Common Element Construction Claim"** means a Claim relating to: (i) the design or construction of the Common Elements or any Improvement located thereon; or (ii) any repair or alteration of the Common Elements, or any Improvement located thereon, including any Claims related to an alleged failure to perform repairs or for a breach of warranty.

19.1.4. **"Construction Claim"** means a Claim defined in *Section 19.1.1(iii)* or *Section 19.1.1(iv)*.

19.1.5. **"Respondent"** means any Party against which a Claim has been asserted by a Claimant.

19.1.6. **"Unit Construction Claim"** means a Claim relating to: (i) the design or construction of a Unit (whether one or more) or any Improvement located thereon; or (ii)

any repair or alteration of a Unit (whether one or more), or any Improvement located thereon, including any Claims related to an alleged failure to perform repairs or for a breach of warranty.

19.2. **Mandatory Procedures: All Claims.** Claimant may not initiate any proceeding before any judge, jury, arbitrator or any other judicial or administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the mandatory procedures of this *Article 19*. As provided in *Section 19.9* below, a Claim must be resolved by binding arbitration.

19.3. **Mandatory Procedures: Construction Claims.** Failure of a Claimant to comply with the procedures of this *Article 19* for a Construction Claim may result in significant expenses incurred by the Respondent to respond to a Construction Claim that would not have been otherwise incurred had the Claimant followed the procedures and dispute resolution process set forth herein, including attorney fees, court costs and other administrative expenses (the “**Response Costs**”). Notwithstanding any provision contained herein to the contrary, failure by a Claimant to comply with any of the procedural or dispute resolution requirements for a Construction Claim set forth in this *Article 19* shall constitute a material breach of this Declaration and any warranty agreement, entitling the Respondent to recover, from the Claimant, all actual and reasonable Response Costs incurred by Respondent. Moreover, strict compliance with the procedural and dispute resolution requirements of this *Article 19* shall be a condition precedent to any recovery for a Construction Claim.

19.4. **Common Element Construction Claim by the Association.** In accordance with *Section 12.1* of this Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other proceedings for: (i) a Construction Claim in the name of or on behalf of any Unit Owner (whether one or more); or (ii) a Unit Construction Claim. Additionally, no Unit Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim. Each Unit Owner, by accepting an interest in or title to a Unit, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim. In the event the Association asserts a Common Element Construction Claim, as a precondition to providing the Notice defined in *Section 19.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 19*, or taking any other action to prosecute a Common Element Construction Claim, the Association must:

19.4.1. **Obtain Owner Approval of Law Firm, Attorney and Inspection Company.**

*The requirements related to Owner approval set forth in this Section 19.4.1 are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm and/or attorney engaged by the Association to prosecute a Common Element Construction Claim, and any financial*

*arrangements between the Association and the Inspection Company (defined below) or a law firm and/or attorney and the Inspection Company. The agreement between the Association, the law firm or attorney, and/or the Inspection Company may include requirements that the Association pay costs, fees, and expenses to the law firm, attorney, or the Inspection Company which will be paid through Assessments levied against Owners. The financial agreement between the Association, the law firm or attorney, and/or the Inspection Company may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association, the law firm or attorney, and/or the Inspection Company is terminated, the Association elects not to engage the law firm or attorney or Inspection Company to prosecute or assist with the Common Element Construction Claim, or if the Association agrees to settle the Common Element Construction Claim. In addition, the financial arrangement between the Association, the law firm or attorney, and/or the Inspection Company may include additional costs, expenses, and interest charges. These financial obligations can be significant. The Board may not engage or execute an agreement with a law firm or attorney to investigate or prosecute a Common Element Construction Claim, or engage or execute an agreement between the Association and a law firm or attorney, for the purpose of preparing a Common Element Report or performing any other investigation or inspection of the Common Elements related to a Common Element Construction Claim unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 19.4.1. In addition, the Board may not execute an agreement with an Inspection Company to prepare the Common Element Report or perform any other investigation or inspection of the Common Elements related to a Common Element Construction Claim, unless the Inspection Company and the financial arrangements between the Association and the Inspection Company are approved by the Owners in accordance with this Section 19.4.1. For the purpose of the Owner approval required by this Section 19.4.1, an engagement, agreement or arrangement between a law firm or attorney and an Inspection Company, if such engagement, agreement or arrangement could result in any financial obligations to the Association, irrespective of whether the Association and law firm or attorney have entered into an engagement or other agreement to prosecute a Common Element Construction Claim, must also be approved by the Owners in accordance with this Section 19.4.1. An engagement or agreement described in this paragraph is referred to herein as a "Claim Agreement".*

Unless otherwise approved by Members holding sixty-seven percent (67%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to enter into a Claim Agreement if the Claim Agreement includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney and/or the Inspection Company, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the Claim Agreement or engages another firm or third-party to assist with the Common Element Construction Claim; (ii) if the Association elects not to enter into a Claim Agreement; (iii) if the Association agrees to settle the Common Element Construction Claim for

a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iv) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney or the Inspection Company; and/or (v) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney or the Inspection Company. For avoidance of doubt, it is intended that Members holding sixty-seven percent (67%) of the votes in the Association must approve the law firm and attorney who will prosecute a Common Element Construction Claim and the Inspection Company who will prepare the Common Element Report or perform any other investigation or inspection of the Common Elements related to a Common Element Construction Claim, and each Claim Agreement. All Claim Agreements must be in writing. The Board shall not have the authority to pay any costs, expenses, fees, or other charges to a law firm, attorney or the Inspection Company unless the Claim Agreement is in writing and approved by the Owners in accordance with this Section 19.4.1.

The approval of the Members required under this *Section 19.4.1* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney and/or the Inspection Company; (b) a copy of each Claim Agreement; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association under any Claim Agreement; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association under any Claim Agreement; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment under the Claim Agreement occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm, attorney and/or the Inspection Company will use to evaluate the Common Element Construction Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Buildings, Common Elements, Units, or Improvements). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Units or the Common Elements will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Buildings, Common Elements, Units, or Improvements affected by such testing, the estimated costs thereof, and an estimate of Assessments that may be levied against the Owners for such repairs. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed Claim Agreement being approved by the Members. In the event Members holding sixty-seven percent (67%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Common Element Construction Claim, and the Inspection Company who will prepare the Common Element Report or perform any other investigation or inspection of the Common Elements related to a Common Element Construction Claim, and the Claim Agreement(s), the Board shall have the authority to engage the law firm and/or attorney, and the Inspection Company, and enter into the Claim Agreement approved by the Members.

19.4.2. Provide Notice of the Investigation or Inspection.

As provided in *Section 19.4.3* below, a Common Element Report is required which is a written inspection report issued by the Inspection Company. Before conducting an investigation or inspection that is required to be memorialized by the Common Element Report, the Association must have provided at least ten (10) days prior written notice of the date on which the investigation or inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Element Report, the specific Common Elements to be investigated or inspected, and the date and time the investigation or inspection will occur. Each Respondent may attend the investigation or inspection, personally or through an agent.

#### 19.4.3. Obtain a Common Element Report.

*The requirements related to the Common Element Report set forth in this Section 19.4.3 are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Element Report and recommendations are not affected by influences that may compromise the professional judgment of the party preparing the Common Element Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Element Report is compromised.*

Obtain a written independent third-party report for the Common Elements (the “**Common Element Report**”) from a professional engineer licensed by the Texas Board of Professional Engineers with an office located in Travis County, Texas (the “**Inspection Company**”). The Common Element Report must include: (i) a description with photographs of the Common Elements subject to the Common Element Construction Claim; (ii) a description of the present physical condition of the Common Elements subject to the Common Element Construction Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Elements performed by the Association or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Common Elements subject to the Common Element Construction Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Element Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Travis County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Element Report must be obtained by the Association. The Common Element Report will not satisfy the requirements of this Section and is not an “independent” report if: (a) the Inspection Company has an arrangement or other agreement to provide

consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (b) the costs and expenses for preparation of the Common Element Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Element Report is finalized and delivered to the Association; or (c) the law firm or attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association's agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Common Element Report. For avoidance of doubt, an "independent" report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Common Element Report is finalized and delivered to the Association.

19.4.4. Provide a Copy of Common Element Report to all Respondents and Owners. Upon completion of the Common Element Report, and in any event no later than three (3) days after the Association has been provided a copy of the Common Element Report, the Association will provide a full and complete copy of the Common Element Report to each Respondent and to each Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Element Report which will include the date the report was provided. The Common Element Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

19.4.5. Provide a Right to Cure Defects and/or Deficiencies Noted on Common Element Report. Commencing on the date the Common Element Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Element Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Element Report; and (iii) correct any condition identified in the Common Element Report. As provided in *Section 3.10* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Element Report.

19.4.6. Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of any Claim Agreement, the Association must obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in *Section 19.6*, initiate the mandatory dispute resolution procedures set forth in this *Article 19*, or take any other action to prosecute a Common Element Construction Claim, which approval from Members must be obtained at

a 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: (i) the nature of the Common Element Construction Claim, the relief sought, the anticipated duration of prosecuting the Common Element Construction Claim, and the likelihood of success; (ii) a copy of the Common Element Report; (iii) a copy of any Claim Agreement between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Common Element Construction Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Common Element Construction Claim; (v) a summary of the steps previously taken by the Association to resolve the Common Element Construction Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Common Element Construction Claim may affect the market value, marketability, or refinancing of a Unit while the Common Element Construction Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Common Element Construction Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Common Element Construction Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Common Element Construction Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Common Element Construction Claim. In the event Members approve providing the Notice described in *Section 19.6*, or taking any other action to prosecute a Common Element Construction Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Common Element Construction Claim.

19.5. **Unit Construction Claim by Owners.** Class action proceedings are prohibited, and no Unit Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration. In the event an Owner asserts a Unit Construction Claim, as a precondition to providing the Notice defined in *Section 19.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 19*, or taking any other action to prosecute a Unit Construction Claim, the Owner must:

19.5.1. **Provide Notice of the Investigation or Inspection.**

As provided in *Section 19.5.2* below, a Unit Report is required which is a written inspection report issued by the Inspection Company. Before conducting an investigation or inspection that is required to be memorialized by the Unit Report, the Owner must have provided at least ten (10) days prior written notice of the date on which the investigation or inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Unit Report, the Unit and areas of the Unit to be

investigated or inspected, and the date and time the investigation or inspection will occur. Each Respondent may attend the investigation or inspection, personally or through an agent.

19.5.2. Obtain a Unit Report.

*The requirements related to the Unit Report set forth in this Section 19.5.2 are intended to provide assurance to the Claimant and Respondent that the substance and conclusions of the Unit Report and recommendations are not affected by influences that may compromise the professional judgment of the party preparing the Unit Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Unit Report is compromised.*

Obtain a written independent third-party report for the Unit (the “**Unit Report**”) from an Inspection Company. The Unit Report must include: (i) a description with photographs of the Unit and portions of the Unit subject to the Unit Construction Claim; (ii) a description of the present physical condition of the Unit; (iii) a detailed description of any modifications, maintenance, or repairs to the Unit performed by the Owner or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Unit. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Unit Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Travis County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Unit Report must be obtained by the Owner. The Unit Report will not satisfy the requirements of this Section and is not an “independent” report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Owner or proposes to represent the Owner; (b) the costs and expenses for preparation of the Unit Report are not directly paid by the Owner to the Inspection Company no later than the date the Unit Report is finalized and delivered to the Owner; or (c) the law firm or attorney that presently represents the Owner or proposes to represent the Owner has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Owner’s agreement with the law firm or attorney) the Owner for the costs and expenses for preparation of the Unit Report. For avoidance of doubt, an “independent” report means that the Owner has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Owner will directly pay for the report no later than the date the Unit Report is finalized and delivered to the Owner.

19.5.3. Provide a Copy of Unit Report to all Respondents. Upon completion of the Unit Report, and in any event no later than three (3) days after the Owner has been provided a copy of the Unit Report, the Owner will provide a full and complete copy of the Unit Report to each Respondent. The Owner shall maintain a written record of each Respondent who was provided a copy of the Unit Report which will include the date the report was provided. The Unit Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

19.5.4. Right to Cure Defects and/or Deficiencies Noted on Unit Report. Commencing on the date the Unit Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Unit Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Unit Report; and (iii) correct any condition identified in the Unit Report. As provided in *Section 3.10* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Unit Report.

19.5.5. Common Element Construction Claim. Pursuant to *Section 19.4* above, a Unit Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim. In the event that a court of competent jurisdiction or arbitrator determines that a Unit Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim, such Unit Owner shall be required, since a Common Element Construction Claim could affect all Owners, as a precondition to providing the Notice defined in *Section 19.6*, initiating the mandatory dispute resolution procedures set forth in this *Article 19*, or taking any other action to prosecute a Common Element Construction Claim, to comply with the requirements imposed by the Association in accordance with *Section 19.4.2* (Provide Notice of Inspection), *Section 19.4.3* (Obtain a Common Element Report), *Section 19.4.4* (Provide a Copy of Common Element Report to all Respondents and Owners), *Section 19.4.5* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Element Report), *Section 19.4.6* (Owner Meeting and Approval), and *Section 19.6* (Notice).

19.6. Notice. Claimant must notify Respondent in writing of the Claim (the “**Notice**”), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (ii) the basis of the Claim (*i.e.*, the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *Section 19.6*. For Construction Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 19.7* below, is equivalent to the sixty (60) day period

under Section 27.004 of the Texas Property Code. If a Construction Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 19.7*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Section 19.7* 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 Construction Claim. The one hundred and twenty (120) day period for mediation set forth in *Section 19.8* 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 19.8* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association and for a Common Element Construction Claim, the Notice will also include: (a) a true and correct copy of the Common Element Report, and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Common Elements; (b) a copy of any Claim Agreement; (c) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with *Section 19.4.1*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 19.4.6* above; and (e) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and the Claim is a Unit Construction Claim, the Notice will also include a true and correct copy of the Unit Report.

**19.7. Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (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.

**19.8. 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 thirty (30) day period, Respondent will submit the Claim to mediation in accordance with this *Section 19.8*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 19.9*.

19.9. **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 19.9*.

19.9.1. **Governing Rules.** If a Claim has not been resolved by mediation in accordance with *Section 19.8*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 19.9* and the American Arbitration Association (the “AAA”) Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the “AAA Rules”). In the event of any inconsistency between the AAA Rules and this *Section 19.9*, this *Section 19.9* 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 (1) arbitrator shall be selected by the Respondent, in its sole and absolute discretion; (ii) one (1) arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and (iii) one (1) arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

19.9.2. **Exceptions to Arbitration; Preservation of Remedies.** No provision of, nor the exercise of any rights under, this *Section 19.9* will limit the right of Claimant or Respondent, and Claimant and 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: (i) exercising self-help remedies (including set-off rights); or (ii) 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.

19.9.3. **Statute of Limitations.** All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 19.9*.

19.9.4. **Scope of Award; Modification or Vacation of Award.** The arbitrator shall resolve all Claims in accordance with the Applicable Law. The arbitrator may grant any

remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 19.9* and subject to *Section 19.10*; **provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent.** In addition, for a Construction Claim, or any portion of a Construction 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, **except that the arbitrator may not award attorney's fees and/or costs to either Claimant or Respondent.** 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: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. **In no event may an arbitrator award speculative, special, exemplary, treble or punitive damages for any Claim.**

19.9.5. 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. Arbitration proceedings hereunder shall be conducted in Travis County, Texas. Unless otherwise provided by this *Section 19.9*, 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. Claimant and Respondent agree 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. In no event shall Claimant or Respondent 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.

19.10. Allocation of Costs. Notwithstanding any provision in this Declaration to 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.

19.11. 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.

19.12. Period of Limitation.

19.12.1. For Actions by an Owner or Occupant of a Unit. The exclusive period of limitation for any of the Parties to bring any Claim shall be the earliest of: (i) for a Construction Claim, two (2) years and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Construction Claim; (ii) for Claims other than Construction Claims, four (4) years and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In the event that a court of competent jurisdiction determines that a Unit Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings for a Common Element Construction Claim, the exclusive period of limitation for such Common Element Construction Claim, shall be the earliest of: (a) two (2) years and one (1) day from the date that the Owner or the Association discovered or reasonably should have discovered evidence of the Common Element Construction Claim; or (b) the applicable statute of limitations for the Common Element Construction Claim. In no event shall this *Section 19.12.1* be interpreted to extend any period of limitations.

19.12.2. For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim shall be the earliest of: (i) for a Common Element Construction Claim, two (2) years and one (1) day from the date that the Association or its manager, board members, officers, or agents discovered or reasonably should have discovered evidence of the Common Element Construction Claim; (ii) for Claims other than a Common Element Construction Claim, four (4) years and one (1) day from the date that the Association or its manager, board members, officers, or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 19.12.2* be interpreted to extend any period of limitations.

19.13. Funding the Resolution of Claims. The Association must levy a Special Assessment to fund estimated costs to resolve a Construction Claim pursuant to this *Article 19*. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Construction Claim unless the Association has previously established and funded a dispute resolution fund.

## ARTICLE 20

### GENERAL PROVISIONS

20.1. Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by electronic mail, personally or by mail. Such notice shall be deemed delivered at the time of personal or electronic delivery, and if delivery is made by mail, it shall be deemed to have been delivered on the third 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 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 of created.

20.2. **Integration into Master Plan Development.** The Regime is subject to all terms, conditions and restrictions set forth in the Master Plan Documents. The Master Plan Documents may be amended in accordance with the terms and provisions thereof, from time to time, and such amendments shall be binding and enforceable against all Owners.

20.3. **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Regime and of promoting and effectuating the fundamental concepts of the Regime set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

20.4. **Captions.** In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer.

20.5. **Construction.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections, or articles hereof. Throughout this Declaration there appears text enclosed by a box. This text is used to aid in the reader's comprehension of certain provisions of this Declaration. In the event of a conflict between the text enclosed by a box and any provision of this Declaration, the provision of the Declaration will control.

20.6. **Appendix / Attachments.** The following appendixes and exhibits are attached to this Declaration and are incorporated herein by reference:

Exhibit "A"	The Land
Attachment "1"	Condominium Plats and Plans
Attachment "2"	Encumbrances
Attachment "3"	Common Interest Allocation and Votes
Attachment "4"	Guide to the Association's Examination of Common Elements
Attachment "5"	Guide to Association's Major Management and Governance Functions
Attachment "6"	Maintenance Responsibility Chart
Appendix "A"	Declarant Reservations

*[SIGNATURE PAGE FOLLOWS]*

EXECUTED on this 20th day of April, 2021.

DECLARANT:

KB HOME LONE STAR INC.,  
a Texas corporation

By: [Signature]

Printed Name: Pat Murphy

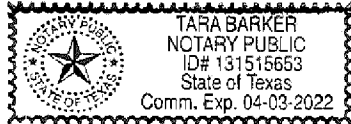
Title: Vice President Land Acquisition

STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§

This instrument was acknowledged before me on the 20th day of April, 2021, by Pat Murphy Vice President Land Acquisition of KB Home Lone Star Inc., a Texas corporation, on behalf of said corporation.

[seal]



[Signature]  
Notary Public, State of Texas

**ACKNOWLEDGED AND AGREED FOR**  
**PURPOSES OF SECTION 3.13 OF THIS DECLARATION:**

**MASTER ASSOCIATION:**

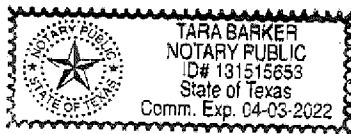
MCKINNEY CROSSING MASTER COMMUNITY, INC.,  
a Texas nonprofit corporation

Shawn A. Kirkpatrick  
Shawn Kirkpatrick, Director

STATE OF TEXAS                   §  
COUNTY OF Williamson       §

This instrument was acknowledged before me on the 15 day of April, 2021, by Shawn Kirkpatrick, a Director of MCKINNEY CROSSING MASTER COMMUNITY, INC., a Texas nonprofit corporation, on behalf of said corporation.

[seal]



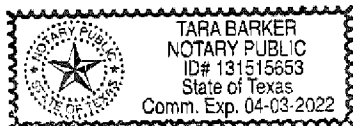
Tara Barker  
Notary Public, State of Texas

John Zinsmeyer  
John Zinsmeyer, Director


STATE OF TEXAS                   §  
COUNTY OF Travis           §

This instrument was acknowledged before me on the 15 day of April, 2021, by John Zinsmeyer, a Director of MCKINNEY CROSSING MASTER COMMUNITY, INC., a Texas nonprofit corporation, on behalf of said corporation.

[seal]



Tara Barker  
Notary Public, State of Texas

  
 April Miertschin, Director

STATE OF TEXAS

§

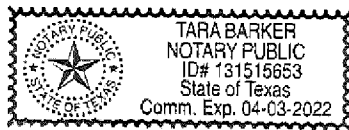
COUNTY OF Williamson


§

§

This instrument was acknowledged before me on the 15 day of April, 2021, by April Miertschin, a Director of MCKINNEY CROSSING MASTER COMMUNITY, INC., a Texas nonprofit corporation, on behalf of said corporation.

[seal]



  
 Notary Public, State of Texas

**EXHIBIT "A"**

Lot 1, Block A, Colton Bluff, Phase 1A, according to the plat recorded as Document No. 202000092, Official Public Records of Travis County, Texas.

**ATTACHMENT "1"**

**CONDOMINIUM PLATS AND PLANS**

The plats and plans, attached hereto as Attachment "1" contains the information required by the Texas Uniform Condominium Act.

Printed Name: Aaron V. Thomason  
RPLS or License: 6214

**BOUNDARIES OF UNIT**

The legal boundaries of each Unit are established by the Declarant and the Plat and Plans attached hereto. However, each Owner acknowledges that the Unit may be measured and depicted in a manner which differs from the legal boundaries of a Unit. For example, the Unit may be measured or depicted differently for tax purposes, appraisal purposes, sales purposes, and for purposes of carpeting and paint. No single measurement is definitive for all purposes. Measurements may be of the area under roof, or the air conditioned space, or the area within the Unit's legal boundaries.

*SEE NEXT PAGE FOR ORIGINAL CERTIFICATION*

**McKINNEY CROSSING CONDOMINIUMS CONDO PLAT AND PLANS**

AMENDED PLAT OF LOT 1, BLOCK A, COLTON BLUFF PHASE 1A, FINAL PLAT

DOCUMENT NUMBER 202000092, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**McKINNEY CROSSING CONDO PLATS AND PLANS****(CERTIFICATION)**

THE PLAT AND PLANS, ATTACHED HERETO, CONTAIN THE INFORMATION  
REQUIRED BY SECTIONS 82.052 AND 82.059 OF THE TEXAS UNIFORM  
CONDOMINIUM ACT, AS APPLICABLE.



AARON V. THOMASON  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6214

21 Jan 2021

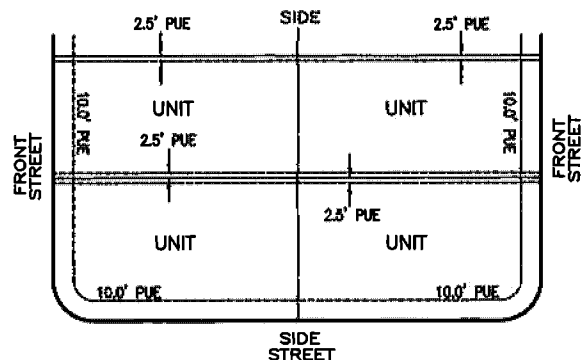
**LEGEND**

- B.L. BUILDING SETBACK LINE  
G.C.E.\* GENERAL COMMON ELEMENT  
- SUBJECT TO DEVELOPMENTAL RIGHTS  
G.C.E. GENERAL COMMON ELEMENT  
D.E. DRAINAGE EASEMENT  
P.U.E. PUBLIC UTILITY EASEMENT  
L.S.E. LANDSCAPE EASEMENT

- Ⓐ BLOCK  
1 UNIT NUMBER  
■ CONCRETE MONUMENT SET  
○ CAPPED IRON ROD SET  
● CAPPED IRON ROD FOUND  
△ MAG NAIL SET  
— UNIT LINE

■ MASTER MAINTAINED AREA

A 2.5' PUBLIC UTILITY EASEMENT IS  
ADJACENT TO ALL SIDE UNIT LINES  
(NOT TO SCALE)

**Carlson, Brigrance & Doering, Inc.**

FIRM ID #F3791 ♦ REG. # 10024900

Civil Engineering ♦ Surveying  
5501 West William Cannon ♦ Austin, Texas 78749  
Phone No. (512) 280-5160 ♦ Fax No. (512) 280-5165

McKINNEY CROSSING CONDOMINIUMS

CONDO PLAT  
AND PLANS

DESIGNED BY:

DRAWN BY:

CHECKED BY:

DATE:

TKM

AT

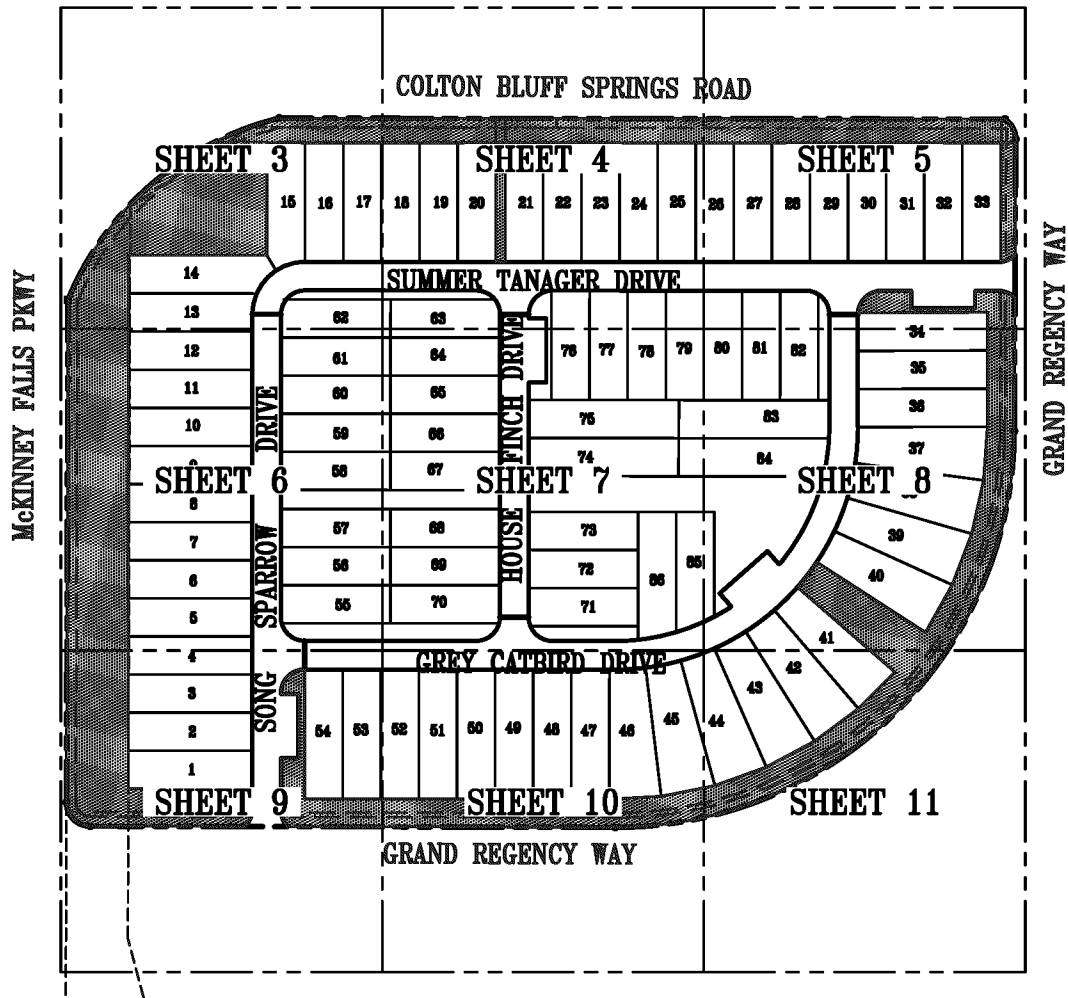
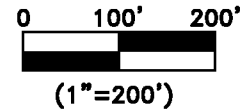
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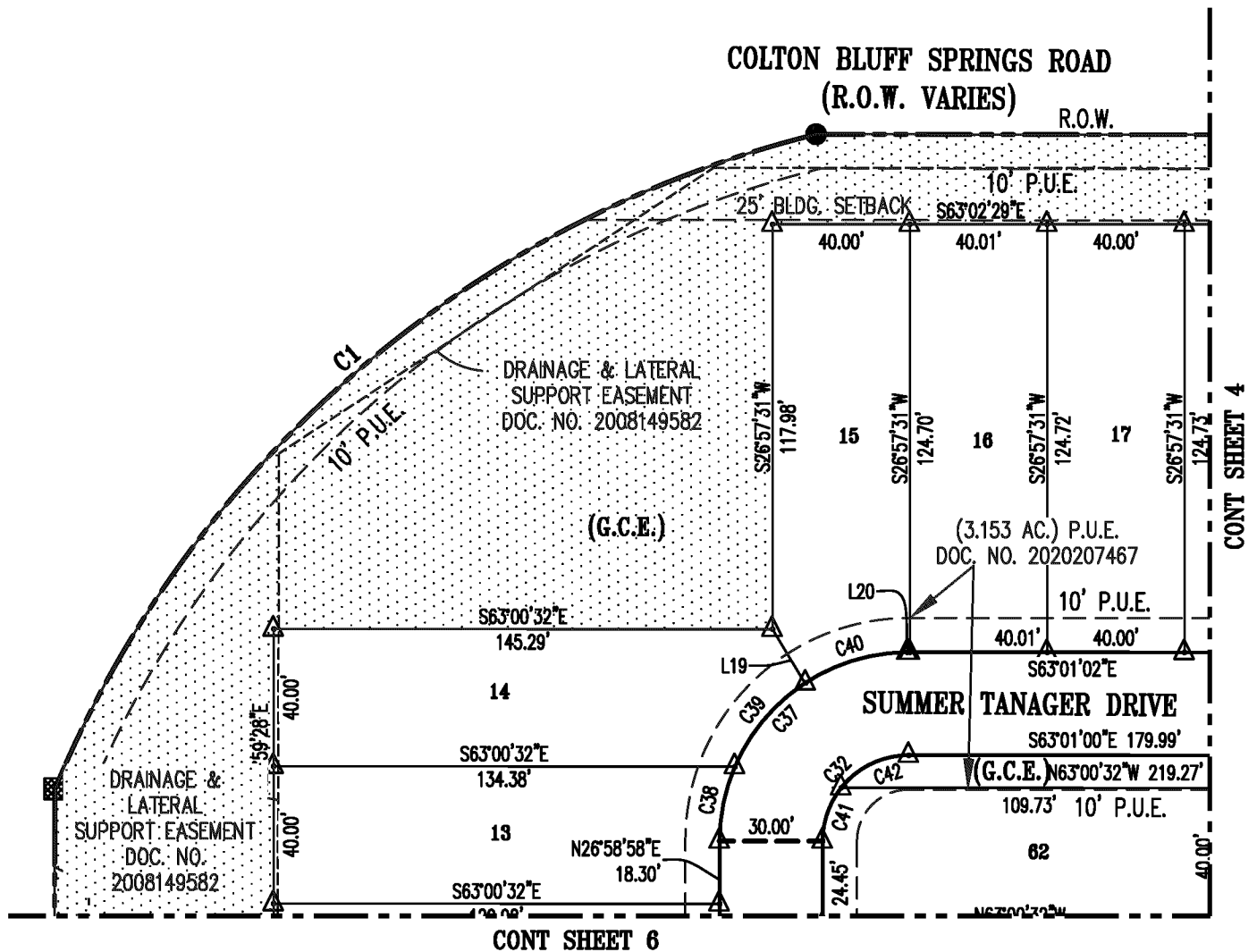
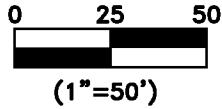
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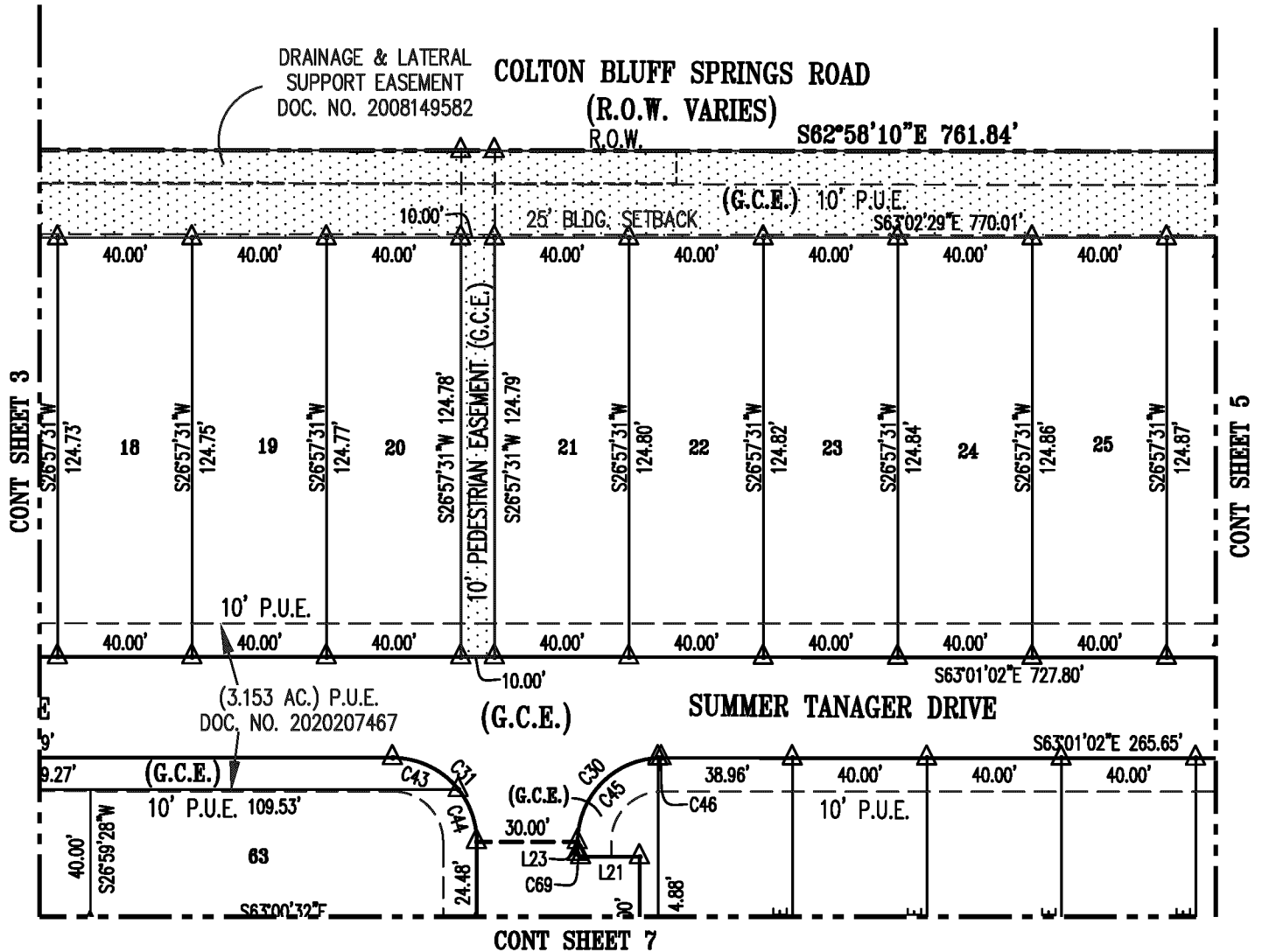
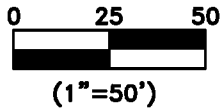
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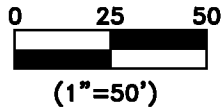
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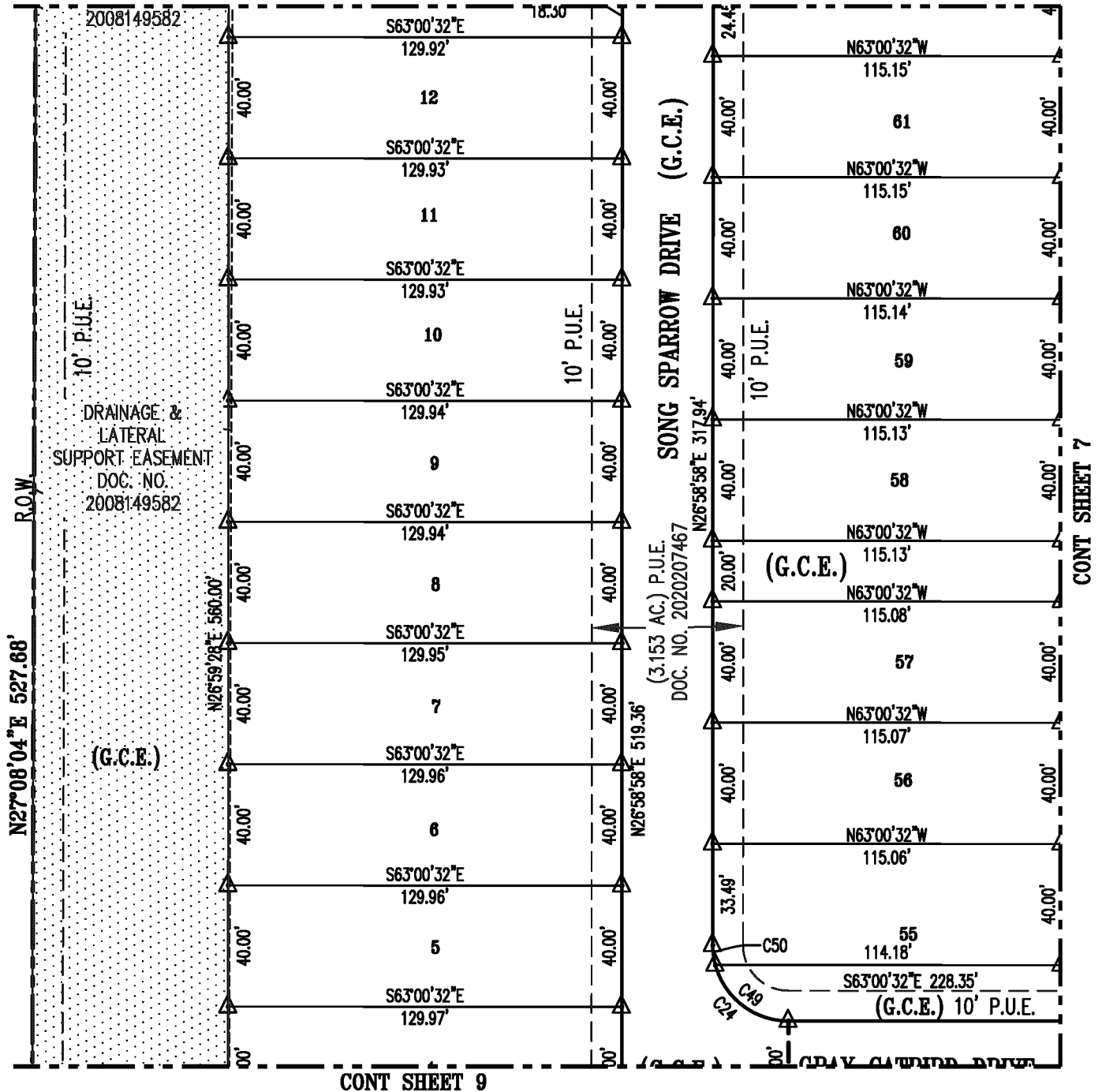
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AMENDED PLAT OF LOT 1, BLOCK A, COLTON BLUFF PHASE 1A, FINAL PLAT

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CONT SHEET 3



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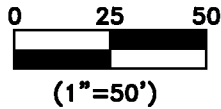
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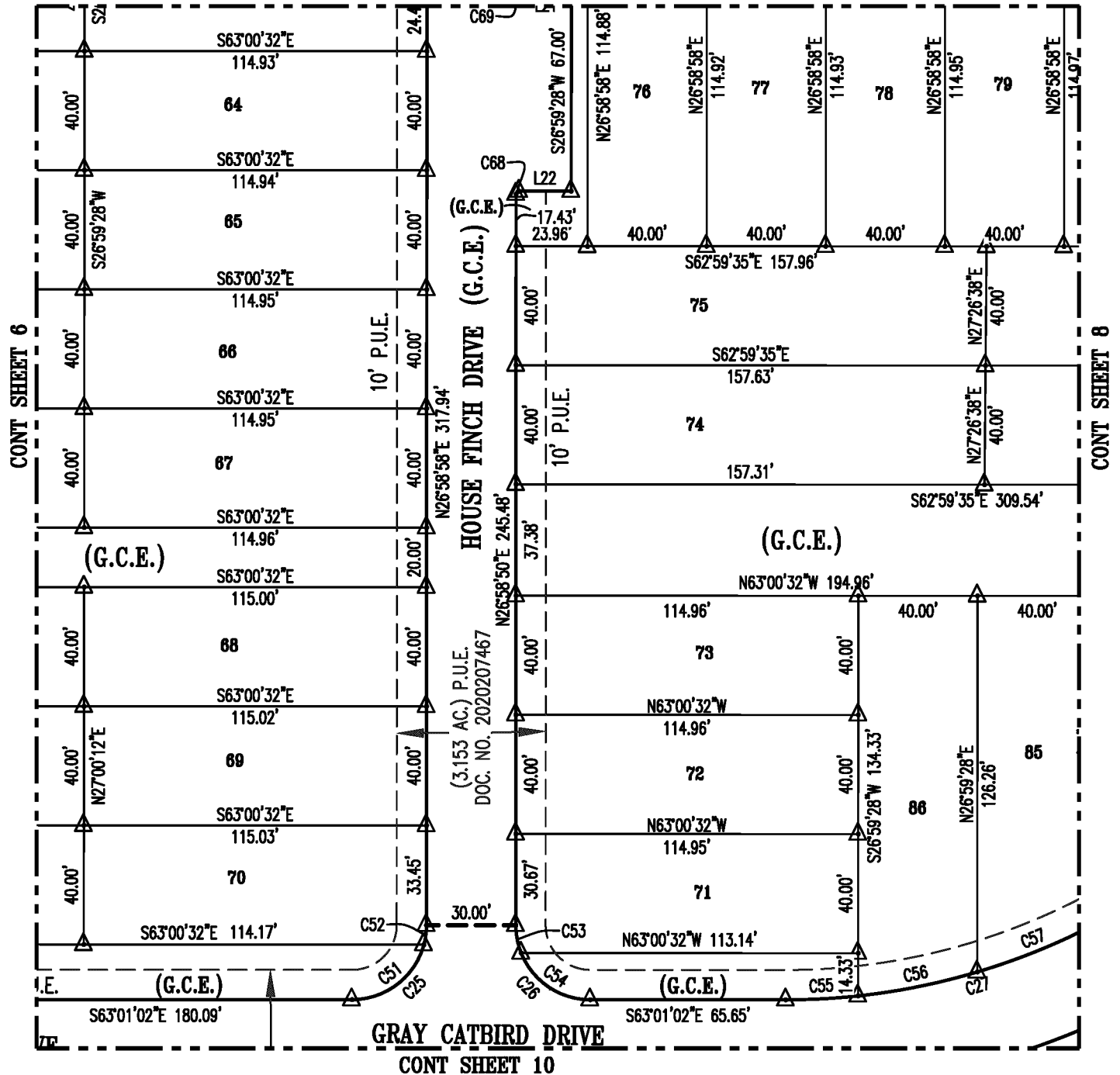
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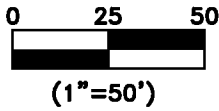
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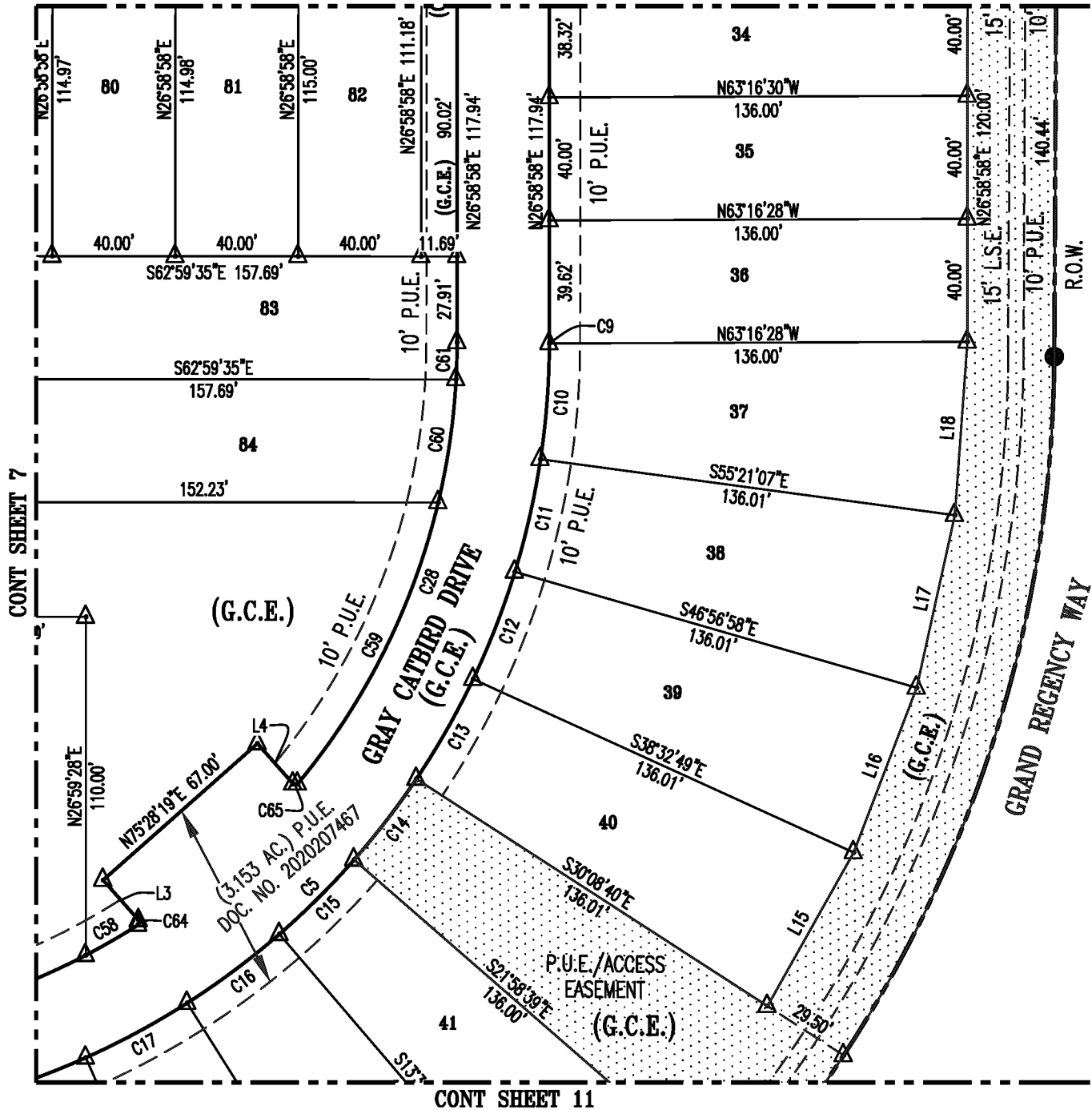
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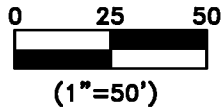
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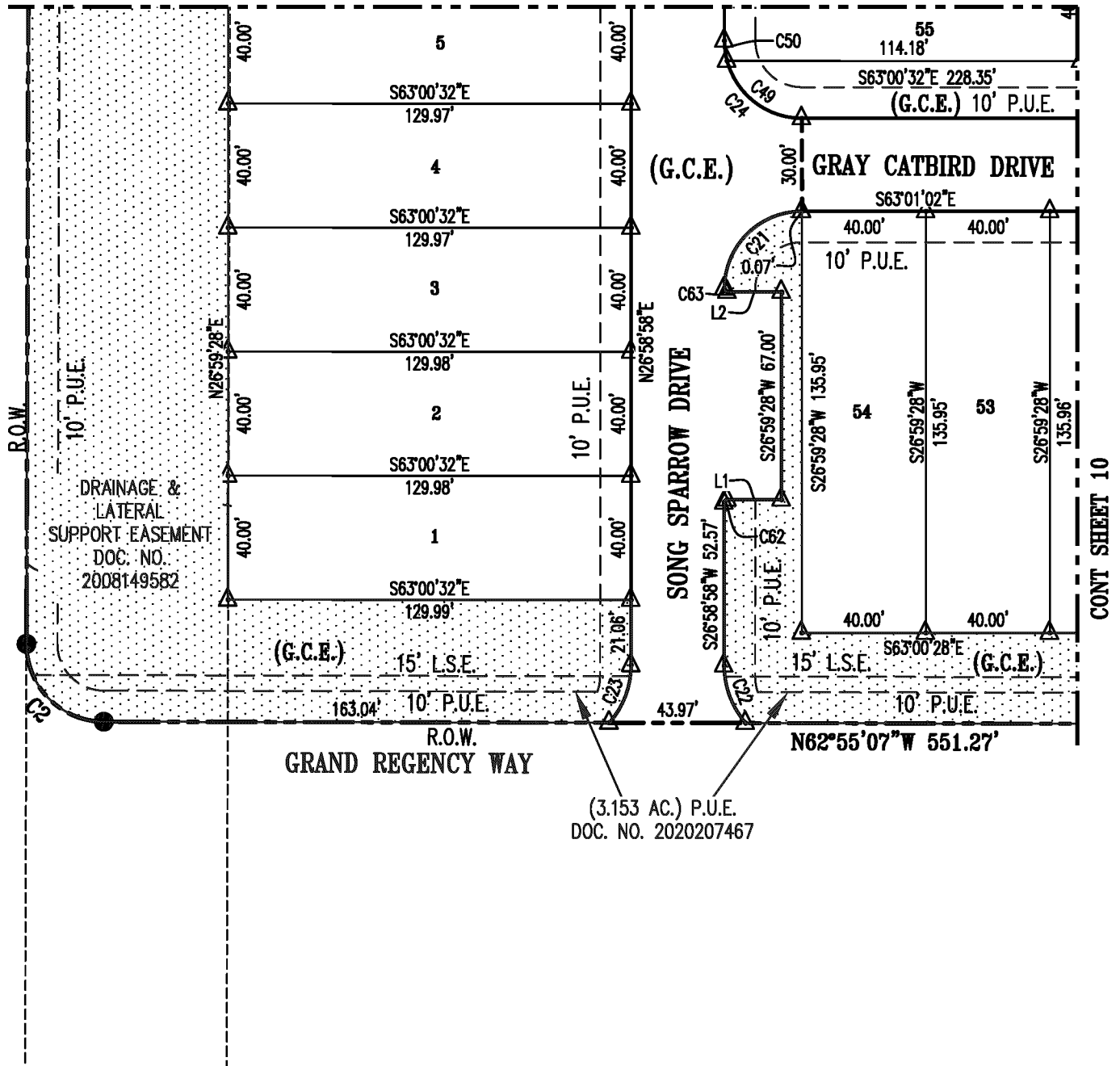
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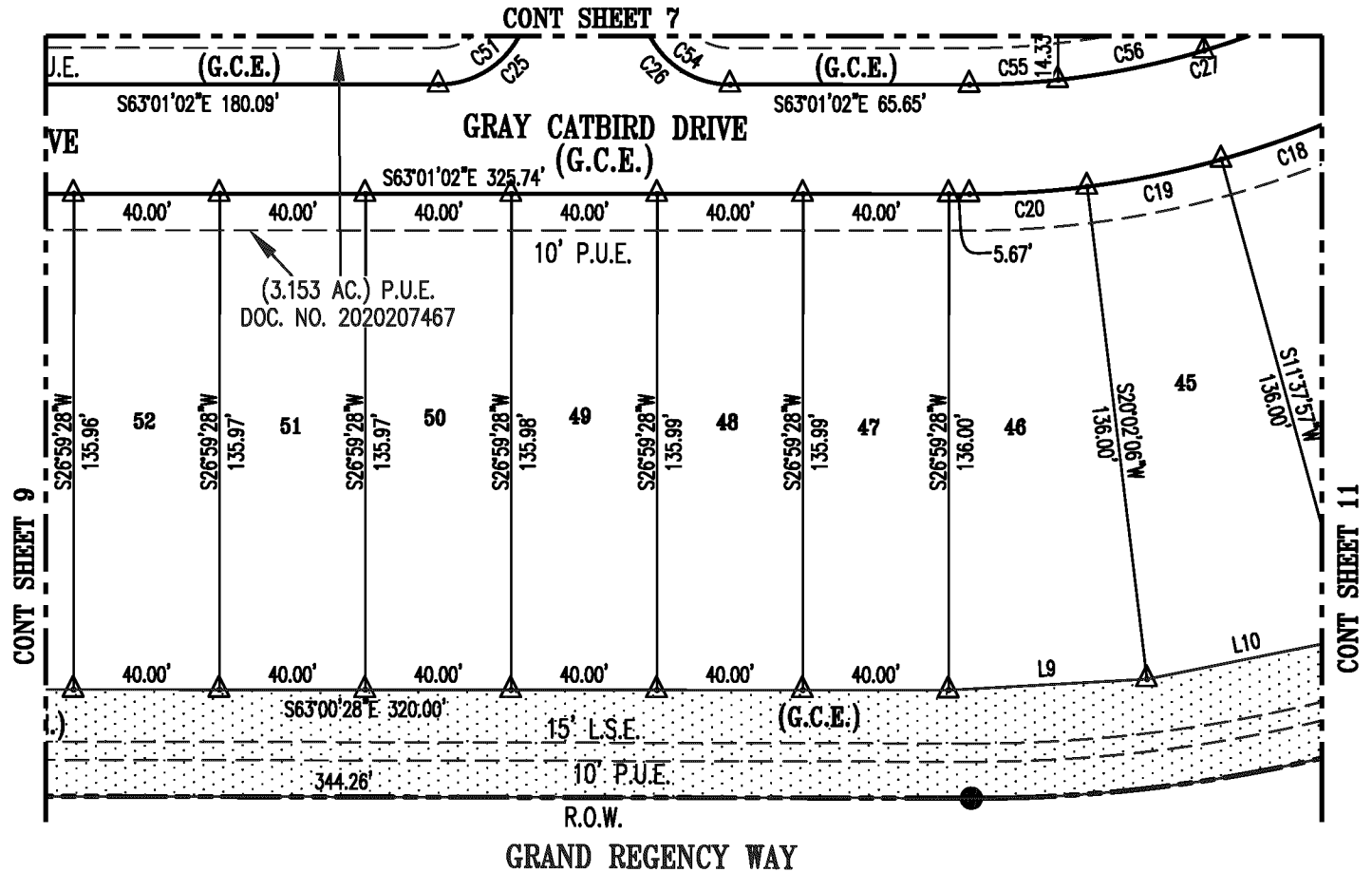
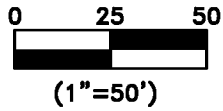
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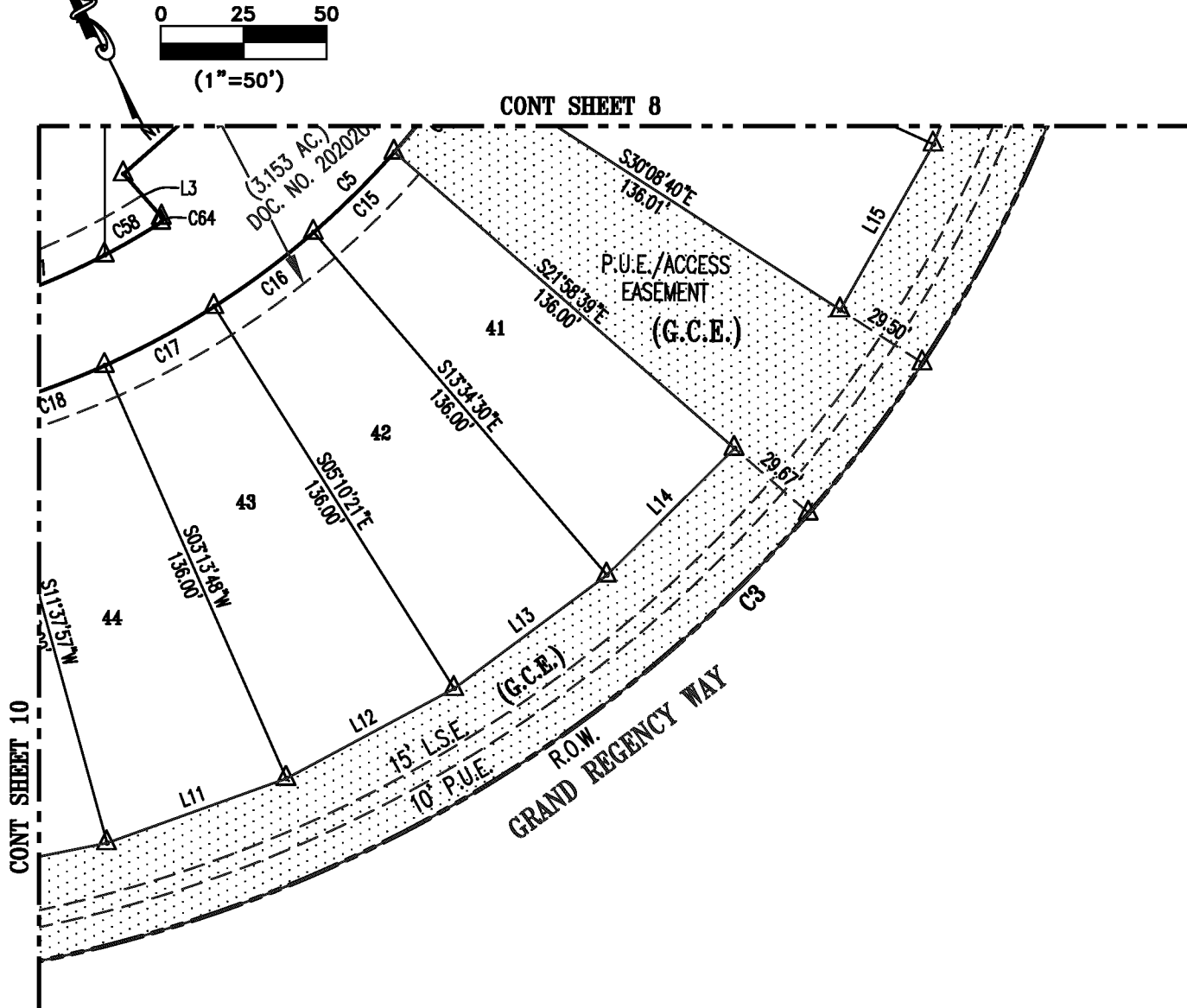
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**McKINNEY CROSSING CONDOMINIUMS CONDO PLAT AND PLANS**

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Curve Table						
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C1	303.38'	324.27'	N76°15'31"E	292.43'	163.82'	53°36'15"
C2	39.29'	25.00'	N17°53'31"W	35.37'	25.02'	90°03'11"
C3	655.43'	418.00'	S72°10'11"W	590.32'	416.84'	89°50'26"
C4	25.20'	25.00'	S01°37'27"E	24.14'	13.79'	57°44'42"
C5	400.55'	255.00'	N71°58'58"E	360.62'	255.00'	90°00'00"
C6	39.27'	25.00'	S71°58'58"W	35.36'	25.00'	90°00'00"
C7	37.59'	25.00'	S73°54'37"W	34.15'	23.37'	86°08'43"
C8	1.68'	25.00'	S28°54'37"W	1.68'	0.84'	3°51'17"
C9	0.38'	126.22'	S26°58'58"W	0.38'	0.19'	0°10'27"
C10	37.79'	255.03'	S31°18'53"W	37.75'	18.93'	8°29'22"
C11	37.57'	255.00'	S39°46'48"W	37.53'	18.82'	8°26'28"
C12	37.48'	255.00'	S48°12'39"W	37.44'	18.77'	8°25'14"
C13	37.38'	255.00'	S56°37'16"W	37.35'	18.73'	8°24'00"
C14	33.21'	255.00'	S64°33'08"W	33.19'	16.63'	7°27'44"
C15	34.30'	255.00'	S72°08'14"W	34.28'	17.18'	7°42'27"
C16	37.47'	255.00'	S80°12'00"W	37.43'	18.77'	8°25'05"
C17	37.51'	255.00'	S88°37'21"W	37.47'	18.79'	8°25'37"
C18	37.54'	255.00'	N82°56'47"W	37.51'	18.81'	8°26'08"
C19	37.58'	255.00'	N74°30'26"W	37.54'	18.82'	8°26'36"
C20	32.35'	255.00'	N66°39'05"W	32.33'	16.20'	7°16'06"
C21	39.27'	25.00'	S71°58'57"W	35.36'	25.00'	90°00'02"
C22	20.16'	28.00'	S06°21'05"W	19.73'	10.54'	41°15'47"
C23	20.26'	28.00'	N47°42'47"E	19.82'	10.60'	41°27'37"
C24	39.27'	25.00'	S18°01'01"E	35.36'	25.00'	89°59'58"
C25	39.27'	25.00'	N71°58'58"E	35.36'	25.00'	90°00'00"

**Carlson, Brigrance & Doering, Inc.**

FIRM ID #F3791 ♦ REG. # 10024900

Civil Engineering ♦ Surveying  
 5501 West William Cannon ♦ Austin, Texas 78749  
 Phone No. (512) 280-5160 ♦ Fax No. (512) 280-5165

McKINNEY CROSSING CONDOMINIUMS

CONDO PLAT  
AND PLANS

DESIGNED BY:

DRAWN BY:

TKM

CHECKED BY:

AT

DATE:

21 JAN. 21

JOB NUMBER  
5147SHEET  
12  
OF  
16

**McKINNEY CROSSING CONDOMINIUMS CONDO PLAT AND PLANS**

AMENDED PLAT OF LOT 1, BLOCK A, COLTON BLUFF PHASE 1A, FINAL PLAT

DOCUMENT NUMBER 202000092, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

Curve Table						
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C26	39.27'	25.00'	S18°01'02"E	35.36'	25.00'	90°00'00"
C27	128.12'	225.00'	S79°19'48"E	126.40'	65.85'	32°37'33"
C28	155.72'	225.00'	N46°48'36"E	152.63'	81.13'	39°39'16"
C29	39.27'	25.00'	N18°01'02"W	35.36'	25.00'	90°00'00"
C30	39.27'	25.00'	S71°58'58"W	35.36'	25.00'	90°00'00"
C31	39.27'	25.00'	N18°01'02"W	35.36'	25.00'	90°00'00"
C32	39.37'	25.00'	S72°05'57"W	35.43'	25.10'	90°13'57"
C33	20.35'	28.00'	N42°11'54"W	19.90'	10.65'	41°38'14"
C34	20.10'	28.00'	S83°34'39"E	19.67'	10.50'	41°07'15"
C35	17.12'	28.00'	S86°37'14"E	16.86'	8.84'	35°02'10"
C36	2.97'	28.00'	S66°03'36"E	2.97'	1.49'	6°05'05"
C37	86.02'	55.00'	S71°47'21"W	77.52'	54.63'	89°36'43"
C38	22.31'	55.00'	N38°36'06"E	22.15'	11.31'	23°14'14"
C39	32.16'	55.00'	N66°58'09"E	31.70'	16.55'	33°29'51"
C40	31.56'	55.00'	S79°50'36"E	31.13'	16.23'	32°52'38"
C41	16.78'	25.00'	N46°12'35"E	16.47'	8.72'	38°27'13"
C42	22.59'	25.00'	S88°40'27"E	21.83'	12.13'	51°46'45"
C43	22.53'	25.00'	N37°12'00"W	21.77'	12.09'	51°38'03"
C44	16.74'	25.00'	N07°48'00"E	16.43'	8.70'	38°21'57"
C45	38.23'	25.00'	N70°47'46"E	34.62'	23.99'	87°37'35"
C46	1.04'	25.00'	S64°12'14"E	1.04'	0.52'	2°22'25"
C47	14.04'	25.00'	N46°55'41"W	13.86'	7.21'	32°10'42"
C48	25.23'	25.00'	N01°55'41"W	24.17'	13.81'	57°49'18"
C49	32.68'	25.00'	N25°34'07"W	30.40'	19.15'	74°53'45"
C50	6.59'	25.00'	N19°25'52"E	6.57'	3.31'	15°06'13"

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AMENDED PLAT OF LOT 1, BLOCK A, COLTON BLUFF PHASE 1A, FINAL PLAT

DOCUMENT NUMBER 202000092, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

Curve Table						
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C51	32.65'	25.00'	N79°34'24"E	30.38'	19.12'	74°49'09"
C52	6.62'	25.00'	N34°34'24"E	6.60'	3.33'	15°10'51"
C53	9.57'	25.00'	S16°01'14"W	9.51'	4.84'	21°55'29"
C54	29.70'	25.00'	S28°58'46"E	27.99'	16.89'	68°04'31"
C55	24.34'	225.00'	S66°06'59"E	24.33'	12.18'	6°11'55"
C56	40.86'	225.00'	S74°25'07"E	40.81'	20.49'	10°24'20"
C57	43.24'	225.00'	S85°07'39"E	43.18'	21.69'	11°00'43"
C58	19.67'	225.00'	N86°51'43"E	19.67'	9.84'	5°00'34"
C59	103.16'	225.00'	N53°30'09"E	102.26'	52.50'	26°16'12"
C60	40.47'	225.00'	N35°12'53"E	40.41'	20.29'	10°18'19"
C61	12.09'	225.00'	N28°31'21"E	12.09'	6.05'	3°04'46"
C62	1.57'	1.00'	S71°59'13"W	1.41'	1.00'	90°00'29"
C63	1.57'	1.00'	S18°00'48"E	1.41'	1.00'	89°59'29"
C64	1.73'	1.00'	N34°54'52"E	1.52'	1.17'	98°53'06"
C65	1.72'	1.00'	S63°56'43"E	1.52'	1.17'	98°50'05"
C66	1.57'	1.00'	N18°00'22"W	1.41'	1.00'	89°59'40"
C67	1.57'	1.00'	S71°59'13"W	1.41'	1.00'	89°59'31"
C68	1.57'	1.00'	S71°59'38"W	1.41'	1.00'	89°59'40"
C69	1.57'	1.00'	S18°00'25"E	1.41'	1.00'	90°00'15"

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**McKINNEY CROSSING CONDOMINIUMS CONDO PLAT AND PLANS**

AMENDED PLAT OF LOT 1, BLOCK A, COLTON BLUFF PHASE 1A, FINAL PLAT

DOCUMENT NUMBER 202000092, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

Line Table		
Line #	Length	Direction
L1	17.49	N63°00'32"W
L2	17.50	N63°00'32"W
L3	17.46	S14°31'41"E
L4	17.49	S14°31'41"E
L5	17.50	N26°59'28"E
L6	17.51	N26°59'28"E
L7	22.30	S63°00'47"E
L8	30.00	S63°01'31"E
L9	54.49	S66°13'20"E
L10	57.47	S74°23'19"E
L11	57.44	S82°48'54"E
L12	57.40	N88°45'49"E
L13	57.36	N80°20'53"E
L14	54.20	N72°10'02"E
L15	57.28	N56°17'06"E
L16	57.37	N47°52'38"E
L17	57.46	N39°27'23"E
L18	56.54	N31°05'46"E
L19	18.34	N04°03'19"W
L20	0.75	S63°01'02"E

Line Table		
Line #	Length	Direction
L21	17.50	S63°00'32"E
L22	17.50	N63°00'32"W
L23	3.46	N26°58'58"E

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**McKINNEY CROSSING CONDOMINIUMS CONDO PLAT AND PLANS**

AMENDED PLAT OF LOT 1, BLOCK A, COLTON BLUFF PHASE 1A, FINAL PLAT

DOCUMENT NUMBER 202000092, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

GENERAL NOTES:

1. ALL IMPROVEMENTS AND LAND REFLECTED ON THE PLAT ARE DESIGNATED AS GENERAL COMMON ELEMENTS, SAVE AND EXCEPT PORTIONS OF THE REGIME DESIGNATED AS LIMITED COMMON ELEMENTS OR UNITS IN THE DEVELOPMENT AREA DECLARATION OF CONDOMINIUM REGIME FOR McKINNEY CROSSING CONDOMINIUMS, (THE "DECLARATION") OR ON THE PLAT AND PLANS OF THE REGIME.
2. OWNERSHIP AND USE OF CONDOMINIUM UNITS IS SUBJECT TO THE RIGHTS AND RESTRICTIONS CONTAINED IN THE DECLARATION.
3. EACH UNIT, BUILDING, LIMITED COMMON ELEMENT AND GENERAL COMMON ELEMENT IS SUBJECT TO SPECIAL RIGHTS RESERVED BY THE DECLARANT IN THE DECLARATION. PURSUANT TO SUCH PROVISIONS, AMONG OTHER THINGS, DECLARANT HAS RESERVED THE RIGHT TO:
  - COMPLETE OR MAKE IMPROVEMENTS INDICATED ON THE PLAT AND PLANS
  - EXERCISE ANY DEVELOPMENT RIGHT PERMITTED BY THE TEXAS UNIFORM CONDOMINIUM ACT (THE "ACT") AND THE DECLARATION, INCLUDING THE RIGHT(S)
    - TO ADD REAL PROPERTY TO THE CONDOMINIUM
    - TO CREATE UNITS, GENERAL COMMON ELEMENTS, AND LIMITED COMMON ELEMENTS
    - TO SUBDIVIDE UNITS OR CONVERT INTO COMMON ELEMENTS
    - TO WITHDRAW PROPERTY FROM THE CONDOMINIUM
  - MAKE THE PROPERTY PART OF A LARGER CONDOMINIUM OR PLANNED COMMUNITY
  - USE UNITS OWNED OR LEASED BY DECLARANT AS MODELS, STORAGE AREAS, AND OFFICES FOR THE MARKETING, MANAGEMENT, MAINTENANCE, CUSTOMER SERVICE, CONSTRUCTION, AND LEASING OF THE PROPERTY USE EASEMENTS THROUGH THE COMMON ELEMENTS FOR THE PURPOSE OF MAKING IMPROVEMENTS THROUGH THE REGIME.
  - APPOINT OR REMOVE ANY DECLARANT-APPOINTED OFFICER OR DIRECTOR OF THE ASSOCIATION DURING THE DECLARANT CONTROL PERIOD (AS DEFINED IN THE DECLARATION) CONSISTENT WITH THE ACT. FOR PURPOSES OF PROMOTING, IDENTIFYING, AND MARKETING THE PROPERTY, DECLARANT HAS RESERVED AN EASEMENT AND RIGHT TO PLACE OR INSTALL SIGNS, BANNERS, FLAGS, DISPLAY LIGHTING, POTTED PLANTS, EXTERIOR DECORATIVE ITEMS, SEASONAL DECORATIONS, TEMPORARY WINDOW TREATMENTS, AND SEASONAL LANDSCAPING ON THE PROPERTY, INCLUDING ITEMS AND LOCATIONS THAT ARE PROHIBITED TO OTHER OWNERS. DECLARANT HAS ALSO RESERVED AN EASEMENT AND RIGHT TO TIME. DECLARANT HAS RESERVED AN EASEMENT AND RIGHT OF INGRESS AND EGRESS IN AND THROUGH THE COMMON ELEMENTS (AS DEFINED IN THE DECLARATION) AND UNITS OWNED OR LEASED BY DECLARANT FOR PURPOSES OF CONSTRUCTING, MAINTAINING, MANAGING, AND MARKETING THE PROPERTY, AND FOR DISCHARGING DECLARANT'S OBLIGATIONS UNDER THE ACT AND THE DECLARATION.
4. BOUNDARIES ARE AS DESCRIBED IN THE DECLARATION.
5. THE FOREGOING PROPERTY IS LOCATED WITHIN ZONE X ACCORDING TO THE FEMA FLOOD INSURANCE RATE MAP 48453C0611K & 48453C0613K DATED JANUARY 22, 2020. ZONE X IS NOT WITHIN A 100 YEAR FLOOD ZONE.

**Carlson, Brigrance & Doering, Inc.**

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5147SHEET  
16  
OF  
16

TAX CERTIFICATE  
 Bruce Elfant  
 Travis County Tax Assessor-Collector  
 P.O. Box 1748  
 Austin, Texas 78767  
 (512) 854-9473

-----  
 ACCOUNT NUMBER: 03-3901-0202-0000

PROPERTY OWNER:

KB HOME LONE STAR INC  
 10800 PECAN PARK BLVD STE 200  
 AUSTIN, TX 78750-1249

PROPERTY DESCRIPTION:

ABS 24 DELVALLE S ACR 94.441

-----  
 ACRES 94.4410 MIN% .000000000000 TYPE  
 -----

SITUS INFORMATION: 7321 COLTON-BLUFF SPRG RD

-----  
 This is to certify that after a careful check of tax records of this office, the following taxes, delinquent taxes, penalties and interests are due on the described property of the following tax unit(s):

YEAR	ENTITY	TOTAL
2020	CITY OF AUSTIN (TRAV)	*ALL PAID*
	TRAVIS COUNTY	*ALL PAID*
	DEL VALLE ISD	*ALL PAID*
	TRAVIS CENTRAL HEALTH	*ALL PAID*
	ACC (TRAVIS)	*ALL PAID*
TOTAL SEQUENCE 0		*ALL PAID*
TOTAL TAX:		*ALL PAID*
UNPAID FEES:		* NONE *
INTEREST ON FEES:		* NONE *
COMMISSION:		* NONE *
TOTAL DUE ==>		*ALL PAID*

TAXES PAID FOR YEAR 2020 \$17,488.42

ALL TAXES PAID IN FULL PRIOR TO AND INCLUDING THE YEAR 2020 EXCEPT FOR UNPAID YEARS LISTED ABOVE.

The above described property may be subject to special valuation based on its use, and additional rollback taxes may become due. (Section 23.55, State Property Tax Code). Pursuant to Section 31.08 of the State Property Tax Code, there is a fee of \$10.00 for all Tax Certificates.

-----  
 GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS DATE OF 01/20/2021

Fee Paid: \$10.00

Bruce Elfant  
 Tax Assessor-Collector

By: *Susan Michels*

**ATTACHMENT "2"****ENCUMBRANCES**

1. Restrictive Covenants recorded under Document No. 2003288729 of the Official Public Records of Travis County, Texas.
2. Drainage and lateral support easement granted to Travis County recorded in/under Document No. 2008149582 of the Official Public Records of Travis County, Texas, as shown on survey prepared by Aaron V. Thomason, R.P.L.S. # 6214 dated January 23, 2017.
3. Lateral support easement granted to Travis County recorded in/under Document No. 2008149583 of the Official Public Records of Travis County, Texas, as shown on survey prepared by Aaron V. Thomason, R.P.L.S. # 6214 dated January 23, 2017.
4. Open or enclosed storm water easement granted to the City of Austin recorded in/under Volume 9983, Page 857 of the Real Property Records of Travis County, Texas, as shown on survey prepared by Aaron V. Thomason, R.P.L.S. # 6214 dated January 23, 2017.
5. Any claim or right of adjoining property owner to that strip of land lying between the fence and the boundary line of the property, as shown on survey prepared by Aaron V. Thomason, R.P.L.S. # 6214 dated January 23, 2017.
6. Fence does not follow property line, as shown on survey prepared by Aaron V. Thomason, R.P.L.S. # 6214 dated January 23, 2017.

**ATTACHMENT "3"**

**COMMON INTEREST ALLOCATION AND VOTES**

The Common Interest Allocation and Common Expense Liability for each Unit is 1/the number of Units. Each Unit is allocated one (1) vote.

**THE COMMON INTEREST ALLOCATION AND COMMON EXPENSE LIABILITY ASSIGNED TO A PARTICULAR UNIT WILL DECREASE IF ADDITIONAL UNITS ARE CREATED AND ADDED TO THE REGIME BY THE DECLARANT.**

## ATTACHMENT "4"

### GUIDE TO THE ASSOCIATION'S EXAMINATION OF COMMON ELEMENTS

This Guide provides information to assist the Board in conducting an annual examination of the Common Elements for the purpose maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the General Common Elements maintained by the Association. The annual examination is required by *Section 9.4* of the Declaration and is a necessary prerequisite to establishing sufficient reserves as required by *Section 6.10* of the Declaration. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute*. See [www.caionline.org](http://www.caionline.org). In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration or current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Common Elements. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

#### **Developing a Plan**

In developing a plan, the age and condition of Common Elements maintained by the Association must be considered. The possibility that new types of material, equipment, or maintenance processes associated with the repair and/or maintenance of Common Elements should also be taken into account. The individual or company who prepares the examination calculates a suggested annual funding amount and, in doing so, may consider such factors as which components are included, estimated replacement costs of the components, useful lives of the components, inflation, and interest on reserve account balances or other earnings rates. Annual contributions to the replacement fund from annual assessments are based on this examination or reserve study. A reserve study generally includes the following:

- Identification and analysis of each major component of Common Elements maintained by the Association
- Estimates of the remaining useful lives of the components
- Estimates of the costs of replacements or repairs
- A cash flow projection showing anticipated changes in expenditures and contributions over a time period generally ranging between 20 and 30 years
- The "Funding Goal" which is generally one of the following:
  - Component Full Funding: Attaining, over a period of time, and maintaining, once the initial goal is achieved, a cumulative reserve

account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or

- Threshold Funding: Maintaining the reserve account cash balance above a specified dollar or percent funded amount.

Note that Threshold Funding will increase the likelihood that special assessments will be required to fund major repairs and replacements. For example, one study has shown that a Threshold Funding goal of 40 to 50% results in a 11.2% chance that the Association will be unable to fund repairs and replacement projects in the next funding year. See “Measuring the Adequacy of Reserves”, *Common Ground*, July/August 1997. The same study found that Component Full Funding reduces this likelihood to between .09 and 1.4%.

### **Finding Common Element Component Replacement Information**

Common Element component replacement information may be obtained from contractors, suppliers, technical specialists, “Reserve Study” specialist or from using tables in technical manuals on useful lives of various components. As provided in *Section 9.4* of the Declaration, the Board must reevaluate its funding level periodically based upon changes to the Common Elements as well as changes to replacement costs and component conditions. The specific components of Common Elements include, but are not limited to roads, recreational facilities, and furniture and equipment owned or maintained by the Association. Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually.

**ATTACHMENT "5"****GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS**

This Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Association's Board of Directors may, from time to time, use this Guide to consider what functions, if any, to delegate to one or more managers, managing agents, employees, or volunteers. Because laws and practices change over time, the Association and/or the Board should not use this Guide without taking account of applicable changes in law and practices.

<b>MAJOR MANAGEMENT &amp; GOVERNANCE FUNCTIONS</b>	<b>PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS</b>	<b>DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT</b>
<b><u>FINANCIAL MANAGEMENT</u></b>  To adopt annual budget and levy assessments, per Declaration.  Prepare annual operating budget, periodic operating statements, and year-end statement.  Identify components of the property the Association is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule. Annually update same.  Collect assessments and maintain Association accounts.  Pay Association's expenses and taxes.  Obtain annual audit and income tax filing.  Maintain fidelity bond on whomever handles Association funds.  Report annually to members on financial status of Association.		
<b><u>PHYSICAL MANAGEMENT</u></b>  Inspect, maintain, repair, and replace, as needed, all components of the property for which the Association has maintenance responsibility.  Contract for services, as needed to operate or maintain the		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
<p>property.</p> <p>Prepare specifications and call for bids for major projects.</p> <p>Coordinate and supervise work on the property, as warranted.</p>		
<p><b><u>ADMINISTRATIVE MANAGEMENT</u></b></p> <p>Receive and respond to correspondence from owners, and assist in resolving owners' problems related to the Association.</p> <p>Conduct hearings with owners to resolve disputes or to enforce the governing documents.</p> <p>Obtain and supervise personnel and/or contracts needed to fulfill Association's functions.</p> <p>Schedule Association meetings and give owners timely notice of same.</p> <p>Schedule board meetings and give directors timely notice of same.</p> <p>Enforce the Documents.</p> <p>Maintain insurance and bonds as required by the Documents or Applicable Law, or as customary for similar types of property in the same geographic area.</p> <p>Maintain Association books, records, and files.</p> <p>Maintain Association's corporate charter and registered agent &amp; address.</p>		
<p><b><u>OVERALL FUNCTIONS</u></b></p> <p>Promote harmonious relationships within the community.</p> <p>Protect and enhance property values in the community.</p> <p>Encourage compliance with Documents and Applicable</p>		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	PERFORMED BY ASSOCIATION OFFICERS OR DIRECTORS	DELEGATED TO ASSOCIATION EMPLOYEE OR AGENT
<p>Law.</p> <p>Act as liaison between the community of owners and governmental, taxing, or regulatory bodies.</p> <p>Protect the Association and the property from loss and damage by lawsuit or otherwise.</p>		

**ATTACHMENT "6"****MAINTENANCE RESPONSIBILITY CHART**

"All aspects" includes maintenance, repair, and replacement, as needed.

<b>COMPONENT OF PROPERTY</b>	<b>ASSOCIATION RESPONSIBILITY</b>	<b>OWNER RESPONSIBILITY</b>
Control access gate at street entrance, if any.	All aspects.	None.
Water detention pond, if any.	All aspects.	None.
Perimeter Fencing	All aspects.	None.
Private Streets	All aspects.	None.
Street Lights	All aspects.	None.
Exterior lighting	None.	All aspects.
Sidewalks	None.	All aspects.
Exterior Landscaping	None.	All aspects.
Roofs and roof facilities	None.	All aspects.
Exterior Building components	None.	All aspects.
Building Foundation	None.	All aspects.
Unit interior, including improvements, fixtures, partition walls and floors within Unit	None.	All aspects.
Sheetrock within Unit & treatments on walls	None.	All aspects.
Exterior Unit doors	None.	All aspects.
Windows	None.	All aspects.

COMPONENT OF PROPERTY	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Garage Doors, if applicable	None.	All aspects.
Water, wastewater, electrical lines & systems.	All aspects of common lines & systems serving more than one Unit, none for those serving an individual Unit.	All aspects of lines, pipes, fixtures, and appliances serving only that Owner's Unit.
HVAC System	None.	All aspects.
Intrusion alarms smoke/heat detectors, monitoring equipment.	None.	All aspects.

NOTE 1: The components listed in the first column are applicable only if they exist, and may not be construed to create a requirement to have such a component.

NOTE 2: If an Owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notices to the Owner.

NOTE 3: Set forth above is a summary of the maintenance obligations imposed upon the Association and the Owners generally as described more fully in this Declaration. Please note that the information set forth in this Attachment 6 is a summary **only** and is not intended to modify any of the provisions of this Declaration. Accordingly, in the event of a conflict between the summary set forth in this Attachment 6 and any provision set forth in the Declaration above, the provision set forth in the Declaration above will control.

## APPENDIX "A"

### DECLARANT RESERVATIONS

#### A.1. General Provisions.

A.1.1. Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling Declarant-related provisions in this Appendix.

A.1.2. General Reservation and Construction. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of a conflict between this Appendix "A" and any other Document, this Appendix "A" controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

A.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and Declarant Control Period to ensure a complete and orderly sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. The "**Development Period**", as specifically defined in *Section 1.17* of the Declaration, means the five (5) year period beginning on the date this Declaration is Recorded, unless such period is earlier terminated by Declarant's Recordation of a notice of termination. The Declarant Control Period is defined in *Section 1.15* of the Declaration. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with ninety (90) days' written notice.

A.2. Declarant Control Period Reservations. For the benefit and protection of Owners and Mortgagees, and for the purpose of ensuring a complete and orderly build-out and sellout of the Property, Declarant will retain control of the Association, subject to the following:

A.2.1. Officers and Directors. During Declarant Control Period, the Board may consist of three (3) persons. Declarant may appoint, remove, and replace each officer or director of the Association, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a "Leader," subject to the following

MCKINNEY CROSSING CONDOMINIUMS

DEVELOPMENT AREA DECLARATION OF CONDOMINIUM REGIME

limitations: (i) within one hundred and twenty (120) days after fifty percent (50%) of the maximum number of Units that may be created have been conveyed to Owners other than Declarant, at least one-third of the Board must be elected by the Owners other than Declarant; and (ii) within one hundred and twenty (120) days after seventy-five percent (75%) of the total number of Units that may be created have been conveyed to Owners other than Declarant, all Board members must be elected by all Owners, including the Declarant. Notwithstanding the above, the above mentioned periods in subsections (i) and (ii) shall occur no later than five (5) years after the Declaration is Recorded.

A.2.2. Obligation for Assessments. For each Unit owned by Declarant, Declarant is liable for Special Assessments, Utility Assessments, Individual Assessments, and Deficiency Assessments in the same manner as any Owner. Regarding Regular Assessments, upon the earlier to occur of expiration of the Declarant Control Period or the expiration of three (3) years after the first conveyance of a Unit by the Declarant, Declarant may: (i) pay Regular Assessments on each Declarant owned Unit in the same manner as any Owner; or (ii) pay the difference between the Association's actual operational expenses and the Regular Assessments received from Owners other than Declarant.

A.2.3. Obligation for Reserves. During the Declarant Control Period, neither the Association nor Declarant may use the Association working capital or reserve funds to pay operational expenses of the Association.

A.2.4. Common Elements. At or prior to termination of the Declarant Control Period, if title or ownership to any Common Element is capable of being transferred, Declarant will convey title or ownership to the Association. At the time of conveyance, the Common Element will be free of encumbrance except for the property taxes, if any, accruing for the year of conveyance. Declarant's conveyance of title or ownership is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners.

**A.3. Development Period Rights.** Declarant has the following rights during the Development Period:

A.3.1. Annexation. The Property is subject to expansion by phasing for up to five (5) years from the date this Declaration is Recorded. During the Development Period, Declarant may annex additional property into the Regime, and subject such property to this Declaration and the jurisdiction of the Association by Recording an amendment or supplement of this Declaration, executed by Declarant.

A.3.2. Creation of Units. When created, the Property contains eighty-six (86) Units; however, Declarant reserves the right to create up to and including one-hundred (100) Units upon full buildout of all phases of the project which may include land added by the Declarant in accordance with *Section 2.1* of the Declaration. Declarant's right to

create Units is for a term of years and does not require that Declarant own a Unit in the Property at the time or times Declarant exercises its right of creation. The instrument creating additional units must include a revised schedule of allocated interests.

A.3.3. Changes in Development Plan. During the Development Period, Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, the subdivision or combination of Units, changes in the sizes, styles, configurations, materials, and appearances of Units, and Common Elements.

A.3.4. Transfer Fees. During the Development Period, Declarant will not pay transfer-related and resale certificate fees.

A.3.5. Website & Property Name. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Property or the Association, all information available on or through the Property website, if any, and all uses of the property name by the Association.

A.3.6. Fines and Penalties. During the Development Period, neither Declarant nor Units owned by Declarant are liable to the Association for late fees, fines, administrative charges, or any other charge that may be considered a penalty.

A.3.7. Statutory Development Rights. As permitted by the Act, Declarant reserves the following Development Rights which may be exercised during the Development Period: (i) to add real property to the Property; (ii) to create and modify Units, General Common Elements, and Limited Common Elements within the Property; (iii) to subdivide Units or convert Units into Common Elements; and (iv) to withdraw from the Property any portion of the real property marked on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," provided that no Unit in the portion to be withdrawn has been conveyed to an Owner other than Declarant.

A.3.8. Development Rights Reserved. Regarding portions of the real property shown on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights," if any, Declarant makes no assurances as to whether Declarant will exercise its Development Rights, the order in which portions will be developed, or whether all portions will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise them as to other portions.

A.3.9. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other Owners or any mortgagee, for the following limited purposes:

- (i) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
- (ii) To correct any defects in the execution of this Declaration or the other Documents.
- (iii) To add real property to the Property, in the exercise of statutory Development Rights.
- (iv) To create Units, General Common Elements, and Limited Common Elements within the Property, in the exercise of statutory Development Rights.
- (v) To subdivide, combine, or reconfigure Units or convert Units into Common Elements, in the exercise of statutory Development Rights.
- (vi) To withdraw from the Property any portion of the real property marked or noted on the Plat and Plans as "Development Rights Reserved" or "Subject to Development Rights" in the exercise of statutory Development Rights.
- (vii) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- (viii) To change the name or entity of Declarant.

**A.4. Special Declarant Rights.** As permitted by the Act, Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by Applicable Law, which may be exercised, where applicable, anywhere within the Property during the Development Period.

- (i) The right to complete or make Improvements indicated on the Plat and Plans.
- (ii) The right to exercise any Development Right permitted by the Act and this Declaration.
- (iii) The right to make the Property part of a larger condominium or planned community.
- (iv) The right to use Units owned or leased by Declarant or Common Elements as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.

- (v) For purposes of promoting, identifying, and marketing the Property, Declarant reserves an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Occupants. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and broker parties – at the Property to promote the sale of Units.
- (vi) Declarant has an easement and right of ingress and egress in and through the Common Elements and Units owned or leased by Declarant for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under the Act and this Declaration.
- (vii) The right to appoint or remove any Declarant-appointed officer or director of the Association during Declarant Control Period consistent with the Act.

**A.5. Additional Easements and Rights.** Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, for the duration of the Development Period:

- (i) An easement and right to erect, construct, and maintain on and in the Common Elements and Units owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property.
- (ii) The right to sell or lease any Unit owned by Declarant. Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Documents.
- (iii) The right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered or Common Elements. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.
- (iv) An easement and right to make structural changes and alterations on Common Elements and Units used by Declarant as models and offices, as may be necessary to adapt them to the uses permitted herein. Declarant, at

MCKINNEY CROSSING CONDOMINIUMS

DEVELOPMENT AREA DECLARATION OF CONDOMINIUM REGIME

Declarant's sole expense, will restore altered Common Elements and Units to conform to the architectural standards of the Property. The restoration will be done no later than one hundred and twenty (120) days after termination of the Development Period.

- (v) An easement over the entire Property, including the Units, to inspect the Common Elements and all Improvements thereon and related thereto to evaluate the maintenance and condition of the Common Elements.
- (vi) The right to provide a reasonable means of access and parking for prospective Unit purchasers in connection with the active marketing of Units by Declarant.

**A.6. Common Elements.** Because the Common Elements are owned by the Owners, collectively and in undivided interest, the Common Elements are not capable of being separately conveyed. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of the ownership of the Common Elements. Because ownership of the Common Elements is not conveyed by Declarant to the Association, there is no basis for the popular misconception that Owners may "accept" or "refuse" the Common Elements.

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS



*Dana DeBeauvoir*

Dana DeBeauvoir, County Clerk  
Travis County, Texas

Apr 27, 2021 12:47 PM Fee: \$34.00

**2021092867**

\*Electronically Recorded\*



AFTER RECORDING RETURN TO:

Robert D. Burton, Esq.  
Winstead PC  
401 Congress Ave., Suite 2100  
Austin, Texas 78701  
Email: [rburton@winstead.com](mailto:rburton@winstead.com)

**MCKINNEY CROSSING**  
**NOTICE OF APPLICABILITY**  
**[MCKINNEY CROSSING CONDOMINIUMS]**

**Declarant:** KB HOME LONE STAR INC., a Texas corporation

Cross reference to McKinney Crossing Master Covenant [Residential], recorded as Document No. 2020027954 in the Official Public Records of Travis County, Texas, as amended.

**NOTICE OF APPLICABILITY  
OF MCKINNEY CROSSING MASTER COVENANT [MCKINNEY CROSSING  
CONDOMINIUMS]**

This Notice of Applicability of McKinney Crossing Master Covenant [*McKinney Crossing Condominiums*] is made and executed by **KB HOME LONE STAR INC.**, a Texas corporation ("**Declarant**") and is as follows:

1. **Applicability of Master Covenant.** This Notice of Applicability is filed with respect to Lot 1, Block A, Colton Bluff, Phase 1A, according to the plat recorded as Document No. 202000092, Official Public Records of Travis County, Texas (the "**Development Area**"). Pursuant to that certain McKinney Crossing Master Covenant [Residential], recorded as Document No. 2020027954 in the Official Public Records of Travis County, Texas (the "**Covenant**"), Declarant served notice that portions of the property described on Exhibit "A" to the Covenant, upon the Recording of appropriate notices of applicability from time to time, may be made a part of the Development and thereby fully subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Covenant.

2. **Development Area.** The Development Area described and identified in Paragraph 1 hereinabove will constitute one of the Development Areas which is permitted, contemplated and defined under the Covenant.

3. **Property Incorporated Into Development.** The provisions of the Covenant shall apply to the Development Area. The Development Area is hereby included within and made a part of the Development, and is hereby subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Covenant.

4. **Allocation of Assessment Units and Votes to Condominium Units.** Pursuant to *Section 3.4* and *Section 5.9* of the Covenant, in the event all or any portion of the Development Area is submitted to the condominium form of ownership by the recordation in the Official Public Records of Travis County, Texas, of a declaration of condominium (a "**Condominium Declaration**"), then on the date a Condominium Declaration is recorded, each Condominium Unit established thereby will be deemed a "Condominium Unit" as such term is defined in the Covenant. Pursuant to *Section 5.9.2* of the Covenant, each Condominium Unit so created will be allocated Assessment Units and votes which may be cast on all matters to be voted on by the Members of the Association in accordance with the Covenant, as follows:

Assessment Unit per Condominium Unit	0.50
Vote per Condominium Unit	0.50

In lieu of mailing a statement of assessment to each Owner, the Association will have the option to mail a statement of assessment for each Condominium Unit within the Development Area to the condominium association established for such Condominium Units. The amounts reflected on a statement of assessment will be due and payable within thirty (30) days after the due date set forth

on a statement of assessment will be due and payable within thirty (30) days after the due date set forth on any statement. Notwithstanding any provision in this notice to the contrary, each Owner of a Condominium Unit is obligated to pay the assessment attributable to such Owner's Condominium Unit as set forth in the Covenant. The Association's remittance of a statement to any Condominium Association will not be construed to waive the Association's right to collect assessments from the owner of a Condominium Unit.

5. **Miscellaneous.** This notice constitutes a notice of applicability under Section 9.5 of the Covenant. Any capitalized terms used and not otherwise defined in this notice shall have the meanings set forth in the Covenant.

EXECUTED to be effective as of the 20th day of April, 2021.

**DECLARANT:**

**KB HOME LONE STAR INC.,** a Texas corporation

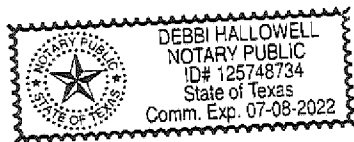
By: Shawn A. Kirkpatrick  
 Printed Name: Shawn A Kirkpatrick  
 Title: Director of Public Affairs

THE STATE OF TEXAS     §  
   §  
 COUNTY OF Williamson §

This instrument was acknowledged before me this \_\_\_\_ day of April, 2021 by Shawn A Kirkpatrick Director of Public Affairs of KB Home Lone Star Inc., a Texas corporation, on behalf of said corporation.

(SEAL)

\_\_\_\_\_  
 Notary Public Signature



FILED  
In the Office of the  
Secretary of State of Texas

MAR 20 2020

**CERTIFICATE OF FORMATION  
OF  
MCKINNEY CROSSING CONDOMINIUM COMMUNITY, INC. Corporations Section**

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

**ARTICLE I  
NAME**

The name of the corporation is: McKinney Crossing Condominium Community, Inc. (hereinafter called the "Association").

**ARTICLE II  
NONPROFIT CORPORATION**

The Association is a nonprofit corporation.

**ARTICLE III  
DURATION**

The Association shall exist perpetually.

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

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. In furtherance of its purposes, the Association shall have the following powers which, unless indicated otherwise by this Certificate of Formation, that certain Development Area Declaration of Condominium Regime for McKinney Crossing Condominiums, which is recorded in the Official Public Records of Travis County, Texas, as the same may be amended from time to time (the "Declaration"), the Bylaws, or Texas law, may be exercised by the Board of Directors:

- (a) all rights and powers conferred upon nonprofit corporations by Texas law in effect from time to time;
- (b) all rights and powers conferred upon condominium associations by Texas law, including the Act, in effect from time to time, provided, however, that the Association shall not have the power to institute, defend, intervene in, settle or compromise proceedings in the name of any Owner as provided in Section 82.102(a)(4) of the Act; and

1  
MCKINNEY CROSSING CONDOMINIUM COMMUNITY, INC.  
CERTIFICATE OF FORMATION

(c) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in this Certificate of Formation, the Bylaws, the Declaration, or Texas law.

Notwithstanding any provision in Article XIV to the contrary, any proposed amendment to the provisions of this Article IV shall be adopted only upon an affirmative vote by the holders of one-hundred percent (100%) of the total number of votes of the Association and the Declarant, as determined and defined under the Declaration.

#### **ARTICLE V REGISTERED OFFICE; REGISTERED AGENT**

The street address of the initial registered office of the Association is 401 Congress Avenue, Suite 2100, Austin, Texas 78701. The name of its initial registered agent at such address is Robert D. Burton, Esq.

#### **ARTICLE VI MEMBERSHIP**

Membership in the Association shall be determined by the Declaration.

#### **ARTICLE VII VOTING RIGHTS**

Voting rights of the members of the Association shall be determined as set forth in the Declaration. Notwithstanding the foregoing, cumulative voting is not permitted.

#### **ARTICLE VIII INCORPORATOR**

The name and street address of the incorporator is:

NAME

Robert D. Burton

ADDRESS

401 Congress Avenue, Suite 2100  
Austin, Texas 78701

#### **ARTICLE IX BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors for nonprofit corporations pursuant to the Texas Business Organizations Code. The number of Directors of the Association may be increased in

accordance with the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Shawn Kirkpatrick	10800 Pecan Park Blvd, Suite 200 Austin, Texas 78750
John Zinsmeyer	10800 Pecan Park Blvd, Suite 200 Austin, Texas 78750
April Miertschin	10800 Pecan Park Blvd, Suite 200 Austin, Texas 78750

All of the powers and prerogatives of the Association shall be exercised by the initial Board of Directors named above until their successors are elected or appointed in accordance with the Declaration.

#### ARTICLE X LIMITATION OF DIRECTOR LIABILITY

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

#### ARTICLE XI INDEMNIFICATION

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

## ARTICLE XII DISSOLUTION

Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes substantially similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such substantially similar purposes.

## ARTICLE XIII ACTION WITHOUT MEETING

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

## ARTICLE XIV AMENDMENT

This Certificate of Formation may be amended by proposal submitted to the membership of the Association. Except as otherwise provided by the terms and provisions of Article IV of this Certificate of Formation, any such proposed amendment shall be adopted only upon an affirmative vote by the holders of a two-thirds (2/3) majority of the total number of votes of the Association, as determined under the Declaration. In the case of any conflict between the Declaration and this Certificate of Formation, the Declaration shall control; and in the case of any conflict between this Certificate of Formation and the Bylaws of the Association, this Certificate of Formation shall control.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, this 20<sup>TH</sup> day of MARCH, 2020.



Robert D. Burton, Incorporator

**MCKINNEY CROSSING CONDOMINIUM COMMUNITY, INC.  
CONSENT OF DIRECTORS IN LIEU OF  
ORGANIZATIONAL MEETING**

The undersigned, being all of the members of the Board of Directors of McKinney Crossing Condominium Community, Inc., a Texas non-profit corporation (hereinafter referred to as the “**Association**”), do hereby consent, pursuant to Section 22.220(a) of the Texas Business Organizations Code, to the adoption of the following resolutions:

**1. DIRECTORS**

RESOLVED, that each of the undersigned, being all of the directors of the Association, as named in its Certificate of Formation filed with the Secretary of State of the State of Texas on March 20, 2020 does hereby accept appointment to such office and does hereby agree to serve as a director of the Association.

**2. COMMUNITY MANUAL**

RESOLVED, that the Association has received a copy of the Community Manual adopted by the Declarant in accordance with that certain Development Area Declaration of Condominium Regime for McKinney Crossing Condominiums, which Declarant will cause to be recorded in the Official Public Records of Travis County, Texas.

**3. OFFICERS**

RESOLVED, that each of the following-named persons be and they hereby are elected as officers of the Association for the office or offices set forth below opposite his or her name, and to hold any such office to which elected until the first annual meeting of the Board of Directors of the Association and until his or her successor should be chosen and qualified in his or her stead, or until his or her earlier death, resignation, retirement, disqualification or removal from office:

Shawn Kirkpatrick	-	President
John Zinsmeyer	-	Vice President
April Miertschin	-	Secretary/Treasurer

**4. BOOKS AND RECORDS**

RESOLVED, that the secretary of the Association be and hereby is authorized and directed to maintain all necessary books and records of the Association.

## 5. ORGANIZATIONAL EXPENSES

RESOLVED, that the President of the Association or other officer be and hereby is authorized and directed to pay all fees, expenses and costs incident to or necessary for the incorporation and organization of the Association and to reimburse any person who may have paid any of such fees, expenses and costs.

## 6. ASSOCIATION MANAGEMENT

RESOLVED, that the Association business affairs shall be managed on a day to day basis by Colby Property Management, as Agent for the Association, and hereby directs the President or other officer to negotiate and execute a management agreement with Colby Property Management in substantially similar form as the Management Agreement attached hereto as Exhibit "A".

## 7. CORPORATE SEAL

RESOLVED, that a corporate seal is not adopted at this time and that no impression of a corporate seal is required on any Association document.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of and effective the 20th day of April, 2021

DocuSigned by:

Shawn Kirkpatrick

9B28230E1FA44C5

Shawn Kirkpatrick, Director

DocuSigned by:

John Zinsmeyer

87166EA52FEB44E

John Zinsmeyer, Director

DocuSigned by:

April Miertschin

1536635B042F477

April Miertschin, Director

**EXHIBIT A**

**Management Agreement**

*[Form of Management Agreement Follows this Cover Page.]*

## PROPERTY MANAGEMENT AGREEMENT

This agreement is entered into by and between KB HOME LONE STAR INC on behalf of the McKinney Crossing Condominium Community, Inc. (the "Association") and Colby Property Management (the "Manager"). This agreement shall be referred to hereafter as the "Agreement" or the "Management Agreement". The Commencement Date on which Manager shall assume management of the Association is February 1, 2021.

The Association hereby contracts with Manager as an independent contractor, with agency authority, on an exclusive basis to manage the Association as described herein.

### [1] THE COMMUNITY

The Community is the Colton Bluff Phase 1A Subdivision. The legal description of the property governed by the Association (the "Property") is contained in the Declaration of Condominium Regime for McKinney Crossing Condominiums, or similar document (the "Declaration") and will be recorded in the Travis County Office of Public Records by KB HOME LONE STAR INC. The plat for the subdivision is recorded in the Travis County Office of Public Records as Document 2020-00092.

### [2] MANAGEMENT RESPONSIBILITY AND AUTHORITY.

Subject to the terms of this agreement, Manager shall have the duty and authority to manage Association, including the following responsibilities.

(1) *Due diligence.* At Board direction, Manager shall generally do and perform or cause to be done and performed all acts and things reasonably necessary to assure proper and efficient management and operation of the Association in accordance with the governing documents and state law, as well as the maintenance and appearance of the common elements and/or common areas. Manager shall use due diligence in management of the Association and maintenance of the common area under the terms of this Agreement.

(2) *Association legal documents.* Manager shall become familiar with Association documents, including the corporate charter, declaration, rules and regulations, bylaws, policies of the Association regarding fines, collections and foreclosures.

(3) *Attendance at meetings.* Manager shall prepare for and attend all monthly or quarterly Board meetings and the annual Association membership meeting, and shall prepare and mail out Association meeting notices as requested. Manager shall be compensated for additional special meetings on a reasonable hourly basis. Manager shall be compensated on an hourly basis for any Board or Association meeting lasting longer than two hours with the exception of the Annual Meeting. Manager's hourly fee after two hours is \$75.00 per hour.

(4) *Minutes of meeting.* Unless requested otherwise, the Property Manager shall be responsible for preparing minutes of Board meeting and Association meeting, including regular and specially called meetings.

(5) *Maintenance of the common elements.* With Board approval, Manager shall contract for and oversee the maintenance of the common elements and/or common areas, including (if applicable) amenity centers, parking lots, landscaping, garbage receptacles, playground equipment, trails, detention or drainage facilities, street sweeping as applicable, and any other agreed upon common element.

(6) *Property Inspection.* Manager shall inspect the Property every three weeks to determine needed maintenance, cleanup or repairs to the common area and to ascertain visible rule or declaration violations by owners or tenants.

(7) *City/state inspections.* Manager shall coordinate with appropriate parties for governmental inspections for any regulated common elements.

(8) *Contract services for the Association.* Manager shall, as directed by the Board from time to time, make contracts in the name of the Association acting as agent for the Association, for common area electricity, gas, water, sewer, telephone, trash removal, cleaning and lawn maintenance, or any other services deemed as necessary.

(9) *Purchase of supplies.* As agents for the Association, Manager shall purchase supplies, chemicals and equipment, as needed, for maintenance.

(10) *Authority to hire and fire personnel.* With the Board's approval, Manager shall have authority to hire, fire, control and direct employees or contractors of the Manager who will be doing the day-to-day managing of the Association. Manager may hire temporary onsite personnel as needed, also with Board approval.

(11) *Payment of expenses.* Manager shall have authority to pay, on the Association's behalf and with Association funds, any indebtedness, property taxes, sales taxes, and all other expenses of the Association, subject to the limitations set forth in this agreement.

(12) *Budget preparation.* Manager shall timely prepare operating budgets for the review and approval of the Board and/or the Association.

(13) *Capital expenditure recommendations.* Manager shall make recommendations to the Association for any capital expenditures for common areas, and utility conservation measures which are reasonably needed in Manager's judgment. Manager's right to expend money to remedy unsafe or unlawful conditions shall be subject to the Association's approval and funding of any costs of same. In event of an emergency, Manager shall be authorized to expend Association funds in the amount of \$500.00 without prior approval.

(14) *Taxes of Association Property.* Manager shall coordinate with the local taxing authorities regarding any taxes on Association common area or commonly owned facilities that should be taxed pro rata to the individual members of the Association on their dwelling ad valorem tax bill, rather than to the Association. This is allowed under state statute.

(15) *Collection of Association revenues.* Manager shall use due diligence in the collection of all sums due to the Association in the normal course of operations, including monthly assessments, late fees, hot check fees, damages, interest, fines and attorneys fees. Collection of delinquent monies due the association shall be included in Manager's monthly management fee to the Association; and all late fees and hot check fees shall belong to the Association, however Collection Fees as called out in Exhibit B shall be retained by the Manager at the time they are collected.

(16) *Reports to the Board.* Manager shall provide to the Association's Board of Directors (the "Board") itemized monthly and annual statements of receipts and expenses of the Association, as well as a register of the checks issued, a list of delinquencies and other appropriate information.

(17) *Association membership roster.* Manager shall maintain a membership roster, showing names and mailing addresses of all Association members that have been provided to the Association.

(18) *Custodian of Association records.* Manager shall be responsible for the custody of all Association records, including corporate charter, declaration, bylaws, rules and regulations, membership lists, board minutes, income tax returns, letters to the memberships, invoices, budgets, checkbooks, deposit slips, bank statements, etc.

(19) *Income tax return.* Manager shall coordinate with the Association's accountant for filing annual income tax returns for the Association.

(20) *Enforcement of declarations and rules.* Manager shall have initial responsibility for enforcing the declarations and rules, in accordance with Board direction, including enforcement against owners, tenants, visitors, and workmen. Enforcement may involve oral, emailed or written notices, fines, suspension of voting, suspension of common area use rights, as permitted under declaration or state law, with the assistance of the Association's attorney as may be authorized by the Board from time to time.

(21) *Towing.* Manager shall be responsible for making contractual arrangements for towing of illegally parked vehicles in common area, in accordance with Board policy or Association rules and regulations. Calling the towing company to tow specific vehicles shall be the responsibility of the Board of Directors and/or Management.

(22) *Lawsuits.* Manager shall keep up to date the information at the Texas Secretary of State's office regarding the Association's corporate registered agent for service and registered office. Manager shall accept service of citation for any lawsuit against the Association and shall work with the Association's attorney or insurance company attorneys regarding lawsuits by or against the Association.

(23) *Interface with title companies, casualty insurance agents, real estate agents, and city officials.* Manager shall be responsible for answering questions from title insurance companies, casualty insurance companies, real estate sales and leasing agents, and city officials about the Association.

(24) *Compliance with laws.* Manager and Manager's employees shall comply with all state, local and federal laws in the Management of the Association. Manager shall use reasonable diligence to discover and correct conditions as directed by the Board which are (a) hazardous to human health and safety, (b) detrimental to the preservation of the Property, and (c) in violation of local, state, or federal laws.

(25) *Assistance regarding laws applicable to the Association.* Upon consultation with an attorney as needed, Management

Company shall assist the Association in:

- (a) compliance with state statutes and local ordinances regarding towing of illegally parked vehicles;
- (b) compliance with state statutes regarding security device duties of owners who rent their units; and state and local laws regarding common area lighting and common area safety and security;
- (c) compliance with state structural pest control laws regarding building exteriors and landscaped areas;
- (d) compliance with ADA disability access requirements for common areas and any onsite offices;
- (e) compliance with federal ADA and state disability employment laws when hiring employees or contractors for the Association;

(f) compliance with local ordinances regarding fire lane designations, common area lighting, and fire hazards; and

(g) Recommending corporate charter changes to minimize risks of personal liability for members of the Association's Board of Directors;

(26) *Purchase of insurance.* Manager shall assist the Association in the purchase of insurance according to Section [14].

(27) *Summary of insurance.* Manager shall cause to be prepared the insurance summary which is required to be attached to resale certificates.

(28) *Casualty losses.* Manager shall advise the Association on casualty losses when they occur and shall, with the assistance of the Association's attorney, as necessary, be responsible for working with the insurance carrier on settlements and/or lawsuits to recover proceeds due the Association. Any settlements shall require Board approval.

(29) *Sales taxes.* Manager shall use best efforts to comply with sales tax laws as set forth in Section [12].

(30) *Resale certificates and related documents.* Manager shall, on behalf of the Association, prepare resale certificates and resale certificate updates for owners of units or lots, as needed, and shall upon request provide owners with copies of relevant documents, such copies of the declarations, bylaws, rules, minutes, model residential or a person designated by such owner upon request of the unit owner or the owner's agent. Payment for such documents shall be made payable to the Manager. This agreement authorizes the Manager to be reimbursed when the owner, title company, or other third party makes payment to the Association in error for these services when Manager is in possession of a written invoice for same.

(31) *Transfer of ownership.* As Manager becomes aware of transfers of ownership and consummated sales of lots or units, it will record in the Association records the name, lots or identification, and mailing address and telephone number of the new owner. Transfer fees ("new owner set-up fees") shall be paid to Manager by the Transferee according to the agreed on rate schedule.

(32) *Establish bank accounts for the Association.* The Manager is authorized, effective the signing date of this Agreement, to establish bank accounts for the Association, and to be placed on the Association accounts as a signer.

### **[3] STATUS AS INDEPENDENT CONTRACTOR AND AGENT.**

As between the Association and Manager, neither Manager nor any employee, servant, contractor or subcontractor of Manager shall be or shall be deemed to be the employee, servant, contractor or subcontractor of the Association. However, Manager and its employees shall have authority, as agents of the Association in the Association's name, to contract with the various suppliers, contractors, insurance companies, utility companies, and service companies necessary for operation of the Association and maintenance of the common area. Insofar as the Association and members of the public are concerned, the Association acknowledges that Manager acts as an agent of the Association under public liability laws and that this Management Agreement cannot alter such relationship.

### **[4] MANAGEMENT FEES.**

The Association agrees to pay Manager a monthly management fee, payable on the 1st of the month. The monthly management fee will be based on the number of Lots with conveyed homes using the rates in Exhibit C while the Agreement is in effect. Such fees may be paid by the Manager from the operations account for the Association. As additional compensation for Manager's service, all payments by unit or lot owners or their agents for resale certificates, transfer fees, declarations, bylaws, and rules or other instruments as allowed shall be made directly to Manager. The Management Fee and the Management Fee schedule in Exhibit C is subject to change upon written consent by both parties.

### **[5] COMMENCEMENT, DURATION, AND TERMINATION OF MANAGEMENT AGREEMENT.**

(a) *Terms of Management Agreement.* Manager shall take over management of the Property on the Commencement Date and shall continue management of the Property until either party gives notice in (c) below.

(b) *Renewal; Term.* The term of this Agreement shall be monthly. Until one party gives written termination notice to the other, the term of this Agreement shall automatically extend by one month on the 15<sup>th</sup> of the current month being managed. By way of example, the first extension of this Agreement will take place on 2/15/2021, and will extend the Agreement to 3/31/2021. Renewal extensions do not take place after termination notice is given.

(c) *Termination.* The Agreement may be terminated by either party at any time, with or without cause, by providing written notice to the other party. The Association must give at least 30 day notice to the Manager. The Manager must give at least 90 day written notice to the Association. The Management Agreement remains in effect during the final 30 day or 90 day service period, whichever is applicable, and does not end mid-month.

(d) Procedures for termination. In event of termination of this Agreement, the procedures set forth in Section [20] shall apply.

**[6] INITIAL FUNDING OF MANAGEMENT OPERATING ACCOUNT.**

At the commencement of management of the Association by Manager, the Association shall make available sufficient funds in the operating account for the Association.

**[7] REPAIRS TO COMMON AREAS AND UNITS OR LOTS.**

Manager shall use its experience and best judgment on methods, timing and choice of personnel or contractors for the purpose of making needed maintenance, repairs or improvements to the common area. If repair or maintenance personnel or contractors are affiliated or associated with Manager, such information shall be disclosed to the Board in advance.

**[8] CONTROL OF FUNDS; ACCOUNTING.**

Manager shall deposit all monies of the Association in a bank account(s) in the name of the Association. Manager shall at all times keep and maintain full, true and accurate books and records to reflect fully all monies received and all monies paid out in connection with the management of the Association. Books and records may be kept on computer. Manager's employees or contractors who have authority to deposit monies or write checks on connection with the Association shall be bonded. Accounting and bookkeeping shall be done on a cash basis. If Board requests or the Declaration require an independent audit of the books and records of the Association, and if fiscal malfeasance or mismanagement by the Manager in excess of 1% of the total Annual Budget is discovered, the cost of the audit will be borne as an expense of the Manager, not the Association; otherwise the cost of the audit shall be considered an expense of the Association.

**[9] CHARGES TO OWNERS FOR DOCUMENTS.**

Manager shall determine the amount of all charges to unit owners for information such as resale certificates and copies of the declaration, bylaws, rules, minutes, and financial records. The cost for various documents is detailed in the Service Fee List which is attached.

**[10] RESALE CERTIFICATES.**

Resale certificates and any accompanying documents shall be prepared by Manager upon request by unit or lot owners or their agents and distributed to the owner or his agent. For purpose of this contract, the following definitions apply: "Resale certificates" are certificates issued by the Association similar to TREC No 37-1 Subdivision Information. "Transfer fees" are fees charged by the Manager for processing the paperwork for new owner, e.g., changes in ownership records, setting up accounts receivable, sending the new owner payment coupons (if applicable), rules, and other relevant information. Manager is authorized to issue and sign such resale certificates for the Association.

**[11] ASSOCIATION EXPENSES.**

(a) *Operating expenses.* Manager shall have authority to incur and payout of the Association operating account on Association's behalf, expenses and disbursements which are necessary for the management of the Association in the reasonable judgment of Manager, and in accordance with the approved budget for the Association. Funds may be removed from the Association's reserve account only upon express approval of the Board, or in emergencies, the approval of the Board president. In the event the Board president and Manager are the same, the approval of the Board treasurer shall suffice.

(b) *Contract services.* With express approval of the Board, Manager shall have authority to make contracts in the name of Association and on Association's behalf for common area electricity, gas, water, sewer, telephone, trash removal, common element and common area repairs, pest control for common areas, pest control in individual units or lots as expressly authorized by the Board, security service, landscape installation and maintenance, preparation of IRS returns, and/or other services as Manager shall deem reasonably necessary, but in no event shall Manager become liable for any indebtedness related to the Property. Manager may terminate such contracts for cause. If Association employs onsite personnel (as distinguished from Manager's representative who offices in Manager's main office), then the expenses of onsite employee drug test shall be considered Association expenses.

(c) *Supplies and services.* Manager shall have authority to incur, purchase, and pay for out of the Association's operating account, as agent of the Association and on Association's behalf: all onsite maintenance supplies, tools and equipment, and other items and services necessary for the proper management, operation and maintenance of

Association and the common area. Manager shall pay for, with Association funds, all license, permits, taxes and governmental charges which the Association may be required by law to pay in connection with the management, operation and maintenance of the Association and the common area, Accountant's fees for Federal income tax returns or audits of the Association shall be considered an expense of the Association. Long distance calls concerning the Association shall be considered an expense of the Association.

(d) *Attorneys fees.* Manager shall have authority, upon approval of the Board, to retain the services of an attorney when in the judgment of Manager and the Board, it is necessary for the Association to obtain immediate advice on Association problems which have potential for lawsuits. Otherwise, retention of attorneys may be done only upon prior approval of the board, on a case by case basis or in accordance with written Board policy on retaining the services of an attorney.

(e) *When Board approval is required for expenditure.* If any one item of expenditure (other than insurance, taxes, utilities, and management fees) exceeds \$500.00, Manager shall secure prior approval of the Board for such expenditures except in an emergency. An expenditure previously approved by the Board and/or the Association in a budget or via an approved bid procedure shall be considered prior approval.

#### **[12] SALES TAX.**

Association acknowledges that sales taxes must be paid, as required by state law, on certain products and services which are purchased from or furnished by third-party vendors for the benefit of Association, including but not limited to materials, tools, supplies, landscape maintenance, landscape installation, cleaning, repair (commercial condominiums only), security, trash removal, etc. Association acknowledges that when taxable invoices are received from third-party vendors without the tax amount stated or without a notation on the invoice by the vendor stating "all sales taxes included", Manager must pay sales tax on the amount of the invoice.

#### **[13] MANAGEMENT CERTIFICATE AND SIGN.**

(a) The Association and Manager shall execute the "Management Certificate" form to assist title insurance companies in determining whom it contact to find out about unpaid assessments, Association lien releases, resale certificates, etc. Such notice shall be recorded at the Association's expense.

(b) Subject to the Association's prior approval, Manager may place a sign or signs on the Property indicating that it is managed by Manager.

#### **[14] INSURANCE.**

Manager shall advise and consult with the Association concerning all insurance:

(a) *The Association's fire and extended coverage insurance.* Manager shall, on behalf of the Association and with prior approval of the Board, contract for fire and extended coverage insurance on common areas and on any other improvements required by the declaration to be insured by the Association, including vandalism and malicious mischief. All known mortgagees of the various units or lots shall be named as mortgagees on the fire and casualty policy. Manager shall obtain and use best efforts to keep current a list of names, addresses, and telephone numbers of all mortgagees. Certificates of such insurance shall be provided by the insurance agent to any lender(s) having a lien on a unit or lot.

(b) *The Association's liability insurance.* With express authorization of the Board, Manager shall contract on Association's behalf and in the name of the Association for comprehensive general liability insurance with broad form endorsement, along with any automobile liability insurance for non-owned automobile and used by any person in the employ of the Association or Manager driving his own or a borrowed vehicle on Association business. Manager shall be named as an additional insured on the Association's liability insurance policies.

(c) *Subcontractor insurance.* Manager shall require any contractor or subcontractors engaged by Manager on behalf of the association in connection with Manager's duties hereunder to maintain liability insurance coverage's in amounts acceptable to the Association in order to avoid potential liability for the Association or Manager. Manager shall request and retain certificates of insurance for all contractors and subcontractors, as applicable.

(d) *Evidence of insurance.* If the Association contracts for any insurance relating to the Property, Manager shall be the custodian of any policies for certificates in insurance furnished by the carriers and shall promptly provide the Association a copy same upon the Association's request. If the Association contracts directly for any insurance relating to the Property, the Association shall promptly provide Manager with a copy of such policies, including waivers of subrogation or satisfactory evidence of same.

**[15] WAIVER OF SUBROGATION.**

If waiver of subrogation is not contained in the form language of the insurance policy, Association or Manager may require that the other party's fire, casualty, or liability insurance policy contain a waiver of subrogation clause. For purposes of waiver of subrogation, Association and Manager release each other and their respective officers, directors, employees, and agents from any claims for loss, damage, or injury insured against under insurance policies carried by Association or Manager. The foregoing shall not apply to losses, damages, or injuries that are in excess of policy limits. Upon written request, Manager shall furnish to the Association copies of the policies of insurance referred to in this Agreement, including waivers of subrogation or satisfactory evidence of same.

**[16] INDEMNIFICATION.**

(a) *Reliance on data.* Association may rely on all data furnished to Association by Manager. Manager may rely on all data furnished to Manager by Association. Manager shall promptly contact the Association's insurance carrier and Association regarding threatened or actual litigation. Association shall promptly contact Manager regarding threatened or actual litigation.

(b) *Indemnification.* Manager shall indemnify and hold harmless Association, Association's officers, members, or affiliates from all claims, damages, lawsuits, cost, attorneys fees and other expenses in connection with acts or omissions of Manager within, outside of, or in violation of this Agreement. Association shall indemnify and hold harmless Manager from all claims, damages, lawsuits, cost, attorney fees, and other expenses in connection with the acts or omissions of the Association within, outside of, or in violation of this Agreement.

**[17] EXPENSES BORNE BY THE ASSOCIATION.**

Routine office supplies, copying, printing, and long distance calls directly related to the management of the Property shall be considered expenses of the Manager and are included in the Manager's Fee to the Association. Charges for postage, attorney fees, or other Association business shall be considered expenses of the Association. Subject to the foregoing, Association funds shall not be used for the payment of Manager's overhead, including the salary or compensation of Manager's representative assigned to the day-to-day administration of the association's affairs.

**[18] OWNERSHIP OF PERSONAL PROPERTY.**

All supplies, tools and equipment purchased by Manager with Association funds for use in onsite management, operation, and maintenance of the Association shall be delivered to and stored on the Property and shall be owned by the Association and used only in connection with the Property. Manager shall furnish to the Association an inventory of supplies, tools, and equipment located on the Property.

**[19] OWNERSHIP OF RECORDS.**

All minutes, utility and service agreements, contracts and amendments, correspondence and agreements with owners, owner notices, work order, invoices, tax returns, sales tax reports, and similar records regarding same shall be owned by the Association. The 'back office' software, databases, and servers used to manage the Association's books and accounting records shall be the property of the Manager, provided however, at any time while Manager is managing the association, the association may inspect all books, correspondence, and records and make copies of same at the expense of the Association. Any paper originals in the possession of Manager, as well as electronic copies of the managerial books, correspondence, and records shall be delivered to the Association after the last day of Management by the Manager.

**[20] TERMINATION OF MANAGEMENT AGREEMENT.**

The following shall apply to termination of this Agreement by either party:

(a) *Accounting and funds.* At the expiration or termination of this Agreement, the parties shall account to each other with respect to all matters that are outstanding. Manager shall make a full accounting of all revenues collected and monies disbursed. All Association funds shall be turned over to the association, provided however, Manager may for 30 days after the termination of the term of this Management Agreement withhold funds in an amount reasonably sufficient to pay expenses previously incurred but not yet invoiced (including sums due Manager under this Agreement) and to close the association's bank accounts. Thereafter, all remaining monies shall be refunded to the Association.

(b) *Records.* At the termination of this Agreement, Manager shall turn over to the Association or the Association's designated representative the records which are owned by the Association as set forth in Section [19].

(c) *Keys the Association's personal property; and contract rights.* At the termination of this Management Agreement, Manager shall turn over to the Association of the Association's designated representative all keys, if any, to the

Property which is in Manager's possession and all of the Association's personal property as described in Section [18]. If necessary, Manager shall assign to the Association all rights Manager may have in existing agreements, contracts, accounts receivable, claims, licenses, and permits relating to the operation of the Association and maintenance of the common area and the Property.

**[21] INFORMATION ABOUT THE ASSOCIATION.**

The Board, on behalf of the Association, will provide or assist Manager in obtaining, as soon as possible after the signing of the Agreement, the following information:

- (a) the information called for in a resale certificate form;
- (b) a recorded copy of the declaration and any amendments (showing volume and pages numbers of recording); a copy of the Association's corporate charter; and current copies of the by laws and any amendments thereto, rules and regulations, and resolutions of the Association;
- (c) a subdivision map (or maps) showing the lot or lots subject to the declaration;
- (d) a surveyor map of the Property showing locations, if applicable, of buildings, streets, parking areas, and cutoffs for water, gas, exterior lighting, electric, and sprinkler systems;
- (e) An inventory of the personal property and tools of the Association to be left on the Property,
- (f) the Association's files and past records;
- (g) whether or not the Association has a federal income tax exemption under the Internal Revenue Code;
- (h) whether or not the Association has a state franchise tax exemption as allowed under state law, and;
- (i) whether the taxes for common areas are (1) billed directly to the Association, or (2) incorporated as a part of the taxes on the respective units or lots.

**[22] RENOVATIONS.**

In the event the Association desires to make major renovations to the common area in excess of \$50,000 for one project, Manager's fees for (1) analysis and submission of renovation plans and/or supervision, and (2) implementation of such plans, shall be separately negotiated by the Association and Manager, as the need arises.

**[23] CORPORATE RESOLUTIONS.**

The Association is a corporation, organized under the laws and currently in good standing with the State of Texas. The Association's name at the beginning of this Agreement is not an assumed name.

**[24] WARRANTIES.**

Manager makes the following representations and warranties to the Association.

- (a) *Organization and licenses.* Manager is duly organized, validly existing, and in good standing under the laws of the State of Texas. At all times during the term hereof: Manager shall comply with all applicable laws in order to conduct business in Texas. Manager has and will continue to have the power and authority required to execute, deliver and perform this Agreement. Manager has and will continue to have sufficient resources to carry out Manager duties hereunder in a prompt, efficient and diligent manner. Manager has or will obtain all licenses and permits necessary to legally and validly execute, deliver and perform the Agreement.

**[25] NON WAIVER.**

The Association's or Manager's acceptance of past due sums or failure to complain of any action, non action, delayed payment, or default, whether singular or repetitive, shall not constitute a waiver of rights or obligations under this Agreement. The Association's or Manager's waiver of any rights or any defaults shall not constitute waiver of other rights, violations or defaults, or subsequent rights, violations or defaults under this Agreement.

**[26] MISCELLANEOUS.**

The Agreement contains the entire agreement of the parties. No other written or oral promises or representations have been made, and none shall be binding. This Agreement shall not be amended or changed except by written instrument, signed by both the Association and Manager. The representatives of the respective parties have no authority to amend or modify this Agreement except in writing. All payments and other sums due under the Agreement shall be made in the county where Manager is located. All other obligations of the parties shall be performed in such county except to the extent that a particular obligation must be physically necessity or performed in another county. Texas laws shall apply to this Agreement. This Agreement shall not be construed against either party more or less favorably by reason of authorship or origin of language. If any date of performance or exercise of a right ends on a Saturday, Sunday or state holiday, such date shall be automatically extended through the next business

day. Either party may require that disputes between the parties be submitted to binding mediation prior to litigation. In the event of litigation under this Agreement, the prevailing parties shall recover attorney's fees from the non prevailing party, together with all out-of-pocket costs. If any provision of this Agreement is invalid under present or future laws, the remainder of the Agreement shall not be affected. All signatories to this Agreement warrant that they have been duly authorized to execute same and that no other signatures are necessary for the Agreement to be binding.

**[27] NOTICES.**

All notices require or permitted under this Agreement shall be deemed given of delivered personally or if mailed by certified mail, return receipt requested to the address set forth below. Delivery shall also be deemed if such notice is actually received by mail, private courier, or fax at such address. If any party changes such address, such party shall notify the other party of same by the notice procedures of this paragraph.

**[28] EFFECTIVE DATE OF AGREEMENT.**

The effective date of this Agreement is the date on which all of the undersigned have signed. The management Commencement Date is as stated in Section [5]. The date of this Agreement for identification purpose only shall be the Commencement Date shown at the top of page 1 of the Agreement.

**[29] ASSOCIATION'S COVENANT NOT TO HIRE MANAGER'S PERSONNEL.**

The Association covenants and agrees not to solicit or hire, directly or indirectly, the personnel of Colby Property Management for the purpose of providing management, maintenance, or supervisory services to the Association prior to or subsequent to the termination of this Agreement for a period of three (3) years.

**[30] SCOPE OF RESPONSIBILITIES WITH REGARD TO POOL FACILITIES.**

When the Association's assets include a pool facility, Manager shall maintain, or cause to be maintained, the pool facility as specified in Article [2], Item (5) of this agreement. Manager shall not staff the pool with pool monitors, lifeguards, or other contractors or personnel funded by Manager. If the Association wishes to have the pool facility staffed or monitored by personnel, the scope of such staffing shall be determined by the Association, paid for by the Association, and overseen by Manager as specified in Article [2], Item (8).

**[31] MANAGER NOT A SOCIAL MEDIA MANAGER.**

The Association agrees that the Manager will not be responsible for, nor participate in, any social media activities on behalf of the Association. Manager will provide an Association with a website. Manager will be available for residents to communicate with by either phone, email or in person visits which will take the place of social media. The Association agrees that Manager participation in social media could lead to the perception that the social media platform is the Association's official online presence, instead of the Manager-supplied website.

**[32] EXHIBITS.**

The exhibits attached to this Agreement are as follows:

**Exhibit A - Service Fee List**

**Exhibit B - Collection Policy**

**Exhibit C - Management Fee Schedule**

**[33] AUTHORITY TO SIGN.**

All signatories to this Agreement warrant that they have been duly authorized to execute same and that no other signatures are necessary for the Agreement to be binding.

**ASSOCIATION:**

**MANAGEMENT COMPANY**

McKinney Crossing Condominium Community,  
Inc.

Colby Property Management

By: Shawn A. Kirkpatrick  
(signature)

By: Paula Bidwell  
(signature)

Printed Name: Shawn A. Kirkpatrick

Printed Name: Paula Bidwell

Title: President

Title: VP - Director of Operations

Date: April 20, 2021

Date: 1/19/21

**Exhibit A - Schedule of Fees**  
**McKinney Crossing Condominium Community, Inc.**

**TO THE ASSOCIATION**

Base Management Fee	Exhibit C <i>(flat fee)</i>
Transition Fee (one time)	WAIVED
Collection Actions by manager	Exhibit B
Certified/Return Receipt Letter Fees	At Cost
Postage	At Cost
Credit card payment acceptance	At Cost

**These items are included in our Base Management Fee:**

Office Supplies	\$0 <i>(included in base fee)</i>
Welcome Packets	\$0 <i>(included in Transfer Fee)</i>
Telephone	\$0 <i>(included in base fee)</i>
HOA Website	\$0 <i>(included in base fee)</i>
Online Board Portal	\$0 <i>(included in base fee)</i>
Online ACC Portal	\$0 <i>(included in base fee)</i>
Financial Statements	if needed <i>(included in base fee)</i>
ACH withdrawal service	\$0 <i>(included in base fee)</i>
Twice monthly property inspections	\$0 <i>(included in base fee)</i>

**TO THE HOMEOWNER**

Initial Ownership Conveyance (Resale Certificate)	\$0 <i>(to the Buyer)</i>
Subsequent Resale Certificate/Ownership Conveyance	\$285 <i>(to the Seller)</i>
Transfer Fee	\$165 <i>(to the Buyer/Transferee)</i>

***There are no charges for routine items other companies charge for, such as:***

Governing Documents  
Statement of Accounts  
Refinance Questionnaire completion  
Payment Plan set up and administration

## Exhibit B - Collection Policy

### McKinney Crossing Condominium Community, Inc.

Our collection program consists of the items listed below.

There will be a \$10.00 collection fee assessed to each delinquent homeowner's account for any account with an overdue balance of \$50.00 or more as of the last day of the calendar month or other date as dictated by your policies. This collection fee will be considered to be a portion of the late fee assessed by the association. This fee is charged directly to the homeowner and billed to his/her account and retained by the Manager.

<u>SERVICE</u>	<u>DATE SENT</u>	<u>COST PER TRANSACTION</u>
Late notice & invoice	30 days delinquent	Collection Fee: \$10.00
Demand Letter & invoice	60 days delinquent	Collection Fee: \$10.00
Intent to forward to Attorney; intent to file lien; invoice	90 days delinquent	Collection Fee: \$10.00
Late notice & invoice	Each month thereafter	Collection Fee: \$10.00
Forwarding to Attorney for any action	[AS NEEDED] (At Board's request only)	[No charge to Association]
Filing paperwork for small claims court	[AS NEEDED] (At Board's request only)	[No charge to Association]
Representing HOA in small claims court		\$75/hour [same rate as 'meeting overtime']

**Exhibit C - Management Fee Schedule**  
**McKinney Crossing Condominium Community, Inc.**

The monthly Management Fee called out for in Section [4] of the Agreement will be based on the number of conveyed Units in the Association. This Schedule is based on a build out of 86 Units; should the Developer increase the number of Units in the Association by adding additional Sections or Phases, Manager and Association will revise this Schedule.

<u>UNITS</u>	<u>MONTHLY MANAGEMENT FEE</u>
0	\$0
1 - 34	\$300
35 - 69	\$525
70 +	\$750

By way of example, if the 35th Unit is sold in September, the October Management Fee payable on 10/1 will be \$525.



*Dana DeBeauvoir*

Dana DeBeauvoir, County Clerk  
Travis County, Texas

Apr 27, 2021 12:47 PM Fee: \$206.00

**2021092869**

\*Electronically Recorded\*

**AFTER RECORDING RETURN TO:**

Robert D. Burton, Esq.  
Winstead, PC  
401 Congress Ave., Suite 2100  
Austin, Texas 78701  
Email: [rburton@winstead.com](mailto:rburton@winstead.com)



# COMMUNITY MANUAL MCKINNEY CROSSING CONDOMINIUMS

Consisting of:

Certificate of Formation

Bylaws

Initial Rules & Regulations

Assessment Collection Policy

Fine Policy

Certification & Acknowledgement

## ***PROPERTY***

McKinney Crossing Condominiums are located in Austin, Texas and are subject to the Development Area Declaration of Condominium Regime for McKinney Crossing Condominiums, recorded or to be recorded in the Official Public Records of Travis County, Texas.

*Copyright © 2020. Winstead, PC. All rights reserved. This Community Manual may be used only in connection with the condominium known as McKinney Crossing Condominiums in Travis County, Texas.*

# **MCKINNEY CROSSING CONDOMINIUMS COMMUNITY MANUAL**

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<b>1.</b>	<b>CERTIFICATE OF FORMATION</b>	<b>ATTACHMENT 1</b>
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ATTACHMENT 1

CERTIFICATE OF FORMATION  
OF  
MCKINNEY CROSSING CONDOMINIUM COMMUNITY, INC.

FILED  
In the Office of the  
Secretary of State of Texas

MAR 20 2020

**CERTIFICATE OF FORMATION  
OF  
MCKINNEY CROSSING CONDOMINIUM COMMUNITY, INC. Corporations Section**

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

**ARTICLE I  
NAME**

The name of the corporation is: McKinney Crossing Condominium Community, Inc. (hereinafter called the "Association").

**ARTICLE II  
NONPROFIT CORPORATION**

The Association is a nonprofit corporation.

**ARTICLE III  
DURATION**

The Association shall exist perpetually.

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

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. In furtherance of its purposes, the Association shall have the following powers which, unless indicated otherwise by this Certificate of Formation, that certain Development Area Declaration of Condominium Regime for McKinney Crossing Condominiums, which is recorded in the Official Public Records of Travis County, Texas, as the same may be amended from time to time (the "Declaration"), the Bylaws, or Texas law, may be exercised by the Board of Directors:

- (a) all rights and powers conferred upon nonprofit corporations by Texas law in effect from time to time;
- (b) all rights and powers conferred upon condominium associations by Texas law, including the Act, in effect from time to time, provided, however, that the Association shall not have the power to institute, defend, intervene in, settle or compromise proceedings in the name of any Owner as provided in Section 82.102(a)(4) of the Act; and

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MCKINNEY CROSSING CONDOMINIUM COMMUNITY, INC.  
CERTIFICATE OF FORMATION

(c) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in this Certificate of Formation, the Bylaws, the Declaration, or Texas law.

Notwithstanding any provision in Article XIV to the contrary, any proposed amendment to the provisions of this Article IV shall be adopted only upon an affirmative vote by the holders of one-hundred percent (100%) of the total number of votes of the Association and the Declarant, as determined and defined under the Declaration.

#### **ARTICLE V REGISTERED OFFICE; REGISTERED AGENT**

The street address of the initial registered office of the Association is 401 Congress Avenue, Suite 2100, Austin, Texas 78701. The name of its initial registered agent at such address is Robert D. Burton, Esq.

#### **ARTICLE VI MEMBERSHIP**

Membership in the Association shall be determined by the Declaration.

#### **ARTICLE VII VOTING RIGHTS**

Voting rights of the members of the Association shall be determined as set forth in the Declaration. Notwithstanding the foregoing, cumulative voting is not permitted.

#### **ARTICLE VIII INCORPORATOR**

The name and street address of the incorporator is:

**NAME**

Robert D. Burton

**ADDRESS**

401 Congress Avenue, Suite 2100  
Austin, Texas 78701

#### **ARTICLE IX BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors for nonprofit corporations pursuant to the Texas Business Organizations Code. The number of Directors of the Association may be increased in

accordance with the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Shawn Kirkpatrick	10800 Pecan Park Blvd, Suite 200 Austin, Texas 78750
John Zinsmeyer	10800 Pecan Park Blvd, Suite 200 Austin, Texas 78750
April Miertschin	10800 Pecan Park Blvd, Suite 200 Austin, Texas 78750

All of the powers and prerogatives of the Association shall be exercised by the initial Board of Directors named above until their successors are elected or appointed in accordance with the Declaration.

#### ARTICLE X LIMITATION OF DIRECTOR LIABILITY

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

#### ARTICLE XI INDEMNIFICATION

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

## ARTICLE XII DISSOLUTION

Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes substantially similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such substantially similar purposes.

## ARTICLE XIII ACTION WITHOUT MEETING

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

## ARTICLE XIV AMENDMENT

This Certificate of Formation may be amended by proposal submitted to the membership of the Association. Except as otherwise provided by the terms and provisions of Article IV of this Certificate of Formation, any such proposed amendment shall be adopted only upon an affirmative vote by the holders of a two-thirds (2/3) majority of the total number of votes of the Association, as determined under the Declaration. In the case of any conflict between the Declaration and this Certificate of Formation, the Declaration shall control; and in the case of any conflict between this Certificate of Formation and the Bylaws of the Association, this Certificate of Formation shall control.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, this 20<sup>th</sup> day of MARCH, 2020.



Robert D. Burton, Incorporator

## ATTACHMENT 2

### MCKINNEY CROSSING CONDOMINIUM COMMUNITY, INC. BYLAWS

(a Texas condominium association)

#### ARTICLE 1 INTRODUCTION

1.1. **Property.** These Bylaws of McKinney Crossing Condominium Community, Inc., provide for the governance of the condominium regime known as McKinney Crossing Condominiums, established on certain real property located in Travis County, Texas (the "**Property**"), as more particularly described in that certain Development Area Declaration of Condominium Regime for McKinney Crossing Condominiums, recorded or to be recorded in the Official Public Records of Travis County, Texas (the "**Declaration**").

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

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

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

1.5. **Declarant Control.** Notwithstanding anything to the contrary in these Bylaws, a number of provisions are modified by the Declarant's reservations in Appendix "A" of the Declaration during the Declarant Control Period and the Development Period, as defined in the Declaration, including the number, qualification, appointment, removal, and replacement of Directors.

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

#### ARTICLE 2 BOARD OF DIRECTORS

During the Declarant Control Period, Appendix "A" of the Declaration governs the number, qualification, and appointment of directors. The initial directors will be appointed

MCKINNEY CROSSING CONDOMINIUMS  
COMMUNITY MANUAL

by the Declarant and need not be Owners. Directors appointed by Declarant may not be removed by the Owners and may be removed by Declarant only. Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

2.1. **Number and Term of Office.** During the Declarant Control Period, the Board will consist of three (3) persons. A director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed. The number of directors may be changed by amendment of these Bylaws, but may not be less than three (3).

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

2.2.1. **Owners.** At least a Majority of the directors must be Members of the Association or spouses of Members.

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

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

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

2.3. **Election.** Directors will be elected by the Members of the Association. The election of directors will be conducted at the annual meeting of the Association, at any special meeting called for that purpose, or by mail, facsimile transmission, electronic mail, or a combination of any of these.

2.4. **Vacancies.** Vacancies on the Board caused by any reason, except the removal of a director by a vote of the Association, are filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board. Each director so elected serves until the next meeting of the Association, at which time a successor will be elected to fill the remainder of the term.

2.5. **Removal of Directors.**

2.5.1. Removal by Members. At any annual meeting or special meeting of the Association, any one or more of the directors may be removed with or without cause by Members representing at least two-thirds (2/3) of the votes present in person or by proxy at the meeting, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members must be given an opportunity to be heard at the meeting.

2.5.2. Removal by Directors. A director may not be removed by the officers or by the remaining Directors, except for the following limited reasons for which a director may be removed by at least a Majority of the other directors at a meeting of the Board called for that purpose:

i. The director is a party adverse to the Association or the Board in pending litigation to which the Association or the Board is a party; provided the Association did not file suit to effect removal of the director.

ii. The director's account with the Association has been delinquent for at least ninety (90) days or has been delinquent at least three (3) times during the preceding twelve (12) months; provided he was given notice of the default and a reasonable opportunity to cure.

iii. The director has refused or failed to attend three (3) or more meetings of the Board during the preceding twelve (12) months; provided he was given proper notice of the meetings.

iv. The director has refused or failed to cure a violation of the Documents for which he has been given notice, a reasonable opportunity to cure, and an opportunity to request a hearing before the Board.

## 2.6. Meetings of the Board.

2.6.1. Organizational Meeting of the Board. Within ten (10) days after the annual meeting, the directors will convene an organizational meeting for the purpose of electing officers. The time and place of the meeting will be fixed by the Board and announced to the directors.

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

2.6.3. Special Meetings of the Board. Special meetings of the Board may be called by the president or, if he is absent or refuses to act, by the secretary, or by any two (2) directors. At least three (3) days notice will be given to each director, personally or

by telephone, written, or electronic communication, which notice must state the place, time, and purpose of the meeting.

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

2.6.5. Conduct of Meetings. The president presides over meetings of the Board and the secretary keeps, or causes to be kept, a record of resolutions adopted by the Board and a record of transactions and proceedings occurring at meetings. When not in conflict with law or the Documents, the then current edition of Robert's Rules of Order governs the conduct of the meetings of the Board.

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

2.6.7. Open Meetings. Regular and special meetings of the Board are open to Members of the Association, subject to the following provisions to the extent permitted or required by the Act:

- i. No audio or video recording of the meeting may be made, except by the Board or with the Board's prior express consent.
- ii. Members who are not directors may not participate in Board deliberations under any circumstances, and may not participate in Board discussions unless the Board expressly so authorizes at the meeting.
- iii. The Board may adjourn any meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar or sensitive nature. The nature of business to be considered in executive session will first be announced in open session.
- iv. The Board may prohibit attendance by non-Members, including representatives, proxies, agents, and attorneys of Members.
- v. The Board may prohibit attendance by any Member who disrupts meetings or interferes with the conduct of Board business.

vi. The Board may but is not required to publish to Members the time, date, and place of Board meetings, but will provide the information if requested in writing by a Member on a meeting by meeting basis.

2.6.8. Telephone Meetings. Members of the Board or any committee of the Association may participate in and hold meetings of the Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

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

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

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

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

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

2.9. **Fidelity Bonds.** Any person handling or responsible for Association funds, including officers, agents, and employees of the Association, must furnish adequate fidelity bonds. The premiums on the bonds may be a common expense of the Association.

### **ARTICLE 3** **OFFICERS**

3.1. **Designation.** The principal officers of the Association are the president, the secretary, and the treasurer. The Board may appoint one (1) or more vice-presidents and other officers and assistant officers as it deems necessary. The president and secretary must be directors. Other officers may, but need not, be Members or directors. Any two (2) offices may be held by the same person, except the offices of president and secretary. If an officer is absent or unable to act, the Board may appoint a director to perform the duties of that officer and to act in place of that officer, on an interim basis.

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

3.3. **Removal and Resignation of Officers.** A Majority of directors may remove any officer, with or without cause, at any regular meeting of the Board or at any special meeting of the Board called for that purpose. A successor may be elected at any regular or special meeting of the Board called for that purpose. An officer may resign at any time by giving written notice to the Board. Unless the notice of resignation states otherwise, it is effective when received by the Board and does not require acceptance by the Board. The resignation or removal of an officer who is also a director does not constitute resignation or removal from the Board.

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

#### **Description of Principal Offices.**

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

3.5.2. **Secretary.** The secretary: (i) keeps the minutes of all meetings of the Board and of the Association; (ii) has charge of such books, papers, and records as the Board may direct; (iii) maintains a record of the names and addresses of the Members

for the mailing of notices; and (iv) in general, performs all duties incident to the office of secretary.

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

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

#### **ARTICLE 4**

##### **MEETINGS OF THE ASSOCIATION**

4.1. **Annual Meeting.** An annual meeting of the Association will be held once during each twelve (12) month period on a date and at a time determined by the Board. At each annual meeting the Members will elect directors in accordance with these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

4.2. **Special Meetings.** It is the duty of the president to call a special meeting of the Association if directed to do so by a Majority of the Board or by a petition signed by Owners of at least forty percent (40%) of the Units. The meeting must be held within thirty (30) days after the Board resolution or receipt of petition. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

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

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

4.5. **Ineligibility.** The Board may determine that no Member may vote at meetings of the Association if the Member's financial account with the Association is in arrears forty-five

(45) days before the date of a meeting of the Association at which Members will vote, provided each ineligible Member is given notice of the arrearage and an opportunity to become eligible. The Board may specify the manner, place, and time for payment for purposes of restoring eligibility. A determination of Members entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than forty-five (45) days after the original meeting.

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

4.7. **Quorum.** At any meeting of the Association, the presence in person or by proxy of Members representing at least twenty percent (20%) of the Units in the Property constitutes a quorum.

4.8. **Lack of Quorum.** If a quorum is not present at any meeting of the Association for which proper notice was given, Members representing at least a Majority of the votes present at the meeting, although not constituting a quorum, may vote to recess the meeting for not more than twenty-four (24) hours in order to attain a quorum, provided the place of the meeting remains as stated in the notice. If the meeting is adjourned without attainment of a quorum, notice of a new meeting for the same purposes within fifteen (15) to thirty (30) days may be given to an Owner of each Unit, at which meeting the Members present in person or by proxy (even if representing less than a Majority of the Units) will be sufficient to constitute a quorum for the purposes of that meeting.

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

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

4.9.2. **Corporation-Owned Units.** If a Unit is owned by a corporation, the vote appurtenant to that Unit may be cast by any officer of the corporation in the absence of the corporation's written appointment of a specific person to exercise its vote. The vote of a partnership may be cast by any general partner in the absence of the partners'

written appointment of a specific person. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of a corporation or partnership is qualified to vote.

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

4.10. **Proxies.** Votes may be cast in person or by written proxy. To be valid, each proxy must: (i) be signed and dated by a Member or his attorney-in-fact; (ii) identify the Unit to which the vote is appurtenant; (iii) name the person or title (such as “presiding officer”) in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (iv) identify the meeting for which the proxy is given; (v) not purport to be revocable without notice; and (vi) be delivered to the secretary, to the person presiding over the Association meeting for which the proxy is designated, or to a person or company designated by the Board. Unless the proxy specifies a shorter or longer time, it terminates eleven (11) months after the date of its execution. Perpetual or self-renewing proxies are permitted, provided they are revocable. To revoke a proxy, the granting Member must give actual notice of revocation to the person presiding over the Association meeting for which the proxy is designated. Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled is valid when the meeting reconvenes. A proxy may be delivered by fax. However, a proxy received by fax may not be counted to make or break a tie-vote unless: (a) the proxy has been acknowledged or sworn to by the Member, before and certified by an officer authorized to take acknowledgments and oaths; or (b) the Association also receives the original proxy within five (5) days after the vote.

4.11. **Conduct of Meetings.** The president, or any person designated by the Board, presides over meetings of the Association. The secretary keeps, or causes to be kept, the minutes of the meeting which should record all resolutions adopted and all transactions occurring at the meeting, as well as a record of any votes taken at the meeting. The person presiding over the meeting may appoint a parliamentarian. The then current edition of Robert’s Rules of Order governs the conduct of meetings of the Association when not in conflict with the Documents. Votes should be tallied by Members appointed by the person presiding over the meeting.

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

- Determine votes present by roll call or check-in procedure
- Announcement of quorum
- Proof of notice of meeting
- Approval of minutes of preceding meeting

- Reports of Officers (if any)
- Election of directors (when required)
- Unfinished or old business
- New business

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

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

4.15. **Telephone Meetings.** Members of the Association may participate in and hold meetings of the Association by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in the meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## **ARTICLE 5**

### **RULES**

5.1. **Rules.** The Declarant has adopted initial rules and regulations for: (i) the administration of the Association and the Documents; (ii) the maintenance, management, operation, use, conservation, and beautification of the Property; and (iii) the health, comfort, and general welfare of the Occupants; provided, however, that such rules may not be in conflict with law or the Documents. The Board will, at all times, maintain the then current and complete rules in a written form which can be copied and distributed to the Members. The Board has the right to amend, from time to time, the rules and regulations; provided, however, that until the expiration or termination of the Development Period, all amendments to the rules and regulations must be approved in advance and in writing by Declarant.

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

5.3. **Distribution**. On request from any Member or Occupant, the Board will provide a current and complete copy of rules. Additionally, the Board will, from time to time, distribute copies of the current and complete rules to Owners and, if the Board so chooses, to non-Member Occupants.

## **ARTICLE 6**

### **ENFORCEMENT**

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

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

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

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

6.2. **Notice and Hearing**. Before imposing a fine or exercising self-help abatement, the Board must give the Owner a written violation notice and an opportunity to be heard.

6.2.1. **Notice of Violation**. Before levying a fine, the Association will give the Owner a written violation notice via certified mail, return receipt requested, and an opportunity to be heard, if requested by the Owner. This requirement may not be waived. The Association's written violation notice will contain the following items: (1) the date the violation notice is prepared or mailed; (2) a description of the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due to the Association from the Owner; (3) a reference to the rule or provision that is being violated; (4) a description of the action required to cure the violation; (5) the timeframe in which the violation is required to be cured to avoid the fine or suspension; (6) the amount of the fine; (7) a statement that no later than the thirtieth (30th) day after receiving the notice, the Owner may request a hearing pursuant to Section 82.102 of TUCA; and (8) a statement informing the Owner that they may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. section et seq), if the Owner is serving on active military duty. The notice sent out is further subject to the Association's Fine Policy.

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

6.2.3. Request for Hearing. To request a hearing before the Board, an Owner must submit a written request to the Board within thirty (30) days after receiving the violation notice (the "Request"). The Association must then hold the hearing requested no later than thirty (30) days after the Board receives the Request. The Board must notify the Owner of the date, time, and place of the hearing at least (10) days' before the date of the hearing, and should be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend.

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

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

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

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

6.3.1. Amount. The Board may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Board may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation. If the Board allows fines to accumulate, it may establish a maximum amount for a particular fine, at which point the total fine will be capped.

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

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

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

## **ARTICLE 7**

### **OBLIGATIONS OF THE OWNERS**

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

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

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

7.4. **Registration of Mortgagees.** Within thirty (30) days after granting a lien against his Unit, the Owner must provide the Association with the name and address of the holder of the lien and the loan number. The Owner must notify the Association within thirty (30) days

after he has notice of a change in the information required by this Section. Also, the Owner will provide the information on request by the Association from time to time.

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

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

## **ARTICLE 8**

### **ASSOCIATION RECORDS**

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

- i. Minutes or a similar record of the proceedings of meetings of the Association.
- ii. Minutes or a similar record of the proceedings of meetings of the Board.
- iii. Names and mailing addresses of the Members, the currency and accuracy of the information being the responsibility of the Members.
- iv. Names and mailing addresses of the mortgagees, the currency and accuracy of the information being the responsibility of the Members and their mortgagees.
- v. Financial records and books of account for the Association, kept in a manner consistent with generally accepted accounting principles.
- vi. Copies of income tax returns prepared for the Internal Revenue Service.
- vii. Copies of the Documents and all amendments to any of these.
- viii. A record of all votes or written consents by which amendments to the Documents were approved, for at least four (4) years after the approval.

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

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

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

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

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

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

## **ARTICLE 9**

### **NOTICES**

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

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

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

## ARTICLE 10

### DECLARANT PROVISIONS

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

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

10.3. **Organizational Meeting.** Within sixty (60) days after the end of the Declarant Control Period, or sooner at Declarant's option, Declarant will call an organizational meeting of the Members for the purpose of electing directors, by ballot of Members. Notice of the organizational meeting will be given as if it were notice of an annual meeting.

## ARTICLE 11

### AMENDMENTS TO BYLAWS

11.1. **Authority.** These Bylaws may be amended by a Majority vote of the Board of Directors.

11.2. **Mortgagee Protection.** In addition to the notices and consents required by these Bylaws, certain actions and amendments require notice to or approval by eligible Mortgagees, pursuant to the Mortgagee Protection article of the Declaration. If applicable, the Association must give the required notices to and obtain the required approvals from eligible Mortgagees.

11.3. **Effective.** To be effective, each amendment must be in writing, reference the names of the Property and the Association, and be executed by a Majority of the Board of Directors. Further, if these Bylaws are publicly recorded, the amendment must recite the recording data for the Bylaws, and be recorded in the Official Public Records of Travis County, Texas.

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

## ARTICLE 12

### GENERAL PROVISIONS

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

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

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

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

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

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

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

12.4. **Construction.** The effect of a general statement is not limited by the enumerations of specific matters similar to the general. The captions of articles and sections are inserted only for convenience and may not be construed as defining or modifying the text to which they refer. The singular is construed to mean the plural, when applicable, and the use of masculine or neuter pronouns includes the feminine.

12.5. **Fiscal Year.** The fiscal year of the Association will be set by resolution of the Board, and is subject to change from time to time as the Board determines. In the absence of a resolution by the Board, the fiscal year is the calendar year.

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

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

12.8. **Preparer**. These Bylaws were prepared in by Robert D. Burton, Esq., Winstead, PC, 401 Congress Ave., Suite 2100, Austin, Texas 78701.

### **ATTACHMENT 3**

#### **INITIAL RULES & REGULATIONS**

These Initial Rules & Regulations are established by **KB HOME LONE STAR INC.**, a Texas corporation, for the benefit of McKinney Crossing Condominium Community, Inc., a Texas nonprofit corporation (the “**Association**”). These Initial Rules and Regulations are the “Rules” defined in Article 1 of the Development Area Declaration of Condominium Regime for McKinney Crossing Condominiums, recorded or to be recorded in the Official Public Records of Travis County, Texas (the “**Declaration**”).

These Rules are in addition to the provisions of the Declaration and Bylaws. By owning or occupying a Unit, each Owner and Occupant agrees to abide by these Rules and to comply with the obligations of Owners and Occupants under the Declaration and Bylaws of the Association.

Words and phrases defined in the Declaration have the same meaning when used in these Rules. In the event of a conflict between Documents, the hierarchy of authority is as follows: Declaration (highest), Bylaws, and these Rules (lowest). The Association’s Board of Directors is empowered to interpret, enforce, amend, and repeal these Rules.

#### **A. COMPLIANCE**

- A-1. Compliance. Each Owner will comply with the provisions of these Rules, the other Documents, and policies adopted by the Board to supplement these Rules, as any of these may be revised from time to time. Each Owner, additionally, is responsible for compliance with the Documents by the Occupants of his Unit, and his or their respective relatives, invitees, tenants, agents, employees, or contractors. If a Rule requires or prohibits conduct by an “Owner” or “Occupant,” each of those terms are deemed to include the other, and applies to all persons for whom an Owner or Occupant is responsible. Any question regarding these Rules should be referred to the Association. The Association has the right to enforce these Rules against any person on the Property.

*Users of this document should periodically review statutes and court rulings that may modify or nullify provisions of this document or its enforcement, or may create rights or duties not anticipated by this document.*

- A-2. Additional Rules. Each Occupant must comply with any rules and signs posted from time to time on the Property by the Association. Each Occupant must comply with notices communicated by the Association, from time to time, which may include seasonal or temporary rules, or notice of a change affecting use of the Property. Posted and temporary rules are incorporated in these Rules by reference.

- A-3. Variance. Circumstances may warrant a variance of these Rules. To obtain a variance an Owner must make written application to the Board. The Board's approval of a variance must be in writing, and may be conditioned.
- A-4. Limits. It is understood that individuals may have different interpretations of and tolerances for these Rules. On lifestyle-related rules, such as the "Community Etiquette" rules below, the Association may refrain from acting on a perceived violation unless the Board determines the violation to be significant or a community-wide problem. The Association may not be compelled by one Occupant to enforce these Rules against another Occupant. Occupants are expected to deal directly and peaceably with each other about their differences.
- A-5. Filing Complaints. Because the Association is not staffed to monitor the Property for Rules violations, the Association relies on Occupants to identify and report violations of these Rules and the Documents, and to monitor compliance with these Rules by violators. The Association also relies on Occupants to help keep each other informed about the Rules. Recognizing that an Occupant may be reluctant to confront another Occupant about a violation, the Association will work with Occupants to enforce the Rules. Generally, a complaint must be in writing and must be signed by an Occupant or Owner who is willing to be identified as the complainant. The Association may refuse to enforce a violation (1) that cannot be easily and independently verified, (2) for which it did not receive a signed written complaint, (3) for which the complainant will not cooperate with monitoring the violation and compliance, and (4) which the Board does not consider to be significant or community-wide.

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

- B-1. Damage. An Owner is responsible for any loss or damage he causes to his Unit or the improvements therein, other Units and residences, the personal property of other Occupants or their guests, or to the Common Elements.
- B-2. Association Does Not Insure. A person assumes full risk and sole responsibility for placing his personal property in or on the Property. Each Occupant is solely responsible for insuring his Unit and personal property in the Unit and on the Property, including improvements and betterments installed by the Owner within their Unit, and the Owner's furnishings and vehicles. THE ASSOCIATION STRONGLY RECOMMENDS THAT ALL OWNERS AND OCCUPANTS PURCHASE AND MAINTAIN INSURANCE ON THEIR PERSONAL BELONGINGS.
- B-3. Risk Management. An Owner may not permit anything to be done or kept in his Unit or the Common Elements that is illegal or that may result in the cancellation of insurance on the Property.

- B-4. Reimbursement for Enforcement. An Owner must promptly reimburse the Association for any expense incurred by the Association to enforce the Documents against the Owner, his Unit, or persons for whom the Owner is responsible.
- B-5. Reimbursement for Damage. An Owner must promptly reimburse the Association for the cost of damage to the Property caused by the negligent or willful conduct of the Owner or persons for whom the Owner is responsible.
- B-6. No Garage Sales. Without the Board's prior written permission, no person may conduct at the Property a sale or activity that is advertised or attractive to the public, such as garage sales, car sales, or estate sales. This Section does not apply to marketing the sale or rental of a Unit, unless combined with a prohibited activity.
- B-7. Supervision of Minors. For their own well-being and protection, persons who are legally incompetent or younger than eighteen (18) years must be under the general control and supervision of their parents or guardians at all times while on the Property.

### **C. OCCUPANCY STANDARDS**

- C-1. Leases. A Unit may not be leased for hotel or transient purposes or for a period less than six (6) months. Less than the entire Unit may not be leased. All leases must be made subject to the Declaration, Bylaws and these Rules and an Owner is responsible for providing his tenant with copies of the Declaration, Bylaws and these Rules and notifying him of changes thereto. Each tenant is subject to and must comply with all provisions of the Declaration, Bylaws, these Rules, and Applicable Law. Each lease must be in writing, and the Unit Owner shall provide the Board with a copy of each lease.
- C-2. Danger. As permitted by the federal Fair Housing Act Rules, no Unit may be occupied by a person who constitutes a direct threat to the health or safety of other persons, or whose occupancy would result in substantial physical damage to the property of others.

### **D. FIRE AND SAFETY**

- D-1. Safety. Each Occupant is solely responsible for his own safety and for the safety, well-being, and supervision of his guests and any person on the Property to whom the Occupant has a duty of care, control, or custody. No Occupant shall permit anything to be done or kept in his Unit or on the Common Elements which will result in the cancellation of insurance on any Unit, or any part of the Common Elements or which may be in violation of Applicable Law.
- D-2. Fires. Except for barbecue fires as permitted by these Rules, there may not be any exterior fires on the Property.
- D-3. Barbecue. The Board reserves the right to prohibit or restrict the existence and/or use of all or certain outdoor cooking grills if, in the Board's discretion, a grill constitutes a fire

hazard or is unattractive or oversized for the area in which it is kept. On permitted grills, (a) open fires must be supervised at all times; (b) gas tanks must be properly used and maintained; (c) no flames may be higher than the cooking surface; and (d) a grill may not be used near combustible materials. Notwithstanding the foregoing, all outdoor cooking grills must comply with Applicable Law.

- D-4. Intrusion Monitoring. Although the Unit may be wired for intrusion monitoring service, the Association is not the service provider to the Unit, and has no responsibility or liability for the availability for quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service. As stated in the Declaration, the Association may serve as a conduit for the service fees and payments from the Owner to the provider.
- D-5. Safety Equipment. No person may use, tamper with, or modify the fire and safety equipment, if any, in the Common Elements of the Property, such as alarms, extinguishers, monitors, and self-closing gates or doors. This Section may not be construed to require the installation or use of such equipment.
- D-6. Security. The Association may, but is not be obligated to, maintain or support certain activities within the Property designed to make the Property less attractive to intruders than it otherwise might be. The Association, its directors, committees, Members, agents, and employees will not in any way be considered an insurer or guarantor of security within the Property, and may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner, Occupant, guest, and invitee on the Property assumes all risk for loss or damage to his person, to his Unit, to the contents of his Unit, and to any other of his property on the Property. The Association expressly disclaims and disavows any and all representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security systems, equipment, or measures recommended, installed, or undertaken within the Property.

#### **E. GENERAL USE AND MAINTENANCE OF UNIT**

- E-1. Residential Use. Each Unit must be used solely for residential use, and may not be used for commercial or business purposes, except as permitted in the Declaration. This restriction does not prohibit an Occupant from using his Unit for personal, business, or professional pursuits, provided that: (a) the non-residential use is incidental to the Unit's residential use; (b) the use conforms to applicable laws and ordinances; (c) there is no external evidence of the non-residential use; (d) the non-residential use does not entail visits to the Unit by the public, employees, suppliers, or clients; and (e) the non-residential use does not interfere with the use and enjoyment of neighboring Units.
- E-2. Annoyance. An Occupant may not use his Unit in a way that: (a) annoys Occupants of neighboring Units; (b) reduces the desirability of the Property as a residential

community; (c) endangers the health or safety of other Occupants; or (d) violates any law or any provision of the Documents.

- E-3. Maintenance. An Owner, at his expense, will maintain his Unit, Wastewater System, and Improvements constructed within the Unit, and keep it in good condition and repair. The Board, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this provision has occurred.
- E-4. Porch and Balcony Maintenance. An Occupant will maintain the porch and balcony of his Unit (if any) in a clean manner. An Occupant will take care that the cleaning of his porch and balcony does not annoy or inconvenience other Occupants. A porch or balcony may not be enclosed or used for storage purposes. If the Board determines that a porch or balcony is unsightly, the Board may give the Owner notice of the problem and a reasonable time period in which to correct it, after which the Board may take corrective action at the Owner's expense.
- E-5. Combustibles. An Occupant may not store or maintain, anywhere on the Property – including within a Unit – explosives or materials capable of spontaneous combustion.
- E-6. Report Malfunctions. An Occupant will immediately report to the Board his discovery of any leak, break, or malfunction in any portion of the Property which the Association has a duty to maintain. An Occupant who fails to promptly report a problem may be deemed negligent, in which case the Owner may be liable for any additional damage caused by the delay.
- E-7. Emergencies. In case of continuous water overflow, an Occupant should immediately turn off water and TURN THE SHUT-OFF VALVES BEHIND THE TOILET OR UNDER THE SINK.
- E-8. Frozen Water Pipes. Some Units are constructed with water lines in exterior walls. It is the duty of every Owner and Occupant of such a Unit to protect the water lines from freezing during winter months. Between November 1 and March 25 of any year, no Unit with water lines in exterior walls may be left unheated. During periods of anticipated below freezing temperatures, water lines in exterior walls should be allowed to drip continuously, and cabinets enclosing plumbing lines should be left ajar. Dish washers on exterior walls should not be used during and immediately after periods of extreme cold. Failure by an Owner or Occupant to monitor the local weather and take appropriate precautions may be deemed negligence.

## **F. GENERAL USE & MAINTENANCE OF COMMON ELEMENTS**

- F-1. Intended Use. Every area and facility in the Property may be used only for its intended and obvious use. For example, streets, walkways, sidewalks, and driveways are used exclusively for purposes of access, not for social congregation or recreation.

- F-2. Personal Property. The sidewalks, entrances, passages, driveways, parking areas and similar portions of the Common Elements shall not be obstructed nor used for any purpose other than for ingress and egress to and from the Regime and the Units. No carts, bicycles, carriages, chairs, tables or other similar objects or personal property shall be stored in, on or upon the Common Elements, except in areas, if any, designated for such purposes. All personal property must be stored within an Owner's Unit.
- F-3. Grounds. Unless the Board designates otherwise, Occupants may not use or abuse the landscaped areas, lawns, beds, and plant materials on the Common Elements.
- F-4. Abandoned Items. No item or object of any type may be stored, placed, or maintained anywhere on the General Common Elements, except by the Board or with the Board's prior written consent. Items of personal property found on the General Common Elements are deemed abandoned and may be disposed of by the Board.

### G. COMMUNITY ETIQUETTE

- G-1. Courtesy. Each Occupant will endeavor to use his Unit and the Common Elements in a manner calculated to respect the rights and privileges of other Occupants.
- G-2. Annoyance. An Occupant will avoid doing or permitting anything to be done that will annoy, harass, embarrass, or inconvenience other Occupants or their guests, or the Association's employees and agents.
- G-3. Noise and Odors. Each Occupant must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb Occupants of other Units.
- G-4. Parties. In planning private social functions at the Property, an Occupant should be aware of the potential consequences on the Property's parking resources and on the sensibilities of other Occupants. An Occupant intending to use his Unit for a party or other activity that may be expected to produce a higher-than-customary level or duration of noise or other disturbance will make a diligent effort to give Occupants of adjacent Units timely prior notice of the event, as a courtesy. If the event is expected to attract twenty (20) or more guests to the Property, the Occupant will also give the Board timely prior written notice of the event.
- G-5. Reception Interference. Each Occupant will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, or electronic reception on the Property.

### H. VEHICLE RESTRICTIONS

- H-1. Permitted Vehicles. To be permitted on the Property, a vehicle must be operable, and must display a current license tag and inspection sticker. For purposes of these Rules,

vehicles include automobiles, motorcycles, motorized bikes, passenger trucks, small vans, and similar passenger vehicles. The following are not permitted on the Property without the Board's consent: trailers, boats, recreational vehicles, buses, large commercial trucks, industrial vehicles. Motorcycles, motorbikes, or other motorized vehicles may not be operated on the Property except to provide transportation to and from a Unit.

- H-2. Repairs. Washing, repairs, restoration, or maintenance (including oil changes) of vehicles is prohibited on the private streets except for emergency repairs, and then only to the extent necessary to enable movement of the vehicle to a repair facility.
- H-3. Proper Placement. No vehicle, including motorcycles, may be driven, parked, or placed anywhere on the Property except in designated areas. Motorcycles may not be chained to buildings, fences, or any other part of the Property, unless designated for that purpose.
- H-4. Nuisances. Each vehicle must be muffled and must be maintained and operated to minimize noise, odor, and oil emissions. Except in cases of an emergency, the use of car horns on the Property between the hours of 9:00 p.m. and 9:00 a.m. are prohibited, and between the hours of 9:00 a.m. and 9:00 p.m., the use of car horns on the Property is discouraged. No vehicle may be kept on the Property if the Board deems it to be unsightly, inoperable, inappropriate, or otherwise violative of these Rules.
- H-5. Obstructions. No vehicle may be parked in a manner that impedes or prevents ready access to the Property, driveways, or parking spaces. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard. No vehicle may be parked, even temporarily, in fire-lanes or in any area designated as "No Parking."
- H-6. Garages. Because of the shortage of visitor parking within the Property, it is imperative that each Occupant use their garage for the parking of vehicles. An Occupant with a car must use his garage for routine parking. No garage may be enclosed or used for any purpose that prevents the parking of the maximum number of vehicles for which it was constructed. Garage doors must be kept closed at all times, except when entering or exiting.
- H-7. Violations. A vehicle in violation of these Rules may be stickered, wheel-locked, towed, or otherwise removed from the Property by the Board, at the expense of the vehicle's owner. The Association expressly disclaims any liability for damage to vehicles on which the Association exercises these remedies for Rules violations.

## **I. TRASH DISPOSAL**

- I-1. General Duty. Occupant will endeavor to keep the Property clean and will dispose of all refuse in receptacles designated specifically by the Association or by the City for that purpose. Occupants may NOT litter on the Common Elements.

- I-2. Trash Containers. Trash containers and recycling bins must be stored inside the garage of the residence constructed within the Unit and may only be placed on the street within twenty-four (24) hours of the designated trash pick up day. Occupants will place trash entirely within the designated receptacle. If a receptacle is full, Occupants should locate another receptacle to hold trash. Boxes and large objects should be crushed or broken down before placed in a receptacle. Receptacles are to be closed at all times when not in use. Occupants must arrange privately for removal of discarded furnishings or any unusually large volume of debris.
- I-3. Hazards. Occupants may NOT store trash inside or outside his Unit in a manner that may permit the spread of fire, odors, or seepage, or encouragement of vermin. Before discarding coals, ashes, logs, or other materials used in barbecue grills or fireplaces, Occupants will ensure that the debris is thoroughly cold.

## **J. PETS**

- J-1. Prohibited Animals. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for anywhere on the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, snakes or lizards, ferrets, monkeys or other exotic animals). An Owner or Occupant shall be allowed no more than two (2) household pets in any Unit. No Occupant may keep a dangerous or exotic animal, trained attack dog, or any other animal deemed by the Board to be a potential threat to the well-being of people or other animals. In the event that any regulatory authority (i.e. animal control) determines that an animal within the Property is dangerous or hazardous, then the owner of such animal shall be required to immediately remove the animal from the Property. No animal or household pet may be kept, bred, or maintained for any commercial purpose or for food.
- J-2. Indoors/Outdoors. No pet is allowed on Common Elements unless carried or leashed. No pet may be leashed to a stationary object on the Common Elements. Feeding bowls for pets may not be left outside a residence.
- J-3. Disturbance. Pets must be kept in a manner that does not disturb another Occupant's rest or peaceful enjoyment of his Unit or the Common Elements. No pet may be permitted to bark, howl, whine, screech, or make other loud noises for extended or repeated periods of time.
- J-4. Damage. Each Occupant is responsible for any property damage, injury, or disturbance his pet may cause or inflict. An Occupant who keeps a pet on the Property is deemed to indemnify and agrees to hold harmless the Board, the Association, and other Owners

and Occupants, from any loss, claim, or liability of any kind or character whatever resulting from any action of his pet or arising by reason of keeping or maintaining the pet on the Property.

- J-5. Pooper Scooper. Each Occupant is responsible for the removal of his pet's wastes from the Common Elements. The Board may levy a fine against a Unit and its Owner each time feces are discovered on the Common Elements and attributed to an animal in the custody of that Unit's Occupant. Animal waste, including cat litter, must be disposed of only in the trash receptacle serving the Owner's Unit.
- J-6. Removal. If an Occupant or his pet violates these Rules, or if a pet creates a noise, odor, or other disturbance or nuisance, the Occupant or person having control of the animal may be given a written notice by the Board to correct the problem. If the problem is not corrected within the time specified in the notice (not less than ten (10) days), the Occupant, upon written notice from the Board, may be required to remove the animal. Each Occupant agrees to permanently remove his violating animal from the Property within ten (10) days after receipt of a removal notice from the Board.

#### K. ARCHITECTURAL CONTROL

- K-1. Common Elements. Without the prior written consent of the McKinney Crossing Reviewer and the Board, a person may not change, decorate, destroy or improve the Common Elements nor do anything to change the appearance of the Common Elements.
- K-2. Prohibited Acts. No Owner or Occupant may:
- (a) Post signs, notices or advertisements on the Common Elements or in a Unit if visible from outside his Unit, other than signs permitted by *Section 10.19* of the Declaration.
  - (b) Place or hang an object in, on, from or above any window, interior window sill, balcony or patio that, in the Board's opinion, detracts from the appearance of the Property.
  - (c) Hang, shake or otherwise display linens, clothing, towels, rugs, shoes, mops, bedding or other similar items from windows, doors, porches, balconies, patios or use the front porch as a storage area.
  - (d) Erect or install exterior horns, lights, aerials, antennas or other transmitting or receiving equipment, or cause anything to protrude through an exterior wall or roof, except that with the Board's approval of the location and size of an antenna dish, each Owner may install satellite TV and internet provided that the antenna is not visible from the front of the Owner's Unit.

- (e) Place decorations other than temporary (no more than four (4) weeks display) holiday decorations on exterior walls or doors, or on the Common Elements.
  - (f) Paint the exterior walls or trim of their Unit a garish or attention grabbing color that the Association, at its sole discretion, finds to be in conflict with the exterior presentation and color theme of the Property.
- K-3. Window Treatments. An Owner may install window treatments inside his Unit, at his sole expense, provided:
- (a) Window treatments are limited to drapes, blinds or shutters.
  - (b) Aluminum foil and reflective window treatments are expressly prohibited.
  - (c) Window treatments must be maintained in good condition, and must be removed or replaced if they become stained, torn, damaged or otherwise unsightly in the opinion of the McKinney Crossing Reviewer and the Board.
- K-4. McKinney Crossing Reviewer. All proposed improvements and modifications to the Regime must be approved in advance by the McKinney Crossing Reviewer in accordance with the Declaration.

#### **L. MISCELLANEOUS**

- L-1. Right to Hearing. An Owner may request in writing a hearing by the Board regarding an alleged breach of these Rules by the Owner or any person for whom the Owner is responsible. The Board will schedule a hearing within 30 days after receiving the Owner's written request. At the hearing, the Board will consider the facts and circumstances surrounding the alleged violation. The Owner may attend the hearing in person, or may be represented by another person or written communication.
- L-2. Mailing Address. An Owner who receives mail at any address other than the address of his Unit must maintain with the Association his current mailing address. Notifications of change of name or change of address should be clearly marked as such. All notices required to be sent to Owners by the Documents may be sent to an Owner's most recent address as shown on the records of the Association. If an Owner fails to provide a forwarding address, the address of that Owner's Unit is deemed effective for purposes of delivery.
- L-3. Revision. These Rules are subject to being revised, replaced, or supplemented, and Owners and Occupants are urged to contact the Association to verify the rules currently in effect on any matter of interest. These Rules will remain effective until 10 days after an Owner of each Unit has been given a notice of the amendment or revocation of these Rules.

- L-4. Other Rights. These Rules are in addition to and in no way whatsoever detract from the rights of the Association under the other Documents and Applicable Law.

## **ATTACHMENT 4**

### **ASSESSMENT COLLECTION POLICY**

The McKinney Crossing Condominiums is a condominium regime created by and subject to the Development Area Declaration of Condominium Regime for McKinney Crossing Condominiums, recorded or to be recorded in the Official Public Records of Travis County, Texas, as it may be amended (the “**Declaration**”). As a condominium regime, the McKinney Crossing Condominiums is also subject to Applicable Law, including Chapter 82 of the Texas Property Code -- the Texas Uniform Condominium Act (“**TUCA**”). The operation of the McKinney Crossing Condominiums is vested in the McKinney Crossing Condominium Community, Inc. (the “**Association**”), acting through its Board of Directors (the “**Board**”). The Association is empowered to enforce the covenants of the Declaration, including the obligation of owners to pay assessments. In addition to rights and remedies of the Association under the Declaration, TUCA gives the Association, acting through the Board:

1. Authority to adopt and amend rules regulating the collection of delinquent assessments and the application of payments. §82.102(a)(13);
2. Authority to impose interest and late charges for late payments of assessments, and returned check charges. §82.102(a)(12);
3. Authority to adopt and amend rules regulating the termination of utility service to a Unit, the Owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility. §82.102(a)(14);
4. Authority to suspend the voting privileges of or the use of certain general common elements by an Owner delinquent for more than thirty (30) days in the payment of assessments. §82.102(a)(17); and
5. A private power of sale to foreclose the assessment lien nonjudicially, subject to a limited right of redemption by the Unit Owner. §82.113.

To establish equitable policies and procedures for the collection of delinquent assessments, the Declarant hereby adopts this policy for the benefit of the Association, as part of the initial project documentation.

### **SECTION 1. DELINQUENCIES, LATE CHARGES & INTEREST**

- 1-A. **Due Date.** An Owner will timely and fully pay Regular Assessments and Special, Individual, Utility and Deficiency Assessments. Regular Assessments are due and payable on the first calendar day of each month. Special, Individual, Utility and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Special, Individual, Utility or Deficiency Assessment is given.

- 1-B. Delinquent. Any assessment that is not fully paid when due is delinquent. When the account of a Unit becomes delinquent, it remains delinquent until paid in full – including collection costs and late fees.
- 1-C. Late Fees & Interest. If the Association does not receive full payment of a Regular Assessment by 5:00 p.m. on the tenth (10<sup>th</sup>) calendar day of the month, the Association may levy a late fee of \$25 per month and/or interest of ten percent (10%) per annum from the first day of delinquency until the delinquency is paid in full. After the initial month of delinquency, a late fee of \$25 may be on the first day of each month the account is delinquent until the account is current.
- 1-D. Liability for Collection Costs. The defaulting Owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, court costs, filing fees, and other reasonable costs and attorney's fees incurred by the Association in collecting the delinquency.

*Users of this document should periodically review statutes and court rulings that may modify or nullify provisions of this document or its enforcement, or may create rights or duties not anticipated by this document.*

- 1-E. Insufficient Funds. The Association may levy a charge of \$25 for any check returned to the Association marked for "insufficient funds" or the equivalent.
- 1-F. Waiver. Properly levied collection costs, late fees, and interest may not be waived by the Board, unless a Majority of the directors determines that extraordinary circumstances warrant an adjustment to the account, in which case the adjustment must be described in detail in the minutes of the Board's meeting. Because of the potential for inadvertently effecting a waiver of the policies contained in this policy, the Board will exercise caution in granting adjustments to an Owner's account.

## SECTION 2. INSTALLMENTS & ACCELERATION

If a Special or Deficiency Assessment is payable in installments, and if an Owner defaults in the payment of any installment, the Association may declare the entire assessment in default and accelerate the due date on all remaining installments of that assessment. A Special or Deficiency Assessment payable in installments may be accelerated only after the Association gives the Owner at least fifteen (15) days prior notice of the default and the Association's intent to accelerate the unpaid balance if the default is not timely cured. Following acceleration of the indebtedness, the Association has no duty to reinstate the installment program upon partial payment by the Owner.

### SECTION 3. PAYMENTS

3-A. Application of Payments. After the Association notifies the Owner of a delinquency and the Owner's liability for late fees or interest, and collection costs, **any payment received by the Association will be applied in the following order, starting with the oldest charge in each category, until that category is fully paid**, regardless of the amount of payment, notations on checks, and the date the obligations arose:

- |   |                                     |
|---|-------------------------------------|
| (1) Collection costs and attorneys fees | (8) Delinquent Utility Assessments  |
| (2) Fines                               | (9) Delinquent Regular Assessments  |
| (3) Reimbursable expenses               | (10) Current Individual Assessments |
| (4) Late charges and interest           | (11) Current Deficiency Assessments |
| (5) Delinquent Individual Assessments   | (12) Current Special Assessments    |
| (6) Delinquent Deficiency Assessments   | (13) Current Utility Assessments    |
| (7) Delinquent Special Assessments      | (14) Current Regular Assessments    |

3-B. Form of Payment. The Association may require that payment of delinquent assessments be made only in the form of cash, cashier's check, or certified funds.

3-C. Partial and Conditioned Payment. The Association may refuse to accept partial payment (i.e., less than the full amount due and payable) and payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's endorsement and deposit of a payment does not constitute acceptance. Instead, acceptance by the Association occurs when the Association posts the payment to the Unit's account. If the Association does not accept the payment at that time, it will promptly refund the payment to the payer. A payment that is not refunded to the payer within thirty (30) days after being deposited by the Association may be deemed accepted as to payment, but not as to words of limitation or instruction accompanying the payment. The acceptance by the Association of partial payment of delinquent assessments does not waive the Association's right to pursue or to continue pursuing its remedies for payment in full of all outstanding obligations.

3-D. Notice of Payment. If the Association receives full payment of the delinquency after recording a notice of lien, the Association will cause a release of notice of lien to be publicly recorded, a copy of which will be sent to the Owner. The Association may require the Owner to prepay the cost of preparing and recording the release.

3-E. Correction of Credit Report. If the Association receives full payment of the delinquency after reporting the defaulting Owner to a credit reporting service, the Association will report receipt of payment to the credit reporting service.

#### SECTION 4. LIABILITY FOR COLLECTION COSTS

The defaulting Owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, filing fees, and other reasonable costs and attorney's fees incurred in the collection of the delinquency, which amounts are secured by a lien against the Unit.

#### SECTION 5. COLLECTION PROCEDURES

- 5-A. Delegation of Collection Procedures. From time to time, the Association may delegate some or all of the collection procedures, as the Board in its sole discretion deems appropriate, to the Association's managing agent, an attorney, or a debt collector.
- 5-B. Delinquency Notices. If the Association has not received full payment of an assessment by the due date, the Association may send one or more written notices of nonpayment to the defaulting Owner, by hand delivery, first class mail, and/or by certified mail, stating the amount delinquent. The Association's delinquency-related correspondence may state that if full payment is not timely received, the Association may pursue any or all of the Association's remedies, at the sole cost and expense of the defaulting Owner.
- 5-C. Collection by Attorney. After giving the Owner notice of the delinquency, the Association may refer the delinquent account to an attorney for collection. In that event, the defaulting Owner will be liable to the Association for its legal fees and expenses.
- 5-D. Verification of Owner Information. The Association may obtain a title report to determine the names of the Owners and the identity of other lienholders, including the mortgage company.
- 5-E. Notification of Mortgage Lender. The Association may notify the mortgage lender of the default obligations.
- 5-F. Notification of Credit Bureau. The Association may report the defaulting Owner to one or more credit reporting services.
- 5-G. Notice of Lien. The Association may cause a notice of the Association's assessment lien against the Unit to be publicly recorded. In that event, a copy of the notice will be sent to the defaulting Owner, and may be sent to his mortgage holder.
- 5-H. Foreclosure of Lien -- Nonjudicially. The Board may instruct an attorney, officer, or agent of the Association to notify the defaulting Owner of the Association's intent to foreclose its assessment lien, to post the property for public auction, and to conduct a public auction of the Unit on the steps of the county courthouse in accordance with Applicable Law and the Association's documents. The Board may not foreclose a lien consisting solely of fines or securing money for which the Association has obtained a personal money judgment.

- 5-I. Foreclosure of Lien -- Judicially. The Association may file suit against the Owner for judicial foreclosure of the Association's assessment lien. This action may be combined with a claim against the Owner's personal liability, for recovery of a money judgment.
- 5-J. Suit for Owner's Personal Liability. Whether or not the Association forecloses the Association's assessment lien, the Board may file a suit for a personal judgment against the defaulting Owner, and may execute on the judgment.
- 5-K. Possession Following Foreclosure. If the Association purchases the Unit at public auction, the Board may immediately institute actions to recover possession.
- 5-L. Limited Right of Redemption. If the Association buys a Unit at the nonjudicial foreclosure sale of its assessment lien, the Association's ownership is subject to a ninety (90) day right of redemption by the Owner. TUCA's statutory right of redemption does not apply to judicial foreclosures or foreclosures of judgment liens.
- 5-M. Collection Agency. The Board may employ or assign the debt to one or more collection agencies.
- 5-N. Cancellation of Debt. If the Board deems the debt to be uncollectible, the Board may elect to cancel the debt on the books of the Association, in which case the Association may report the full amount of the forgiven indebtedness to the Internal Revenue Service as income to the defaulting Owner.
- 5-O. Suspension of Voting Rights. The Association may suspend the voting rights of an Owner whose account with the Association is delinquent for at least thirty (30) days.
- 5-P. Suspension of Use of Certain Facilities or Services. The Association may suspend the use of the Common Element amenities by an Owner, or his tenant, whose account with the Association is delinquent for at least thirty (30) days.
- 5-Q. Utility Shut-Off. The Association may terminate utility service to the Unit for which assessments used to pay the cost of that utility are delinquent, according to the Association's utility shut-off policy.

## SECTION 6. GENERAL PROVISIONS

- 6-A. Independent Judgment. Notwithstanding the contents of this detailed policy, the officers, directors, manager, and attorney of the Association will exercise their independent, collective, and respective judgment in applying this policy.
- 6-B. Other Rights. This policy is in addition to and does not detract from the rights of the Association to collect assessments under the Association's Documents and Applicable Law.

- 6-C. Limitations of Interest. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with this policy, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the Owner if those assessments are paid in full.
- 6-D. Notices. Unless the Documents, Applicable Law, or this policy provide otherwise, any notice or other written communication given to an Owner pursuant to this policy will be deemed delivered to the Owner upon depositing same with the U.S. Postal Service, addressed to the Owner at the most recent address shown on the Association's records, or on personal delivery to the Owner. If the Association's records show that two (2) or more persons own a Unit, notice to one co-Owner is deemed notice to all co-Owners. Similarly, notice to one Occupant is deemed notice to all Occupants. Written communications to the Association, pursuant to this policy, will be deemed given on actual receipt by the Association's president, secretary, managing agent, or attorney.
- 6-E. Definitions. Words and phrases used in this policy have the same meanings given to them by the Declaration.
- 6-F. Amendment of Policy. This policy will remain effective until ten (10) days after the Association delivers to an Owner of each Unit notice of amendment or revocation of this policy. The notice may be published and distributed in an Association newsletter or other community-wide publication.

## **ATTACHMENT 5**

### **FINE POLICY**

1. **Background.** This fine policy is based on the requirements of Sec. 82.102(d) and (e) of TUCA. To establish policies and procedures for fining under TUCA, the Declarant adopts this policy for the benefit of the Association, as part of the initial project documentation.
2. **Policy.** The Association uses fines to discourage violations of the Documents, and to encourage compliance when a violation occurs - not to punish violators or generate revenue for the Association. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Association for enforcing the Documents. The Association's use of fines does not interfere with its exercise of other rights and remedies for the same violation. Nor may the Association use fines to the exclusion of other remedies.
3. **Owner's Liability.** An Owner is liable for fines levied by the Association for violations of the Documents by the Owner, the Occupants of the Unit, and the relatives, guests, employees, and agents of the Owner and Occupants. Regardless of who performs the violation, the Association will direct its communications to the Owner, although the Association may send copies of its notices to the Occupant.
4. **Violation Notice.** Before levying a fine, the Association will give the Owner a written violation notice via certified mail, return receipt requested, and an opportunity to be heard, if requested by the Owner. This requirement may not be waived. The Association's written violation notice will contain the following items: (1) the date the violation notice is prepared or mailed; (2) a description of the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due to the Association from the Owner; (3) a reference to the rule or provision that is being violated; (4) a description of the action required to cure the violation; (5) the timeframe in which the violation is required to be cured to avoid the fine or suspension; (6) the amount of the fine; (7) a statement that no later than the thirtieth (30th) day after receiving the notice, the Owner may request a hearing pursuant to Section 82.102 of TUCA; and (8) a statement informing the Owner that they may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. section et seq), if the Owner is serving on active military duty. The notice sent out pursuant to this paragraph is further subject to the following:
  - a. **First Violation.** If the Owner has not been given notice and a reasonable opportunity to cure the same or similar violation within the preceding twelve (12) months, the notice will state those items set out in (1) – (8) above, along with a specific timeframe by which the violation must be cured to avoid the fine. The notice must state that any future violation of the same rule may result in the levy of a fine.

- b. Repeat Violation – No Cure within 12 Months. If the Owner has been given notice and a reasonable opportunity to cure the same or similar violation within the preceding twelve (12) months but commits the violation again, the notice will state those items set out in (1) - (3), (6) and (8) above, but will also state that because the Owner has been given notice and a reasonable opportunity to cure the same or similar violation within the preceding twelve (12) months but has not cured the violation, then the Owner will be fined pursuant to the Schedule of Fines described below.
  - c. Continuous Violation. After an Owner has been notified of a violation as set forth herein and assessed fines in the amounts set forth in the Schedule of Fines described below, if the Owner has never cured the violation in response to either the notices or the fines, in its sole discretion, the Board may determine that such a circumstance is a continuous violation which warrants a levy of a fine based upon a daily, monthly, or quarterly amount as determined by the Board.
- 5. Violation Hearing. If the Owner is entitled to an opportunity to cure the violation, then the Owner has the right to submit a written request to the Association for a hearing before the Board or a committee appointed by the Board to discuss and verify the facts and resolve the matter. To request a hearing, the Owner must submit a written request (the “**Request**”) to the Association’s manager (or the Board if there is no manager) within thirty (30) days after receiving the violation notice. The Association must then hold the hearing requested no later than thirty (30) days after the Board receives the Request. The Board must notify the Owner of the date, time, and place of the hearing at least (10) days’ before the date of the hearing. The hearing will be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend. The Board or the Owner may request a postponement, and if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. Notwithstanding the foregoing, the Association may exercise its other rights and remedies as set forth in TUCA. Any hearing before the Board will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner shall attend the hearing in person, but may be represented by another person (i.e., attorney) during the hearing, upon advance written notice to the Board. If an Owner intends to make an audio recording of the hearing, such Owner’s request for hearing shall include a statement noticing the Owner’s intent to make an audio recording of the hearing, otherwise, no audio or video recording of the hearing may be made, unless otherwise approved by the Board.
- 6. Levy of Fine. The Association must notify an Owner of a levied fine or damage charge no later than the thirtieth (30<sup>th</sup>) day after the date of the levy under Section 82.102(e) of TUCA. A fine levied at a hearing requested by the Owner at which the Owner is present shall satisfy the notice requirement if the Board announces its decision to the Owner at the hearing. Otherwise, any fine or damage charge levied shall be reflected on the

Owner's periodic statement of account or delinquency notices so long as such periodic statement or notice is provided to the Owner not later than the thirtieth (30<sup>th</sup>) day after the date the fine or damage charge is levied by the Board.

7. Amount. The Association may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Association may establish a schedule of fines for certain types of violations. If circumstances warrant a variance from the schedule, the Board will document the reasons for the variance in the minutes of its meeting. The amount and cumulative total of a fine must be reasonable in comparison to the violation, and should be uniform for similar violations of the same provision of the Documents. If the Association allows fines to accumulate, it will establish a maximum amount for a particular fine, at which point the total fine will be capped.
8. Type of Levy. If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, monthly, or quarterly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.
9. Collection of Fines. The Association is not entitled to collect a fine from an Owner to whom it has not given notice and an opportunity to be heard. The Association may not foreclose its assessment lien on a debt consisting solely of fines. The Association may not charge interest or late fees for unpaid fines.
10. Amendment of Policy. This policy may be revoked or amended from time to time by the Board. This policy will remain effective until ten (10) days after the Association delivers to an Owner of each Unit notice of amendment or revocation of this policy. The notice may be published and distributed in an Association newsletter or other community-wide publication.

ATTACHMENT 6

## MCKINNEY CROSSING CONDOMINIUMS

## COMMUNITY MANUAL

CERTIFICATION & ACKNOWLEDGMENT

As the Declarant of McKinney Crossing Condominiums and the initial and sole member of McKinney Crossing Condominium Community, Inc. (the "Association"), I certify that the foregoing McKinney Crossing Condominiums Community Manual was adopted for the benefit of the Association as part of the initial project documentation for McKinney Crossing Condominiums, located in Austin, Texas. This Community Manual becomes effective when recorded.

SIGNED on this 20<sup>th</sup> day of April, 2021.

DECLARANT:

KB HOME LONE STAR INC.,

a Texas corporation

By: Shawn A. Kirkpatrick  
 Printed Name: Shawn A Kirkpatrick  
 Title: Director of Public Affairs

THE STATE OF TEXAS

§

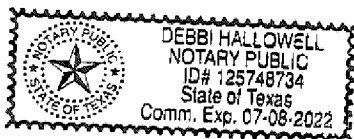
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COUNTY OF TRAVIS

§

This instrument was acknowledged before me this \_\_\_\_ day of April, 2021  
 by Shawn A Kirkpatrick Director of Public Affairs of KB Home Lone Star Inc., a Texas  
 corporation, on behalf of said corporation.

(SEAL)



\_\_\_\_\_  
 Notary Public Signature

MCKINNEY CROSSING CONDOMINIUMS  
 COMMUNITY MANUAL

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS



*Dana DeBeauvoir*

Dana DeBeauvoir, County Clerk  
Travis County, Texas

Apr 27, 2021 12:47 PM Fee: \$30.00

**2021092868**

\*Electronically Recorded\*

**MANAGEMENT CERTIFICATE  
MCKINNEY CROSSING CONDOMINIUM COMMUNITY, INC.**

The undersigned, being an officer of McKinney Crossing Condominium Community, Inc., and in accordance with Section 82.116 of the Texas Uniform Condominium Act, does hereby certify as follows:

1. The name of the condominium project: McKinney Crossing Condominiums (the "Condominium").
2. The name of the condominium association: McKinney Crossing Condominium Community, Inc., a Texas non-profit corporation (the "Association").
3. The location of the condominium: 7231 Colton Bluff Springs, Austin, Travis County, Texas 78744.
4. The recording data for the declaration: The Association is a Texas non-profit corporation established to administer common elements and the affairs of the Condominium established pursuant to Chapter 82 of the Texas Uniform Condominium Act and the terms and provisions of that certain Development Area Declaration of Condominium Regime for McKinney Crossing Condominiums, recorded as Document No. 2021088151, Official Public Records of Travis County, Texas.
5. The mailing address of the association: McKinney Crossing Condominium Community, Inc., c/o Colby Property Management, 205 Paloma Drive, Temple, Texas 76502.
6. The name and mailing address of the person managing the association: Colby Property Management, 205 Paloma Drive, Temple, Texas 76502, Attn.: Glen Colby.

[SIGNATURE PAGE FOLLOWS]

This Certificate is effective as of the 20th day of April, 2021.

**MCKINNEY CROSSING CONDOMINIUM  
COMMUNITY, INC.,**  
a Texas non-profit corporation

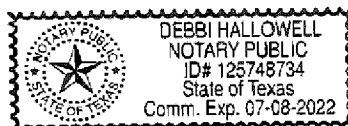
By: Shawn A. Kirkpatrick  
Name: Shawn A. Kirkpatrick  
Title: President

THE STATE OF TEXAS       §  
  §  
COUNTY OF Williamson   §

This instrument was acknowledged before me this 15th day of April, 2021, by Shawn A. Kirkpatrick the President of McKinney Crossing Condominium Community, Inc., a Texas nonprofit corporation, on behalf of said nonprofit corporation.

(SEAL)

\_\_\_\_\_  
Notary Public Signature



**AFTER RECORDING RETURN TO:**

Robert D. Burton, Esq.  
Winstead, PC  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701