

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

FOR

FLOYD ACRES

This Declaration of Covenants, Conditions & Restrictions for Floyd Acres is made by Silver Leaf Communities LLC a Texas limited liability company ("Declarant"), on the date signed below. Declarant owns the real property described in Exhibit A of this Declaration, together with the improvements thereon.

Declarant desires to establish a general plan of development for the planned community to be known as Floyd Acres. Declarant also desires to maintain certain development rights that are essential for the successful completion and marketing of the Property.

Declarant further desires to provide for this preservation, administration, and maintenance of portions of Floyd Acres, and to protect the value, desirability, and attractiveness of Floyd Acres. As an integral part of the development plan, and pursuant to the requirements of the City of Midland, Declarant is creating a property owners association to perform these functions and activities more fully described in this Declaration and the other Governing Documents described below.

Declarant DECLARES that the property described in Exhibit A and any additional property made subject to this Declaration by recording one or more amendments of or supplements to this Declaration, will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Declaration; will run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the property, their heirs, successors, and assigns, and inure to the benefit of each Owner of any part of the property.

ARTICLE 1 DEFINITIONS

The following words and phrases, whether or not capitalized, have specific meanings when used in the Governing Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1. **"Applicable Law"** means the statutes and public laws and ordinances in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document, and are not intended to apply to the Project if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.2. **"Architectural Reviewer"** means the entity having jurisdiction over a particular application for architectural approval: During the Development Period, the

Architectural Reviewer is Declarant, Declarant's designee, or Declarant's delegatee. Thereafter, the board-appointed Architectural Control Committee is the Architectural Reviewer.

1.3. **"Area of Common Responsibility"** means those components of the townhomes and townhome lots for which the Association has maintenance responsibilities, as described with more particularity in Article 4 of this Declaration, and as further described in the Maintenance Responsibility Chart attached hereto as Exhibit D.

1.4. **"Assessment"** means any charge levied against a lot or owner by the Association, pursuant to the Governing Documents or State law, including but not limited to Regular Assessments, Special Assessments, Insurance Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 8 of this Declaration.

1.5. **"Association"** means the association of owners of all lots in the Property, and serving as the "property owners' association" defined in Section 202.001(2) of the Texas Property Code. The initial name of the Association is Floyd Acres Townhome Association.

1.6. **"Board"** means the board of directors of the Association.

1.7. **"Builder"** means a person or entity which purchases, or contracts to purchase, a lot from Declarant or from Builder for the purpose of constructing a townhome for resale or under contract to an owner other than Declarant. As used in this Declaration, Builder does not refer to Declarant or to a home building or home marketing company that is an affiliate of Declarant.

1.8. **"City"** means the City of Midland, Texas, in which the Property is located.

1.9. **"Common Area"** means portions of real property and improvements thereon that are owned and/or maintained by the Association, as described in Article 4 below.

1.10. **"Community Manual"** means the initial compilation of policies and rules pertaining to the use, operation, and maintenance of the Property. In the event of conflict between this Declaration and the Community Manual, this Declaration controls.

1.11. **"Declarant"** means DBRC Construction LLC, a Texas limited liability company, which is developing the Property, or the successors and assigns of DBRC Construction LLC, which are designated a Successor Declarant by DBRC Construction LLC, or by any such successor and assign, in a recorded document, executed by both Declarant and Successor Declarant in the case of a voluntary assignment.

1.12. **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of (1) ten years from the date this Declaration is recorded, or (2) four months after all of the lots have been improved with townhomes and title to 95 percent of the lots has been conveyed to owners. Declarant may voluntarily terminate its control of the Association at any earlier time by publicly recording a notice of termination.

1.13. **"Declaration"** means this document, as it may be amended from time to time.

1.14. **"Development Period"** means the 15-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to this Declaration, such as rights relating to development, construction, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own land described in Exhibit A. The Development Period is different from and longer than the Declarant Control Period. Declarant may voluntarily terminate the Development Period at any time by publicly recording a notice of termination.

1.15. **"Governing Documents"** means, singly or collectively as the case may be, this Declaration, the Plat, the Bylaws of the Association, the Association's Articles of Incorporation, the Community Manual, and the Maintenance Responsibility Chart, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Governing Document is a part of that Governing Document.

1.16. **"Lot"** means a portion of the Property intended for independent ownership, on which there is or will be constructed a townhome, as shown on the Plat. As a defined term, "lot" does not refer to common areas, even if platted and numbered as a lot. Where the context indicates or requires, "lot" includes all improvements thereon and any portion of a right-of way that customarily is used exclusively by and in connection with the lot.

1.17. **"Majority"** means more than half. A reference to "a majority of owners" in any Governing Document or applicable law means "owners of at least a majority of the lots," unless a different meaning is specified.

1.18. **"Member"** means a member of the Association, each member being an owner of a lot, unless the context indicates that member means a member of the board or a member of a committee of the Association. In the context of votes and decision-making, each lot has only one membership, although it may be shared by co-owners of a lot.

1.19. **"Owner"** means a holder of recorded fee simple title to a lot. Declarant is the initial owner of all lots. Contract sellers and mortgagees who acquire title to a lot through a deed in lieu of foreclosure or through judicial or nonjudicial 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. A reference in any Governing Document or applicable law to a percentage or share of owners or members means owners of at least that percentage or share of the lots, unless a different meaning is specified. For example, "a majority of owners" means owners of at least a majority of the lots.

1.20. **"Plat"** means all plats, singly and collectively, recorded in the Real Property Records of Midland County, Texas, and pertaining to the real property described in Exhibit A of this Declaration, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the plat, as it may be amended from time to time.

1.21. **"Property"** means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is

Floyd Acres. The Property is located on land described in Exhibit A to this Declaration, as it may be amended or supplemented from time to time, and includes every lot and any common area thereon.

1.22. **"Resident"** means an occupant of a townhome, regardless of whether the person owns the lot.

1.23. **"Rules"** means rules and regulations of the Association adopted in accordance with the Governing Documents or applicable law. The Initial Rules may be adopted by Declarant for the benefit of the Association.

1.24. **"Townhome"** means the attached single-family dwelling on each individually-owned town home lot. **"Townhome Building"** means the structure containing multiple townhomes. Although all components of a townhome building are owned by the respective lot owners, some components may be maintained by the Association as Areas of Common Responsibility.

**ARTICLE 2
PROPERTY SUBJECT TO DOCUMENTS**

2.1. **PROPERTY.** The real property described in Exhibit A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, which run with the Property and bind all parties 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.** Although this Declaration contains a limited number of disclosures about the Property and its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective owner or resident must make his own inspection of the Property and its location, and make inquiries of anything that concerns him. Except for the express disclosures stated in this Declaration, Declarant makes no representation of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what the plat shows as potential uses of adjoining land. Declarant and the Association cannot and do not guaranty scenic views, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air.

2.3. **CHANGE OF CIRCUMSTANCE.** This Declaration discloses some characteristics of the Property that may change or that may cease to apply because of acts or decisions by authorities external to the Property. If the change of circumstance is of public record or is capable of independent verification by any interested person, the board of directors, without a vote of the owners, may issue a Notice of Change that references the provision of this Declaration that ceases to apply to the Property. The Notice may be recorded in the Real Property Records of Midland County, Texas, and does not constitute an amendment of this Declaration. If such a Notice is issued, the Association will notify owners of its existence and will make it available to owners as an Association record. This provision

may not be construed to give the board unilateral amendment powers, nor to prevent an amendment of this Declaration by a vote of the owners to achieve the same purpose.

2.4. RESTRICTIONS, EASEMENTS & PLAT DEDICATIONS. In addition to the easements and restrictions contained in this Declaration, the Property is subject to all restrictions, easements, licenses, leases, and encumbrances of record, including any shown or referenced on the plat, each of which is incorporated herein by reference. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior recorded restrictions, easements, licenses, leases, and encumbrances, and further agrees to maintain any easement that crosses his lot and for which the Association does not have express responsibility.

2.5. STREETS WITHIN PROPERTY. Because streets, alleys, and cul de sacs within the Property (hereafter "**streets**") may be capable of being converted from publicly dedicated to privately owned, and vice versa, this section addresses both conditions. Private streets, if any, are part of the common area which is governed by the Association. Public streets are part of the common area only to the extent a governmental body, such as the city or county, authorizes or delegates to the Association.

2.5.1. Public Streets. As to public streets, the Association, acting through the board, is specifically authorized (1) to accept from a governmental body any delegation of street-related duties, and (2) to act as attorney in fact for the owners in executing instruments required by public ordinance or public law to impose, modify, or remove restrictions or traffic devices (such as speed bumps) on public streets in the Property.

2.5.2. Private Streets. **Only if and when the Property has private streets,** the Association, acting through the board, is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of any private streets in the Property - including but not limited to (1) designation of parking or no-parking areas, (2) limitations or prohibitions on curbside parking, (3) removal or prohibition of vehicles that violate applicable rules and regulations, (4) fines for violations of applicable rules and regulations, and (5) programs for controlling access through entrance gates, if any.

ARTICLE 3 PROPERTY EASEMENTS AND RIGHTS

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

3.2. OWNER'S EASEMENT OF ENJOYMENT. Every owner is granted a right and easement of enjoyment over the common areas and to use of improvements therein, subject to other rights and easements contained in the Governing Documents.

3.3. WARRANTY CLAIMS. If the owner is the beneficiary of a warranty against major structural defects of the Area of Common Responsibility, the owner may NOT appoint

the Association or its officers and directors as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of a claim against a warranty that pertains to the Area of Common Responsibility. This prohibition is warranted by the possibility that the Association may become a party to the dispute because of its duty to maintain the Area of Common Responsibility.

3.4. EASEMENT FOR AREA OF COMMON RESPONSIBILITY. Each owner, by accepting an interest in or title to a lot, 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 lot and all improvements thereon for the Association's maintenance, repair, and replacement of the Area of Common Responsibility. Also, each owner hereby assigns to the Association, for the Association's use with the Area of Common Responsibility, the non-exclusive right to use any easement or right belonging to the owner, such as the following two easements.

3.5. OWNER'S MAINTENANCE EASEMENT. Every owner is granted an access easement over adjoining lots, common areas, and Areas of Common Responsibility for the maintenance or reconstruction of his townhome and other improvements on his lot, provided exercise of the easement does not damage or materially interfere with the use of the adjoining townhome or common area. Requests for entry to an adjoining townhome or common area must be made to the owner of the adjoining townhome, or the Association in the case of common areas, in advance for a time reasonably convenient for the adjoining owner, who may not unreasonably withhold consent. If an owner damages an adjoining townhome, Area of Common Responsibility, or common area in exercising this easement, the owner is obligated to restore the damaged property to its original condition, at his expense, within a reasonable period of time.

3.6. TOWNHOME EASEMENT. Every owner of a townhome lot is granted a perpetual easement over, under, and through every other townhome lot in the same townhome building in which his townhome is located for the limited purpose of installing, maintaining, and replacing wires, cables, conduit, and pipes, that serve his townhome, but only to the extent that use of this easement is reasonable and necessary. In the event of dispute, the board is the arbiter of whether the anticipated use of this easement is reasonable and necessary. Reciprocally, the owner of a townhome that contains wire, cables, conduit, or pipes that serve one or more other townhomes has a duty to refrain from interfering with or damaging those items. This easement and reciprocal responsibility anticipates that the electrical meters for all the townhomes in one building may be grouped at one end of the building. It also anticipates that attic or roofline installations of wiring may be the most cost effective and least unsightly way of accommodating future needs for cable services.

3.7. OWNER'S INGRESS/EGRESS EASEMENT. Every owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his lot.

3.8. OWNER'S ENCROACHMENT EASEMENT. Every owner is granted an easement for the existence and continuance of any encroachment by his lot's improvements on any adjoining lot or common area 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.

3.9. OWNER'S RIGHT TO BUILD. That a townhome lot remains vacant and unimproved for a period of years, even decades, does not diminish the right of the lot owner to construct improvements on the lot. Nor does a vacant lot enlarge the rights of owners of neighboring lots, who may have become so accustomed to the open space that they expect it to remain unimproved forever.

3.10. RIGHTS OF CITY. The City of Midland, including its agents and employees, has the right of immediate access to the common areas at all times if necessary for the welfare or protection of the public, to enforce City ordinances, or to improve the appearance of or to preserve public property, public easements, or public rights of way. If the Association fails to maintain the common areas to a standard acceptable to the City, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's written demand (at least 90 days), the City may maintain the common areas at the expense of the Association after giving written notice of its intent to do so to the Association. The City may give its notices and demands to any officer, director, or agent of the Association, or alternatively, to each owner of a lot as shown on the City's tax rolls. To fund the City's cost of maintaining the common areas, the City may levy an assessment against every lot in the Property in the same manner as if the Association levied a special assessment against the lots. The Association hereby indemnifies and holds harmless the City of Midland from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the City's exercise of its rights under this Declaration or under the City's Code. The rights of the City under this Section are in addition to other rights and remedies provided by law.

3.11. ASSOCIATION'S ACCESS EASEMENT. Each owner, by accepting an interest in or title to a lot, 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 areas and the owner's lot and all improvements thereon - including the townhome and yards - for the below-described purposes.

3.11.1. Purposes. Subject to the limitations stated below, the Association may exercise this easement of access and entry for the following express purposes:

- a. To inspect the property for compliance with maintenance and architectural standards.
- b. To perform maintenance that is permitted or required of the Association by the Governing Documents or by applicable law.
- c. To perform maintenance that is permitted or required of the owner by the Governing Documents or by applicable law, if the owner fails or refuses to perform such maintenance.
- d. To enforce architectural standards.
- e. To enforce use restrictions.

- f. The exercise of self-help remedies permitted by the Governing Documents or by applicable law.
- g. To enforce any other provision of the Governing Documents.
- h. To respond to emergencies.
- i. To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- j. To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by applicable law.

3.11.2. No Trespass. In exercising this easement on an owner's lot, the Association is not liable to the owner for trespass.

3.11.3. Limitations. If the exercise of this easement requires entry onto an owner's lot, including into an owner's fenced yard, the entry will be during reasonable hours and after notice to the owner. This Subsection does not apply to situations that - at time of entry - are deemed to be emergencies that may result in imminent damage to or loss of life or property.

3.12. UTILITY EASEMENT. The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property. 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. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

3.13. MINERAL RIGHTS. Some or all of the Property may be subject to a previous owner's acquisition, reservation, or conveyance of oil, gas, or mineral rights pursuant to one or more deeds or other instruments recorded in the Real Property Records of Midland County, Texas, including but not limited to rights to all oil, gas, or other minerals lying on, in, or under the Property and surface rights of ingress and egress. Because the instruments conveying or reserving mineral interests were recorded prior to this Declaration, those interests in the Property are superior and are not affected by any provision to the contrary in this Declaration. By accepting title to or interest in a lot, every owner acknowledges the existence of the mineral rights and/or reservations referenced in this Section and the attendant rights in favor of the owner or owners of the mineral interests.

3.14. NOTICE OF LIMITATION ON LIABILITY. The development of the Property occurs during a period when many local governments are trying to be absolved of liability for flood damage to private property. As a condition of plat approval, a governmental entity may require a plat note that not only disavows the entity's liability for flood damage, but affirmatively assigns the liability to the Association. Declarant does not intend or desire to impose such absolute liability on the nonprofit association of lot owners. Notwithstanding plat notes or public codes or ordinances now in existence or hereafter created, the Association cannot and should not be liable for acts of God or for property damage that is not the result of

the Association's negligence or willful misconduct. On behalf of the Association, Declarant hereby gives notice that the Association does not accept liabilities imposed by any governmental entity for which the Association cannot obtain insurance at a reasonable cost, or for which its members refuse to fund reserve accounts at levels sufficiently high to pay the damages for which the governmental entity may seek to make the Association liable. This notice is not intended to create a liability for any governmental entity. Further, this notice may not be construed to create a duty for the Association to obtain insurance or to fund reserve accounts for damage from rising waters.

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

ARTICLE 4

LOTS, COMMON AREAS & AREAS OF COMMON RESPONSIBILITY

4.1. GENERAL. The Property is platted into townhome lots, common areas, alleys and streets. Portions of the townhome lots are designated by this Declaration to be Areas of Common Responsibility, and are burdened with easements for the use and benefit of the Association, owners, and residents.

4.2. TOWNHOME LOTS. Because the boundaries of each townhome lot may not be obvious on a visual inspection of the Property, the recorded plat is the source of each lot's boundaries. Each residential lot is to be improved with a townhome. The owner of a townhome lot owns every component of the lot and townhome, including all the structural components and exterior features of the townhome. Nevertheless, this Declaration identifies components of the townhomes and lots as Areas of Common Responsibility, to be maintained by the Association as a common expense.

4.3. NOTICE ABOUT TOWNHOME SIZE. The size of a townhome may be measured different ways for different purposes, such as 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 lot's building lines. The townhome's partition wall cavities and/or its

perimeter wall cavities may or may not be included. The townhome's garage area, attic area, front porch, and/or balcony space, if any, may or may not be included.

4.4. COMMON AREA. The designation of real property as a common area is determined by the plat and this Declaration, and not by the ownership of the property. This Declaration contemplates that the Association will eventually hold title to every common area capable of independent ownership by the Association. Declarant may install, construct, or authorize certain improvements on common areas in connection with the initial development of the Property, and the cost thereof is not a common expense of the Association. Thereafter, any costs attributable to common areas, including maintenance, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the common areas, unless this Declaration elsewhere provides for a different allocation for a specific common area.

4.5. COMPONENTS OF COMMON AREA. The common area of the Property consists of the following components on or adjacent to the Property, even if located on a lot or a public right-of-way:

- a. All of the Property, save and except the townhome Lots.
- b. The land described in Exhibit A as common area and all improvements thereon.
- c. Any area shown on the plat as common area or an area to be maintained by the Association.
- d. Any modification, replacement, or addition to any of the above-described areas and improvements.
- e. Personal property owned by the Association, such as books and records, office equipment, and supplies.

4.6. ACCEPTANCE OF COMMON AREA. By accepting an interest in or title to a lot, each owner is deemed (1) to accept the common area of the Property, and any improvement thereon, in its then existing "as is" condition; (2) to acknowledge the authority of the Association, acting through its board of directors, for all decisions pertaining to the common area; (3) to acknowledge that transfer of a common area's title to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (4) to acknowledge the continuity of maintenance of the common area, regardless of changes in the Association's board of directors or management.

4.7. AREA OF COMMON RESPONSIBILITY. The Association, acting through its members only, has the right but not the duty to designate, from time to time, portions of lots or townhomes as Areas of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense. The cost of maintaining components of lots or townhomes as Areas of Common Responsibility is added to the annual budget and assessed uniformly against all lots as a regular assessment, unless owners of at least a majority of the lots decide to assess the costs as individual assessments.

4.7.1. Significance of Designation. A designation applies to every lot and townhome having the designated feature. A component listed on the Maintenance

Responsibility Chart is applicable only if the component exists, and may not be construed to create a requirement to have or retain such a component.

4.7.2. Initial Designation. On the date of this Declaration, the initial designation of components of lots and townhomes as Areas of Common Responsibility is shown in the column so titled on the Maintenance Responsibility Chart attached hereto as Exhibit B.

4.7.3. Change In Designation. The Association may, from time to time, change or eliminate the designation of components of lots or townhomes as Areas of Common Responsibility. Any such change must be approved by owners of a majority of the townhome lots, or by owners of two-thirds of the townhome lots represented at a meeting of the Association called for the purpose of changing the Area of Common Responsibility. Although the Maintenance Responsibility Chart is attached to this Declaration as Exhibit B, it may be amended, restated, and published as a separate instrument and/or as a part of the Community Manual. The authority for amending it is contained in this Section. Any amended or restated Maintenance Responsibility Chart must be (1) published and distributed to an owner of each lot, (2) reflected in the Association's annual budget and reserve funds, and (3) recorded in the Real Property Records of Midland County, Texas.

4.7.4. Conflicts. In the event of a conflict between the Maintenance Responsibility Chart and a provision in the main body of this Declaration, the Declaration controls. The Maintenance Responsibility Chart may not be interpreted or amended to create a conflict with a provision of this Declaration.

4.8. ALLOCATION OF INTERESTS. Subject to the rights of Declarant, the interests allocated to each lot are calculated by the following formulas.

4.8.1. Common Expense Liabilities. The percentage or share of liability for common expenses allocated to each platted townhome lot is uniform for all platted townhome lots, regardless of the value, size, or location of the lot or townhome.

4.8.2. Votes. Each townhome lot has one vote, the weight of which is uniform for all town home lots, regardless of a lot's other attributes, such as the location, size, or value.

**ARTICLE 5
ARCHITECTURAL COVENANTS AND CONTROL**

5.1. PURPOSE. Because the townhomes are part of a single, unified community, this Declaration creates rights to regulate the design, use, and appearance of the lots and common areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements

on a lot, including but not limited to townhomes, fences, landscaping, retaining walls, sidewalks and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

5.2. ARCHITECTURAL CONTROL DURING THE DEVELOPMENT PERIOD.

During the Development Period, neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new townhomes on vacant lots. During the Development Period, the Architectural Reviewer for new townhomes on vacant lots is the Declarant or its delegates.

5.2.1. Declarant's Rights Reserved. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property or the ability of Builder to sell townhomes in the Property. Accordingly, each owner agrees that - during the Development Period - no improvements will be started or progressed on owner's lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

5.2.2. Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) Builder, (2) a modifications or architectural committee appointed by Declarant or by the board, (3) a modifications or architectural committee elected by the owners, or (4) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

5.3. ARCHITECTURAL CONTROL BY ASSOCIATION. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Control Committee (the "ACC"), or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC will assume jurisdiction over architectural control. The ACC will consist of at least 3 but not more than 7 persons appointed by the board, pursuant to the Bylaws. Members of the ACC serve at the pleasure of the board and may be removed and replaced at the board's discretion. At the board's option, the board may act as the ACC, in which case all references in the Governing Documents to the ACC are construed to mean the board. Members of the ACC need not be owners or residents, and may but need not include

architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the board.

5.4. LIMITS ON LIABILITY. The Architectural Reviewer has sole discretion with respect to taste, design, and all standards specified by this Article. The Architectural Reviewer and each of its members has no liability for decisions made in good faith by the Architectural Reviewer, and which are not arbitrary or capricious. The Architectural Reviewer is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the Architectural Reviewer, (2) supervising construction for the owner's compliance with approved plans and specifications, or (3) the compliance of the owner's plans and specifications with governmental codes and ordinances, state and federal laws.

5.5. PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT. Without the Architectural Reviewer's prior written approval, a person may not construct a townhome or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to a townhome or any other part of the Property, if it will be visible from a street, by a person standing at ground level of another townhome or the common area. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

5.6. ARCHITECTURAL APPROVAL. To request architectural approval, an owner must make electronic application and submit to the Architectural Reviewer a complete set of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed in support of the application, the owner may but is not required to submit letters of support or non-opposition from owners of lots that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will electronically return a signed set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required."

5.6.1. No Verbal Approval. Verbal approval by an Architectural Reviewer, the Declarant, an Association director or officer, a member of the ACC, or the Association's manager does not constitute architectural approval by the appropriate Architectural Reviewer. **Approval must be in writing and executed by the Architectural Reviewer.**

5.6.2. No Deemed Approval. The failure of the Architectural Reviewer to respond to an application may not be construed as approval of the application. **Under no circumstance may approval of the Architectural Reviewer be deemed, implied, or presumed.**

5.6.3. No Approval Required. Approval is not required for an owner to remodel or repaint the interior of a townhome, provided the work does not impair the structural soundness of the building.

5.6.4. Building Permit. If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer approval.

5.6.5. Neighbor Input. The Architectural Reviewer may solicit comments on the application, including from owners or residents of townhomes that may be affected by the proposed change, or from which the proposed change may be visible. Whether to solicit comments, from whom to solicit comments, and whether to make the comments available to the applicant is solely at the discretion of the Architectural Reviewer. The Architectural Reviewer is not required to respond to the commenter's in ruling on the application.

5.6.6. Declarant Approved. Notwithstanding anything to the contrary in this Declaration, any improvement to the Property made or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer.

ARTICLE 6 USE RESTRICTIONS

6.1. VARIANCE. The use of the Property is subject to the restrictions contained in this Article, and subject to rules adopted pursuant to this Article. The board or the Architectural Reviewer, as the case may be, 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. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance, in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance.

6.2. LIMITS TO RIGHTS. No right granted to an owner by this Article or by any provision of the Governing Documents is absolute. The Governing Documents grant rights with the expectation that the rights will be exercised in ways, places, and times that are customary' for the neighborhood. This Article and the Governing Documents as a whole do not try to anticipate and address every creative interpretation of the restrictions. The rights granted by this Article and the Governing Documents are at all times subject to the board's determination that a particular interpretation and exercise of a right is significantly inappropriate, unattractive, or otherwise unsuitable for the neighborhood, and thus constitutes a violation of the Governing Documents. In other words, the exercise of a right or restriction must comply with the spirit of the restriction as well as with the letter of the restriction.

6.3. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through its 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. In addition to the restrictions

contained in this Article, each lot is owned and occupied subject to the right of the board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of common areas and Areas of Common Responsibility.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. This consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of exteriors of townhomes and lots.
- f. Landscaping and maintenance of yards.
- g. The occupancy and leasing of townhomes.
- h. Animals.
- i. Vehicles.
- j. Disposition of trash and control of vermin, termites, and pests.
- k. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Governing Documents, or the quality of life for residents.

6.4. ANIMALS. No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for a commercial purpose or for food. 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 at the Property. The board may require or effect the removal of any animal determined to be in violation of this Section or the Rules. Unless the Rules provide otherwise:

6.4.1. Number. No more than 4 pets may be maintained in each townhome. Of the 4 pets, no more than 2 may be cats or dogs. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the board.

6.4.2. Disturbance. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other lots. No pet may be permitted to bark, howl, whine, screech, or make other loud noises for extended or repeated periods of time. The board is the sole arbiter of what constitutes a disturbance or annoyance.

6.4.3. Indoors/Outdoors. A permitted pet must be maintained inside the townhome, and may not be kept on a patio, in a courtyard, or in a yard area. No pet is allowed on the common area unless carried or leashed.

6.4.4. Pooper Scooper. Resident is responsible for the removal of his pet's wastes from the Property.

6.4.5. Liability. An owner is responsible for any property damage, injury, or disturbance caused or inflicted by an animal kept on the lot. The owner of a lot on which an animal is kept is deemed to indemnify and to hold harmless the board, the Association, and other owners and residents, from any loss, claim, or liability

resulting from any action of the animal or arising by reason of keeping the animal on the Property.

6.5. ANNOYANCE. No lot or common area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of residents of other lots; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The board has the sole authority to determine what constitutes an annoyance.

6.6. APPEARANCE. Both the lot and the townhome must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring townhomes. The Architectural Reviewer is the arbitrator of acceptable appearance standards.

6.7. BUSINESS USE. A resident may use a townhome for business uses, such as telecommuting, personal business, and professional pursuits, provided that: (1) the uses are incidental to the primary use of the townhome as a residence; (2) the uses conform to applicable governmental ordinances; (3) the uses do not entail visits to the townhome by employees or the public in quantities that materially increase the number of vehicles parked on the street; and (4) the uses do not interfere with the residential use and enjoyment of neighboring townhomes by other residents.

6.8. COURTYARDS. This Section applies to an entry courtyard that is visible from the street by virtue of see-through or open-picket fencing or gate. An owner will use and maintain his courtyard in a neat and attractive manner that is consistent with the neighborhood. If the Architectural Reviewer perceives that the appearance of courtyards detracts from the overall appearance of the Property, the Architectural Reviewer may limit the colors, numbers, sizes, or types of furnishings, plantings, and other items kept in the courtyard. A courtyard may not be used for storage.

6.9. DECLARANT PRIVILEGES. Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other owners and residents. Declarant's exercise of a Development Period right that appears to violate a rule or a use restriction of this Article does not constitute waiver or abandonment of the restriction by the Association as applied to owners other than Declarant.

6.10. DECORATION. Residents must refrain from individualizing and decorating the exteriors of their townhomes. What is appealing and attractive to one person, may be objectionable to another. For that reason, the Association prohibits exterior "decorations" by owners without the prior written approval of the Architectural Reviewer. Examples of exterior decorations are windsocks, potted plants, benches, name signs on tiles, hanging baskets, bird feeders, awnings, window sill birdfeeders, yard gnomes, and clay frogs. **Even if a fancy store sells it, you cannot display it at Floyd Acres.**

6.11. DRAINAGE. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the board.

6.12. DRIVEWAYS. The driveway portion of a lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of boats, trailers, and inoperable vehicles; or (2) for repair or restoration of vehicles.

6.13. FLAGS. Each owner and resident of Floyd Acres has a right to fly the flag on his lot, The United States flag ("Old Glory") and/or the Texas state flag ("Lone Star Flag") may be displayed in a respectful manner on each lot, subject to reasonable standards adopted by the Association for the height, size, illumination, location, and number of flagpoles. All flag displays must comply with public flag laws. No other types of flags, pennants, banners, kites, or similar types of displays are permitted on a lot if the display is visible from a street or alley. Unless the Rules provide otherwise, a flag must be wall-mounted to the first floor facade of the townhome, and no in-ground flag pole is permitted on a lot.

6.14. GARAGES. Without the board's prior written approval, the original garage area of a town home may not be enclosed or used for any purpose that prohibits the parking of two standard-size operable vehicles therein. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

6.15. "GARAGE SALES". The Association may adopt rules limiting the frequency, location, and signage of garage sales, yard sales, estate sales, rummage sales, and other types of merchandise sales activities that may be expected to attract the public to the Property.

6.16. GUNS. Hunting and shooting are not permitted anywhere on or from the Property. The Association is not required to enforce this provision by confronting an armed person.

6.17. LANDSCAPING. No person may perform landscaping, planting, or gardening on the common area or Areas of Common Responsibility, without the board's prior written authorization.

6.18. LEASING OF TOWNHOMES. An owner may lease the townhome on his lot. Whether or not it is so stated in a lease, every lease is subject to the Governing Documents. An owner is responsible for providing his tenant with copies of the Governing Documents and notifying him of changes thereto. Failure by the tenant or his invitees to comply with the Governing Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an owner of his tenant's violation, the owner will promptly obtain his tenant's 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 has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The owner of a leased lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Governing Documents against his tenant. The Association is not liable to the owner for any damages, including lost rents, suffered by the owner in relation to the Association's enforcement of the Governing Documents against the owner's tenant.

6.19. LIGHTS. Exterior light sources on a lot should be unobtrusive, shielded to prevent glare, directed away from neighboring townhomes, with little if any spillover light on neighboring property. All visible exterior light fixtures on a lot should be consistent in style and finish with the architecture of the townhome. The wattage of building-mounted exterior lighting may not exceed 150 watts per fixture.

6.20. NOISE & ODOR. Although the town homes are constructed to reduce the transmission of sound between adjoining townhomes, **the townhomes are not soundproofed**. Some noise transmission between adjoining townhomes is possible. A resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to unreasonably disturb or annoy the typical resident of a neighboring townhome. The rules may limit, discourage, or prohibit noise-producing activities and items in the town homes and on the Area of Common Responsibility.

6.21. OCCUPANCY - NUMBERS. The board may adopt Rules regarding the occupancy of townhomes. If the Rules fail to establish occupancy standards, no more than 2 persons per bedroom may occupy a townhome, subject to the exception for familial status. The Association's occupancy standard for residents 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 townhome) permitted by the U.S. Department of Housing and Urban Development. Other than the living area of the townhome, no thing or structure on a lot, such as the garage, may be occupied as a residence at any time by any person.

6.22. OCCUPANCY - TYPES. A person may not occupy a townhome if the person constitutes a direct threat to the health or safety of other persons, or if the person's occupancy would result in substantial physical damage to the property of others. This Section does not and may not be construed to create a duty for the Association or a selling owner to investigate or screen purchasers or prospective purchasers of town homes. By owning or occupying a townhome, each person acknowledges that Floyd Acres is subject to local, state, and federal fair housing laws and ordinances. Accordingly, this Section may not be used to discriminate against legally protected classes or categories of people.

6.23. RESIDENTIAL USE. The use of a townhome is limited exclusively to residential purposes or any other use permitted by this Declaration, such as the limited business uses described above.

6.24. SIGNS. In high density neighborhoods, such as Floyd Acres, outdoor signs have much greater impact than in a lower density neighborhood with large wide lawns. In a block of townhomes, it can be difficult to distinguish which sign belongs to which townhome. On a block with front yards that are less than 10-feet deep, a few signs can look like a forest of signs. Signs staked in yards impede maintenance of the grounds by the Association. These are among the reasons why - except as permitted below - no sign or object may be erected, placed, or permitted to remain on the Property or to be visible from windows in the townhome without the board's prior written approval. The board's approval may specify the location, nature, appearance, dimensions, number, and time period of a sign or object. Without liability for trespass or any other liability connected with the removal, the board may effect the immediate removal of any sign or object (1) that violates this Section, (2) which the

board deems inconsistent with neighborhood standards, or (3) which the board deems an abuse of the below-permitted sign uses. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message.

6.24.1. Contractor Signs Prohibited. Signs advertising the contractor or material manufacturer working at a house are prohibited without the prior written approval of the board.

6.24.2. Event Signs + Spirit Signs Prohibited. Signs celebrating an event or an accomplishment, or identifying the town home as the site of a social event, are prohibited without the prior written approval of the board.

6.24.3. Inflammatory Signs Prohibited. Even among the categories of permitted signs, the board may disallow, prohibit, and remove a particular sign that the Association directors unanimously consider to be (1) provocative, vulgar, or profane for the sensitivities of the Property's residents, (2) likely to incite violence, fear, or disruptive counter-activity, (3) denigrating of a resident or owner, or category of residents or owners, (4) likely to negatively affect the image of the Property as a desirable place to own and occupy, or (5) otherwise unsuitable for the Property.

6.24.4. Lease Signs Prohibited. The right to lease a townhome is not the right to post a "for lease" sign on the Property. Without the board's prior written permission, which may be withheld for any reason or no reason, a person may not post or maintain a sign anywhere on the Property that advertises a townhome for rent or for lease. This blanket prohibition includes, without limitation, yard signs, signs in or on windows, and signs on vehicles.

6.24.5. Political Signs. If public law - such as Texas Property Code Section 202.009 and local ordinances - grants an owner the right to place political signs on the owner's lot, the Association may not prohibit an owner's exercise of such right. The Association may adopt and enforce Rules regulating every aspect of political signs on owners' lots to the extent not prohibited or protected by public law. Unless the Rules or public law provide otherwise (1) a political sign may not be displayed more than 90 days before or 10 days after an election to which the sign relates; (2) a political sign must be ground-mounted; (3) an owner may not display more than one political sign for each candidate or ballot item; and (4) a political sign may not have any of the attributes itemized in Texas Property Code Sec. 202.009(c), to the extent that statute applies to the lot.

6.24.6. Sale Signs. An owner who is actively marketing his lot for sale may place in the front yard one professionally-made traditional yard sign of not more than 5 square feet advertising the lot for sale. Only one such sign is allowed per lot, and only on the lot that is being actively marketed. **All aspects of the sign, including, the height, shape, color, material, wording and placement must be customary for the neighborhood.**

6.24.7. Security Signs Prohibited. Signs advertising a security service employed for the townhome are prohibited without the prior written approval of the board.

6.24.8. Window Signs Prohibited. A sign in a window, on a window, or visible through a window is prohibited. "Window" includes a door, light, or pane that is transparent.

6.25. STRUCTURAL INTEGRITY. No person may directly or indirectly impair the structural soundness or integrity of a building or another townhome, nor do any work or modification that will impair an easement or real property right.

6.26. TELEVISION. Each resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another townhome are prohibited within the Property, except (1) reception-only antennas or satellite dishes designed to receive television broadcast signals, (2) antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "Antenna") are permitted if located (a) inside the structure (such as in an attic or garage) so as not to be visible from outside the structure, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the owner may install the Antenna in the least conspicuous location on the lot where an acceptable quality signal can be obtained. The Association may adopt reasonable rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law.

6.27. TRASH. Each resident 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. Trash must be placed entirely within the designated receptacle. The board may adopt, amend, and repeal rules regulating the visibility of trash receptacles and the disposal and removal of trash from the Property.

6.28. VEHICLES. All vehicles on the Property, whether owned or operated by the residents or their families and guests, are subject to this Section and Rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The board may effect the removal of any vehicle in violation of this Section or the Rules without liability to the owner or operator of the vehicle.

6.28.1. Parking In Street. The following subsection may not be construed to prohibit the parking of all vehicles on public streets. Vehicles that are not prohibited below may park on public streets if the City allows curbside parking, subject to the continuing right of the Association to adopt reasonable rules if circumstances warrant.

6.28.2. Prohibited Vehicles. Without prior written board approval, the following types of vehicles and vehicular equipment - mobile or otherwise - may not be kept, parked, or stored anywhere on the Property - including overnight parking on streets and driveways - if the vehicle is visible from a street or from another townhome: mobile homes, motor homes, buses, trailers, boats, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles which are not customary personal passenger vehicles, and any vehicle which the board deems to be a nuisance, unsightly, or inappropriate. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a townhome. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times.

6.29. WINDOW TREATMENTS. Each townhome building in Floyd Acres is designed to have a uniform window appearance, Therefore, the color and condition of all windows panes, window screens, and window treatments must conform to the building standard. All window treatments within the townhome, that are visible from the street or another townhome, must be maintained in good condition and must not detract from the appearance of the Property. All window treatments within a townhome building must be uniform, although styles of window treatments may vary from townhome building to townhome building. The Architectural Reviewer may require an owner to change or remove a window treatment, window film, window screen, or window decoration that the Architectural Reviewer determines to be inappropriate, unattractive, or inconsistent with the Property's uniform window standard. The Architectural Reviewer may prohibit the use of certain colors or materials for window treatments. **If the Rules fail to establish a different standard, all window treatments - as seen from the street - must be white in color and the style must be 2-inch Venetian horizontal blinds.**

6.30. TEMPORARY RENTALS. Use of the Property by the Unit Owners shall be subject to the following restrictions. Short-term rentals for a period of less than one (1) month are hereby prohibited. No Unit Owner shall be permitted to lease or rent the Unit, for hotel, transient, or vacation rental purposes, for a short-term period, which, for purposes of this paragraph is defined as less than one (1) month. No Unit Owner shall be permitted to lease or rent less than the entire Unit.

ARTICLE 7 ASSOCIATION OPERATIONS

7.1. THE ASSOCIATION. The existence and legitimacy of the Association is derived from this Declaration and the Bylaws of the Association.

7.1.1. Type. The Association must be a nonprofit organization, and may be unincorporated or incorporated, as the Association decides from time to time. If the Association is incorporated, the subsequent failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association.

7.1.2. Applicability. The Association is subject to the Texas Business Organizations Code ("TBOC"). Because provisions of this Declaration address issues covered by the TBOC, this Declaration is a "Governing Document" as defined by TBOC, and any such provision herein is a "Bylaw" as defined by TBOC. When incorporated, the Association is subject to TBOC Chapter 22 - the Nonprofit Corporation Law. When unincorporated, the Association is subject to TBOC Chapter 252 - the Uniform Unincorporated Nonprofit Association Act.

7.1.3. Name. A name is not the defining feature of the Association. Although the initial name of the Association is Floyd Acres Townhome Association, the Association may operate under any name that is approved by the board and (1) registered by the board with the County Clerk of Midland County, Texas, as an assumed name, or (2) filed by the Association with the Secretary of State as the name of the filing entity. The Association may also change its name by amending the Governing Documents. 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.

7.1.4. Duties. The duties and powers of the Association are those set forth in the Governing Documents, together with the general and implied powers of a property owners association and, as applicable, an unincorporated nonprofit association or a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Governing Documents.

7.1.5. Duration. The Association comes into existence on the later to occur of the two following events: (1) the date on which this Declaration is recorded in the Real Property Records of Midland County, Texas, or (2) the date on which a deed is recorded in the Real Property Records of Midland County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

7.2. BOARD. The Association is governed by a board of directors. Unless the Association's Bylaws or Articles of Incorporation provide otherwise, the board will consist of at least 3 persons elected by the members at the annual meeting of the Association, or at a special meeting called for that purpose. Unless the Governing 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 Governing Documents to the "Association" may be construed to mean "the Association acting through its board of directors."

7.3. MEMBERSHIP. Each owner is a member of the Association, ownership of a lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the lot. The board may require satisfactory evidence of transfer of ownership before a purported owner is entitled to vote at meetings of the Association. If a

lot is owned by more than one person or entity, each co owner is a member of the Association and may exercise the membership rights appurtenant to the lot. A member who sells his lot under a contract for deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the board. However, the contract seller remains liable for all assessments attributable to his lot until fee title to the lot is transferred.

7.4. DECISION-MAKING. Any decision or act of the Association may be made by or at the direction of the board, unless the Governing Documents reserve the decision or act to the members, the Declarant, or any other person or group. Unless the Governing Documents or applicable law provide otherwise, any action requiring approval of the members may be approved (1) at a meeting by owners of at least a majority of the lots that are represented at the meeting, provided notice of the meeting was given to an owner of each lot, or (2) in writing by owners of at least a majority of all lots, provided the opportunity to approve or disapprove was given to an owner of each lot.

7.5. MANAGER. The board may delegate the performance of certain functions to one or more managers or managing agents of the Association. Notwithstanding a delegation of its functions, the board is ultimately responsible to the members for governance of the Association.

7.6. COMMUNICATIONS. This Declaration is drafted in an era of rapidly changing communication technologies. Declarant does not intend to limit the methods by which the Association, owners, and residents communicate with each other. Such communications may be by any method or methods that are available and customary. For example, if the Association is required by the Governing Documents or applicable law to make information available to owners of all lots, that requirement may be satisfied by posting the information on the Association's website or by using electronic means of disseminating the information, unless applicable law requires a specific method of communication. It is foreseeable that meetings of the Association and voting on issues may be conducted electronically. As communication technologies change, the Association may adopt as its universal standard any technology that is used by owners of at least 85 percent of the lots. Also, the Association may employ multiple methods of communicating with owners and residents.

7.7. VOTING. One indivisible vote is appurtenant to each lot. The total number of votes equals the total number of lots in the Property. Each vote is uniform and equal to the vote appurtenant to every other lot, except during the Declarant Control Period, cumulative voting is not allowed. Votes may be cast by written ballot or proxy, according to the requirements of the Association's Bylaws.

7.8. BOOKS & RECORDS. The Association will maintain copies of the Governing Documents and the Association's books, records, and financial statements. The Association will make its books and records available to members, on request, for inspection and copying pursuant to the requirements of applicable law.

7.9. INDEMNIFICATION. The Association indemnifies every officer, director, committee chair, 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 an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. 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. The Association may maintain general liability and directors and officers liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

7.10. OBLIGATIONS OF OWNERS. Without limiting the obligations of owners under the Governing Documents, each owner has the following obligations:

7.10.1. Pay Assessments. Each owner will pay assessments properly levied by the Association against the owner or his lot, and will pay regular assessments without demand by the Association.

7.10.2. Comply. Each owner will comply with the Governing Documents as amended from time to time.

7.10.3. Reimburse. Each owner will pay for damage to the Property caused by the negligence or willful misconduct of the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, contractors, agents, or invitees.

7.10.4. Liability. Each owner is liable to the Association for violations of the Governing Documents by the owner, a resident of the owner's lot, or the owner or resident'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.

7.12. TOWNHOME SALES. For purposes of this Declaration, a "resale" is every sale of conveyance of a lot (or of an interest in a lot) that is improved with a townhome and is subject to HOA Sale Fees.

7.12.1. Resale Certificate. An owner intending to sell his townhome will notify the Association and will request a resale certificate from the Association. The resale certificate provided by the Association or its manager must contain the Notice of HOA Sale Fees then in effect, and an itemization of the types and amounts of HOA Sale Fees that may be collected at or prior to closing.

7.12.2. 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 lot to the Association.

7.12.3. HOA Sale Fees. At time of transfer, the HOA Sale Fees described on the Notice of HOA Sale Fees then in effect are due and payable by buyer and/or

seller. The initial Notice of HOA Sale Fees is or will be publicly recorded with the Association's Management Certificate.

7.12.4. Information. Within 30 days after acquiring an interest in a lot, an owner will provide the Association with the following information; a copy of the settlement statement or deed by which owner has title to the lot; the owner's email address (if any), U.S. postal address, and phone number; any mortgagee's name, address, and loan number; the name and phone number of any resident other than the owner; the name, address, and phone number of owner's managing agent, if any.

ARTICLE 8 COVENANT FOR ASSESSMENTS

8.1. PURPOSE OF ASSESSMENTS. The Association will use assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of owners and residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the board's decision with respect to the use of assessments is final.

8.2. PERSONAL OBLIGATION. IF YOU OWN A TOWNHOME IN FLOYD ACRES, YOU MUST PAY ASSESMENTS TO THE ASSOCIATION. An owner is obligated to pay assessments levied by the board against the owner or his lot. An owner makes payment to the Association at its principal office or at any other place the board directs. Payments must be made in full regardless of whether an owner has a dispute with the Association, another owner, or any other person or entity regarding any matter to which this Declaration pertains. No owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the common area or by abandonment of his lot. An owner's obligation is not subject to offset by the owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the owner and a continuing covenant running with the lot.

8.3. CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of owners of at least two thirds of the lots. In addition to other rights granted to owners by this Declaration, owners have the following powers and controls over the Association's budget:

8.3.1. Veto Increased Dues. At least 30 days prior to the effective date of an increase in regular assessments, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless owners of at least a majority of the lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

8.3.2. Veto Special Assessment. At least 30 days prior to the effective date of a special assessment, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the special assessment. The special assessment will automatically become effective unless owners of at least a majority of

the lots disapprove the special assessment by petition or at a meeting of the Association.

8.4. TYPES OF ASSESSMENTS. There are 5 types of assessments: Regular, Special, Insurance, Individual, and Deficiency.

8.4.1. Regular Assessments. Regular assessments are based on the annual budget. Each lot is liable for its equal share of the annual budget. 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. 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. Regular assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, of the common area.
- b. Maintenance, repair, and replacement, as necessary, of the Area of Common Responsibility.
- c. Utilities billed to the Association.
- d. Services billed to the Association and available to all lots.
- e. Taxes on property owned by the Association and the Association's income taxes.
- f. Management, legal, accounting, auditing, and professional fees for services to the Association.
- g. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- h. Premiums and deductibles on insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including fidelity bonds and directors and officers liability insurance.
- i. Contributions to the reserve funds.
- j. Any other expense which the Association is required by law or the Governing Documents to pay, or which in the opinion of the board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Governing Documents.

8.4.2. Special Assessments. In addition to regular assessments, and subject to the owners' control for assessment increases, the board may levy one or more special assessments against all lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special assessments do not require the approval of the owners, except that special assessments for the following purposes must be approved by owners of at least a majority of the lots:

- a. Acquisition of real property, other than the purchase of a lot at the sale foreclosing the Association's lien against the lot.
- b. Construction of additional improvements within the Property, but not replacement of original Improvements.
- c. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

8.4.3. Insurance Assessments. The Association's insurance premiums are common expenses that must be included in the Association's annual budget. Nevertheless, the board may levy an Insurance Assessment - separately from the regular assessment - to fund insurance premiums and insurance deductibles. If the Association levies an Insurance Assessment, the Association must disclose the Insurance Assessment in resale certificates prepared by the Association.

8.4.4. Individual Assessments. In addition to regular, special, and insurance assessments, the board may levy an individual assessment against a lot and its owner. Individual assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an owner or his lot into compliance with the Governing Documents; fines for violations of the Governing Documents; insurance deductibles; transfer related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per lot basis and "pass through" expenses for services to lots provided through the Association and which are equitably paid by each lot according to benefit received.

8.4.5. Deficiency Assessments. The board may levy a deficiency assessment against all lots for the purpose of defraying, in whole or in part, the cost of repair or restoration if insurance proceeds or condemnation awards prove insufficient.

8.5. BASIS & RATE OF ASSESSMENTS. The share of liability for common expenses allocated to each lot is uniform for all lots, regardless of a lot's location or the value and size of the lot or townhome.

8.6. DECLARANT OBLIGATION. A lot that is owned by Declarant during the Development Period is exempt from mandatory assessment by the Association.

8.7. ANNUAL BUDGET. The board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The board will make the budget or its summary available to an owner of each lot, although failure to receive a budget or summary does not affect an owner's liability for assessments. The board will provide copies of the detailed budget to owners who make written request and pay a reasonable copy charge.

8.8. DUE DATE. The board may levy regular assessments on any periodic basis - annually, semi-annually, quarterly, or monthly. Regular assessments are due on the first day of the period for which levied. Special and individual assessments are due on the date stated in the notice of assessment or, if no date is stated, within 10 days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

8.9. RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. Beginning no later than the first full fiscal year after termination of the Declarant Control Period, the Association must budget for reserves and may fund reserves out of regular assessments.

8.9.1. Operations Reserves. The Association will endeavor to maintain operations reserves at a level determined by the board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, such as the full amount of deductibles on insurance policies maintained by the Association.

8.9.2. Replacement & Repair Reserves. The Association will endeavor to maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the common area and Area of Common Responsibility.

8.10. DECLARANT'S RIGHT TO INSPECT & CORRECT ACCOUNTS. For a period of 5 years after termination of the Declarant Control 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 from 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 Governing Documents or applicable State 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 lot, 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 and Development Periods.

8.11. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust 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, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the owners hereunder.

8.12. 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 Governing 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 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.

8.13. HOA SALE FEES. This Section addresses the expenses, fees, charges, and contributions (hereafter, collectively, the "HOA Sale Fees") that are charged by the Association or its manager, and that arise at the time of a townhome's sale or purchase. As used in this Section, "HOA Sale Fees" does not include a buyer's prepaid and/or pro-rata assessments. HOA Sale Fees are not refundable by the Association or the Association's manager, and may not be regarded as a prepayment of or credit against assessments, HOA Sale Fees generally fall into two types of categories - budget enhancing fees, such as contributions to the reserve or operating funds of the Association, and administrative fees, such as fees for resale certificates, estoppel certificates, copies of governing documents, compliance inspections, ownership record changes, and priority processing.

8.13.1 Notice of HOA Sale Fees. The Association will publicly record a Notice of HOA Sale Fees. The Initial Notice is or will be recorded with the Association's Management Certificate. Restatements and amendments of the Notice may be recorded independent of the Management Certificate.

8.13.2. Waiver. The Association and its manager may waive some or all HOA Sale Fees on a transfer by transfer basis, without waiving the right to charge such Fees on future transfers.

8.13.3. Manager's Fees. HOA Sale Fees may be charged by the Association's manager, managing director, or managing agent (collectively, "manager"), pursuant to a contract between the Association and the manager, and provided there is no duplication of fees by type or amount with fees charged by the Association. This Article does not obligate the manager to levy HOA Sale Fees. The number, types, and amounts of HOA Sale Fees charged by a manager (1) must have the prior written approval of the board, (2) are not subject to the Association's assessment lien, (3) should not exceed what is customary in amount, kind, and number for the local marketplace, and (4) are not payable by the Association unless the management contract so stipulates.

8.13.4. Amendment of Notice. The board, without a vote of the owners, may amend the Notice of HOA Sale Fees for the following two purposes: (1) to change a stated amount or formula for an HOA Sale Fee, or (2) to conform the Notice of HOA Sale Fees with applicable law regarding HOA Sale Fees. Any other amendment of the Notice requires the approval of owners of two-thirds of the lots represented at a meeting of the Association at which a quorum is present, provided notice of the proposed amendment is given with the notice of meeting. During the Development

Period, any amendment of the Notice of HOA Sale Fees must have the written and acknowledged consent of Declarant.

8.13.5. Effective. To be effective, an amendment or restatement of the Notice of HOA Sale Fees by the owners or by the board must be in the form of a written instrument (1) referencing the platted name of the Property (Floyd Acres), the common name of the Property (Floyd Acres), the name of the Association, the recording data of the Declaration, and the recording data of the most recently previously recorded Notice of HOA Sale Fees, (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of owners or directors, and (3) recorded in the Real Property Records of Midland County, Texas.

- a. Applicability. If the amended or restated Notice of HOA Sale Fees results in an overall reduction of HOA Sale Fees for a conveyance that is pending at the time of the amendment, the lower rate is effective immediately for any closing that occurs after the date the amendment is publicly recorded. If the amended or restated Notice of HOA Sale Fees results in an overall increase of HOA Sale Fees for the lot being conveyed, the increased amount is not effective until the 90th day after the date on which the amended or restated Notice of HOA Sale Fees is publicly recorded.
- b. Distribution. Within 60 days after the amended or restated Notice of HOA Sale Fees is publicly recorded, a copy or report of, or electronic link to, the recorded amended Notice of HOA Sale Fees must be delivered or made available to an owner of each lot.

ARTICLE 9 ASSESSMENT LIEN

9.1. ASSESSMENT LIEN. Each owner, by accepting an interest in or title to a lot, 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 lot and is secured by a continuing lien on the lot. Each owner, and each prospective owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his lot.

9.2. SUPERIORITY OF ASSESSMENT LIEN. The assessment lien is superior to all other liens and encumbrances on a lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration, (3) a recorded deed of trust lien securing a loan for construction of the original townhome, and (4) a purchase money vendor's lien or purchase money deed of trust lien recorded before the date on which the delinquent assessment became due. The assessment lien is subordinate and inferior to a recorded deed of trust lien that secures a purchase money mortgage, an FHA-insured mortgage, or a VA guaranteed mortgage.

9.3. EFFECT OF MORTGAGEE'S FORECLOSURE. Foreclosure of a superior lien extinguishes the Association's claim against the lot 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, and for the owner's pro rata share of the pre-foreclosure deficiency as an Association expense.

9.4. NOTICE AND RELEASE OF NOTICE. The Association's lien 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 Association, at its option, may cause a notice of the lien to be recorded in the Real Property Records of Midland County, 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.

9.5. POWER OF SALE. By accepting an interest in or title to a lot, each owner grants to the Association a private power of nonjudicial 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. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a board meeting.

9.6. FORECLOSURE OF LIEN. The assessment lien may be enforced by judicial or nonjudicial foreclosure. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the Bylaws and applicable law, such as Chapter 209 of the Texas Property Code. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose the assessment lien if the debt consists solely of fines and/or a claim for reimbursement of attorney's fees incurred by the Association.

ARTICLE 10 EFFECT OF NONPAYMENT OF ASSESSMENTS

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. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the Bylaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the board nor the Association, however, is liable to an owner or other person for its 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 has.

10.1. 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 lesser of 18 percent or the maximum permitted by law. If the board fails to establish a rate, the rate is 10 percent per annum.

10.2. LATE FEES. Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the board from time to time.

10.3. COSTS OF COLLECTION. The owner of a lot 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.

10.4. ACCELERATION. If an owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

10.5. 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's lien for assessments.

10.6. NOTICE TO MORTGAGEE. The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of assessments.

10.7. FORECLOSURE OF ASSESSMENT LIEN. As provided by this Declaration, the Association may foreclose its lien against the lot by judicial or nonjudicial means.

10.8. APPLICATION OF PAYMENTS. The board may adopt and amend policies regarding the application of payments. 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 payer attaches conditions or directions contrary to the board's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the lot's account.

ARTICLE 11 ENFORCING THE DOCUMENTS

11.1. NOTICE AND HEARING. State law applies to many of the Association's enforcement rights and remedies. Before the Association may exercise certain of its remedies for a violation of the Governing Documents or damage to the Property, the Association must give an owner written notice and an opportunity for a hearing, according to the requirements and procedures in the Bylaws and in applicable law, such as Chapter 209 of the Texas Property Code. Notices are also required before an owner is liable to the Association for certain charges, including reimbursement of attorneys fees incurred by the Association.

11.2. REMEDIES. The remedies provided in this Article for breach of the Governing Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Governing Documents and by law, the Association has the following right to enforce the Governing Documents, subject to applicable notice and hearing requirements (if any):

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

11.2.2. Fine. The Association may levy reasonable charges, as an individual assessment, against an owner and his lot if the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate a provision of the Governing 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 Governing Documents.

11.2.3. Self-Help. The Association has the right to enter any part of the Property, including lots, to abate or remove, using force as may reasonably be necessary, any improvement, thing, animal, person, vehicle, or condition that violates the Governing Documents. In exercising this right, the board is not trespassing and is not liable for damages related to the abatement. The board may levy its costs of abatement against the lot and owner as an Individual Assessment. The board will make reasonable efforts to give the violating owner prior notice of its intent to exercise self-help. The notice may be given in any manner likely to be received by the owner. Prior notice is not required (1) in the case of emergencies, (2) to remove violative signs, (3) to remove violative debris, or (4) to remove any other violative item or to abate any other violative condition that is easily removed or abated and that is considered a nuisance, dangerous, or an eyesore to the neighborhood.

11.2.4. Suit. Failure to comply with the Governing 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.

11.3. BOARD DISCRETION. The board may use its sole discretion in determining whether to pursue a violation of the Governing 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 (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) 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 (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

11.4. 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 Governing Documents. Failure by the Association or by any owner to enforce a provision of the Governing Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Governing Documents at any future time. No officer, director, or member of the Association is liable to any owner for the failure to enforce any of the Governing Documents at any time.

11.5. RECOVERY OF COSTS. The costs of curing or abating a violation are at the expense of the owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Governing Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Governing Documents or the restraint of violations of the Governing Documents, the prevailing party is entitled to recover from the nonprevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

**ARTICLE 12
MAINTENANCE AND REPAIR OBLIGATIONS**

12.1. OVERVIEW. Generally, the Association maintains the common areas, and the owner maintains his lot and townhome, with two significant exceptions. One is that the Association maintains certain components of the town home and lot as Areas of Common Responsibility. The other exception arises by the interconnectedness of the townhomes in a townhome building and the system of sharing the cost of certain repairs among the owners of the townhomes.

12.2. ASSOCIATION MAINTAINS. The Association's maintenance obligations will be discharged when and how the board deems appropriate. The Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on lots or common areas.

- a. The common areas.
- b. The Areas of Common Responsibility.
- c. Landscaping on street medians and street island within and around the Property, to the extent it is not maintained by the City.
- d. Any real and personal property owned by the Association but which is not a common area, such as a lot owned by the Association,
- e. Any property adjacent to Floyd Acres if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property.
- f. Any area, item, easement, or service - the maintenance of which is assigned to the Association by this Declaration or by the plat.

12.3. OWNER RESPONSIBILITY. Every owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the architectural control requirements of Article 5 and the use restrictions of Article 6.

12.3.1. Townhome Building Repairs. Unless the Property was designed for diversity and exterior expressions of individuality, all townhomes will be maintained with an eye towards uniformity and architectural harmony. This Section is necessitated by periods during which the Association may be lax about enforcing architectural uniformity, or during periods in which the Area of Common Responsibility is limited.

- a. The exterior of each townhome must be maintained and repaired in a manner that is consistent for the entire townhome building.
- b. If an owner desires to upgrade a component of the exterior, such as replacing aluminum windows with wood windows, the decision to change a standard component of the townhome building must be approved by the owners of more than half the townhomes in the townhome building, in addition to the Architectural Reviewer. Thereafter, the new building standard will apply to repairs or replacement of the component, as needed, on other town homes in the building.
- c. Unless a change of component has been approved, repairs, replacement, and additions to the exteriors of the townhomes must conform to the original construction. For example, if the building was constructed with bronze colored window frames, replacement windows with white frames may not be used unless white frames have been approved as the new standard for the townhome building. Similarly, the siding on one townhome may not be replaced with wood, while another is replaced with vinyl, and a third is replaced with cement fiberboard.
- d. Ideally, all the townhome buildings in the Property will have the same architectural requirements, without building-to-building individuality. Nothing in this Section may be construed to prevent the Association from requiring uniform architectural standards for the entire Property. This Section may not be construed as authority for one building to "do its own thing."

12.3.2 Townhome Foundation. Each owner of a townhome lot is solely responsible for the maintenance and repair of the foundation on his lot. However, if a licensed structural engineer determines that the failure to repair the foundation under one townhome may adversely affect one or more other townhomes in the building, then the cost of the foundation repair will be divided by the number of townhomes in the building, and the owner of each of those townhomes will pay an equal share. If an owner fails or refuses to pay his share of costs of repair of the foundation, the owner advancing monies has a right to file a claim of lien for the monies advanced in the county's real property records, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an owner to contribution from another owner under this Section is appurtenant to the land and passes to the owner's successors in title.

12.3.3 Townhome Roofs. Each owner of a townhome lot is solely responsible for the maintenance, repair, and replacement of all components of the roof of his townhome, except for the roof components designated as Areas of Common Responsibility. However, if a roofing professional determines that the failure to repair the structural components of the roof of one townhome may adversely affect one or more other townhomes in the building, then the cost of the structural roof work will be divided by the number of townhomes in the building, and the owner of each townhome will pay an equal share. If an owner fails or refuses to pay his share of costs of repair of the roof, the owner advancing monies has a right to file a claim of lien for the monies advanced in the county's real property records, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an owner to contribution from another owner under this Section is appurtenant to the land and passes to the owner's successors in title.

12.3.4. Townhome Cooperation. Each owner of a townhome will endeavor to cooperate with the owners of the other townhomes in the building to effect the purposes and intent of the adjoining sections on townhome foundations and townhome roofs. If the owners of the adjoining townhomes in the building cannot agree on an equitable division of the costs based on the circumstances, the division will be equal among the townhomes although one townhome may be more affected than the others. If the owners of the adjoining townhomes cannot agree on any aspect of maintenance that requires their joint participation, the matter will be decided by a 3-person ad hoc committee appointed by the Board of Directors.

12.3.5. Townhome Maintenance. Each owner, at the owner's expense, must maintain all improvements on the lot, including but not limited to the townhome, fences, sidewalks, and driveways, **except an area designated as an Area of Common Responsibility.** Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each owner is expected to maintain his lot's improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each owner must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

12.3.6. Avoid Damage. An owner may 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 of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

12.3.7. Responsible for Damage. An owner is responsible for his own willful or negligent acts and those of his or the resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the common areas, the Area of Common Responsibility, or the property of another owner.

12.4. OWNER'S DEFAULT IN MAINTENANCE. If the board determines that an owner has failed to properly discharge his 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 owner's expense, which is an individual assessment against the owner and his lot. In case of an emergency, however, the board's responsibility to give the owner written notice may be 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.

12.5. CONCRETE. Minor cracks in poured concrete, including foundations, garage floors, sidewalks, driveways, and patio slabs, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of the building. Such minor cracking is typically an aesthetic consideration without structural significance. The Association is not required to repair non-structural cracks in concrete components of the Area of Common Responsibility.

12.6. SHEETROCK. Notwithstanding anything to the contrary in the Governing Documents, the Association is not responsible for the repair and replacement of sheetrock in any townhome, or for any surface treatments on the Sheetrock, regardless of the source of damage and the availability of insurance. This provision is provided for the benefit of the Association and is warranted by the difficulty of scheduling interior Sheetrock work and the possibility that the owner may not be satisfied with the quality or appearance of spot repairs. If the Association receives insurance proceeds for sheetrock damage to a townhome and chooses to not perform the repairs, the owner of the damaged townhome is entitled to the proceeds in exchange for identification of the damage and a release from future claims for the same damage.

12.7. MOLD. In the era in which this Declaration is written, the public and the insurance industry have a heightened awareness of and sensitivity to anything pertaining to mold. Because many insurance policies do not cover damages related to mold, owners should be proactive in identifying and removing visible surface mold, and in identifying and repairing sources of water leaks in the townhome. To discourage mold in his townhome, each resident should maintain an inside humidity level under 60 percent. For more information about mold, the owner should consult a reliable source, such as the U.S. Environmental Protection Agency.

12.8. PARTY WALLS. A townhome wall located on or near the dividing line between 2 lots and intended to benefit both lots constitutes a Party Wall and, to the extent not inconsistent with the provisions of this Section, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

12.8.1. Encroachments & Easement. If the Party Wall is on one lot or another due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this Section. Each townhome sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as

the Party Wall stands. Each lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

12.8.2. Right to Repair. If the Party Wall is damaged or destroyed from any cause, the owner of either lot may repair or rebuild the Party Wall to its previous condition, and the owners of both lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall.

12.8.3. Maintenance Costs. The owners of the adjoining lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an owner is responsible for damage to or destruction of the Party Wall, that owner will bear the entire cost of repair, reconstruction, or replacement. If an owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Midland County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien; provided the claim of lien is filed within 90 days after the date of repairs or replacements to the Party Wall, and suit is filed within one year after the date the lien is filed. The right of an owner to contribution from another owner under this Section is appurtenant to the land and passes to the owner's successors in title.

12.8.4. Alterations. The owner of a lot sharing a Party Wall may not alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining townhome. Unless both owners reach a mutual decision to the contrary, the Party Wall will always remain in the same location as where initially erected.

ARTICLE 13

INSURANCE

13.1. GENERAL PROVISIONS. All insurance affecting the Property is governed by the provisions of this Article, with which the board will make every reasonable effort to comply. 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. Each owner irrevocably appoints the Association, acting through its board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:

13.1.1. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

13.1.2. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable

for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an owner or resident or their invitees, the owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

13.2. INSURANCE RATIONALE. A townhome development provides many complex issues and opportunities for insurance. There are valid reasons for having the Association insure the individually owned townhomes, and valid reasons why the individual owners should insure their own townhomes. This Article allocates insurance responsibilities between the Association and the owners based on the following rationale. The Association insures the townhome buildings to the extent necessary (1) to preserve the appearance of the Property, (2) to maintain the structural integrity of the townhome building and the townhomes therein, (3) to maintain systems that serve multiple townhomes in a townhome building, such as pest control tubing and fire safety sprinklers, and (4) to maintain the perimeter shells of the townhomes. **The owner insures all other aspects of his townhome.** In the event of a conflict or gap between the liabilities and policies of the Association and the owner, the Association's liabilities and policies will control.

13.3. PROPERTY INSURANCE BY ASSOCIATION. To the extent it is reasonably available, the Association will obtain property insurance for all improvements insurable by the Association. This insurance must be in an amount sufficient to cover **100 percent of the replacement cost** of any repair or reconstruction in event of damage or destruction from any insured hazard. In insuring the Property, the Association may be guided by types of policies and coverages customarily available for similar types of properties. As used in this Article, "Building Standard" refers to the typical townhome for the Property, as originally constructed, and as modified over time by changes in replacement materials and systems that are typical for the market and era.

13.3.1. Common Area. The Association will insure, as a common expense:

- a. Insurable improvements on the common area.
- b. Insurable Improvements in the Area of Common Responsibility.
- c. The improvements on any townhome lot owned by the Association.
- d. Insurable property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies.

13.3.2. Townhomes Partially Insured by Association. In addition to insuring the property owned or maintained by the Association, the Association will maintain property insurance on the following components of the town home buildings to the Building Standard.

- a. All structural components of the townhome building, such as foundations, load bearing walls, and roof trusses.
- b. The exterior construction or the townhome building, such as the roof and roof stacks, exterior walls, windows, and doors; and patios, balconies, and decks.

- c. The party walls of the townhome building, from unfinished sheetrock on one side of the party wall, to unfinished sheetrock on the other side of the party wall.
- d. The structural components of the floor/ceiling assemblies that partition the town home into levels or floors, including stairs connecting the floors.
- e. The fire sprinkler system and pest control tubing (If any).

13.3.3. Not Insured by Association. Except for the limited components stated above, no other component of a townhome or townhome building must be insured by the Association as a common expense. Also, the Association does not insure an owner or resident's personal property. Each owner and resident is solely responsible for insuring his personal property in his townhome and on the Property, including furnishings and vehicles. **The Association strongly recommends that each owner and resident purchase and maintain insurance on his personal belongings.**

13.4. PROPERTY INSURANCE BY OWNER. Although the Association insures the outside and structural components of the town home, the owner must insure the "guts" of the townhome. **The owner of each townhome must obtain and maintain a homeowners insurance policy on the townhome** covering, at a minimum, the components listed below, at least to the Building Standard. On the date of this Declaration, homeowners policies may also cover the owner's personal property in the townhome.

- a. Partition walls, countertops, cabinets, furr downs, interior doors, and fixtures within the townhome.
- b. Finish materials on walls, floors, and ceilings, such as carpet, paint, tile, mirror, and wallpaper.
- c. Window treatments, lighting fixtures, tub enclosures, and decorative hardware.
- d. Appliances and plumbing fixtures.
- e. Betterments and improvements to the components of the townhome building that are insured by the Association, but only to the level of Building Standard, such as an art glass window or a custom skylight.
- f. All utility systems and equipment serving the townhome, including water heaters, air conditioning and heating equipment, electric wiring, ducts, and vents.

13.5. PROPERTY INSURANCE BY TENANT. The Association does not insure the personal property of tenants. Tenants are advised to obtain and maintain renters insurance to cover possible losses, minus any deductible. A tenant who does not have his own insurance coverage may be solely responsible for replacing or repairing his property (furniture, clothes, art work, pots & pans) in the event of a loss. This Section is advisory only and may not be construed to modify a lease agreement that addresses insurance responsibilities between a landlord and a renter.

13.6. VARIATIONS IN PROPERTY INSURANCE. Notwithstanding the foregoing rationale and allocation of insurance responsibilities, the Association's coverage decisions

will be guided by types of policies and coverages customarily available for similar types of properties. The Association, acting through its board, is hereby authorized to obtain and maintain property insurance for components of the townhomes that are designated by this Article as the sole responsibility of the owner if such an insurance purchase by the Association is in the best collective interests of the Floyd Acres owners and if the Association gives the owners at least 30 days prior written notice of the change of coverage.

13.6.1. Board Determination to Reduce Risks. Notwithstanding the requirements of this Article, the board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by owners if the insurance is deemed necessary or desirable by the board to **reduce potential risks to the Association or other owners.** If an owner fails to maintain required insurance, the board may obtain it on behalf of the owner who will be obligated for the cost as an individual assessment.

13.6.2. Overlapping Coverages. If at the time of a loss under a policy maintained by the Association, there is other insurance in the name of the townhome owner covering the same property covered by the Association's policy, the owner's policy provides primary insurance, and the Association's policy provides excess coverage, if needed.

13.6.3. Gap Construction. If it is not clear to the Association whether a particular component of the Property is required by this Article to be insured by the owner or by the Association, the component is hereby deemed to be the Responsibility of the Association.

13.6.4. Betterments and Improvements. If the Association provides property insurance on the entire individual townhome, the owner will give the Association a written report of all structural changes, additions, betterments, or improvements to his townhome, and any other information the board may require to maintain adequate levels of insurance coverage. Each owner will comply with reasonable requests by the board for periodic inspection of the townhome for purposes of insurance appraisal.

13.7. LIABILITY INSURANCE BY ASSOCIATION. The Association will maintain a commercial general liability insurance policy over the common areas - expressly excluding the liability of each owner and resident within his lot - for bodily injury and property damage resulting from the operation, maintenance, or use of the common areas. 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. If available, the Association may obtain liability insurance over the Area of Common Responsibility for bodily injury and property damage resulting from the maintenance of the Area of Common Responsibility.

13.8. LIABILITY INSURANCE BY OWNER. Notwithstanding anything to the contrary in this Declaration, to the extent permitted by applicable law, each owner is liable for damage to the Property caused by the owner or by persons for whom the owner is responsible. **Each owner is hereby required to obtain and maintain general liability insurance,** to cover this liability as well as occurrences within his townhome, in amounts

sufficient to cover the owner's liability for damage to the property of others in the Property and to the Area of Common Responsibility, whether such damage is caused willfully and intentionally, or by omission or negligence.

13.9. DIRECTORS & OFFICERS LIABILITY. To the extent it is reasonably available, the Association will 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.

13.10. OTHER COVERAGES. The Association may maintain any insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a mortgagee or an owner.

ARTICLE 14 MORTGAGEE PROTECTION

14.1. INTRODUCTION. This Article establishes certain standards for the benefit of Mortgagees, as defined below.

14.1.1. **"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 lot, or any renewal, modification, or refinancing thereof. In dealing with the Association, a Mortgagee may be represented by a mortgage servicer, agent, or representative.

14.1.2. **"Eligible Mortgagee"** means a Mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying number and street address of the mortgaged lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A single notice per lot will be valid so long as the Eligible Mortgagee holds a mortgage on the lot. The board will maintain this information.

14.1.3. **"Underwriting Lender"** means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or U.S. Department of Veterans Affairs (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an owner's financing options nor as a representation that the Property is approved by any institution.

14.2. MORTGAGEE RIGHTS.

14.2.1. Lien Superiority. As stated in the Assessment Lien Article of this Declaration, the lien in a Mortgagee's recorded deed of trust is superior to the Association's lien for assessments.

14.2.2. Termination. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least 51 percent of Eligible Mortgagees, in addition to the required consents of owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least two thirds of Eligible Mortgagees.

14.2.3. Inspection of Books. Mortgagees may inspect the Association's books and records, including the Governing Documents, by appointment, during normal business hours.

14.2.4. Financial Statements. If a Mortgagee so requests, the Association will give the Mortgagee an audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

14.2.5. Right of First Refusal. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

14.2.6. Amending Governing Documents. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the board, without approval of owners or Mortgagees, may amend this Article and other provisions of the Governing Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Governing Documents. In case of conflict, this Article controls.

14.2.7. Attend Meetings. A representative of an Eligible Mortgagee may attend and address any meeting which an owner may attend.

14.2.8. Insurance. If an Underwriting Lender is a Mortgagee or an owner, at the request of the Underwriting Lender the Association will comply with the Underwriting Lender's insurance requirements to the extent the requirements are reasonable and available, and do not conflict with other insurance requirements of this Declaration.

14.3. LIMITS ON ASSOCIATION'S DUTIES.

14.3.1. Which Mortgagees? The Association's affirmative obligations to Mortgagees under the Governing Documents extend only to those Mortgagees of whom the Association has actual knowledge. This Article may not be construed to require the Association to perform title research to ascertain the existence and identify of a Mortgagee on a lot. Any duty of the Association to a Mortgagee is conclusively satisfied if performed for Mortgagees known to the Association, without regard to other holders of liens on lots. The Association may rely on the information provided by owners and mortgagees.

14.3.2. Communications with Mortgagee. If the Governing Documents or public law require the consent of Mortgagees for an act, decision, or amendment by the Association, the approval of a Mortgagee is implied when the Mortgagee fails to respond within 30 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.

ARTICLE 15 AMENDMENTS

15.1. CONSENTS REQUIRED. As permitted by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by the board alone. Amendment of the Maintenance Responsibility Chart, initially recorded as Exhibit B of this Declaration, is subject to the terms of Section 4.7. Otherwise, amendments to this Declaration must be approved by owners of at least a majority of the lots. Approval of owners does not require that the amendment be signed by the consenting owners, or that consents be executed and acknowledged by the approving owners.

15.2. METHOD OF AMENDMENT. For an amendment that requires the approval of owners, this Declaration may be amended by any method selected by the board from time to time, pursuant to the Bylaws, provided the method gives an owner of each lot the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

15.3. EFFECTIVE. To be effective, an amendment approved by the owners or by the board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of owners or directors and, if required, Eligible Mortgagees; and (3) recorded in the Real Property Records of Midland County, Texas, except as modified by the following sections.

15.4. CITY PROVISIONS. When amending a Governing Document, the Association must consider the validity and enforceability of the amendment in light of current public law, including without limitation the PD Ordinance to which the Property is subject. No amendment may affect the City's rights under this Declaration without the City's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without the City's written and acknowledged consent.

15.5. DECLARANT PROVISIONS. During the Development Period, Declarant has an exclusive right to unilaterally amend this Declaration. 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 Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

15.7. 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 owners of at least a majority of the lots. Upon a 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 association pursuant to the merger. The surviving or consolidated association may administer the provisions of the Governing Documents within the Property, together with the covenants and restrictions established upon 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 within the Property.

15.8. TERMINATION. Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by owners of at least two-thirds of the lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the board without a vote of owners. In all other circumstances, an amendment to terminate must be approved by owners of at least 80 percent of the lots.

15.9. CONDEMNATION. In any proceeding, negotiation, settlement, or agreement concerning condemnation of the common area, the Association will be the exclusive representative of the owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the common area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

**ARTICLE 16
DISPUTE RESOLUTION**

16.1. INTRODUCTION & DEFINITIONS. The Association, the owners, Declarant, Builder, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

16.1.1. "**Claim**" means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.
- b. Claims relating to the rights and/or duties of Declarant as Declarant under the Governing Documents.
- c. Claims relating to the design, construction, or maintenance of the Property.

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

16.1.3. **"Exempt Claims"** means the following claims or actions, which are exempt from this Article:

- a. The Association's claim for assessments, and any action by the Association to collect assessments.
- b. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- c. Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.
- d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

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

16.2. **MANDATORY PROCEDURES.** Claimant may not file suit in any court or initiate any proceeding before an administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

16.3. **NOTICE.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

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

16.5. **MEDIATION.** If the parties negotiate but do not resolve the Claim through

negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 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 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have **waived** the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

16.6. TERMINATION OF MEDIATION. If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

16.7. ALLOCATION OF COSTS. Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

16.8. ENFORCEMENT OF RESOLUTION. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter falls to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the noncomplying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

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

16.10. LITIGATION APPROVAL & SETTLEMENT. To encourage the use of alternate dispute resolution and discourage the use of costly and uncertain litigation, the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section. This Section may not be amended without the approval of owners of at least 75 percent of the lots.

16.10.1. Owner Approval. The Association may not initiate any judicial or administrative proceeding without the prior approval of owners of at least a majority of the lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of

goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceeding instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of owners in order to preserve the status quo.

16.10.2. Higher Approval of Certain Suits. Also, the Association may not initiate any judicial or administrative proceeding against Declarant, Builder, Association officers and directors, or the managing agent of the Association without the approval of owners representing at least 75 percent of the lots.

16.10.3. Funding Litigation. Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a special assessment, the Association must levy a special assessment to fund the estimated costs of litigation prior to initiating a judicial or administrative proceeding. The Association may not use its annual operating income, reserve funds, or savings to fund litigation, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation reserve fund.

16.10.4. Settlement. The board, on behalf of the Association and without the consent of owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims.

16.11. CONSTRUCTION-RELATED DISPUTES. In addition to the above procedures, a claim relating to an alleged construction defect may be governed by Texas statutes relating to residential construction, such as:

16.11.1. RCLA. Under Chapter 27 of the Texas Property Code, the Residential Construction Liability Act, if an owner has a complaint concerning an alleged construction defect, and if the alleged defect has not been corrected through normal warranty service, the owner must provide the notice required by Chapter 27 of the Texas Property Code to Builder or the contractor by certified mail, return receipt requested, not later than the 60th day before the date owner files suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the alleged construction defect. If requested by Builder or the contractor, the owner must provide Builder or the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

ARTICLE 17
GENERAL PROVISIONS

17.1. COMPLIANCE. The owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Governing Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi- governmental entity having jurisdiction over the

Association or 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.

17.2. HIGHER AUTHORITY. The Governing Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Governing Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance. In the event of a conflict between the Governing Documents, the hierarchy of authority is as follows: this Declaration (highest), Association's Articles of Incorporation, Bylaws, and the Rules (lowest).

17.3. NOTICE. Any demand or written notice required or permitted by this Declaration may be sent by electronic, ordinary, or certified mail, postage prepaid, or by any other method or combination of methods permitted or required by applicable law. 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 or email, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an owner fails to give the Association an effective address, the notice may be sent to the address of the owner's lot. If the Association properly transmits the notice, the owner is deemed to have been given notice whether or not he actually receives it.

17.4. CHANGING TECHNOLOGY. The Governing Documents are drafted at the end of an era that uses ink on paper to communicate, to give notice, and to memorialize decisions. The next era of communications may be paperless, relying on electronic communications for many activities that are customarily papered on the date of this Declaration. As technology changes, the terms of the Governing Documents that pertain to communications, notices, and documentation of decisions may be interpreted and applied in ways that are consistent with and customary for the then-current technology for standard business practices, without necessity of amending the Governing Document.

17.5. LIBERAL CONSTRUCTION. The terms and provisions of each Governing Document are to be liberally construed to give effect to the purposes and intent of the Governing Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved first to give effect to Declarant's intent to protect Declarant's interests in the Property, and second in favor of the operation of the Association and its enforcement of the Governing Documents, regardless which party seeks enforcement.

17.6. SEVERABILITY. Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

17.7. CAPTIONS. In all Governing 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.

the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

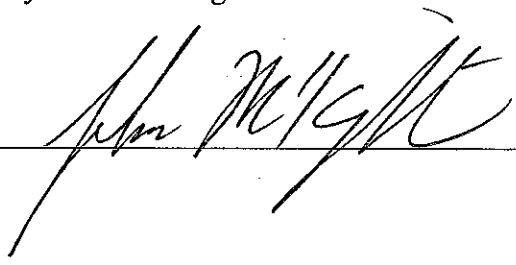
17.10. EXHIBITS. The following exhibits are attached to this Declaration and incorporated herein by reference:

- A - Description of Subject Land
- B - Maintenance Responsibility Chart

Executed this 12 day of February, 2019.

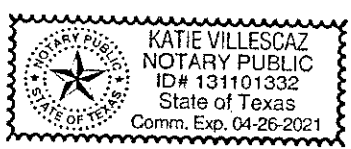
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Fort Worth, TX 76102

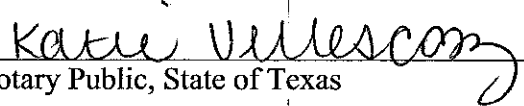
Declarant: **Silver Leaf Communities, LLC**
By: John McKnight



STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This Declaration of Covenants, Conditions and Restrictions for Floyd Acres, was Acknowledged before me this 12 day of February, 2019, by John McKnight.





Notary Public, State of Texas

My commission expires: 4/26/2021

EXHIBIT A
DESCRIPTION OF SUBJECT LAND

BEGINNING at a ½ Inch Iron Rod found for the Northwest corner of this tract in the North line of said Section 6 and being in the Easterly right-of-way line of Loop 250 West, a 300 foot wide right-of-way, and the Southerly right-of-way line of a 20 foot wide alley in the Western Hills, Section 2 addition to the City of Midland as recorded in Cabinet "C", Page 65 of the Plat Records of Midland County, Texas, from which point the calculated Northwest Corner of said Section 6 bears S 75°36'41" W a distance of 70.00 feet;

THENCE N 75°36'41" E with the North line of said Section 6 and the Southerly line of said 20 foot wide alley a distance of 300.00 feet to a ½ Inch Iron Rod found in the West right-of-way line of Beal Parkway, a 60 foot wide right-of-way, for the Northeast corner of this tract;

THENCE S 14°26'22" E with the West right-of-way line of said Beal Parkway a distance of 441.00 feet to a ½ Inch Iron Rod found for an interior corner of this tract;

THENCE S 21°28'28" E with the West right-of-way of said Beal Parkway a distance of 1112.25 feet to a ½ Inch Iron Rod with red plastic cap marked "West Co. Midland" set for the Southeast corner of this tract and the Northeast corner of Lot 1, Block 1, of the Westridge Addition, an addition to the city and county of Midland, Texas as recorded in Cabinet "D", Page 132 of the Plat Records of Midland County, Texas;

THENCE S 75°35'16" W with the North line of said Lot 1, Block 1, Westridge Addition, a distance of 343.08 feet to a ½ Inch Iron Rod with red plastic cap marked "West Co. Midland" set for the Southwest corner of this tract in the East right-of-way line of said Loop 250 West;

THENCE N 19°15'44" W with the East right-of-way line of said Loop 250 West a distance of 1107.90 feet to a ½ Inch Iron Rod found for an exterior corner of this tract;

THENCE N 14°26'22" W with the line of said Loop 250 West a distance of 651.00 feet to the POINT OF BEGINNING, subject tract contains a total of 12.63 acres.

Note: All Bearings, Distances and Coordinates Shown Hereon are Relative to the Texas State Plane Coordinate System, Texas Central Zone, North American Datum of 1927.

End of Exhibit A

**Exhibit B
FLOYD ACRES
Maintenance Responsibility Chart**

“All aspects” includes maintenance, repair, and replacement, as needed.

Component of Property	Area of Common Responsibility	Owner Responsibility
Roofs	Decking, felt, shingles, and metal flashing, only.	All other aspects, including roof trusses.
Roof-mounted attachments.	None.	All aspects.
Exterior vertical walls of buildings, other exterior features of buildings not specifically listed in chart.	Outermost materials only, such as siding, stucco, and brick, and any coatings or surface treatments on the material, such as paint or sealant.	All other aspects, including wall cavities and insulation.
Building foundations, patio slabs, and A/C slabs	None	All aspects, including tolerance for minor cracks that are inevitable results of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of the building.
Concrete driveways & sidewalks.	All structural aspects.	Routine cleaning & tolerance for minor cracks that are inevitable results of the natural expansion & contraction of soil, shrinkage during the curing of the concrete, and settling of the building.
Retaining walls	All aspects.	None.
Displays of street numbers on exterior doors or building surfaces.	All aspects.	None.
Gutters and downspouts.	All aspects.	None.
Grounds – outside the fenced yards.	All aspects.	None.
Yard irrigation system (sprinkler)	All aspects.	None.
Exterior light fixtures on buildings	None.	All aspects.
Garages.	Roofs and exterior vertical walls, as described above.	All aspects, except those noted for Association. Includes, routing interior

		cleaning, interior wall and ceiling materials, garage door, pedestrian door, automatic garage door opener, remote controls, interior light fixture, interior electrical outlets.
Skylights.	None.	All aspects.
Attics.	None.	All aspects.
Insulation & weather-stripping.	None.	All aspects.
Chimneys & Fireplaces.	Chimney caps and siding only.	All other aspects, including flues, firebox, damper, and periodic flue cleaning.
Fences and gates around private townhome yards.	None.	All aspects.
Townhome interiors, including improvements, fixtures, partition walls & floors within townhome.	None.	All aspects.
Sheetrock in townhomes (walls and ceilings) & treatments on walls.	None.	All aspects.
Improvements and grounds in private patio/yards.	None.	All aspects.
Surface water drainage systems.	All aspects, including collection drains and drain systems.	None. Prohibited from changing the drainage system.
Exterior doors of town homes.	Periodic paint or stain on garage doors, only.	All other aspects of the garage door, and all aspects of other doors, including paint, door frame, door, glass panes, hardware, locks, peepholes, thresholds, weather-stripping, and doorbells.
Windows.	Periodic exterior caulking in connection with exterior painting.	All other aspects, including window frames, window sill flashings, window seals and sealants, screens, window locks, glass panes, glazing, interior caulking.
Water, sewer, electrical lines & systems.	None for lines and systems serving the lots.	All aspects of lines and systems serving the lot.
Heating and cooling systems & water heaters.	None.	All aspects.
Intrusion alarms on doors/	None.	All aspects.

windows, smoke/heat detectors, monitoring equipment.		
Cable for television or internet	Standards for location and appearance of cable and/or conduit.	All other aspects.
Television antennas & satellite dishes.	Standards for location and appearance of exterior-mounted devices.	All other aspects.

***** Electronically Recorded Document *****

Midland County

Alison Haley
County Clerk

Document Number: 2019-4529

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Recorded On: February 19, 2019

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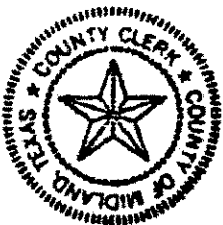
Indirect-

Receipt Number: 598400

Processed By: Cristella Gonzalez

THIS PAGE IS PART OF THE INSTRUMENT

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.



State of Texas
County of Midland

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the named RECORDS of Midland County, Texas as stamped hereon.

County Clerk
Midland County, Texas