

**ARTICLES  
OF  
INCORPORATION**



## Office of the Secretary of State

### CERTIFICATE OF INCORPORATION OF

Southwind Community Association, Inc.  
Filing Number: 800477077

The undersigned, as Secretary of State of Texas, hereby certifies that Articles of Incorporation for the above named corporation have been received in this office and have been found to conform to law.

Accordingly, the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Incorporation.

Issuance of this Certificate of Incorporation does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 04/06/2005

Effective: 04/06/2005



A handwritten signature in black ink that reads "Roger Williams".

Roger Williams  
Secretary of State

ARTICLES OF INCORPORATION  
OF  
SOUTHWIND COMMUNITY ASSOCIATION, INC

**FILED**  
In the Office of the  
Secretary of State of Texas  
APR 06 2005

I, the undersigned, being of the age of eighteen years or more, acting as incorporator of a corporation under the Texas Non-Profit Corporation Act, *Tex. Civ. Stat. Ann. art. 1396-1.01, et seq.*, as it may be amended, do hereby adopt the following Articles of Incorporation for such corporation.

Article 1. Name. The name of the corporation is Southwind Community Association, Inc. (the "Association").

Article 2. Principal Office. The initial principal office of the Association is located at 3010 LBJ Freeway, Suite 1100, Dallas, TX 75234.

Article 3. Duration. The Association shall have perpetual duration.

Article 4. Applicable Statute. The corporation is organized pursuant to the provisions of the Texas Non-Profit Corporation Act (the "Act").

Article 5. Defined Terms. Capitalized terms used in these Articles and not otherwise defined in these Articles shall have the meanings set forth in the Community Charter for Southwind ("Charter"), recorded or to be recorded by Kimball Hill Homes Dallas, LP, a Texas limited partnership ("Founder"), in the Office of the County Clerk of Tarrant County, Texas.

Article 6. Purposes and Powers. The Association does not contemplate pecuniary gain or profit, direct or indirect, to its members.

(a) By way of explanation and not limitation, the purposes for which the Association is formed are:

(i) to be and constitute the Association to which reference is made in the Charter, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the By-Laws of the Association ("By-Laws") and as provided by law; and

(ii) to provide an entity for the furtherance of the interests of the owners of that real property which is subject to the terms of the Charter (the "Community").

(b) In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Charter or By-Laws, may be exercised by its board of directors:

(i) all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of Texas in effect from time to time;

(ii) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By-Laws, or the Charter, including, without limitation, the following:

(1) to fix and to collect assessments and other charges to be levied pursuant to the Charter;

(2) to manage, control, operate, maintain, repair, and improve property subject to the Charter or any other property as to which the Association has a right or duty to provide such services pursuant to the Charter, By-Laws, or any covenant, easement, contract, or other legal instrument;

(3) to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Charter, By-Laws, or other recorded covenant;

(4) to engage in activities which will actively foster, promote, and advance the common interests of all owners of property subject to the Charter;

(5) to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

(6) to borrow money for any purpose;

(7) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(8) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests of such corporations, firms, or individuals;

(9) to adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such By-Laws may not be inconsistent with or contrary to any provisions of the Charter; and

(10) to provide any and all services to the Community and adjacent Community as the Board of Directors may determine to be necessary or desirable to supplement the services provided by local government.

(c) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 6 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article 6. None of the objects or purposes set out above shall be construed to authorize the Association to do any act in violation of the Texas Non-Profit Corporation Act, and all such objects or purposes are subject to the Act.

**Article 7. Membership.** The Association shall be a membership corporation without certificates or shares of stock. The Founder, for such period as is specified in the Charter, and each Person who is the Owner of a Unit within the Community, shall be a member of the Association and shall be entitled to such voting rights and membership privileges as are set forth in the Charter and the By-Laws.

**Article 8. Board of Directors.** The business and affairs of the Association shall be conducted, managed, and controlled by a Board of Directors. The Board may delegate its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

The Board of Directors shall consist of not less than three nor more than seven directors, as determined in accordance with the By-Laws. The initial Board of Directors shall consist of three directors. The names and addresses of the members of the initial Board of Directors, who shall hold office until their successors are elected and have qualified, or until their resignation or removal, are as follows:

Samuel L. Wyse, III	3010 LBJ Freeway, Suite 1100, Dallas, TX 75234
Jeff Kullman	3010 LBJ Freeway, Suite 1100, Dallas, TX 75234
Joe Miller	3010 LBJ Freeway, Suite 1100, Dallas, TX 75234

The number, the method of selection, removal, and filling of vacancies on the Board of Directors, and the term of office of members of the Board of Directors, shall be as set forth in the By-Laws.

**Article 9. Indemnification of Directors.** The Association shall indemnify its officers, directors and committee members as and to the extent required by the By-Laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

Article 10. Dissolution. The Association may be dissolved only upon a resolution duly adopted by its Board of Directors and approved by the affirmative vote of members of the Association who own not less than two-thirds (2/3) of the Units subject to the Charter. In addition, so long as the Founder owns any property subject to the Charter or which the Founder may unilaterally make subject to the Charter pursuant to the Charter, the written consent of the Founder shall be required.

Article 11. Merger and Consolidation. The Association may merge or consolidate only upon a resolution duly adopted by its Board of Directors and the affirmative vote of members who are Owners of not less than two-thirds (2/3) of the Units owned by persons other than Founder. In addition, so long as the Founder owns any property subject to the Charter or which it may unilaterally make subject to the Charter, the written consent of the Founder shall be required.

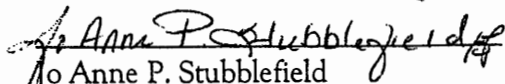
Article 12. Amendments. These Articles may be amended only upon a resolution duly adopted by the Board of Directors and approved by the affirmative vote of members entitled to cast at least two-thirds (2/3) of the total eligible votes of the members; provided, the members shall not be entitled to vote on any amendment to these Articles of Incorporation adopted for the sole purpose of complying with the requirements of any governmental or quasi-governmental entity or institutional lender authorized to fund, insure or guarantee mortgages on individual Units, which amendments may be adopted by the Board of Directors. In addition, so long as the Founder owns any property subject to the Charter or which it may unilaterally make subject to the Charter, the consent of the Founder shall be required for any amendment.

Article 13. Registered Agent and Office. The initial registered office of the Corporation is at 3010 LBJ Freeway, Suite 1100, Dallas, TX 75234, and the initial registered agent at such address is Samuel L. Wyse, III.

Article 15. Incorporator. The name and address of the incorporator are as follows:

Jo Anne P. Stubblefield  
Hyatt & Stubblefield, P.C.  
225 Peachtree Street, N.E., Suite 1200  
Atlanta, Georgia 30303

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation.

  
Jo Anne P. Stubblefield

**COVENANTS, CONDITIONS  
&  
RESTRICTIONS**

99 OPR  
408.00

Upon recording please return to:  
Samuel L. Wyse, III  
Kimball Hill Homes Dallas, LP  
3010 LBJ Freeway, Suite 1100  
Dallas, Texas 75234

FILED  
TARRANT COUNTY TEXAS

2005 SEP -2 PM 1:54

SUZANNE HENDERSON  
COUNTY CLERK

BY \_\_\_\_\_

COMMUNITY CHARTER

RECEIVED-CMA

OCT 31 2005

FOR

SOUTHWIND

Prepared by:

Hyatt & Stubblefield, P.C.  
225 Peachtree Street, N.E., Suite 1200  
Atlanta, Georgia 30303



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# COMMUNITY CHARTER FOR SOUTHWIND

## PREAMBLE

*Southwind is a planned community located in the City of Arlington, Tarrant County, Texas. This Community Charter ("Charter") constitutes the instrument commonly known as a declaration establishing Southwind as a planned community. This Charter creates a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of various residential properties and common areas within Southwind.*

*An integral part of the plan for operation and administration of Southwind is Southwind Community Association, Inc., which has been incorporated pursuant to the Texas Non-Profit Corporation Act to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Charter and the other Governing Documents referenced in this Charter.*

*This document does not, and is not intended to, create a condominium under Texas law.*

## DECLARATION

Kimball Hill Homes Dallas, LP, a Texas limited partnership, its successors and assigns (the "Founder"), by executing and recording this Charter, declares that the property described in Exhibit "A," and any additional property made subject to this Charter by supplement or amendment, shall constitute the planned community of Southwind (the "Community" or "Southwind.") This Charter shall encumber the title to such property, shall govern the development and use of such property, and shall be binding upon the Founder and the future owners of any portion of such property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter holds any legal, equitable, or beneficial interest in any portion of such property. This Charter shall also be binding upon Southwind Community Association, Inc., its successors and assigns (the "Association").

# Article 1

## Governing Documents

A community is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agrees to uphold. Those principles are set forth in the community's governing documents, which bind the community together, give it structure, and provide guidance to all who participate in its growth and evolution.

### 1.1. Scope and Applicability.

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Charter as the "Governing Documents," include this Charter and the other documents described in Table 1.1, as they may be amended. All owners and occupants of property in the Community, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

GOVERNING DOCUMENTS	
Community Charter: (recorded)	this Community Charter for Southwind, which creates obligations that are binding upon the Association and all present and future owners of property in Southwind
Supplement: (recorded)	a recorded supplement to this Charter, which submits additional property to this Charter, creates easements over property described in such Supplement, imposes additional obligations or restrictions on such property, or any of the foregoing
Articles of Incorporation: (filed with Secretary of State)	the Articles of Incorporation of Southwind Community Association, Inc., as they may be amended, which establish the Association as a nonprofit corporation under Texas law
By-Laws: (attached as Exhibit "D")	the By-Laws of Southwind Community Association, Inc., adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc. A copy of the By-Laws is attached as Exhibit "D"
Design Guidelines: (recorded)	the design standards and architectural and aesthetics guidelines adopted pursuant to Article 5, as they may be amended, which govern new construction and modifications to property within the Community, including structures, landscaping, and other items
Rules: (initial set attached as Exhibit "C")	the rules of the Association adopted pursuant to Article 7, which regulate use of property, activities, and conduct within Southwind
Board Resolutions: (Board adopts)	the resolutions which the Association's Board of Directors adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of property which the Association owns or controls

Table 1.1 - Governing Documents

## 1.2. Additional Covenants and Restrictions.

The owner of any property within the Community may impose covenants on such property in addition to those set forth in the Governing Documents, with such approval as may be required pursuant to Article 17. If the provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions shall control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

## 1.3. Conflicts and Ambiguities.

If there are conflicts between any of the Governing Documents and Texas law, Texas law shall control. If there are conflicts between or among any of the Governing Documents, then the Charter, the Articles, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

The Governing Documents use diagrams, tables, and keynotes to illustrate concepts and assist the reader. If there is a conflict between any diagram, table, or keynote and the text of the Governing Documents, the text shall control.

If any court determines that any provision of this Charter is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

The Association's board of directors ("Board") may, by resolution, resolve any ambiguities in the Governing Documents, and the Board's reasonable interpretation of an ambiguous provision shall be determinative.

## 1.4. Definitions.

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found immediately following the Table of Contents for this Charter. All other terms used in the Governing Documents have their usual, commonly accepted definitions.

## 1.5. Interpretation of Certain References.

*Consent or Approval.* All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the person or entity whose consent or approval is required.

*Discretion and Determination.* All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall mean the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, any one authorized in the Governing Documents to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

*Person.* References in the Governing Documents to a "Person" or "Persons" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.



*Recording.* All references in the Governing Documents to a "recorded" legal instrument, or to recording or the recording of a legal instrument, shall refer to an instrument filed or recorded, or the filing or recording of a legal instrument, in the Office of the County Clerk of Tarrant County, Texas, or such other place designated as the official location for filing documents affecting title to real estate in Tarrant County in order to make them a matter of public record.

*Community-Wide Standard.* Where the Governing Documents require compliance with the "Community-Wide Standard," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Charter, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Article 5). The Community-Wide Standard may or may not be set out in writing. The Founder initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as Southwind matures.

\*\*\*

## Article 2 Community Administration

*Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Founder, the Association, the owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This Article identifies these stakeholders and describes their roles in administering the Community.*

### 2.1. The Founder.

The Founder has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The Founder's proposed plan for development of the Community is described in the plan for Southwind approved by the City of Arlington, Texas, as it may be amended, which encompasses all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B" of this Charter (the "Development Plan"). However, the Founder is not obligated to submit property shown on the Development Plan to this Charter. In addition, the Founder may submit property to this Charter that is not shown on the Development Plan.

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise certain of these rights throughout the "Development and Sale Period," which is the period of time during which the Founder, any "Founder Affiliate," or any Builder as defined in Section 2.4 owns real property in the Community primarily for development or sale or has an unexpired option to expand the Community pursuant to Article 16. A "Founder Affiliate" is any Person that controls, is controlled by, or is under common control with the Founder, and any Person that is an owner, a member, a partner, or a shareholder of the Founder.

The Founder has reserved other rights that may be exercised during the "Founder Control Period," which is the period of time that the Founder is entitled to appoint a majority of the members of the Asso-

ciation's Board. It begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

- (a) when 75% of the total number of Units (as defined in Section 3.1) contemplated by the Development Plan are substantially complete and either occupied or ready for occupancy and have been conveyed to persons other than a Founder Affiliate or a builder holding title for purposes of construction and resale;
- (b) December 31, 2025; or
- (c) when, in its discretion, the Founder voluntarily and expressly surrenders such right in a recorded instrument.

The Founder has certain approval rights for a limited period as provided in the By-Laws after the termination of the Founder Control Period.

The Founder may assign its status and rights as the Founder under the Governing Documents to any Founder Affiliate or any person who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

## 2.2. The Association and its Board.

The Founder has established the Association as the primary entity responsible for administering Southwind in accordance with the Governing Documents. On most matters, the Association acts through the Board, which is selected as provided in Section 2.1 and the By-Laws. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Texas law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers that the Governing Documents and Texas law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

## 2.3. The Owners.

Each Person that holds record title to a Unit, as defined in Article 3, is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Part Two of this Charter. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in Articles 3 and 4 and in the By-Laws.

#### 2.4. Builders.

Much of the responsibility and credit for helping to create Southwind rests with those Persons who acquire one or more unimproved lots or parcels of land within Southwind from the Founder for further subdivision or development and resale in the ordinary course of their business ("Builders"). Except as otherwise specifically provided in the Governing Documents, the Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association.

#### 2.5. Additional Associations.

Portions of the Community may have special requirements that lead the Founder or a Builder to establish a separate condominium or homeowners association ("Additional Association") to administer additional covenants applicable to that particular area ("Neighborhood"). However, nothing in this Charter requires the creation of an Additional Association, and the jurisdiction of any Additional Association shall be subordinate to that of the Association.

Additional Associations, if any, are responsible for administering the additional covenants applicable to the property within their jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property which they own or which their respective covenants designate as being for the common benefit of their members.

#### 2.6. Mortgagees.

If a Unit is made subject to a mortgage or other form of security instrument affecting title to a Unit ("Mortgage"), then the holder or beneficiary of that Mortgage ("Mortgagee") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Article 15.

#### 2.7. Commercial Properties.

The commercial properties, if any, located between the Community and State Highway 360 are not intended to be subject to this Charter and the owners of such properties will not be members of the Association. However, such owners may be obligated to contribute to certain costs which the Association incurs in performing its responsibilities under any Covenant to Share Cost recorded pursuant to Section 9.5.

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## Article 3 Community Structure and Organization

*The Community consists of parcels of property, referred to as Units, which are intended for the exclusive use of the Owner and occupants of the Unit, as well as property that is intended for the common use of some or all of the residents of the Community.*

### 3.1. Units.

The Governing Documents refer to the homes and home sites in Southwind as "Units." A Unit is a portion of the Community which is depicted as a separately identified lot, parcel, or airspace on a recorded subdivision plat or in a recorded condominium instrument and which is zoned or otherwise intended for development, use, and occupancy as an attached or detached residence for a single family. The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures and other improvements on such land. A parcel of land under single ownership and intended for construction of more than one residence is considered a single Unit until a subdivision map, plat, or condominium instrument is recorded subdividing it into more than one Unit. The subdivision and combination of Units is subject to the provisions of section 7.1(d).

### 3.2. Common Area.

Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "Common Area." The Common Area also includes any property that the Association holds under a lease and any easements in favor of the Association. The Founder and others may establish and convey Common Area to the Association as provided in Section 9.1.

### 3.3. Limited Common Area.

Certain portions of the Common Area may be designated as "Limited Common Area" and assigned for the exclusive use or primary benefit of less than all Units or Units in specified portions of the Community. Limited Common Areas might include such things as entry features, private streets, and recreational facilities, among other things, that benefit only a portion of the Community.

The Founder may designate property as Limited Common Area and assign it to particular Units on Exhibit "A" to this Charter, or in the Supplement by which the property is submitted to the terms of this Charter, or in the deed conveying such property to the Association.

### 3.4. Area of Common Responsibility.

All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "Area of Common Responsibility," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way. The initial Area of Common Responsibility is described in Article 9.

### 3.5. Other Properties.

In addition to the above, Southwind may include property dedicated to the public and property owned or controlled by an Additional Association for the common use and enjoyment of its members.

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## Article 4 Association Membership and Voting Rights

*The Association is a mechanism by which each Owner can participate in the governance and administration of Southwind. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.*

### 4.1. Membership.

The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners, including Builders, and the Founder membership, which consists solely of the Founder. All persons holding a membership in the Association are referred to in this Charter as "Members."

(a) *Owner Membership.* Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit may use any Common Area recreational facilities available for use by Owners.

(b) *Founder Membership.* The Founder holds the sole Founder membership. The Founder membership shall terminate upon expiration of the Founder Control Period, or on such earlier date as the Founder determines and declares in a recorded instrument.

The Founder may, by Supplement, create additional classes of membership comprised of the Owners of Units within any portion of the additional property submitted to this Charter. The Founder shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

### 4.2. Voting.

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Charter and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.8.

If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves. Any co-Owner may cast the vote for the Unit or consent to any action requiring approval of the Owners on behalf of all co-Owners of the Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement, the Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently. No more than one vote shall be cast for any Unit.

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## Article 5 Architecture, Landscaping and Aesthetic Standards

*The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This Article explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.*

### 5.1. General.

All site work, landscaping, structures, improvements, and other items placed on a Unit or Common Area in a manner or location visible from outside of existing structures ("**Improvements**") are subject to standards for design, landscaping, and aesthetics adopted pursuant to this Article ("**Design Guidelines**") and the approval procedures set forth in this Article, except as this Article or the Design Guidelines may otherwise specify.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect or professional building designer unless the Founder or its designee otherwise approves in its sole discretion.

Approval under this Article is not a substitute for any approvals or reviews required by the City of Arlington or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This Article shall not apply to structures existing on any portion of the Community prior to submitting it to this Charter, or to the Founder's or any Founder Affiliate's design and construction activities, or to the Association's design and construction activities during the Founder Control Period.

### 5.2. Design Review Authority.

(a) *Founder.* The Founder shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period,

or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings that are substantially complete and occupied or ready for occupancy. The Founder may designate one or more persons to act on its behalf in reviewing any application, and may establish a committee ("Founder's Review Committee") comprised of such persons as the Founder deems appropriate (which may but need not include Builders, architects, engineers, or other professionals), to review applications and make recommendations to the Founder of approval or disapproval during the period of time that the Founder holds reviewing authority under this Article. In reviewing and acting upon any request for approval, the Founder and its designee, including any Founder's Review Committee, act solely in the Founder's interest and owe no duty to any other Person.

From time to time, the Founder may delegate any or all of its rights under this Article to other Persons or committees, including any committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Founder's right to revoke such delegation at any time and reassume its prior control, and (ii) the Founder's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Founder has any rights under this Article, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

(b) *Design Review Committee.* Upon the Founder's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Founder's rights under this Article, the Board shall appoint a Design Review Committee ("Design Review Committee" or "DRC") to assume jurisdiction over matters within the scope of the delegated authority or this Article, respectively. The DRC shall consist of at least three, but not more than seven, persons, who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Founder's rights under this Article, the DRC shall notify the Founder in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this Article. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 10 business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC.

Unless and until such time as the Founder delegates all or a portion of its reserved rights to the DRC or the Founder's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) *Reviewer.* For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer."



Initially, the Founder reviews applications for proposed Improvements. Thereafter, the Board of Directors will appoint a Design Review Committee to review applications for proposed improvements. The Founder or the Design Review Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

(d) *Fees; Assistance.* The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs in-

curred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

### 5.3. Guidelines and Procedures.

(a) *Design Guidelines.* The Founder shall have the right to adopt and record initial Design Guidelines, which shall thereafter be subject to amendment as provided in this Section. The Design Guidelines may contain general provisions applicable to all of Southwind as well as specific provisions that vary based on the type of structure, use, or location within the Community. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Founder shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Founder's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Founder also delegates the power to amend to the DRC. Upon termination or delegation of the Founder's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive. Any amendment to the Design Guidelines shall be effective upon recording.

The Reviewer shall make the Design Guidelines, as they may be amended, available to Owners and their contractors upon request.

(b) *Procedures.* Unless the Design Guidelines provide otherwise, no activities within the scope of this Article (as described in Section 5.1) may begin on any property within Southwind until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines may require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Article 18 or judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.



The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Founder's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond within the time period required above, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within 12 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

The Reviewer may exempt certain activities from the application and approval requirements of this Article, if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

#### 5.4. No Waiver of Future Approvals.

The people reviewing applications under this Article will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### 5.5. Variances.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify a variance, but no variance shall (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.



When unusual circumstances exist that make it difficult to comply with a particular requirement of the Design Guidelines, the Owner may file a request with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.

#### 5.6. Limitation of Liability.

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Southwind; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for materials used, for compliance with building codes and other governmental requirements, or for ensuring that structures are fit for their intended purpose, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners. Neither the Reviewer nor any member of the DRC shall have any liability for approving plans that are inconsistent with the Design Guidelines provided that such person acted in good faith in approving such plans.

The Founder, Founder Affiliates, the Association, its officers, the Board, any committee, and any member of any of the foregoing, shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Founder has approved or featured such contractor as a Builder; (d) view preservation; or (e) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the By-Laws.

#### 5.7. Certificate of Compliance.

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

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## Article 6 Maintenance, Repair and Replacement

*One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the Community. This Article describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.*

#### 6.1. Maintenance by Owners.

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or an Additional Association pursuant to this Charter, any Supplement, or by law.

Each Owner whose Unit abuts Common Area or the right-of-way of any public street shall also be responsible for maintaining and irrigating the landscaping (a) between the Unit boundary and the nearest curb of such public street, except where there is a fence easement in favor of the Association pursuant to

Section 13.6; and (b) between the Unit boundary and any wall or fence located on adjacent Common Area or right-of-way within 10 feet of the Unit boundary. However, Owners may not remove trees, shrubs, or similar vegetation from these areas without prior approval pursuant to Article 5. Owners shall have no responsibility for maintaining neighborhood entry features or landscaping associated with such features.

#### 6.2. Maintenance by Additional Associations.

An Additional Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

Any Additional Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of its boundary. An Additional Association shall not remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article 5.

The Association may assume maintenance responsibility for property of any Additional Association, either by contract or agreement with the Additional Association, or upon the Board's determination, pursuant to Article 8, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard.

#### 6.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Association or an Additional Association having jurisdiction over the Unit (if any) carries such insurance. If the Association assumes responsibility for insuring a Unit pursuant to this Charter or any applicable Supplement, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Units and the Owners thereof.

Within 90 days after damage to or destruction of a structure on a Unit which the Owner is responsible for insuring, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Article 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any portion of the Community may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This Section shall apply to an Additional Association with respect to its common property in the same manner as if the Additional Association were an Owner and its common property were a Unit.

#### 6.4. Maintenance and Repair of Party Walls and Similar Structures.

Except as may otherwise be provided by state law, a written agreement between Owners, or other recorded documents applicable to affected Units:

(a) each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Any Owner's right to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(d) To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Article 18.

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## Article 7 Use and Conduct

*In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this Article sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.*

### 7.1. Use, Occupancy, and Transfer of Interests in Units.

(a) *Residential and Related Uses.* Units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing and sale activities of the Founder and Builders it designates, and as otherwise authorized in this section. A business activity shall be considered "related" to a residential use and thus permitted under this Section only if conducted by a person or persons residing in the Unit and only if the business activity:

- (i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;
- (ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the residential character of that portion of the Community in which the Unit is located and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Provision of child care on a limited basis for a fee shall not be considered a "business" within the meaning of this subsection so long as the child care provider (i) resides in the home where the child care is provided; (ii) does not employ other persons to assist in the provision of child care; and (iii) does not provide child care to more than two children at a time who do not reside in the home where the child care is provided, or more than four children total, including the children of the child care provider.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that such lease complies with the requirements of Section 7.1(b)..

(b) *Leasing.* For purposes of this Charter, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit. Leasing of Units shall be prohibited except in strict compliance with all of the following:

(i) Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, any garage apartment, detached "in-law suite" or "guest house" approved pursuant to Article 5 may be leased separate from the main dwelling.

(ii) The Owner and any other Owners to whom such Owner is related with whom such Owner is directly or indirectly affiliated (e.g., through co-ownership, or as a principal, shareholder, partner, member, trustee, or other relationship the Board may determine,) shall not individually or collectively lease or offer for lease more than one Unit at the same time, the intent of this prohibition being to restrict leasing of multiple Units by a single investor or by a group of affiliated investors who take title to Units in different names.

(iii) No signs shall be posted on the Unit, elsewhere within the Community, or on right-of-way adjacent to the Community, advertising the availability of the Unit for rent or for lease; and

(iv) All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

(v) Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require.

(vi) The Owner must give the tenant copies of the Governing Documents.

In accordance with Sections 7.2 and 7.3, the Association or the Board may adopt Rules governing leasing and subleasing in addition to, but consistent with, this subsection.

(c) *Transfer of Title.* Any Owner other than the Founder desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

No Owner shall transfer title to a Unit unless and until it has (i) requested and obtained a resale certificate signed by a representative of the Association pursuant to Section 207.03(b) of the Texas Property Code ("Resale Certificate"), indicating, in addition to the other matters described in Section 207.03(b) of the Texas Property Code, that: (A) all assessments (or installments thereof) and other charges against the Unit due and payable through the date of the certificate have been paid; and (B) there are no violations of the Governing Documents of which the Board has actual knowledge that have not either been cured or waived in writing by the Association.

The Association shall deliver a Resale Certificate, along with a current copy of the Governing Documents, within 10 days after the Association's receipt of written request from an Owner or Owner's agent, or a title insurance company or its agent acting on behalf of the Owner. If the Resale Certificate indicates that there are known conditions on the Unit which violate the Governing Documents, or that there are amounts due and unpaid to the Association on account of the Unit, the Owner shall cure any such violations and pay any such unpaid amounts prior to transfer of title and, upon doing so, may request an update to the Resale Certificate to reflect such action.

The Association may charge a reasonable fee to assemble, copy, and deliver copies of the Governing Documents and the Resale Certificate and to prepare and deliver any update to a Resale Certificate. In addition, upon acceptance of title to a Unit, the new Owner of the Unit shall pay to the Association an administrative transfer fee to cover the administrative expenses associated with updating the Association's records. Such fee shall be in such amount as the Board may reasonably determine necessary to cover its costs, including, but not limited to, any fees charged by a management company retained by the Association for updating its records, except that no such fees shall be charged upon the conveyance of a Unit by the Founder or a Builder prior to the first occupancy of a dwelling on the Unit.

(d) *Subdivision and Combination of Units.* No Person other than the Founder shall subdivide or change the boundary lines of any Unit or combine Units without the Founder's prior written approval during the Development and Sale Period and the Board's prior written approval thereafter. Any subdivision shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). Unless a revised or amended plat reflecting a boundary change has been approved and recorded pursuant to this subsection, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling; therefore, the Owner of such adjacent Units shall be responsible for separate assessments for each such Unit.

(e) *Timesharing.* No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

## 7.2. Rulemaking Authority and Procedures.

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Members are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

(a) *Founder Authority.* So long as the Founder has the right unilaterally to amend this Charter pursuant to Section 20.2, the Founder may unilaterally amend Exhibit "C" to add new Rules or to modify or rescind existing Rules.

(b) *Board Authority.* Subject to the notice requirements in subsection (d) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting. However, during the Development and Sale Period, any such action shall also be subject to the Founder's approval.

(c) *Membership Authority.* Subject to the notice requirements in subsection (d), the Members entitled to cast a majority of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, during the Development and Sale Period, any such action shall also be subject to the Founder's approval.

(d) *Notice.* The Board shall send notice to all Owners or publish notice concerning any Rule change proposed under subsections (b) or (c) above at least five business days prior to the meeting of the Board or the Members at which such action is to be considered. At any such meeting, Members shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(e) *Effective Date.* A Rules change adopted under this Section 7.2 shall be reflected in an amendment to Exhibit "C" executed by the Founder or the Association, or both, as applicable, and recorded. Any such amendment shall take effect upon recording or 30 days after the date on which written notice of the Rules change is given to the Owners, whichever is later.

(f) *Administrative and Operating Policies.* The procedures set forth in this section do not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, safety regulations, or the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(f) *Conflicts.* No action taken under this Section 7.2 shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), the Charter shall control.



Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Founder, the Board, and the Members have the authority to adopt and modify rules as needed to address new or changing circumstances.

### 7.3. Protection of Owners and Others.

Except as may be set forth in this Charter (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) *Similar Treatment.* Similarly situated Units shall be treated similarly; however, the Rules may vary from one portion of the Community to another.

(b) *Displays.* No Rule shall prohibit an Owner or occupant from displaying political, religious, or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs. However, rules may prohibit signs containing profanity or derogatory or offensive language, graphics, or markings, as the Board may determine in its sole discretion, and the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

(c) *Household Composition.* No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

(d) *Activities Within Dwellings.* No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(e) *Allocation of Burdens and Benefits.* No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area set forth in this Charter to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article 12.

(f) *Leasing and Transfer of Units.* No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; however, the Rules may require a minimum lease term of up to 12 months. Minimum lease terms may vary from one portion of the Community to another. The Rules may also require that Owners use Board-approved lease forms (or include specific lease terms) and may impose a reasonable administrative fee in connection with the Board's review of a lease.

(g) *Abriding Existing Rights.* No Rule shall require that an Owner or occupant dispose of personal property kept in or on the Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.



(h) *Reasonable Rights to Develop.* No Rule may unreasonably interfere with the ability of the Founder, any Founder Affiliate, or Builder to develop, market, and sell property in Southwind.

(i) *Interference with Easements.* No Rule may unreasonably interfere with the exercise of any easement.

#### 7.4. Owners' Acknowledgment and Notice to Purchasers.

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

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## Article 8 Compliance and Enforcement

*The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them, and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This Article sets forth the obligation to comply and the remedies available to the Association for noncompliance.*

### 8.1. Compliance.

Every Owner, occupant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Article. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants of or visitors to their Units and for any damage to the Area of Common Responsibility that such occupants or visitors cause.

### 8.2. Remedies for Non-Compliance.

The Association, the Founder, any Founder Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

(a) *Sanctions Requiring Prior Notice and Hearing.* After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Association provides (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents or to bring any Unit into compliance with the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article 5 and the Design Guidelines from continuing or performing any further activities in Southwind;

(vii) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(viii) record a notice of violation with respect to any Unit on which a violation exists.

If, after notice and an opportunity for a hearing, the violation continues or recurs within 12 months after the date of such notice, the Board may impose any of the above sanctions without further notice or opportunity for another hearing.

**(b) Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;


(iii) require an Owner or an Additional Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Additional Association's property, respectively, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Additional Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) *Powers Relating to Additional Associations.* The Association also shall have the power to require specific action to be taken by any Additional Association in connection with its obligations and responsibilities under this Charter, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

An Additional Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Additional Association fails to comply, the Association shall have the right to effect such action on behalf of the Additional Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

 All Owners are required to abide by the Governing Documents. If an Owner fails or refuses to obey the Governing Documents, the Owner may be subject to various penalties including fines and the loss of the right to use the Common Areas.

### 8.3. Board Decision to Pursue Enforcement Action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

- (a) the Association's position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (d) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

### 8.4. Attorneys Fees and Costs.

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs reasonably incurred in such action.

### 8.5. Enforcement of Ordinances.

The Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, the City of Arlington may enforce its ordinances within Southwind.

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## Article 9 Property Management

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of Southwind. This Article establishes the Association's obligation to accept property that the Founder designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of Southwind.

### 9.1. Acceptance and Control of Association Property.

(a) *Transfers and Conveyances by Founder.* The Founder, its designees, or any Founder Affiliate, and with the Founder's written consent, any Builder, may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Founder's written request, the Association shall reconvey to the Founder, or any Founder Affiliate or Builder, any unimproved real property that the Founder originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

The Founder shall have the right to convey any property to the Association as Common Area subject to easements permitting persons who are not members of the Association to use and enjoy such Common Area upon payment to the Association of reasonable use fees.

The Founder may also transfer and assign to the Association any continuing obligations and responsibilities under development agreements or conditions of development approvals relating to the Community, including any obligation to post or maintain maintenance bonds on improvements within public rights-of-way or other portions of the Area of Common Responsibility. The Association shall accept, assume, and fulfill all such obligations and responsibilities as the Founder shall assign to it.

(b) *Management and Control.* The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

### 9.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

(a) the Common Area;

(b) community signage, entry features, monumentation, and landscaping installed by the Founder at entrances to the Community, whether located on Common Area or in public rights-of-way;

(c) decorative fencing or walls located on Common Area or within the fence or wall easements described in Section 13.6, and landscaping between such fencing or walls and the back-of-curb of the street within any adjacent public rights-of-way;

(d) stormwater detention and retention ponds and other stormwater drainage facilities serving more than one Unit or any Unit and the Common Area;

(e) any path or trail system installed by the Founder through utility or pipeline easements within or adjacent to the Community;

(f) such portions of any additional property as may be dictated by the Founder, this Charter, any Supplement, any Covenant to Share Cost recorded pursuant to Section 9.5, or any covenant or agreement for maintenance entered into by, or otherwise binding on, the Association; and

(g) any property and facilities that the Founder or any Founder Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. The Founder shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Founder or Founder Affiliate revokes such privilege of use and enjoyment by written notice to the Association.

The Founder or the Association may, but shall not be obligated to, install paths or trails through portions of the Community and within power and gas line easements running through or adjacent to the Community. In some cases, such paths or trails may be comprised of concrete or other hard surface materials. In other cases, such paths or trails may have no finished surface or may be comprised of pervious material such as crushed rock. All paths and trails may not be built to the same standard and neither the Founder nor the Association shall have any duty to improve or maintain all paths and trails to the same standard.

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, or property owned or maintained by an Additional Association, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

### 9.3. Discontinuation of Operation.

The Association shall maintain the Common Area facilities in operation during such regular or seasonal operating hours as the Board may adopt, unless the Founder, during the Development and Sale Period, and Members entitled to cast 75% of the total votes in the Association, consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall also require the approval in writing of at least 75% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Common Area is assigned. This Section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to restrict temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

### 9.4. Restoring Damaged Improvements.


In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property

to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements unless:

- (a) this Charter is terminated pursuant to Section 20.1;
- (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety;
- (c) the Founder, during the Development and Sale Period, and Members entitled to cast at least 67% of the total votes in the Association, or in the case of a Limited Common Area, Owners of at least 67% of the Units to which the Limited Common Area is assigned, vote within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. Except as provided above, no Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

 This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible not to repair or rebuild if the Owners who benefit from the Common Area prefer not to rebuild.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The insurance proceeds attributable to any Units or Limited Common Areas that are not rebuilt shall be distributed to the Owners of the damaged Units or the Units to which such Limited Common Areas were assigned, or to their respective lienholders, as their interests may appear, in proportion to their relative liability for Association expenses. The Association shall retain and place in a capital improvements account for the benefit of all Owners, or the Owners of Units to which such Limited Common Areas were assigned, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the membership, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

**9.5. Relationships with Other Properties.**

The Founder may prepare, execute, and record a document creating a covenant to share costs by which the Owners of Units in Southwind and the owners of some or all of the properties located between Southwind and State Highway No. 360 ("Commercial Properties"), will be obligated to share costs of maintaining the right-of-way and median landscaping and specified open space, if any, lying within and/or on either side of the right-of-way of the public street providing access between the Community and State Highway No. 360 ("Covenant to Share Costs." The Covenant to Share Costs may obligate the Association to provide such

maintenance and other services to such property and may authorize the Association to collect a specified portion of the costs it incurs from the owners of the Commercial Properties or any owners association having jurisdiction over such Commercial Properties. In addition, the Association may contract with the owner of any neighboring property or recreational amenity to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

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## Article 10 Provision of Services

*In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This Article describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.*

### 10.1. Provision of Services to Units.

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Founder or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, community technology, utilities, fire protection, security, trash collection, landscape maintenance, pest control, and caretaker services.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Limited Common Expense pursuant to Article 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

### 10.2. Community Technology.

(a) *Community Systems.* The Founder may provide, or may enter into and assign to the Association or cause the Association to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, telephone, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Community Systems as the Founder determines appropriate.

The Association may enter into a bulk rate service agreement providing access to any such Community System for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a Specific Assessment pursuant to Article 12 and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

(b) *Opportunities for Community Interaction.* The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent Texas law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

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## Article 11 Association Insurance

*The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This Article describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.*

### 11.1. Required Coverages.

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "all risks of direct physical loss" on a replacement cost basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area; and

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for property damage or personal injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$5,000,000.00 per occurrence with respect to



bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage with a limit of at least \$1,000,000.00; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments (as defined in Section 12.2) on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Tarrant County, Texas area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

#### 11.2. Deductibles.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Limited Common Expense in the same manner as the premiums for the applicable insurance coverage under Section 11.4. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.



Persons who cause damage in Southwind may be held responsible for the insurance deductible payable on any insurance claim related to such damage.

#### 11.3. Policy Requirements.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Texas which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its members, except that policies on Limited Common Area shall be

for the benefit of the Owners of Units to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include a co-insurance waiver or an agreed amount endorsement, if the policy contains a co-insurance clause;


(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

(g) provide a waiver of subrogation against any Owner or household member of an Owner; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies that provide:

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

 Subrogation is a legal concept by which one person is substituted in the place of another with respect to a lawful claim or right. For example, once they have paid a claim by an insured party, insurance companies generally have the right to step into the shoes of the insured party and sue anyone that the insured party could have sued.

(b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

#### 11.4. Insurance Premiums.

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Limited Common Areas shall be levied as Limited Common Area Assessments pursuant to

Section 12.1(b) against the Units to which such Limited Common Area is assigned, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

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## Article 12 Association Finances

This Article provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this Article authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this Article.

### 12.1. Association Expenses.

(a) *Common Expenses.* Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, improvement, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "Common Expenses." Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Founder Control Period for initial development or original construction costs unless the Founder and Members entitled to cast a majority of the total votes in the Association approve such expenditure. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Charter, any Supplement, or any other recorded covenants or agreements.

(b) *Limited Common Expenses.* All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance and operation of Limited Common Areas, including any operating reserve or reserve for repair and replacement of capital items within such Limited Common Area, are considered "Limited Common Expenses" and shall be assessed against the Units to which the Limited Common Area is assigned as a Limited Common Area Assessment pursuant to Section 12.2.

### 12.2. Budgeting for and Allocating Association Expenses.

(a) *Preparation of Budget.* At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Limited Common Area reflecting the estimated Area Limited Common Expenses that the Association expects to incur for that Limited Common Area in the coming year.

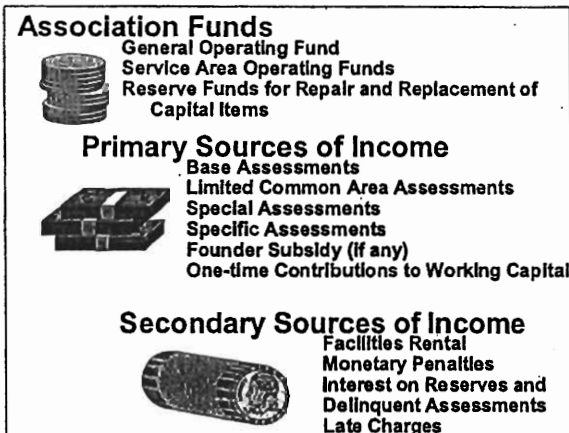
The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Limited Common Expense, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected

useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units (including any Covenant to Share Costs established pursuant to Section 9.5), and the amount to be generated through the levy of Base Assessments and Limited Common Area Assessments pursuant to subsections (b) and (c).

(b) *Calculation of Base Assessments.* The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be allocated among all Units subject to assessment under Section 12.5 and levied as a "Base Assessment." Base Assessments shall be levied at a uniform rate per Unit subject to assessment under Section 12.5, except that Units which the Founder owns shall not be assessed any portion of the Base Assessment levied to fund contributions to reserve funds and shall not be assessed at all during any period that the Founder has elected to fund deficits pursuant to Section 12.6(b).

The Founder may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Founder under Section 12.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Founder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Founder.



(c) *Calculation of Limited Common Area Assessments.* The total Limited Common Expenses budgeted for each Limited Common Area, less any surplus in such budget from prior years, shall be allocated among all Units to which the Limited Common Area is assigned that are subject to assessment under Section 12.5 and levied as a "Limited Common Area Assessment." Except as otherwise specified in Sections 12.5 and 12.6(b) or in any Supplement applicable to a such Units, Limited Common Area Assessments shall be set at a uniform rate per Unit. A supplement may provide that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All funds that the Association collects as Limited Common Area Assessments shall be accounted for separate from the Association's general funds and shall be expended solely for the benefit of the Limited Common Area for which they were collected.

(d) *Notice of Budget and Assessment; Right to Disapprove.* Within 30 days after the Board adopts any budget, the Board shall send a summary of the budget, together with notice of the amount of the Base Assessment or any Limited Common Area Assessment to be levied pursuant to such budget, to the Owner of each Unit responsible for a share of the expenses covered by such budget. The Common Expense budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total votes in the Association and by the Founder, during the Development and Sale Period. Each Limited Common Area budget shall automatically become effective unless disapproved at a meeting by Owners of at least 75% of the Units to which the Limited Common Area is assigned and by the Founder, during the Development and Sale Period. There shall be no obligation to call a meeting to consider the budget except on petition of the membership for a special meeting pursuant to the By-Laws.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is ratified.

(e) *Budget Revisions.* The Board may revise the budget and adjust the Base Assessment or Limited Common Area Assessments any time during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (d) above.

(f) *Surplus Funds.* Any surplus funds of the Association remaining after payment of or provision for all Association expenses and any prepayment of or provision for reserves shall be taken into account in the income portion of the budget pursuant to which the funds were collected, in order to reduce the assessments that would otherwise be levied pursuant to that budget in the succeeding year.

### 12.3. Special Assessments.

The Association may levy "Special Assessments" to cover Common Expenses or Limited Common Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Charter, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units. Any Special Assessment for Limited Common Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units to which the Limited Common Area is assigned and shall be allocated in the same manner as Limited Common Area Assessments under Section 12.1(c). In addition, during the Development and Sale Period, any Special Assessment shall also be subject to the Founder's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

### 12.4. Specific Assessments.

The Association may levy "Specific Assessments" against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior writ-

ten notice and an opportunity for a hearing in accordance with the By-Laws before levying any Specific Assessment under this subsection (b); and

(c) to cover any deductible assessed against the Owner of Unit pursuant to Section 11.2; and

(d) to cover any other amounts that the Governing Documents authorize the Association to charge to a particular Owner or levy against any particular Unit.

#### 12.5. Authority to Assess Owners; Time of Payment.

The Founder hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. Except as otherwise provided in Section 12.2 and Section 12.6 with respect to Units owned by the Founder, the obligation to pay assessments shall commence as to each Unit as of the date on which the Unit is made subject to this Charter. The Base Assessment and Limited Common Area Assessment, if any, levied on each Unit for the year in which the Unit is made subject to this Charter shall be prorated as of such date.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Limited Common Area Assessment shall be due and payable in advance on the first day of each fiscal year.

If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

#### 12.6. Obligation for Assessments.

(a) *Personal Obligation.* By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents which are levied by the Association. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Texas law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Limited Common Area Assessments at the rate of assessment established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.



By acquiring a Unit in Southwind each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, the Owner will be charged late fees and interest on all past due amounts. Owners may not reduce their assessments because of any action or inaction by the Association.

(b) *Founder's Financial Obligations to Association.* Subject to Section 12.2, the Founder shall be liable for assessments on any Units it owns that are subject to assessment under this section, except that during the Development and Sale Period, the Founder may satisfy its obligation to pay Base Assessments, Limited Common Area Assessments and Special Assessments for Common Expenses on Units it owns either (i) by paying such assessments (exclusive of any portion levied to fund contributions to reserve funds) in the same manner as any other Owner, or (ii) by paying any shortfall in actual expenses (excluding contributions to reserve funds) under the applicable budget resulting from events other than failure of other Owners to pay their assessments, the amount of any such shortfall to be determined after allocating to reserves that portion of the assessments actually collected from other Owners for purposes of funding reserve accounts.

Regardless of the Founder's election under this section, any of the Founder's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

(c) *Assessment Statement.* Within seven days after receipt of a written request from any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Association's registered agent or designee, the Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Unit, the amount of current periodic assessments and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered personally or by certified mail, first-class postage prepaid, return receipt requested, or by such other means as may be stated in the request.

The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Association as to Persons who rely thereon in good faith.

#### 12.7. Lien for Assessments.

(a) *Existence of Lien.* The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Texas law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (i) liens and encumbrances recorded prior to this Charter and which the Association has assumed or taken subject to; (ii) the liens of all real estate taxes and other governmental assessments or charges, and (iii) the lien or charge of any Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit and recorded prior to the assessment becoming delinquent.

The Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended, in like manner of any deed of trust on real property. Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the

Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended.



In order to secure the obligation of each Owner to pay its share of Association expenses, the Association has a lien against each Unit. If an Owner does not pay his or her assessments on time, the Association may foreclose the lien on such Owner's Unit, causing it to be sold to pay the past due assessments. The Association may also sue an Owner in court to recover past due assessments.

(b) *Enforcement of Lien.* The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit, subject to the Owner's right of redemption, if any, under Texas law. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) *Effect of Sale or Transfer.* Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage having priority over the Association's lien pursuant to Section 12.7(a) shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

#### 12.8. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Limited Common Area Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Founder or a Founder Affiliate as are included in the Area of Common Responsibility; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by any Additional Association for the common use and enjoyment of its members, or owned by the members of an Additional Association as tenants-in-common.

In addition, the Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Charter for purposes listed in Section 501(c) of the Internal Revenue Code.

#### 12.9. Capitalization of Association.

The first Owner of each Unit other than the Founder, a Founder Affiliate, or a Builder designated by the Founder, shall pay to the Association, immediately upon taking title to the Unit, a contribution to the working capital of the Association in the amount of \$175, for use in funding initial start-up expenses, operating expenses, and other expenses the Association incurs pursuant to this Charter and the By-Laws, and, to



the extent not required to fund expenses, for helping to fund operating or other reserves. These amounts shall be one-time payments in addition to, not in lieu of, the annual Base Assessment levied on the Unit and shall not be considered an advance payment of such assessments.

#### 12.10. Use and Consumption Fees.

The Board may charge use, consumption, or activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

#### 12.11 Community Enhancement Fee

(a) *Authority.* As an additional funding source, the Board may establish and collect a Community Enhancement Fee upon each transfer of title to a Unit. The fee shall be charged to the seller of the Unit, shall be payable to the Association at the closing of the transfer, shall constitute an assessment against the Unit being transferred, and shall be secured by the Association's lien for assessments under Section 12.7. Each Owner shall notify the Association's Secretary or designee at least seven days prior to the scheduled closing and provide the name of the buyer, the date of title transfer, and other information the Board may reasonably require.

(b) *Fee Determination.* The Board shall have the sole discretion to determine the amount of and method of calculating the Community Enhancement Fee. The fee may be based upon a sliding scale that varies in accordance with the "gross sales price" of the property or any other factor the Board deems appropriate. However, the Community Enhancement Fee may not exceed one-quarter of one percent (0.25%) of the Unit's gross selling price, or in the case of a transfer other than a sale at fair market value, one-quarter of one percent (0.25%) of the appraised value of the real property being transferred, as determined by the Tarrant County Appraisal District for real estate ad valorem tax purposes. The "gross sales price," for purposes of this section, shall mean the total amount paid by the purchaser for the real property, excluding customary closing costs.

(c) *Purpose.* The Community Enhancement Fees shall be accounted for separately from the Association's operating and reserve funds and shall be used to provide funding for such activities and other purposes as the Board, or a committee that it appoints, deems beneficial to the general good and welfare of Southwind, aside from those matters which are the Association's responsibility under the Governing Documents. For example, Community Enhancement Fees might be used to sponsor or fund, or to assist one or more tax-exempt entities in sponsoring or funding:

- (i) cultural, artistic, and educational programs, festivals, and holiday celebrations and activities;
- (ii) listings of community services for the benefit of residents of Southwind and the surrounding community (e.g., caretaker services, childcare, personal shopping services, etc.);
- (iii) computer Internet or intranet sites and community-wide video and technology;
- (iv) learning centers and computer centers;
- (v) charter clubs and other volunteer organizations and activities;
- (vi) recycling programs;

- (vii) recreational leagues;
- (viii) social services, educational programs, community outreach programs, and other charitable causes;
- (ix) the preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas and sponsorship of educational programs and activities that contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding Southwind;
- (x) other programs and activities which enhance the welfare, benefit, and lifestyle of residents within and outside of Southwind;

Such Community Enhancement Fees shall not be used to engage in any political activity, including lobbying or protesting.

(d) *Exempt Transfers.* Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to a Unit:

- (i) by or to the Founder;
- (ii) by a Builder designated by the Founder who held title solely for purposes of development and resale;
- (iii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;
- (iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due;
- (vi) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage; or
- (vii) under circumstances which the Board, in its discretion, deems to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes may be, but is not required to be, deemed exempt from payment of the Community Enhancement Fee).

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## Article 13 Easements

*The easements created in this Article establish the rights of Owners to use the Common Area and create various rights for the benefit of owners, the Founder, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property. Others relate to the rights of the Association to come upon property of others to fulfill its responsibilities.*

### 13.1. Easements in Common Area.

The Founder grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area," if any;
- (d) the Board's right to:
  - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
  - (ii) suspend an Owner's right to use Common Area facilities;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Charter;
  - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
  - (v) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
  - (vi) permit use of any recreational facilities situated on the Common Area by persons who do not own property subject to this Charter or reside in the Community, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and
  - (vii) permit any Person to use Common Areas, at such charge or no charge as the Board may determine, for the purpose of offering and conducting classes or similar activities for the benefit of interested Owners and residents and such other individuals as the Board may specify, whether offered on a fee basis for profit or otherwise;
  - (viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- (e) the right of the Founder and its designees to use the Common Area pursuant to Section 17.2.


Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her entire Unit (as opposed to leasing only a garage apartment, in-law suite, or guest house authorized pursuant to Section 7.1(b)) shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.



An easement is one person's right to go onto or do something on the property of another.

### 13.2. Easements of Encroachment.

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

 An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, unintentional encroachments to remain.

### 13.3. Easements for Utilities, Etc.

(a) *Installation and Maintenance.* The Founder reserves for itself, its successors, assigns, and designees, perpetual exclusive easements throughout Southwind (but not through a structure) for the purpose of:

(i) installing utilities and infrastructure, Community Systems, security and similar systems, and drainage systems to serve Southwind;

(ii) installing walkways, pathways and trails, street lights, and signage on property the Founder or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspecting, maintaining, repairing, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access to read, maintain, and repair utility meters.

Notwithstanding the above, the Founder reserves the right to deny access to any utility or service provider, to the extent permitted by law, and to condition such access on negotiated terms.

(b) *Specific Easements.* The Founder also reserves the non-exclusive right and power to grant and record such specific easements, consistent with Section 13.3(a), as it deems necessary or appropriate to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) *Minimal Interference.* All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

#### 13.4. Easements to Serve Additional Property.

The Founder reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Charter. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property which is not submitted to this Charter, the Founder, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

#### 13.5. Easements for Maintenance, Emergency, and Enforcement.

By this Charter, the Founder grants to the Association easements over Southwind as necessary to enable the Association to perform maintenance under Section 9.2 and exercise its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.



The Association may come onto a Unit to perform maintenance or to address violations of the covenants but will give prior notice unless there is an urgent need to enter the property.

#### 13.6. Easement for Fence and Landscape Maintenance.

The Founder, a Builder, or the Association may construct and install decorative fencing or walls and landscaping along public thoroughfares adjacent to or running through the Community to enhance the overall aesthetics of the Community. Such fencing, walls, and landscaping may be installed within public rights-of-way, on Common Area, or in easements established over Units that are situated adjacent to such thoroughfares or separated from such thoroughfares only by Common Area. The Founder reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement over each Unit which lies adjacent to a public thoroughfare, or which is separated from such thoroughfare only by Common Area, for purposes of installation, maintenance, repair and replacement of decorative fencing and landscaping within a strip of land 20 feet wide, as measured from the back of the nearest curb of such public thoroughfare, and running parallel to such curb. Nothing in this Section shall obligate the Founder, the Association, or any Builder to install decorative fencing, walls, or landscaping, the installation of such items being in the sole discretion of the Founder and the Association.

#### 13.7. Easements for Pond Maintenance and Flood Water.

The Founder reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of detention ponds or other bodies of water and wetlands within

Southwind, in order to perform such maintenance and repair as the Board may deem appropriate, which may include removing dead or diseased trees, shrubs, and plants; and taking action to control any condition or remove any thing that constitutes a potential health or safety hazard. All persons entitled to exercise this easement shall use reasonable care in and repair any damage resulting from the intentional exercise of such easement. Nothing in this Section shall be construed to make the Founder or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.



The Founder and the Association have the right to access property adjacent to ponds, streams and wetlands for maintenance purposes.

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## Article 14 Disclosures and Waivers

*This Article discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this Article.*

### 14.1. Public Access.

Most, if not all, of the streets within Southwind are public streets and, as a result, the general public may be able to gain access to Common Areas, including but not limited to parks and trails. The Association may, but shall have no obligation to, control such access or police the Common Areas to identify and eject unauthorized persons.

### 14.2. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Southwind. The Association may, but shall not be obligated to, maintain or support certain activities within Southwind designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Association, the Founder, and Founder Affiliate shall not in any way be considered insurers or guarantors of safety or security within Southwind, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to Southwind, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit that the Association, its Board and committees, and the Founder and Founder Affiliates are not insurers or guarantors of security or safety and has no duty to warn of potential risks or threats, and that each Person within Southwind assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

#### **14.3. Changes in Development Plan.**

Each Owner acknowledges that Southwind is a planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Additional Association shall engage in, or use Association funds to support, any protest, challenge, or other form of objection to changes in uses or density of property within Southwind, or changes in the Development Plan as it relates to property outside Southwind, without the Founder's prior written consent.

#### **14.4. View Impairment.**

Neither the Founder, any Founder Affiliate, nor the Association, guarantee or represent that any view over and across the Units, Common Areas, or open space within the Community, will be preserved without impairment. The Founder, Founder Affiliates, and the Association shall have no obligation to relocate, prune, or thin trees or shrubs on the Common Area. The Association shall have the right to add trees and other landscaping to the Common Area. There shall be no express or implied easements for view purposes or for the passage of light and air.

#### **14.5. Notices and Disclaimers as to Community Systems and Services.**

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Founder, Founder Affiliates, Association, and their respective successors or assigns, shall not be liable for, and shall not be obligated to refund, rebate, discount, or offset any applicable fees as a result of any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

The Owner of each Unit shall be responsible for ensuring that the dwelling on such Unit is pre-wired to connect to any Community System installed by or at the request of the Founder pursuant to Section 17.7. If such wiring is installed by a party other than the provider of the Community System, the Owner shall contact the provider of the Community System upon completion of such installation and arrange for the provider of the Community System to inspect the wiring to ensure compatibility with the Community System. If authorized by the Founder, the provider of the Community System may charge the Owner of the Unit a reasonable fee for such inspection. If it is determined that the wiring is not compatible, the Owner of the Unit shall promptly arrange for such wiring to be replaced with wiring that is compatible with the Community System.

#### **14.6. Radio and Telecommunication Towers.**

Every Owner and occupant of a Unit is hereby advised that radio and telecommunication towers and related equipment may now or hereafter be located within or in the vicinity of Southwind. The Founder, any Founder Affiliate, Builders, the Association, and their respective members, partners, affiliates, officers, directors, agents, and employees, shall not be liable for any damage or injury to any Person or any property arising out of or related to the construction, installation, maintenance, or operation of, or proximity to, radio or telecommunication towers, or any such towers that may now or hereafter be located in or in the vicinity of Southwind.

#### **14.7. Stormwater Facilities.**

Some Units are located adjacent to Common Area containing ponds or stormwater retention facilities that may from time to time contain water. Owners and occupants of such Units have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear, or

otherwise disturb vegetation within natural areas located within the Common Area between the boundary of the Unit and the water's edge, or within the nondisturbance buffer on any Unit.

#### 14.8. Use of Nonpotable Water for Irrigation.

Each Owner and occupant of a Unit, and their respective guests and invitees, are hereby advised that the water used to irrigate property within or adjacent to Southwind may be treated effluent, re-use water or "gray water." Although such water is considered safe for irrigation and limited contact, it is not suitable for human or animal consumption and should not be used for drinking, bathing, swimming, or any purpose other than irrigation.

#### 14.9. Natural Conditions.

The Community contains a number of manmade, natural and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including insects, venomous and non-venomous snakes, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and occupant of any Unit, and every person entering the Community (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or through the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community. Neither the Association, the Founder, any Builder, nor the members, partners, affiliates, officers, directors, agents or employees of any of them, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement or propagation of any plant or wildlife within or through the Community.

The natural areas described in this Section may also contain creeks, ponds, or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Unit shall enter upon, or permit their guests or any other person acting on their behalf to enter upon or disturb, such areas in any way without the Association's or the Founder's prior written approval.

#### 14.10. Utility Easements.

Portions of the Community may be subject to easements for power transmission lines and natural gas pipelines. The Association shall have no responsibility for providing maintenance to such areas or improving them to the Community-Wide Standard.

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## Article 15 Rights of Lenders

*In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this Article sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.*



The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in Southwind.

#### 15.1. Notices of Action.

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

(a) Any condemnation loss or any casualty loss which affects a material portion of Southwind or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

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

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

#### 15.2. No Priority.

No provision of this Charter or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

#### 15.3. Notice to Association.

Upon request, each Owner shall furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

#### 15.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

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## Article 16 Expansion of the Community

*It is not practical to develop, market and sell a community the projected size of Southwind all at one time. Therefore, the Founder intends to develop the Community in phases to meet demand. This Article establishes procedures by which the Founder and the Association may expand the Community.*

#### 16.1. Expansion by Founder.

The Founder may, from time to time, submit to the terms of this Charter all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

The Founder's right to expand Southwind under this section expires when all property described in Exhibit "B" has been submitted to this Charter or 40 years after this Charter is recorded, whichever is earlier. Until then, the Founder may transfer or assign this right to any Founder Affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Founder.

Nothing in this Charter shall require the Founder or any successor to submit additional property to this Charter or to develop any of the property described in Exhibit "B" in any manner whatsoever. The Founder may submit different parcels of property to this Charter at different times. The Founder gives no assurances as to the boundaries of the parcels that may be submitted to this Charter, or as to the order in which the Founder may submit different parcels of property to this Charter, as to whether buildings erected on any additional property submitted to this Charter will be compatible with other buildings in the Community in terms of architectural style, quality of construction, principal materials employed in construction, or size.

#### 16.2. Expansion by the Association.

The Association also may submit additional property to this Charter by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Members entitled to cast more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Founder's consent is required. The Association's President and Secretary, the owner of the property, and the Founder, if the Founder's consent is required, shall sign the Supplement.

#### 16.3. Additional Covenants and Easements.

Any Supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a separate Supplement applicable to property previously submitted to this Charter. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

#### 16.4. Effect of Filing a Supplement.

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Charter shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Charter.

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## Article 17

### Additional Rights Reserved to the Founder

*This Article reserves various rights to the Founder, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Founder's development and sale of property in the Community, to enable the Founder to respond to Owners' concerns, and to protect various property rights and other interests of the Founder.*

#### 17.1. Special Development Rights.

In addition the rights specifically reserved to the Founder under Article 16 with respect to expanding the Community, the Founder reserves the right, during the Development and Sale Period, to:

(a) create Units, Common Areas, and Limited Common Areas, and to designate roadways, within any portion of the Community which it owns;

(a) subdivide or combine any Unit or Units which it owns in order to create larger or additional Units, Common Areas, and/or Limited Common Areas;

(b) convert any Unit which it owns into Common Area, Limited Common Area, or roadways;

(c) adjust the boundaries of any Units that it owns and any Common Area or Limited Common Area; and

(d) amend this Charter or any Supplement to withdraw property from the Community and the coverage of this Charter, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association shall consent to such withdrawal.

#### 17.2. Marketing and Sales Activities.

Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Founder and its designees or assigns may construct, use, and maintain such facilities and conduct such activities upon portions of the Common Area and other property they own as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, parking facilities, exterior lighting features or displays, and special events. Founder and authorized Builders whom the Founder may designate shall have easements for access to and use of such facilities at no charge. Such right shall specifically include the right of the Founder and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge and to restrict use or access to such facilities by the Association, its members and others as long as they are being used for any such purpose. There shall be no limit on the number or location of such facilities, except as otherwise restricted by state law or local ordinance or regulations.

#### 17.3. Access for Development Purposes.

During the Development and Sale Period, the Founder and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area and roadways within the Community for the purpose of:

(a) exercising any rights reserved to the Founder pursuant to this Charter, including the rights set forth in Sections 17.1 and 17.2; and

(b) making, constructing, and installing any improvements indicated on recorded subdivision maps or plats of the Community and such other improvements to the Common Area and to the Exhibit "B" property as it deems appropriate; and

(c) making repairs or correcting any condition on the Common Area or any Unit.

#### 17.4. Right to Approve Changes in Community Standards.

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Founder.

#### 17.5. Additional Covenants and Restrictions.

During the Development and Sale Period, no one other than the Founder or a Founder Affiliate may record any additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

#### 17.6. Exclusive Rights to Use Name of Development.

No Person other than the Founder or a Founder Affiliate shall use the name "Southwind" or any derivative of such name or in any logo or depiction associated with Southwind in any printed or promotional material or on any Internet website without the Founder's prior written consent. However, Owners may use the name "Southwind" in printed or promotional matter where such term is used solely to specify that particular property is located within Southwind, and the Association shall be entitled to use the word "Southwind" in its name.

#### 17.7. Community Systems.

The Founder reserves for itself, Founder Affiliates, and their respective successors and assigns, a perpetual right and easement over all of the property in Southwind to install and operate such Community Systems as the Founder, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the area. The Founder also has the right to charge or authorize any provider to charge individual users a reasonable fee, not to exceed the maximum allowable charge for such service, as defined from time to time by the laws, rules, and regulations of any government authority having jurisdiction.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

#### 17.8. Easement to Inspect and Right to Correct.

The Founder reserves for itself, Builders, and others it may designate, the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Southwind, including Units, and a perpetual nonexclusive easement of access throughout Southwind to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall

promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.



The Founder, or someone it designates, may enter any Owner's property to inspect and correct problems with the Unit. The Founder must give the Owner of the Unit prior notice, unless it is an emergency.

#### **17.9. Right to Notice of Design or Construction Claims.**

Neither the Association, any Owner, or any other Person shall initiate the dispute resolution procedures under Article 18, nor retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Southwind in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction, including any claim for breach of contract or warranty or violation of statutory or common law requirements, unless the Founder has been first notified in writing, by certified mail, and given an opportunity to meet with the Association and the Owner of any affected Unit to discuss the concerns, conduct its own inspection, and take action to remedy any problem in accordance with this Section. Any notice to the Founder under this Section shall include a description of the nature and location of the alleged defect in design or construction ("Defect"), a description of any damage suffered as the result of the Defect, the date on which the Defect was discovered, and dates and times during ordinary business hours that the Founder may meet with the Owner of the affected Unit or a representative of the Association to conduct an inspection.

Nothing in this Section obligates the Founder to inspect, repair, replace, or cure any Defect. However, if the Founder elects to repair any Defect, it will so notify the Association (if the Defect involves Common Area) or the Owner of the affected Unit (if the Defect is in a Unit) within 30 days after conducting such inspection and the Association or Owner shall permit the Founder, its contractors, subcontractors, and agents access as needed during ordinary business hours to make such repairs which, once begun, shall be completed within a reasonable time, subject to the nature of the repair and unforeseen circumstances and events. All applicable statutes of limitations shall be tolled during the period of inspection and cure under this Section, not to exceed the earlier of (i) 120 days after the date the Founder receives written notice of the Defect in accordance with this Section; or (ii) Founder's delivery to the claimant of written notice that the Founder does not intend to take any further action to remedy the Defect.

Any dispute as to the adequacy of the proposed repairs to resolve the problem or as to whether repairs that the Founder, its contractors, or subcontractors have performed have remedied the Defect, the Founder may appoint a third-party inspector who is knowledgeable and experienced in residential home construction to inspect the Defect and make a determination as to whether any proposed solution is adequate or as to whether the Defect has been remedied. The Association, the Founder, and the Owner of any affected Unit agree to accept and abide by the decision of the inspector.

If the Association or any Owner fails to comply with this Section, the Founder shall not be liable for any general, special, or consequential damages, costs, or diminution in value that might have been avoided had the Founder been given the notice and opportunity to repair described in this Section.

#### **17.10. Right to Transfer or Assign the Founder's Rights.**

The Founder may transfer any or all of the Founder's special rights and obligations set forth in this Charter or the By-Laws in whole or in part, temporarily or permanently, to other Persons. However, such a transfer shall not reduce an obligation or enlarge a right beyond that which Founder has under this Charter or the By-Laws. No transfer or assignment of the Founder's status as the Founder or as the Founder mem-

ber shall be effective unless it is in a recorded instrument which the Founder has signed. The Founder may permit other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in this Charter where the Founder does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless desired to evidence the Founder's consent to such exercise.

#### 17.11. Termination of Rights.

Except as otherwise specified above, the rights reserved to the Founder in this Article shall terminate on the earlier of (a) termination of the Development and Sale Period; or (b) the Founder's recording of a written statement that all sales activity has ceased.

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## Article 18 Dispute Resolution and Limitation on Litigation

*From time to time, disputes may arise between owners or between an owner and the Association, the Founder or others involved in the Community. This Article commits the parties to any such a dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.*

#### 18.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) *Bound Parties.* The Founder, the Association and its officers, directors, and committee members, all Owners and other Persons subject to this Charter, and any Person not otherwise subject to this Charter who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

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

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article 5, which shall not be subject to review.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Charter (relating to creation and maintenance of community standards);
- (iii) any suit that does not include the Founder, a Founder Affiliate, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 18.2;
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article; and
- (vi) any suit by the Association to enforce the Governing Documents where the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Association filing suit.

#### 18.2. Dispute Resolution Procedures.

(a) *Notice.* The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) *Negotiation.* The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

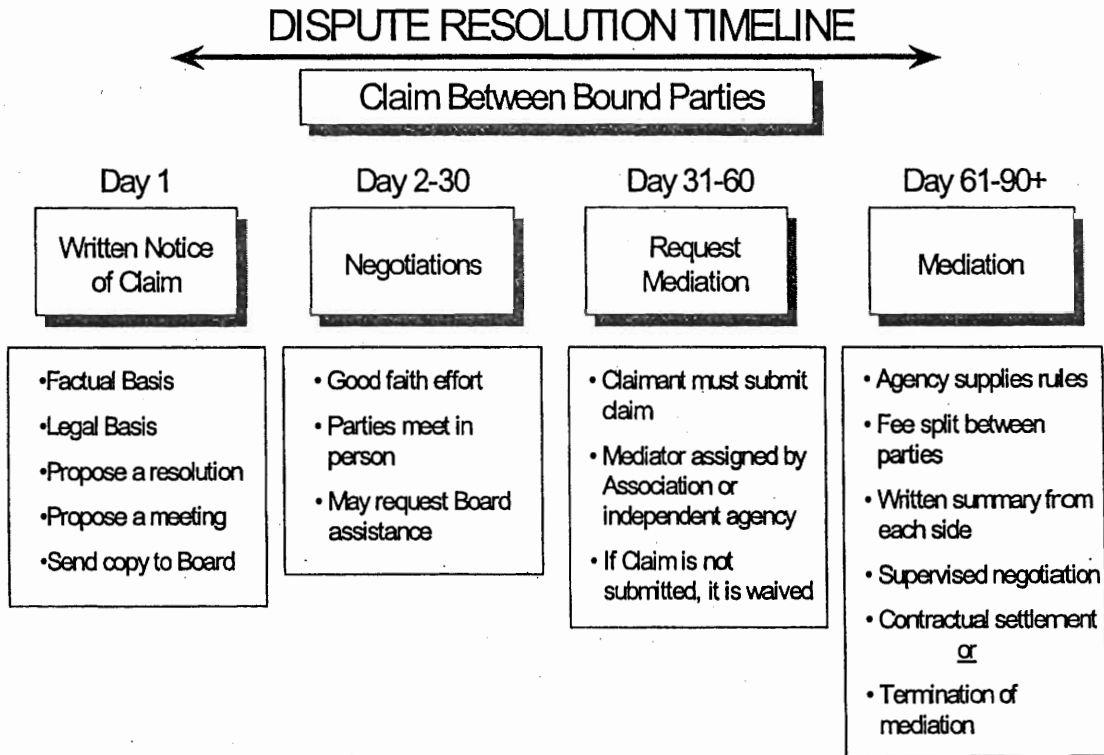
(c) *Mediation.* If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the metropolitan Dallas - Ft. Worth, Texas area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, except as otherwise provided in Section 18.3.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement,



then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.



### 18.3. Initiation of Litigation by Association.

(a) *Membership Approval.* In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Members entitled to cast at least 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

- (i) initiated during the Founder Control Period;
- (ii) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens;
- (iii) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (iv) initiated against any contractor, vendor, or supplier of goods or services, other than the Founder or a Builder, arising out of a contract for services or supplies; or
- (v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This subsection (a) shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

(b) *Mandatory and Binding Arbitration.* Notwithstanding any other provision of this Charter, any Claim by the Association or any Owner or group of Owners arising out of alleged defects in the Common Areas or other portions of the Area of Common Responsibility that is not resolved by mediation shall be submitted to final and binding arbitration in accordance with the is subsection (b). The Claimant shall have 30 days following termination of mediation pursuant to 18.2(c) to submit the Claim to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, or the Claim shall be deemed abandoned and the Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; however, nothing in this section shall release or discharge the Respondent from any liability to Persons not a Party to the foregoing proceedings. Unless the parties agree otherwise, there shall be one arbitrator. The arbitrator may grant any remedy or relief that the arbitrator considers just and equitable. The decision of the arbitrator shall be final, and judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

Each Owner, by accepting a deed to a Unit, waives any right to have a Claim within the scope of this subsection (b) resolved by judicial proceedings, including any right to trial by jury. This subsection (b) is an agreement of the Bound Parties to arbitrate the Claims described in this subsection and may be specifically enforced by any Bound Party. The Bound Parties acknowledge that any Claim subject to this subsection (b) involves a transaction in interstate commerce and shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §1, et seq., to the exclusion of any inconsistent state law, regulation or judicial decision.

If any party commences litigation in violation of this Section, then upon the other party's written objection, the party commencing litigation shall immediately stipulate to the dismissal of that litigation without prejudice. If the party commencing the litigation fails to make that stipulation within five days after the filing of such written objection, that party shall reimburse the other parties for their costs and expenses, in

cluding reasonable attorneys' fees, incurred in seeking a dismissal or stay of that litigation if such dismissal or stay is obtained.

(c) *Good Faith; Fees.* The parties shall participate in good faith in all mediation and arbitration proceedings. The venue of the mediation or arbitration proceeding shall be determined by the mediator or arbitrator, as the case may be. The fees and expenses of the mediation or arbitration proceeding (including the fee of the mediator and arbitrator) shall be shared equally by the parties. Each party shall pay its own expenses (including without limitation attorneys' fees and costs and expenses of preparation and presentation of proofs), except that the prevailing party in any arbitration proceeding shall be entitled to an award of reasonable attorneys' fees and costs.

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## Article 19

### Changes in the Common Area

*Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of, or rights to use, Common Area. This Article explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.*

#### 19.1. Assignment and Reassignment of Limited Common Area.

(a) *Assignment.* The Board may assign any portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and Members representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Founder's written consent.

(b) *Use by Others.* Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Limited Common Area Expenses attributable to such Limited Common Area.

#### 19.2. Condemnation.

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 19.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:



A public entity such as a town, county, or state has the power to condemn property for its own uses and generally has to pay the value of the property to do so.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in

the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Members entitled to cast at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring damaged improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 19.4.

### 19.3. Partition.

Except as permitted in this Charter, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter, with such approval as may be required under Section 19.4.



Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

### 19.4. Transfer, Mortgaging, or Dedication of Common Area.

The Association may transfer or dedicate portions of the Common Area to the City of Arlington, Tarrant County, Texas, any local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Members entitled to cast at least 67% of the total votes in the Association and, during the Development and Sale Period, the written consent of the Founder; or

(b) if Limited Common Area, upon written approval of Owners of at least 67% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines, unless otherwise directed by Members at the time such sale or mortgage is authorized pursuant to Section 19.4(a). The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner directed by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized pursuant to Section 19.4(b).

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

\*\*\*

## Article 20

### Termination and Amendment of Community Charter

*As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This Article sets out procedures by which either the Founder or the Owners as a group may amend this Charter to address such changes.*

#### 20.1. Term and Termination.



There is an old concept of law known as the "Rule Against Perpetuities" that restricts how long covenants can affect the title to land. Many jurisdictions no longer observe such rule; however, where the rule applies, the term of the covenants cannot exceed 21 years after the death of a named person who is living at the time the covenants are recorded.

This Charter shall be effective for a minimum of 21 years from the date it is recorded. After 21 years, this Charter shall be renewed and extended automatically for successive 10-year periods unless at least 67% of the then Owners sign a document stating that the Community Charter is terminated and that document is recorded within the year before any extension. In such case, this Charter shall terminate on the date specified in the termination document.

If any provision of this Charter would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This section shall not permit termination of any easement created in this Charter without the consent of the holder of such easement.

#### 20.2. Amendment.

(a) *By the Founder.* In addition to the specific amendment rights granted elsewhere in this Charter, during the Founder Control Period, the Founder may unilaterally amend this Charter for any purpose.

(b) *By Owners.* Except as otherwise specifically provided above or elsewhere in this Charter, this Charter may be amended only by the affirmative vote or written consent of Owners of not less than two-thirds of the Units or Members entitled to cast not less than 67% of the total votes in the Association. During the Development and Sale Period, the Founder's written consent shall also be required.

Any amendment pursuant to this Section shall be prepared, executed, certified and recorded on behalf of the Association by any officer designated for such purpose or, in the absence of such designation, by the Association's President.

(c) *Validity and Effective Date.* Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or the Founder Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Charter or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment.

No action to challenge the validity of an amendment may be brought more than two years after its recording. In no event shall a change of conditions or circumstances operate to amend any provisions of this Charter.

(d) *Exhibits.* Exhibits "A" and "B" are incorporated by this reference and this Article shall govern amendment of those exhibits. Exhibit "C" is attached for informational purposes only and may be amended as provided in Article 7 or pursuant to Section 20.2. Exhibit "D" is attached for informational purposes only and may be amended as provided in that exhibit.

\*\*\*

In witness of the foregoing, the Founder has executed this Charter this 9<sup>th</sup> day of AUGUST, 2005

FOUNDER: KIMBALL HILL HOMES DALLAS, LP, a Texas limited partnership

By: [Signature]  
Name: SAMUEL L. WYSE, III  
Its: VICE PRESIDENT

STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Samuel L. Wyse, III and NIA, personally known to me or proved to me on the oath of Samuel L. Wyse, III to be the persons whose names are subscribed to the foregoing instrument, and known to me to be the Vice President and NIA of KIMBALL HILL HOMES DALLAS, LP, a Texas limited partnership, and acknowledged to me that they executed the same for the purpose and consideration therein expressed and as the act of said limited partnership.

GIVEN under my hand and seal of office this 9<sup>th</sup> day of August, 2005.

Betty R. Crudden

Notary Public

[Notarial Seal]

My commission expires:

12/11/07



JOINDER OF MORTGAGEE

The undersigned holder of that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents, Proceeds and Agreements, dated July 9, 2003, from Kimball Hill Homes Dallas, LP., a Texas limited partnership, to RFC Construction Funding Corp., a Delaware corporation, and recorded in the Office of the Clerk of Tarrant County, Texas on July 14, 2003, as Document No. D203252223 (the "Mortgage"), which Mortgage encumbers the property described on Exhibit "A" of this Charter, does hereby join in the execution of this Community Charter for Southwind to evidence its consent to such instrument and to subordinate its interest under the Mortgage to such instrument.

IN WITNESS WHEREOF, the undersigned hereby joins in execution of this Community Charter for Southwind by and through its authorized representatives this 16<sup>th</sup> day of August, 2005.

RFC CONSTRUCTION FUNDING CORP., a Delaware corporation

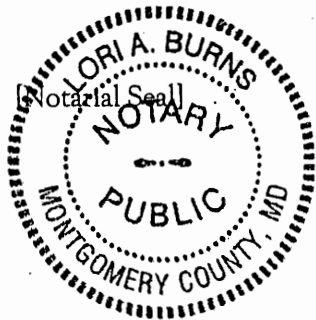
By: [Signature]  
Name: M. FERENTINOS  
Its: ASSISTANT VICE PRESIDENT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF Maryland  
S.  
COUNTY OF Montgomery

Before me, the undersigned authority, on this day personally appeared Metaxas Ferentinos and N/A, personally known to me or proved to me on the oath of M. Ferentinos to be the persons whose names are subscribed to the foregoing instrument, and known to me to be the Asst. VP and N/A of RFC CONSTRUCTION FUNDING CORP., a Delaware corporation, and acknowledged to me that they executed the same for the purpose and consideration therein expressed and as the act of said corporation.

GIVEN under my hand and seal of office this 22 day of August, 2005.



[Signature]  
Notary Public

My commission expires: 7/12/09

EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Tarrant County, Texas, and being more particularly described on that certain final plat of Southwind Addition, Phase I, filed in Cabinet A, Slides 9856, 9857, and 9858, in the Office of the County Clerk of Tarrant County, Texas on January 21, 2005.



## EXHIBIT "B"

### Expansion Property

BEING a tract of land situated in the Ralph Graves Survey, Abstract No. 569, City of Arlington, Tarrant County, Texas, being a portion of that tract of land as described in Special Warrant Deed to Kimball Hill Homes Dallas, L.P., recorded in Volume 16732, Page 126, Deed Records, Tarrant County, Texas (DRTCT), being all of SOUTHWIND ADDITION, PHASE 1, an addition to the City of Arlington, Tarrant County, Texas as recorded in Cabinet A, Slide 9856, Plat Records, Tarrant County, Texas (PRTCT) and being more particularly described as follows:

BEGINNING at a 1/2" rebar capped set at the intersection of the west line of State Highway No. 360 (Variable width R.O.W., adjoining R.O.W. per Volume 10156, Page 1419, DRTCT), with the north line of Southwind Drive (R.O.W. Varies per Cabinet A, Slide 9856, PRTCT), from which a broken concrete monument found bears N 01°57'31" E, 2746.30 feet;

THENCE S 01°57'31" W, along the west line of said State Highway No. 360, a distance of 100.00 feet to a 1/2" rebar capped set at the intersection with the south line of said Southwind Drive, from which a 3/4" rebar found at the most easterly southeast corner of said Kimball Hill tract bears S 01°57'31" W, 468.25 feet and a concrete monument found bears S 01°57'31" W, 522.51 feet;

THENCE departing the west line of said State Highway No. 360, along the south line of said Southwind Drive, as follows:

N 43°02'29" W, a distance of 21.21 feet to a 1/2" rebar capped set;

N 88°02'29" W, a distance of 136.46 feet to a 1/2" rebar capped set at the point of curvature of circular curve to the left, having a radius of 465.00 feet;

Southwesterly, along said curve, having a central angle of 19°07'53", an arc distance of 155.27 feet and a chord that bears S 82°23'34" W, 154.55 feet to a 1/2" rebar capped set at the northeast corner of Lot 1, Block ZZ of said SOUTHWIND ADDITION, PHASE 1;

THENCE departing the south line of said Southwind Drive, along east, south, and west lines of said Lot 1, Block ZZ, as follows:

S 20°28'12" E, non tangent to said curve, a distance of 159.19 feet to a 1/2" rebar capped set;

S 13°11'38" E, a distance of 47.12 feet to a 1/2" rebar capped set;

S 39°09'48" W, a distance of 106.87 feet to a 1/2" rebar capped set;

EXHIBIT "B"

Expansion Property

(continued)

S 67°02'29" W, a distance of 65.54 feet to a 1/2" rebar capped set;

N 78°07'34" W, a distance of 112.25 feet to a 1/2" rebar capped set;

N 54°59'45" W, a distance of 116.26 feet to a 1/2" rebar capped set in the south line of said Southwind Drive at the northwest corner of said Lot 1, Block ZZ;

THENCE along the south line of said Southwind Drive, as follows:

S 29°43'57" W, a distance of 44.03 feet to a 1/2" rebar capped set at the point of curvature of a circular curve to the right, having a radius of 530.00 feet;

Southwesterly, along said curve, having a central angle of 25°31'10", an arc distance of 236.06 feet and a chord that bears S 42°29'32" W, 234.11 feet to a 1/2" rebar capped set in the west line of the 150 foot wide TRACT B easement and right of way as set out to Texas Electric Service Company (TESCO), recorded in Volume 6041, Page 5, DRTCT;

THENCE S 04°16'45" E, departing the south line of said Southwind Drive, non tangent to said curve, along the west line of said TESCO easement and the east line of said SOUTHWIND ADDITION, PHASE 1, a distance of 1173.28 feet to a 1/2" rebar capped set at southeast corner of said SOUTHWIND ADDITION, PHASE 1, said point lying in the southeasterly line of said Kimball Hill tract and the northwesterly line of a tract of land as described in deed to Joe G. Harris and wife, Joyce Harris, recorded in Volume 7544, Page 843, DRTCT, from which a 5/8" rebar capped found at the most southerly southeast corner of said Kimball Hill tract bears N 59°29'32" E, 167.22 feet (Call 167.17 feet);

THENCE S 59°29'32" W, departing the west line of said TESCO easement, along the southeasterly line of said SOUTHWIND ADDITION, PHASE 1, the southeasterly line of said Kimball Hill tract, and the northwesterly line of said Harris tract, at a distance of 668.78 feet passing a 1/2" rebar capped set at the southwest corner of said SOUTHWIND ADDITION, PHASE 1, continuing along the southeasterly line of said Kimball Hill tract, the northwesterly line of said Harris tract, and the northwesterly line of Lot 1, Ralph Graves Addition, an addition to the City of Arlington, Tarrant County, Texas as recorded in Volume 388-203, Page 1, PRTCT, a total distance of 2025.95 feet to the most southerly corner of the herein described tract of land, from which a "PK" nail found at the most southerly southwest corner of said Kimball Hill tract bears S 59°29'32" W, 20.00 feet;

THENCE N 30°05'08" W, departing the southeasterly line of said Kimball Hill tract and the northwesterly line of the final plat of said Lot 1, Ralph Graves Addition, along the proposed southwesterly line of S. Collins Road, traversing said Kimball Hill tract, a distance of 2814.22 feet

EXHIBIT "B"

Expansion Property

(continued)

to a "PK" nail set in concrete in Ragland Road and the northwesterly line of said Kimball Hill tract, from which a "PK" nail found at the most westerly corner of said Kimball Hill tract bears S 59°43'19" W, 25.44 feet;

THENCE N 59°43'19" E, within said Ragland Road, along the northwesterly line of said Kimball Hill tract, a distance of 952.57 feet to a railroad spike set at the northwest corner of the final plat of said SOUTHWIND ADDITION, PHASE 1;

THENCE S 31°54'49" E, along the westerly line of said SOUTHWIND ADDITION, PHASE 1, a distance of 26.81 feet to a 1/2" rebar capped set at the southwest corner of a right-of-way dedication for Ragland Road and the northwest corner of Lot 10, Block A of said addition;

THENCE N 60°01'12" E, along the southeasterly line of said Ragland Road (70' R.O.W. per Cabinet A, Slide 7594 & Cabinet A, Slide 9856, PRTCT), at a distance of 580.53 feet passing a 1/2" rebar capped set at the intersection with the west line of Water Oak Drive (90' R.O.W. at this point per Cabinet A, Slide 9856, PRTCT), at a distance of 670.53 feet passing a 1/2" rebar capped set at the intersection with the east line of said Water Oak Drive, continuing a total distance of 765.53 feet to a 1/2" rebar capped set at the southeast corner of said right-of-way dedication for Ragland Road and the northeast corner of Lot 2, Block I of said addition;

THENCE N 29°58'48" W, along the easterly line of said SOUTHWIND ADDITION, PHASE 1, a distance of 31.02 feet to a railroad spike set in said Ragland Road at the northeast corner of the final plat of said SOUTHWIND ADDITION, PHASE 1 and the northwesterly line of said Kimball Hill tract;

THENCE N 59°37'49" E, within said Ragland Road, along the northwesterly line of said Kimball Hill tract, a distance of 539.96 feet to a point, from which a 1/2" rebar found bears N 59°37'49" E, 506.99 feet and N 59°59'06" E, 965.25 feet;

THENCE departing said Ragland Road, traversing said Kimball Hill tract, as follows:

S 30°04'15" E, a distance of 459.20 feet;

N 59°55'45" E, a distance of 902.72 feet to the west line of the aforementioned TESCO easement recorded in Volume 6041, Page 5, DRTCT;

THENCE S 04°16'45" E, along the west line of said TESCO easement, at a distance of 1022.99 feet passing a 1/2" rebar capped set at the northeast corner of Lot 48, Block I of said SOUTHWIND ADDITION, PHASE 1, continuing along the west line of said TESCO easement and the east line of said SOUTHWIND ADDITION, PHASE 1, a total distance of 1359.02 feet to a 1/2"

EXHIBIT "B"

Expansion Property

(continued)

rebar capped set in the north line of said Southwind Drive, said point being the point of curvature of a non tangent circular curve to the left, having a radius point that bears N 41°42'10" W, 470.00 feet;

THENCE departing the west line of said TESCO easement, along the north line of said Southwind Drive, as follows:

Northeasterly, along said curve, having a central angle of 18°33'53", an arc distance of 152.29 feet and a chord that bears N 39°00'53" E, 151.62 feet to a 1/2" rebar capped set at the point of tangency;

N 29°43'57" E, a distance of 59.38 feet to a 1/2" rebar capped set at the point of curvature of a circular curve to the right, having a radius of 535.00 feet;

Northeasterly, along said curve, having a central angle of 62°13'34", an arc distance of 581.04 feet and a chord that bears N 60°50'44" E, 552.90 feet to a 1/2" rebar capped set at the point of tangency;

S 88°02'29" E, a distance of 136.46 feet to a 1/2" rebar capped set;

N 46°57'31" E, a distance of 21.21 feet to the POINT OF BEGINNING and containing 7,239,298 square feet or 166.191 acres of land.

NOTE: The bearings shown hereon are referenced to City of Arlington monuments AR 27, AR 30 & AR 58.

LESS AND EXCEPT that land initially submitted to this Charter as described on Exhibit "A."

In addition to the above, as the owner or with the written consent of the owner, the Founder may also submit to the terms of the Charter any real property situated within five miles of the perimeter boundaries of the property described on Exhibit "A" or this Exhibit "B."

Note to clerk and title examiners:

This Charter is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Article 16.

## EXHIBIT "C"

### Initial Rules

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article 5, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any appropriate circumstances.

The following shall apply to all of Southwind until such time as they are modified pursuant to the Charter.

1. **General.** The Units within Southwind shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Founder or its designees to assist in the sale of property described in Exhibit "A" or "B," offices for any property manager retained by the Association, or business offices for the Founder or the Association) consistent with this Charter and any Supplement.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within Southwind, except to the extent undertaken by the Founder in the course of development of property in Southwind:

(a) Overnight parking of vehicles on public or private streets or thoroughfares; or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages or other locations screened from view of adjacent property in a manner approved by the Reviewer pursuant to Article 5; provided, construction, service and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

## EXHIBIT "C"

### Initial Rules

(continued)

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(j) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(k) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article 5;

(l) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Southwind or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(m) Regular use of any Unit to host religious activities, motivational meetings, classes, parties, or similar activities requiring the parking of a number of vehicles exceeding the number that can be accommodated in the host's garage, driveway, and the right-of-way immediately in front of and adjacent to the Unit;

(n) Swimming, wading, or use of boats or other watercraft with gasoline-powered engines on any pond within the Community, except that the Founder and the Association may use gasoline-powered boats for construction, maintenance, and repair of such ponds;

(o) Any yard sale, garage sale, moving sale, rummage sale, estate sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis; and

(p) Posting of any signs on Units, Common Areas, or rights-of-way within or adjacent to the Community, except that:

(i) the Founder and the Association may post signs as they deem appropriate;

## EXHIBIT "C"

### Initial Rules

(continued)

(ii) subject to the limitations on leasing of Units set forth in Section 7.1 of the Charter, an Owner may post on a Unit which such Owner is offering for sale or for lease one standard real estate sign, not to exceed four feet in height, the total message area of which does not to exceed 12 square feet (all sides combined), advertising the Unit on which it is posted "for sale" or "for lease;" and

(iii) the Owner or occupant of a Unit may post temporary political signs on the Unit for up to 90 days prior to an election or referendum and up to 10 days after the election or referendum, provided that (A) no more than one sign is posted on a Unit for any one candidate or ballot issue; (B) the sign is ground-mounted or placed in a window; (C) the sign does not exceed 4 feet in width or 6 feet in height (including any post or other device on which it is mounted), (D) the sign has a professional appearance and contains no profanity or derogatory or offensive language, graphics, or markings, as the Board may determine in its sole discretion;

(q) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article 5; and

(r) Any modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article 5 of the Charter. This shall include, without limitation, signs, basketball hoops, and swing sets and similar sports and play equipment; clotheslines; garbage cans; wood-piles; above-ground swimming pools; docks, piers, and similar structures; hedges, walls, dog runs, animal pens, or fences of any kind; decks; storage sheds; and satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Founder and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Southwind, should any master system or systems be utilized by the Association and require such exterior apparatus.

EXHIBIT "C"

Initial Rules  
(continued)

3. Prohibited Conditions. The following shall be prohibited at Southwind:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Southwind; and

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair.



EXHIBIT "D"

By-Laws of Southwind Community Association, Inc.

BY-LAWS  
OF  
SOUTHWIND COMMUNITY ASSOCIATION, INC.

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**BY-LAWS**  
**OF**  
**SOUTHWIND COMMUNITY ASSOCIATION, INC.**

**Article 1**  
**Name, Principal Office, and Definitions**

**1.1. Name.**

The name of the corporation is Southwind Community Association, Inc. (the "Association").

**1.2. Principal Office.**

The Association may have such offices in Tarrant or Dallas County, Texas as the Board may determine or as the Association's affairs may require.

**1.3. Definitions.**

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the meaning ascribed to them in the Community Charter for Southwind recorded by Kimball Hill Homes Dallas, LP, a Texas limited partnership ("Founder") in the Office of the County Clerk of Tarrant County, Texas, as it may be amended (the "Charter"). The term "majority," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**Article 2**  
**Membership: Meetings, Quorum, Voting, Proxies**

**2.1. Membership.**

The Association shall have two classes of membership, Owner Membership and Founder Membership, as more fully described in the Charter. Provisions of the Charter pertaining to membership are incorporated by this reference.

**2.2. Place of Meetings.**

The Association shall hold meetings at the Association's principal office or at such other suitable place as the Board may designate.

**2.3. Association Meetings.**

(a) *General.* The first Association meeting, whether a regular or special meeting, shall be held within one year after the Association's incorporation.

(b) *Annual Meetings.* The Board shall schedule regular annual meetings of the Members to occur within 90 days before the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) *Special Meetings.* The President may call special meetings of the Members. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or within 30 days after receipt of a petition stating the purpose of the meeting and signed by Members holding at least 10% of the total votes in the Association.

#### 2.4. Notice of Meetings.

At least 21 but not more than 30 days before any annual Association meeting, and at least 10 but not more than 30 days before any special Association meeting, the President, the Secretary, or the officers or other persons calling the meeting shall deliver or cause to be delivered to each Member a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including the general nature of any proposed amendment to the Charter or By-Laws, any proposed budget changes, and any proposal to remove a director. If proxies are permitted, the notice shall also state the procedures for appointing proxies. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 10.5.

#### 2.5. Waiver of Notice.

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. Attendance at a meeting by a Member or the Member's appointed proxy shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless the Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

#### 2.6. Adjournment of Meetings.

If any Association meeting cannot be held because a quorum is not present, persons entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time at least 5 but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members or their proxies to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Charter or applicable law for specific actions, must approve any action taken.

**2.7. Voting Rights.**

Members shall have such voting rights as are set forth in the Charter, which provisions are specifically incorporated by this reference.

**2.8. Proxies.**

Members may vote in person or by proxy, subject to the limitations of Texas law and subject to any specific provision to the contrary in the Charter or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, shall be signed by the Member or the Member's duly authorized attorney-in-fact, and shall be dated and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provided otherwise, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Unit for which it was given, (b) the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (c) 11 months from the date of the proxy, unless a different period is specified in the proxy, except that no proxy shall be effective for longer than three years.

**2.9. Quorum.**

Except as these By-Laws or the Charter otherwise provide, the presence of Members or their proxies representing at least ten percent (10%) of the total votes in the Association and, during the Development and Sale Period, the Founder, shall constitute a quorum at all Association meetings.

**2.10. Conduct of Meetings.**

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are prepared, reflecting all resolutions adopted and all other transactions occurring at such meetings. The minutes shall be kept with the Association's books and records.

**2.11. Action Without a Meeting.**

(a) Any action that the Charter, the Articles, or applicable law requires to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if all Members entitled to vote on such matter sign a written consent specifically authorizing the proposed action. Such consents shall be signed within 180 days after receipt of the earliest dated consent, dated, and delivered to the Association. Such consents shall be filed with the Association's minutes and shall have the same force and effect as a vote of the Members at a meeting.

(b) Alternatively, any action that may be taken at a meeting of the Members may be taken without a meeting if (i) the Association mails or delivers a written ballot or consent form to every Person entitled to vote on the action, setting forth the proposed action and providing an opportunity to approve or disapprove the proposed action; and (ii) the number of votes cast by written ballot equals or exceeds the quorum required for a meeting to consider such action; and (iii) the number of votes cast in favor of the

proposed action equals or exceeds the number of votes that would be required at a meeting if the total number of votes cast were the same as the number of votes cast by written ballot. Solicitations by written ballot must indicate the number of responses needed to satisfy the quorum requirement, the percentage of votes necessary to approve any action other than election of directors, and the deadline for receiving the ballot in order to be counted. A written ballot may not be revoked. The Board shall notify the Members of the results of the vote within 30 days after the expiration of the voting period.

## Article 3

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

#### A. Composition and Selection.

##### 3.1. Governing Body; Qualifications.

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Founder Member, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within Southwind.

If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time, except in the case of directors that the Founder Member appoints.

##### 3.2. Number of Directors.

The Board shall consist of three to seven directors, as provided in Section 3.3.

##### 3.3. Selection of Directors; Term of Office.

(a) *Initial Board.* The initial Board shall consist of the three directors identified in the Articles of Incorporation, who shall serve until their successors are appointed or elected as provided in this Section.

(b) *Directors During Founder Control Period.* Except as otherwise provided in this subsection (b), the Founder Member may appoint, remove, and replace Board members until termination of the Founder Control Period. During such period, the Owner Members shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Owner Members are referred to as "Owner Directors"):

(i) Within 60 days after the time that Owners other than the Founder, Founder Affiliates, or Builders own 33% of the maximum number of Units permitted by the Charter or whenever the Founder earlier determines, the Board shall be increased to four directors and the President shall call for an election by which the Owner Members, as a group, shall be entitled to elect one of the four directors. The remaining directors shall be appointees of the Founder. The Owner Director shall be elected for a term of two years or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If



such director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) Within 60 days after the time that Owners other than the Founder, Founder Affiliates, or Builders own 67% of the maximum number of Units permitted by the Charter or whenever the Founder earlier determines, the Board shall be increased to five directors and the President shall call for an election by which the Owner Members shall be entitled to elect two of the five directors. The Founder shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) *Directors After the Founder Control Period.* Not later than termination of the Founder Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the Owner Members shall be entitled to elect all seven directors. Three directors shall be elected to serve until the second annual meeting following their election and four directors shall be elected to serve until the third annual meeting following their election, as such directors determine among themselves.

Thereafter, upon expiration of the term of office of each Owner Director, the Owner Members shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

The diagram below illustrates the concept of transition of control of the Board during and after the Founder Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS			
Initial Board	33% of Total Units Conveyed	67% of Total Units Conveyed	Termination of Founder Control Period
Founder	Owner	Owner	Owner
Founder	Founder	Owner	Owner
Founder	Founder	Founder	Owner
	Founder	Founder	Owner
		Founder	Owner
			Owner
			Owner

#### 3.4. Nomination and Election Procedures.

(a) *Nomination of Candidates.* At least 30 days prior to any election of Owner Directors, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners. The Nominating Committee shall serve until the close of the election for which they were appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number

of positions to be filled by the Owner Directors at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) *Election Procedures.* At each election, voting shall be by written ballot. Each Member may cast all votes assigned to such Member's Units for each position to be filled by an Owner Director.

In the event of a tie vote, the Board shall call for a runoff election among the candidates receiving the same number of votes. Such election shall be held by mail, with ballots to be sent by first class mail to each Member entitled to vote within 10 days after the meeting at which the original election was held.

### **3.5. Removal of Directors and Vacancies.**

Any Owner Director may be removed, with or without cause, by the vote of Owner Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Owner Members, the Owner Members shall elect a successor for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who has three consecutive unexcused absences from Board meetings. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Owner Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors that the Founder appoints. The Founder may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Founder.

## **B. Meetings.**

### **3.6. Organizational Meetings.**

The Board shall hold an organizational meeting within 10 days following each annual meeting of the membership, at such time and place as the Board shall fix.

### **3.7. Regular Meetings.**

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

### **3.8. Special Meetings.**

The President, Vice President, or any two directors may call a special meeting of the Board.

### 3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or electronic communication at least 72 hours before the time set for the meeting.

(b) To the extent practicable, the Board shall give reasonable notice to the Members of the date, time, and place of Board meetings by announcing such information at a previous Board or membership meeting or posting notice in a location reasonably accessible to the Members and which the Board has designated for the posting of notices.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### 3.10. Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

### 3.11. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Texas law, these By-Laws, or the Charter specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

### 3.12. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

**3.13. Open Meetings; Executive Session.**

(a) Subject to the provisions of subsection 3.13(b) and Section 3.14, all Board meetings shall be open to attendance by all Members or their representatives, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak. The Board shall make agendas for its meetings reasonably available for examination by all Members or their representatives prior to the meeting.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may restrict attendance to directors and such other persons as the Board may specifically invite and announce during the open portion of the Board meeting, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, and such other matters as the Texas Nonprofit Corporation Act may specifically authorize.

**3.14. Action Without a Formal Meeting.**

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if a written consent setting forth the action so taken is signed by the number of directors that would be required to approve the same action at a Board meeting at which all of the directors were present. Such consent shall have the same force and effect as a vote at a meeting. The Board shall promptly notify all directors of any action so approved and the effective date of such action and provide each director with a copy of the signed written consent.

**C. Powers and Duties.**

**3.15. Powers.**

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do, or cause to be done on the Association's behalf, all acts and things except those which the Governing Documents or Texas law require to be done and exercised exclusively by the membership generally.

**3.16. Duties.**

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Charter, an annual budget establishing each Owner's share of the Common Expenses and any Limited Common Area Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and, where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) opening bank accounts on the Association's behalf and designating the signatories required;

(f) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;

(g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(h) determining when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter and Section 3.18 below;

(i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate;

(j) paying the cost of all services rendered to the Association;

(k) keeping a detailed accounting of the Association's receipts and expenditures;

(l) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 10.4; and

(m) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Texas law, the Articles, or these By-Laws.

### 3.17. Conflicts of Interest.

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director.

Notwithstanding the above, directors appointed by the Founder may be employed by or otherwise transact business with the Founder or its affiliate, and the Founder may transact business with the Association or its contractors.

### 3.18. Mandatory Arbitration of Certain Claims.

The Association shall submit any claim or dispute arising out of construction of the Common Area or the Area of Common Responsibility to mandatory, binding arbitration as provided in the Charter.

## Article 4 Transition from Founder to Owner Control

### 4.1. Transition Process.

Transition is a process by which control of the Board gradually shifts from the Founder to the Owners, as described in Section 3.3. The process concludes upon termination of the Founder Control Period, when the Owner Members will elect the entire Board. At that time, the Owners, through their newly-elected Board, will take responsibility for fulfilling the Association's responsibilities and exercising the Association's authority under the Governing Documents without the direct guidance or involvement of the Founder or Founder-appointed directors.

### 4.2. Education and Communication.

In anticipation of termination of the Founder Control Period, the Founder Member shall communicate with the Owners regarding the transition process, the anticipated timeline for transition, what to expect during and after the transition, and opportunities for Owner participation. Such communication shall be in writing and through one or more "town hall" meetings at which Owners have the opportunity to ask and obtain answers to questions in order to gain a better understanding of the transition process.

### 4.3. Transition Committee.

If requested by written petition signed by a Owner Members entitled to cast a majority of the total votes in the Association and delivered to the Founder, the Founder Member shall establish a Transition Committee comprised of 5 to 7 members, all of whom shall be Owners, and the following shall apply:

(a) *Appointment; Purpose.* The Transition Committee shall be established at least six months prior to termination of the Founder Control Period or within 30 days after receipt of the Owner Members' petition, whichever is later. The purpose of the Transition Committee shall be (i) to involve the Owners in facilitating a smooth transition of control of the Board from directors appointed by the Founder Member to directors elected by the Owner Members, and (ii) to help prepare the Board and the Owners to assume responsibility for carrying on Association operations once the Founder and its representatives are no longer directly involved.

(b) *Organizational Meeting.* The Founder shall call for a meeting of the Transition Committee within 30 days after its appointment. At such meeting, the Founder shall explain the transition process, advise the Transition Committee of its responsibilities, and facilitate the election of a chairperson from among the members of the Transition Committee. The Transition Committee shall establish a meeting schedule and a schedule for completing necessary tasks prior to the termination of the Founder Control Period. It may appoint such subcommittees as it deems appropriate to assist it in performing its responsibilities. Each subcommittee shall be chaired by a member of the Transition Committee and shall consist of at least two Owners.

(c) *Responsibilities.* The Transition Committee, with the assistance of such subcommittees as it may appoint pursuant to subsection (b), shall conduct a review and analysis of Association properties, facilities, records, and operations to familiarize itself with the history and status of such matters and make recommendations as to matters requiring future action. It shall prepare a report setting forth its findings and recommendations for distribution to the Owners and presentation to the newly-elected Board upon

termination of the Founder Control Period. The Board will use such report to assist in understanding the scope of its responsibilities and as a planning tool. Specific areas to be addressed in the report shall include:

(i) the condition of Association property and facilities, identifying any immediate maintenance, repairs, or improvements needed and suggesting a proposed schedule for short and long-term maintenance, repairs, and replacements;

(ii) the financial condition of the Association, including the status of any outstanding accounts receivable and actions being taken to collect them, the adequacy of the Association's budgets and sufficiency of reserves, and the status of the Association's tax filings, tax liability, if any, and tax reporting responsibilities;

(iii) the nature and extent of insurance policies which the Association is required to maintain, the adequacy of current coverage and limits, renewal dates for all insurance policies, and the status of any pending insurance claims; and

(iv) the status of Association records and legal matters, identifying all existing contracts, permits, licenses, and warranties, if any, noting their expiration dates and making any recommendations as to their renewal; reporting on the status of ownership of all Common Areas; reporting on the status of any pending lawsuits; and making recommendations as to any proposed changes or amendments to the Governing Documents that the Transition Committee feels are appropriate or advisable.

(d) *Communication.* The Transition Committee shall report to the Board at least monthly on the status of its work.

(e) *Board Action.* Upon termination of the Founder Control Period and election of a new Board pursuant to Section 3.3(c), the Board shall review the Transition Committee's report and meet with the Transition Committee to discuss the Committee's findings and recommendations. It shall then use the Transition Committee's report as a planning tool in carrying out its responsibilities under the Governing Documents.

#### 4.4. Professional Assistance.

The Board may, as a Common Expense, retain industry professionals, including association managers, attorneys, engineers, and accountants, as it deems necessary or appropriate to assist the Board in preparing for transition and to assist the Transition Committee in conducting its review.

## Article 5 Officers

### 5.1. Officers.

The Association's officers shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

**5.2. Election and Term of Office.**

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the membership, to serve until their successors are elected.

**5.3. Removal and Vacancies.**

The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

**5.4. Powers and Duties.**

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the Association's budgets as provided for in the Charter, and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

**5.5. Resignation.**

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

## **Article 6 Committees**

**6.1. General.**

In addition to the Transition Committee appointed pursuant to Article 4 and such committees as the Founder or Board may appoint pursuant to the Charter, the Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

**6.2. Covenants Committee.**

In addition to any other committees that the Board may establish pursuant to Section 6.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article 9 of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

**6.3. Activities Committee.**

In addition to such other committees as the Board may establish pursuant to this Article 6, the Board may appoint or allow the Owner Members to elect an Activities Committee to make recommenda-



tions to the Board regarding the use of Community Enhancement Fees collected pursuant to the Charter and, using such fees, to initiate and facilitate activities, programs, and services designed to enhance the sense of community within Southwind, as described in the Charter.

## Article 7 Standards of Conduct; Liability, and Indemnification

### 7.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall be insulated from liability as provided for directors of corporations under Texas law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Texas law.

### 7.2. Liability.

(a) A director or officer shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director or officer if he or she has acted in accordance with Section 7.1. Owner Directors shall not be liable for actions taken or omissions made in the performance of their duties except for wanton or willful acts or omissions.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

There shall not be any presumption that directors appointed by the Founder have a conflict of interest simply by virtue of the fact that the Founder may directly or indirectly be affected by the decision or action under consideration.

(c) The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

### 7.3. Indemnification.

Subject to the limitations of Texas law, the Association shall indemnify every present and former officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Texas law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

### 7.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in Texas law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

#### **7.5. Board and Officer Training.**

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Texas corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall be encouraged to complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audiotape, or in other format. The cost of such seminar shall be a Common Expense.

The Board may also provide, or provide for, Owner and resident education designed to foster a better understanding of Southwind's governance and operations, and leadership training classes designed to educate Owner Members as to the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

The Board may apply for and maintain, as a Common Expense, membership for the Association, its officers and directors, in the Community Associations Institute or any similar nonprofit organization that provides educational opportunities for community association directors, officers and managers in operation and management of community associations.

## **Article 8 Management and Accounting**

#### **8.1. Compensation of Directors and Officers.**

The Association shall not compensate directors and officers for acting as such unless the Founder, during the Founder Control Period, and Owner Members representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

#### **8.2. Right of Founder Member to Disapprove Actions.**

So long as there is a Founder Membership, the Founder Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Founder Member's sole judgment, would tend to impair rights of the Founder or Builders under the Charter or these By-Laws, interfere with development or construction of any portion of Southwind, or diminish the level of services the Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

(a) *Notice.* The Association shall give the Founder Member written notice of all meetings of the membership, the Board, and committees, and any actions proposed to be taken by any of them by written consent in lieu of a meeting. The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Founder Member has registered with the Association. Such notice shall comply, as to Board meetings, with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) *Opportunity to be Heard.* At any such meeting, the Association shall give the Founder Member the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Founder Member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

The Founder Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Founder Member may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Founder Member shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### 8.3. Managing Agent.

The Board may employ for the Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Founder or its affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Founder Control Period unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Founder Control Period upon not more than 90 days' written notice.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

#### 8.4. Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) accounting and controls should conform to generally accepted accounting principles; and

(ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

#### 8.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain membership approval in the same manner provided in the Charter for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

#### 8.6. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside Southwind.

**8.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.**

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

## **Article 9 Enforcement Procedures**

The Association shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter or Texas law, the Board shall comply with the following procedures prior to imposition of sanctions:

**9.1. Notice and Response.**

The Board or its delegate shall serve the alleged violator with written notice, by certified mail, return receipt requested, (a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable; (b) describing the proposed sanction to be imposed; and (c) informing the alleged violator that he or she has 30 days after receipt of the notice to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article 6; and (d) informing the alleged violator that he or she may avoid the proposed sanction by curing the violation within a reasonable cure period stated in the notice, except that the Association shall have no obligation to provide a cure period if the alleged violator has been given notice of a similar violation within the preceding six months. If the hearing is to be held before a Covenants Committee, the notice shall also state that the alleged violator has the right to appeal the decision of the Covenants Committee to the Board.

The alleged violator shall respond to the notice of the alleged violation in writing within such 30-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction, or the proposed sanction shall be imposed. If the alleged violator cures the alleged violation and notifies the Board in writing within such 30-day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

**9.2. Hearing.**

If a hearing is requested within the allotted 30-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session within 30 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 10 days and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing. At the hearing, the alleged violator shall be afforded a reasonable opportunity to be heard and shall be entitled to make

an audio recording of the hearing. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the Board's or Committee's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three days after the hearing.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed unless the violation is cured within the cure period stated in the notice.

**9.3. Appeal.**

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date.

## **Article 10 Miscellaneous**

**10.1. Fiscal Year.**

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

**10.2. Parliamentary Rules.**

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Texas law or the Governing Documents.

**10.3. Conflicts.**

If there are conflicts among the provisions of Texas law, the Articles of Incorporation, the Charter, and these By-Laws, the provisions of Texas law, the Charter, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

**10.4. Books and Records.**

(a) *Turnover of Books and Records.* Within 60 days after termination of the Founder Control Period, the Founder shall deliver to the Association all property, books and records of the Association in the Founder's possession.

(b) *Inspection by Members and Mortgagees.* The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Southwind as the Board shall designate.

(c) *Rules for Inspection.* The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records; and
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(d) *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

#### 10.5. Notices.

(a) *Form of Notice and Method of Delivery.* Except as otherwise provided in the Charter or these By-Laws or by Texas law, all notices, demands, bills, statements, or other communications under the Charter or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

(b) *Delivery Address.* Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Founder, at the Founder's principal address as it appears on the Secretary of State's records, or at such other address as the Founder shall designate by notice in writing to the Association pursuant to this Section.

(c) *Effective Date.* Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.



**10.6. Amendment.**

(a) Until termination of the Founder Control Period, Founder Member may unilaterally amend these By-Laws for any purpose.

(b) The Board of Directors may unilaterally amend these By-Laws, with the consent of the Founder Member during the Founder Control Period, and thereafter, unilaterally, (i) to correct clerical, typographical or technical errors; (ii) to bring any provision into compliance comply with any applicable governmental statute, rule, regulation, or judicial determination; (iii) to comply with the requirements, standards or guidelines of any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; or (iv) to satisfy the requirements of any local, state, or federal governmental agency.

(c) Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Owner Members entitled to cast at least 67% of the total eligible votes in the Association, and the consent of the Founder Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Any amendment adopted pursuant to subsection (a) shall be prepared and signed by the Founder. Any amendment adopted pursuant to subsection (b) shall be prepared and signed by the President or Vice President and by the Secretary or Treasurer of the Association certifying that the requisite approval was obtained.

(e) Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within one year of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Founder, the Founder Member, or any Founder Affiliate without the written consent of Founder, the Founder Member, the Founder Affiliate, or the assignee of such right or privilege.

5555.04/CADocs/Southwind-Bylaws-051205-jps

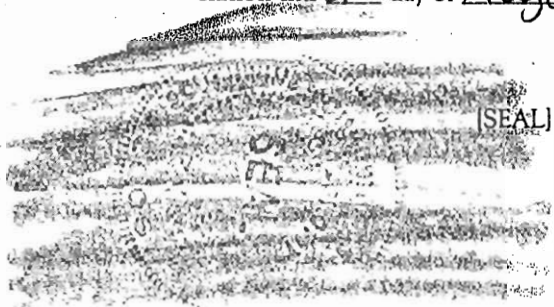
CERTIFICATION

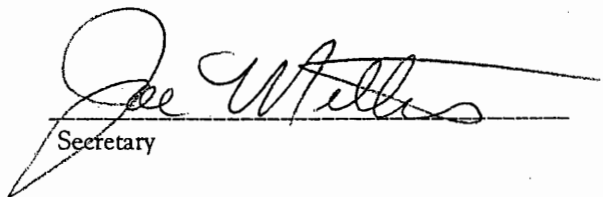
I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Southwind Community Association, Inc., a Texas nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of the Association, as duly adopted by resolution of the Board of Directors thereof on the 8<sup>th</sup> day of August, 2005

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 31<sup>st</sup> day of August, 2005



  
Secretary



SAMUEL L WYSE III  
KIMBALL HILL HOMES DALLAS LP  
3010 LBJ FWY 1100  
DALLAS TX 75234

Submitter: KIMBALL HILL HOMES

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SUZANNE HENDERSON  
TARRANT COUNTY CLERK  
TARRANT COUNTY COURTHOUSE  
100 WEST WEATHERFORD  
FORT WORTH, TX 76196-0401

**DO NOT DESTROY**  
**WARNING - THIS IS PART OF THE OFFICIAL RECORD.**

Filed For Registration: 09/02/2005 01:57 PM  
Instrument #: D205262150  
OPR 100 \$408.00  
PGS

By: 



D205262150

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL OR USE  
OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR  
RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

**NOTICES OF FILING  
“DEDICATORY INSTRUMENTS”**

**NOTICE OF FILING OF DEDICATORY INSTRUMENTS  
FOR  
SOUTHWIND**

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

**THIS NOTICE OF FILING OF DEDICATORY INSTRUMENTS FOR SOUTHWIND** (this "Notice") is made this 13 day of March, 2008, by Southwind Community Association, Inc. (the "Association").

**WITNESSETH:**

**WHEREAS**, Kimball Hill Homes Dallas, LP ("Declarant") prepared and recorded an instrument entitled "Community Charter for Southwind" on September 2, 2005, as Instrument No. D205262150 of the Real Property Records of Tarrant County, Texas (the "Declaration"); and

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

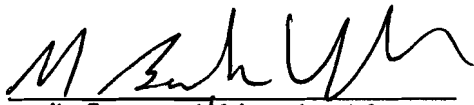
**WHEREAS**, Section 202.006 of the Texas Property Code provides that a property owners' association must file each dedicatory instrument governing the association that has not been previously recorded in the real property records of the county in which the development is located; and

**WHEREAS**, the Association desires to record the attached dedicatory instruments in the Real Property Records of Tarrant County, Texas, pursuant to and in accordance with Section 202.006 of the Texas Property Code.

**NOW, THEREFORE**, the dedicatory instruments attached hereto as **Exhibit "A"** are true and correct copies of the originals and are hereby filed of record in the Real Property Records of Tarrant County, Texas, in accordance with the requirements of Section 202.006 of the Texas Property Code.

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

**SOUTHWIND COMMUNITY ASSOCIATION, INC., a  
Texas non-profit corporation**

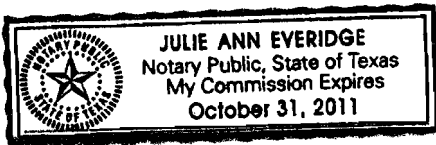
By:   
          M. BROOKS VARSCHYLE  
Its: VICE PRESIDENT

**ACKNOWLEDGMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Brooks Verschayle VP of Southwind Community Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed on behalf of said corporation.

SUBSCRIBED AND SWORN TO BEFORE ME on this 13<sup>th</sup> day of March, 2008.



Julie Ann Everidge  
Notary Public, State of Texas  
10/31/2011  
My Commission Expires

**AFTER RECORDING, RETURN TO:**  
Riddle & Williams, P.C.  
3710 Rawlins Street, Suite 1400  
Dallas, Texas 75219

G:\Notice.ded\southwind.notice

**EXHIBIT "A"**

**DEDICATORY INSTRUMENTS**

A-1 Articles of Incorporation

A-2 Covenant Enforcement and Fining Policy

# **DESIGN GUIDELINES**



39 DPR  
128

NOTE TO CLERK: Please cross-reference to  
Community Charter at  
Instrument No. D205262150

Prepared by/upon recording, please return to:

Samuel L. Wyse, III  
Kimball Hill Homes Dallas, LP  
3010 LBJ Freeway, Suite 1100  
Dallas, Texas 75234

FILED  
TARRANT COUNTY TEXAS  
2005 SEP - 2 PM 2: 01  
BY SUZANNE HENDERSON  
COUNTY CLERK

STATE OF TEXAS

COUNTY OF TARRANT

RESIDENTIAL DESIGN GUIDELINES  
FOR  
SOUTHWIND

THESE RESIDENTIAL DESIGN GUIDELINES are adopted this 31<sup>st</sup> day of August, 2005, by KIMBALL HILL HOMES DALLAS, LP, a Texas limited partnership ("Founder").

WITNESSETH:

On August 31, 2005, the Founder executed the Community Charter for Southwind, which was recorded in the County Clerk Official Records of Tarrant County, Texas on SEPTEMBER 2, 2005 as Instrument No. D205262150 (the "Charter"). The Charter is a "dedicatory instrument," as defined in the Texas Residential Property Owners Protection Act, Texas Property Code §209.001, *et seq.*, covering the establishment, maintenance, and operation of a residential subdivision or planned development located in the City of Arlington, Tarrant County, Texas, known as Southwind. The real property made subject to the terms of the Charter, as it may be supplemented and amended, is referred to as the "Community".

Article V of the Charter establishes architectural controls and review procedures applicable to the property submitted to the Charter. Section 5.3 of the Charter authorizes the Founder to adopt and record design standards and architectural and aesthetic guidelines ("Design Guidelines") to provide guidance to property owners and builders regarding matters of particular concern to the reviewer in considering applications for architectural approval. Pursuant to the authority set forth

in Article IV of the Charter, the Founder has adopted the Design Guidelines attached as Exhibit "A" as the initial Design Guidelines to be administered pursuant to the Charter. Such guidelines are not intended to be the exclusive basis for decisions of the reviewer and compliance with the Design Guidelines does not guarantee approval of any application.

The Founder hereby declares that these Design Guidelines shall apply to the Community, as it may be expanded by amendment to or supplement of the Charter, in accordance with the terms of Article V of the Charter and any amendments adopted pursuant to the Charter.

The Founder desires to record the Design Guidelines to provide public notice of their existence.

IN WITNESS OF THE FOREGOING, the Founder has set its hand and seal as of the date first above written.

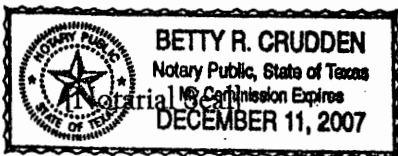
FOUNDER: KIMBALL HILL HOMES DALLAS, LP, a Texas limited partnership

By: [Signature]  
Name: Samuel L. Wyse, III  
Its: Vice President

STATE OF TEXAS )  
 ) ss  
COUNTY OF DALLAS )

Before me, the undersigned authority, on this day personally appeared Samuel L. Wyse, III, personally known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Vice President of KIMBALL HILL HOMES DALLAS, LP, a Texas limited partnership, and acknowledged to me that he executed the same for the purpose and consideration therein expressed and as the act of said limited partnership.

GIVEN under my hand and seal of office this 31<sup>st</sup> day of August, 2005.



[Signature]  
Notary Public

My commission expires: 12/11/07

**EXHIBIT "A"**

[see attached]

# **SOUTHWIND RESIDENTIAL DESIGN GUIDELINES**



**to submit design review  
applications, contact:**

**Southwind Community Association, Inc.  
Founder's Review Committee  
3010 LBJ Freeway, Suite 1100  
Dallas, Texas 75234  
(972) 481-2224  
(972) 243-3189 (fax)**

# SOUTHWIND RESIDENTIAL DESIGN GUIDELINES

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## **Introduction**

These Residential Design Guidelines seek to establish criteria for implementing coordinated design and overall visual identity while maintaining opportunities for individual needs and creativity for each project. Included are parameters for the site design of individual residential lots within the Southwind community as well as procedures and requirements for design submittal and review. These parameters address: spatial boundaries, structures, fencing/screening, pedestrian circulation, provision of open space and landscaping.

The primary purpose of these Residential Design Guidelines is to ensure that property owners within the Southwind community will adhere to a standard of design excellence necessary to maintain a cohesive community. These guidelines seek to establish a design framework through the Community Identity Program that the property owner will use as a guide for site improvements, with flexibility balanced with preserving the design integrity of the Southwind community.

## **DESCRIPTION OF PROPERTY**

These Residential Design Guidelines are for use for the Southwind Addition, a subdivision in the City of Arlington, Tarrant County, Texas, more fully described in Exhibit "A".

## **RELATED CONTROLS**

All improvements must comply with applicable codes and regulations of governing bodies with jurisdiction over the development, including but not limited to the City of Arlington, Tarrant County and the State of Texas. These guidelines are to be used in conjunction with City standards and ordinances and the Community Charter for the development. Should conditions imposed by any provision of these Design Guidelines conflict with those conditions imposed by a City, County or applicable regulatory agency code or regulation, the more restrictive provision shall govern.

## **Administration and Interpretation**

During the development period, the Founder retains final authority for the interpretation and enforcement of the design guidelines and review and approval process; however, the Founder may from time to time delegate these responsibilities to an appointed review committee (the Founder's Review Committee). While some features of the design guidelines are mandatory, others may be waived when it can be demonstrated that the overall spirit and intent will be preserved. Since individual conditions and circumstances may vary, such discretionary actions shall not constitute or imply a binding precedent.

Upon termination of the development period, the Founder may further delegate these responsibilities to an appropriate committee of the Association.

### **DESIGN REVIEW**

Founder's Review Committee or its designee has authority to review plans and specifications for all improvements described herein, shall be the conclusive interpreter of these Design Guidelines, shall monitor the effectiveness of these Design Guidelines, and may promulgate additional design and architectural standards and review procedures consistent with these Design Guidelines from time to time as it deems necessary and appropriate.

### **INTERPRETATION**

The provisions of these Design Guidelines shall be held to be the minimum requirements for the promotion of the health, safety, welfare, order and prosperity of the present and future inhabitants of the Southwind community.

### **REVIEW PROCEDURES**

Exterior construction on properties within the Southwind community that are visible from adjacent property, public right of way, or public open space, must be reviewed and approved by the Founder's Review Committee or its designee prior to the commencement of work. Each Owner shall submit for review an application, plans, and exhibits no later than thirty days prior to the commencement of construction.

### **LIMITATION OF LIABILITY FOR APPROVAL OF PLANS**

Review and assessment of plans and specifications are based solely on aesthetic considerations as informed by these Design Guidelines. Neither Founder nor its designee shall bear any responsibility for ensuring the structural integrity or soundness of approved new construction or modifications, nor for ensuring compliance with building codes or other governmental requirements. Neither Founder nor its designee shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any property within the Southwind community.

### **PRE-DESIGN SITE MEETING**

A pre-design site meeting with a representative of the Founder's Review Committee is available to Builders and to Homeowners for the purpose of reviewing the criteria of these Design Guidelines. An appointment for a pre-design meeting may be made by calling the Founder's offices.

### **REVIEW PERIOD**

The Founder's Review Committee or its designee will meet regularly to review plans submitted for approval, but may require the submittal of additional material and may postpone action until such required materials have been submitted. Founder's Review Committee or its designee will reply to submittals in writing if additional materials are necessary and will take action within thirty days of receipt of required materials. A written copy of the decision will be sent by mail within five days of the decision.

## **APPEAL**

An Owner shall have the right to appeal a decision as described above by resubmitting the required information; however, such appeal shall be considered only if the appellant has modified the proposed construction or has new information which would, in the opinion of Founder's Review Committee, warrant a reconsideration. Upon re-submittal, Founder's Review Committee shall have ten days to approve or disapprove the re-submittal. The filing of an appeal does not extend any maximum time period for the completion of any construction.

## **IMPLEMENTATION OF APPROVED PLANS / PENALTY FOR NONCOMPLIANCE**

All projects and construction shall be implemented per approved plans or requests. If construction is found to not be in accordance with the approved Plans, Founder's Review Committee will require the Owner (Builder or Homeowner) to remedy the discrepancies. If the Owner fails to remedy such non-compliance or fails to commence and continue diligently toward achieving compliance within the time period stated in the notice, then such non-compliance shall be deemed to be in violation of the Community Charter for the development. In such case, Founder's Review Committee or its designee, whichever is appropriate, shall notify the Owner that it may take action to remove the noncompliance and/or seek injunctive relief, recovery of costs incurred, and imposition of a fine, which fine shall not exceed 10% of its cost of achieving compliance.

The Founder's Review Committee, at its sole discretion, may require the Builder to provide a Certificate of Accuracy from a registered licensed Surveyor (hired by the Builder) attesting to the accuracy of the building foundation as approved by Founder's Review Committee. The certificate shall be in the form of an improvement survey showing dimensions of foundation to property lines, top of curb, and elevations (related to USGS datum or equivalent benchmark) of top of foundation. Points at which elevations are taken shall be clearly identified and correlate with location of top of foundation as shown on the final approved plans.

## **PERIOD OF PLAN VALIDATION**

For initial construction of a structure, final approval of plans is valid for twelve months unless otherwise agreed to in writing by Founder's Review Committee and the Builder or Homeowner. Construction shall begin within this period and be completed within twelve months from commencement of Construction. Construction is deemed commenced when the foundation for the structure has been formed.

## **Design Review Application**

The following documents are required for a design review submittal:

### **APPLICATION**

The Owner shall submit a Design Review Application to Founder's Review Committee or its designee. Such Application shall meet the following requirements:

- (A) Owner Information, including:
  - (1) Owner's name, address, and telephone number;
  - (2) Type of project; and
  - (3) Address of construction

- (B) Nature of Request. The Owner shall attach to the Application a written description of the proposed project. If the Application is being re-submitted pursuant to an appeal of a decision, the application shall clearly state such fact.
- (C) All Applications shall be addressed to the appropriate committee at the address set forth on the cover of these Design Guidelines.

### REVIEW FEES

There will be no fee required by for the initial review and first appeal, if applicable. A review fee of \$500.00 is required for a second appeal after plans have twice been denied. This fee will be paid at the time the appeal is submitted.

In the case that, in the judgment of Founder's Review Committee, review by professional architects, landscape architects, engineers or the like is necessary, then the Owner shall be responsible for the payment of all associated professional fees. Final approval shall be contingent upon payment by the Owner of such fees.

### PLANS

All applications for construction shall include plans for review. These plans shall illustrate the design and visual quality of the project as well as how the project complies with these Design Guidelines.

- (A) Architectural Plan Review. For new building construction or major improvements, such as room additions, remodels, structural changes or accessory building construction, the Builder or Homeowner shall submit to Founder's Review Committee one set of professionally prepared 24"x36" or 11"x17" construction documents at a scale of 1/8"=1'0" that includes the following:
  - (1) Architectural elevations (front, side and rear), indicating typical proposed grade lines, finish floor elevations, top of slab elevations and building height calculations.
  - (2) Floor plans, including square footage for each floor.
  - (3) Roof plans indicating pitches, ridges, valleys and location of mounted equipment
  - (4) Locations of all proposed exterior materials
  - (5) Exterior details, including items such as chimneys, exterior stairs and decks, railings, and deck supports
  - (6) Typed schedule of all finished exterior materials and colors, including siding and downspouts, trim/ gutters, roofing, garage doors, front door, and window trim.
  - (7) Cut sheets for exterior lighting
  - (8) Any other proposed improvements
  - (9) Lot, block, subdivision name, street address with Owner's and Builder's names listed.

Samples of materials and/ or a 4'x4' lay-up of masonry or stone material at the construction site may be required at the discretion of Founder's Review Committee.



- (B) Site Plan Review. For new building construction, the Builder or Homeowner shall also submit to Founder's Review Committee one set of 8½" x 11" or larger construction documents to include the following:
- (1) Site Plan for each lot, at a scale of 1"=10'-0" or 1"=20'-0".
  - (2) Lot lines and dimensions, building setbacks, street right-of-way, curb lines and easements.
  - (3) Existing and proposed contour lines at 1' intervals extending 10' past all property lines, existing top of curb or proposed street elevations, finish grade at building corners, drainage swales.
  - (4) Building footprint, main finished floor elevations and garage slab elevations.
  - (5) Walks, driveways, drainage structures, fire hydrants, decks, accessory structures, fencing, retaining walls with top and bottom of wall elevations.
  - (6) All proposed plant locations, types, quantities and sizes, and location of turf and other ground cover materials shall be shown on the plan and labeled. The plan shall also indicate grading and layout of all additional landscape improvements such as berms, walks, and structures.
- (C) Environmental Protection Plan. An Environmental Protection Plan is required for all lots and shall address the following three topics:
- (1) Soil erosion control, i.e., measures designed to minimize erosion both during and after construction;
  - (2) Protection of existing vegetation. Identification of vegetated areas to be preserved and methods of protecting existing vegetation during the construction phase shall be described;
  - (3) Revegetation of disturbed areas. The revegetation plan shall include plans for the revegetation of land disturbed by development and construction activity.

Each Builder shall make an initial submission of an architectural plan for each plan and elevation, which will include a typical Site Plan. A separate submission for each home to be built is not required unless the home includes an elevation, materials, or appertenances not previously approved by the Founder's Review Committee.

#### **ADDITIONAL INFORMATION**

Founder's Review Committee may require the submittal of additional plans, drawings, specifications, samples or other material if deemed necessary to determine whether a project will comply with these Design Guidelines.

#### **DESIGN REVIEW CRITERIA**

While the Design Guidelines are intended to provide parameters for design and visual quality, they are not all-inclusive. In its review process, Founder's Review Committee will consider, among other things, the quality of workmanship, harmony of design with existing lots and

structures, topography, and finished grade elevations. Such assessment will be based solely on aesthetic considerations, as informed by these Design Guidelines.

### **VARIANCES**

Founder's Review Committee may grant variances when circumstances require deviation from these Design Guidelines. Such circumstances may include limitations caused by topography, natural obstructions, or other environmental considerations.

### **Site Planning**

As the location and orientation of structures on residential lots contribute directly to the visual appeal of the streetscape and to the quality of views from community open space, this section provides guidelines for the arrangement and presentation of structures on residential lots.

### **RESERVED LOTS**

Certain lots are reserved for the purpose of providing a view corridor to the community's model homes and the amenity center. These reserved lots shall not be built upon until late in the final phase of development, unless otherwise approved by the Founder's Review Committee. The reserved lots are listed in Exhibit B.

### **BUILDING LAYOUT**

Structures should be designed to fit the constraints of the topography. Using structures to accommodate slopes is encouraged in lieu of extreme cut/fill slopes and construction of retaining walls.

### **BUILDING ENVELOPE**

Each lot has a building envelope defined by the building setbacks and the maximum building height. Although the envelope forms a box, the goal should never be to fill the box with a building. Rather, the use of varied setbacks and articulated building facades should be used to minimize monotonous repetition. Houses should be centrally located on the lot with building height and profile in scale with the surrounding structures and topography. The maximum height of residential structures is thirty-five (35) feet. In the interest of providing visual relief along the street, varied front setbacks are encouraged.

### **ARCHITECTURAL VARIETY**

In order to maintain architectural variety along the residential street, homes of the same floor plan and front elevation shall maintain a minimum of three (3) units between one another, whether on the same side of the street or on the opposite side of the street. The same brick may not be repeated more often than every third house, whether on the same side of the street or on the opposite side of the street. In addition, homes with the same floor plan but with a different elevation shall maintain a minimum of two (2) units between one another, whether on the same side of the street or on the opposite side of the street unless approved by Founder's Review Committee. Variations in color and materials shall also be maintained from homes next to each other and across the street from one another.

### **UTILITIES AND UTILITY EASEMENTS:**

Pipes, wires, poles, utility meters and other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. Locations of utilities and utility equipment require approval by Founder's Review Committee prior to installation. For purposes of these Design Guidelines, utilities shall include water, sewer, gas, electrical, telephone, cable television, and miscellaneous conduits.

Prior to commencing construction, owners are responsible for locating and avoiding existing water, sewer, gas, electrical, cable television and other utility lines or building over utility easements. It is the responsibility of the owner to repair or replace existing utilities damaged during work on his or her lot.

### **GREENBELT EDGES / COMMUNITY OPEN SPACE**

The visual impact of buildings, landscaping, accessory structures and other built elements along Greenbelt edges must be carefully considered during the design process. Attractive, well-articulated facades are encouraged. Lots adjacent to Greenbelts will be reviewed with special attention to the rear building facade.

Unbroken blank facades, unfinished foundations and similar conditions are prohibited. Screen walls and privacy fences are prohibited in rear yards adjacent to and parallel to common areas unless otherwise approved by the Founder's Review Committee.

### **Architecture**

All plans for construction of buildings and other architectural features shall be prepared by a qualified designer and submitted to Founder's Review Committee for review prior to construction. Each submittal will be reviewed with respect to its ability to perpetuate a harmonious relationship with neighboring homes.

### **STYLE**

Due to the importance of residential architecture to the visual context of the community, all architecture should reflect high quality and craftsmanship, both in design and construction. While no mandatory architectural style is required, the use of unusual shapes, colors, and other characteristics that cause disharmony should be avoided.

### **MASSING**

Each structure in the community should complement its site through thoughtful attention to the massing and arrangement of each structure's architectural components on the site and surroundings.

The design of residential structures should include all facades, rather than emphasizing only the front elevation. Large unbroken planes are not considered in keeping with the desired scale of the development. Accessory buildings and enclosures should complement the style and scale of the main structure to develop well-balanced massing.

### **SQUARE FOOTAGE**

Each home in the community must be a minimum of 1,500 square feet of air-conditioned living area, regardless of lot size unless otherwise approved by the Founder's Review Committee. The garage is not included in this required square footage.

### **EXTERIOR SURFACE MATERIALS AND COLORS**

Homes should be designed with careful attention to the combination and interface between materials. Materials chosen should be appropriate for the theme and scale of the building, compatible with its location within the neighborhood, and expressive of the community's desired character and image. Founder's Review Committee will review all exterior materials as to type, color, texture and durability, as well as the extent of use of any single material or combination of materials.

Materials such as natural stone and brick masonry (clay-fired brick or concrete brick is permissible), acrylic-based stucco, fibrous cement siding and trim, and select use of natural wood will be encouraged as exterior building materials in keeping with the image of the community and the desire for visual harmony. Incorporating more than one such material on exterior walls is allowed provided their use does not detract from the building's overall design and form. All materials should appear as structural elements and not merely superficial.

Brick masonry should include special details such as coining, soldier and other decorative coursing, patterned lay-ups, articulated window headers and sills, and special chimney statements. Each residence shall be at least 100% masonry on both the first and second floors unless otherwise approved by the Founder's Review Committee. Masonry coverage calculation does not include doors, windows, chimneys, dormers, window box-outs, bay windows that do not extend to the foundation, or any exterior wall that does not bear on the foundation.

Concrete foundation walls shall not be exposed in excess of 6" and shall be faced or finished to blend with the general architectural design of the building.

Stone masonry joints shall be raked clean where appropriate, and held to a maximum of 1" in width. A 4'x4' sample lay-up of all stone masonry may be required on-site, to be reviewed prior to installation of the stone. The use of synthetic stone veneers, Masonite, plywood, vinyl, aluminum or metal siding is not allowed.

Siding is discouraged but will be considered for chimneys, dormers, window box-outs, bay windows that do not extend to the foundation, or exterior walls that do not bear on the foundation. Only fibrous cement siding and external trim materials shall be allowed. Siding material shall continue to within 6" of finished grade on any elevation. Knotty species of wood and other "rustic" textures are likewise discouraged unless good reason can be shown that it will significantly enhance the design of the house. Owners shall obtain written approval from Founder's Review Committee prior to installing or replacing siding that differs from the original siding material. The following are prohibited except with the express written consent of Founder's Review Committee:

- Metal structures such as sheds
- Multi-colored masonry
- Exposed cinder block
- Metal as a building skin
- Mirrored glass
- Clay tile roofs

The use of color shall generally be restricted to earth tones or natural colors found in the immediate surroundings, and shall apply equally to additions and/or alterations to existing structures as well as to new detached structures. Garish colors and color combinations, and/or unusual designs are discouraged. No bright, unfinished or mirrored surfaces will be allowed.

### **SIDEWALKS, WALKWAYS AND DRIVEWAYS**

Each residence shall have a city sidewalk four feet (4') in width from property line to property line. Street corner lots will have a city sidewalk four feet (4') in width wrapping the street side of the home from the front property line to the rear property line. Sidewalks shall have a medium broom finish.

Lots which are a part of the trail system will require six foot (6') wide sidewalks along the south and east sides of the two collector streets (south side of Southwind Boulevard and the south or east side of Water Oak Drive). These lots are identified in Exhibit B.

Driveways shall be either concrete paved with a medium broom finish, stamped and colored concrete, or exposed aggregate concrete. Driveways shall be perpendicular to the street and shall not exceed 12% slope.

Extension or expansion of driveways requires approval by Founder's Review Committee prior to installation. Founder's Review Committee may not approve such extensions or expansions intended for side yard parking or vehicle storage.

### **ROOFS**

All roof materials and colors are subject to Founder's Review Committee approval. Roof color should complement colors on the home and should be weatherwood or equivalent. Twenty (20) year fiberglass composition shingles should be used. Reflective roofing materials are prohibited. Metal roofs shall be considered reflective unless they have been painted or otherwise treated to reduce or eliminate reflections. Skylights shall be of flat glazed glass units. Roof pitch should be a 6:12 minimum slope.

Founder's Review Committee approval is required prior to installation of rooftop equipment and accessories. All rooftop mechanical equipment shall match roofing colors and be screened from neighboring properties and community open space. Exposed flashing, gutters and downspouts shall be painted to match the fascia and siding material of the structure. Solar equipment and skylights shall be incorporated into the structure and building mass and be architecturally compatible with the residence.

### **GARAGES**

Garages should not dominate the street view of the home. In all neighborhoods, garage doors should be selected to evoke a sense of quality with attention paid to jamb details and shadow lines, but must be metal to be durable.. Each garage shall be capable of housing a minimum of two (2) cars. Automatic door openers are recommended for all garage doors.

Detached garages are allowed only with the express approval of the Founder's Review Committee.

### **SECURITY DOORS AND WINDOWS**

Requests for security treatments for doors and windows must be approved by the Founder's Review Committee prior to installation; however, the use of "burglar bars", steel or wrought iron bars, or similar fixtures on the exterior of any windows or doors is strictly prohibited. Approval is not required for the addition of screen doors or other type doors to a home or an accessory building if the material matches or is similar to existing doors on the house and if the color is complementary to that of existing doors on the house

### **WINDOWS**

Windows shall be of clear glass or a tinted glass of bronze, gray, green or smoke color. The use of reflective glass, reflective tinting, or lining with reflective material is prohibited. Divided lite windows shall be utilized on the front elevation of each home. Founder's Review Committee approval is required for exterior shutters. Shutters shall be of a material similar to and of a color and design generally accepted as complementary to the exterior of the house.

### **AWNINGS AND OVERHANGS**

The use of awnings and overhangs requires Founder's Review Committee approval prior to installation. The materials and colors shall be the same or generally recognized as being complementary to the exterior of the building and will be attached directly to the structure. Neither metal nor plastic awnings will be allowed on any elevation fronting or siding to a street.

### **CHIMNEYS**

External chimneys (foundation projection with a brick ledge) on the front elevation must be constructed of brick or stone to the chimney cap on three sides (side adjacent to the home may be siding). All chimneys, regardless of location, must be constructed with an enclosure (no external flue piping). Interior chimney enclosures may be constructed of siding material.

### **DECKS & PATIOS**

Founder's Review Committee approval is required prior to the installation of a deck or patio. Decks and patios shall be constructed of wood, concrete, brick, high density concrete blocks (pavestone or similar), or of a material similar to that of the residence and, if painted, shall be painted a color similar to or generally accepted as complementary to the residence. Decks or patios shall be located so as not to obstruct or diminish the view from or create a nuisance for adjacent property owners. Construction shall not occur over easements and shall comply with the applicable Design Review procedures as stated herein.

### **PAINTING/ REPAINTING**

Founder's Review Committee approval is required prior to any exterior painting or repainting of the home or its accessory improvements. The submittal shall contain the manufacturer's paint chips with name and code number. Exterior finishes should consist of subdued earth tones such as gray, green, brown, muted blues or reds, or other similar colors. White, primary colors, and other bright colors may be permitted as accent colors only. Downspouts shall be painted to match

the body color of the home. Generally, garage doors should be painted a muted color and blend with other colors of the home, as prescribed herein.

### **ALTERATIONS, ADDITIONS, AND EXPANSIONS**

Founder's Review Committee approval is required prior to any exterior alteration to, addition to, or expansion of a home. The architectural design and materials used in any and all exterior additions, alterations, or renovations shall conform to the original home's design intent with respect to style, detailing, and materials used in the initial construction, as prescribed herein.

### **ACCESSORY STRUCTURES**

Founder's Review Committee approval is required prior to construction of any accessory structure, including but not limited to sheds, gazebos, greenhouses and permanently installed playhouses. Applications for accessory structures will be reviewed with regard to lot size, setbacks, and primary building size. Accessory structures shall be located in the rear yard or in a location not prominently visible from the street, and shall adhere to the standards described herein. Accessory structures shall be architecturally compatible with the home and shall meet the following criteria:

- Accessory structures shall be of the same color, material, and architectural style as the main residence or of color, material, and style that is generally recognized as complementary to that of the main residence.
- An accessory structure's roofing materials shall match those of the main residence.
- Accessory structures shall be no larger than 8'x8'.
- Utilities servicing accessory structures shall be installed underground.
- Accessory structures shall conform to the side and rear yard setbacks, as established by the City.
- Accessory structures shall not unreasonably obstruct any adjacent neighbor's views of public open space.
- Accessory structures shall extend no more than two feet (2') above the yard screening fence.

Carports (non-fully enclosed automobile shelters) and temporary sheds are prohibited.

### **EXTERIOR LIGHTING**

Founder's Review Committee approval is required prior to changing or adding exterior lighting. In reviewing lighting requests, Founder's Review Committee will consider the visibility, style, location and quantity of the light fixtures. Landscape lighting fixtures shall be dark-colored so as to be less obtrusive and shall be as small in size as is reasonably practical. All lighting shall be compatible with the architecture of the residence.

All landscape lighting in the front yard or the side street yard shall be incandescent. Exterior lighting shall not produce glare or direct illumination across a property line of an intensity that creates a nuisance or detracts from the use or enjoyment of adjacent property. Lighting for walkways generally should be directed toward the ground.

### **AIR-CONDITIONING AND OTHER MECHANICAL EQUIPMENT**

All mechanical equipment, including air-conditioning equipment, shall be located in a side or rear yard only and shall be screened from view. No window, roof or wall-type air conditioner that is visible from any street or any other Lot shall be used, placed or maintained on or in any home, garage or other improvement.

### **LIFESTYLE ACCESSORIES**

Unless otherwise specified otherwise, the following items require Founder's Review Committee approval prior to installation. This list is intended to serve as a guide and should not be construed to be all-inclusive.

**Clotheslines** - Clotheslines of any type are prohibited.

**Dog Runs** - Dog runs should be located within side or rear yards in such a way that they are not visible to neighboring properties or to community open space. Generally, dog run areas should not exceed three hundred (300) square feet in size and fence height should not exceed five (5) feet. The dog run fencing should be compatible with the home in material and color. Dog runs shall be well screened from neighboring properties and streets with landscaping. "Dog kennels" are not allowed.

**Playground Equipment/Sports Equipment/Grills** - Jungle gyms, swing sets or similar playground equipment shall be positioned on the Lot so as not to be visible from any street, but no closer to the side within rear lot lines than ten feet (10'). Any playground or other play areas, barbecue grills or equipment furnished as part of the common property of the subdivision shall be used at the risk of the user. Other playground equipment, sports equipment, or grills that are more portable in nature may be temporarily used in the front of the home in view of the street. When not in actual use, all such equipment shall be stored out of view from the street. No playground or other sports equipment or grills shall be permanently erected on the front or side street side of the Lot, visible from any street.

**Flagpoles** - No free standing flagpole shall be permanently erected on any Lot. A temporary flagpole approved by the Founder's Review Committee may be erected on a Lot with a model home until such time that the Lot on which the model home is situated is sold. The Founder's Review Committee may also design and erect permanent free standing flagpoles as part of entryway or common property ornamentation. Temporary poles may be kept in the front of the lot for a period not to exceed ten (10) days prior to and five (5) days following an appropriate national holiday.

**Satellite Dishes and Antennas** - Television antennas, radio towers or masts, and satellite dishes larger than one (1) meter in diameter are prohibited. The satellite dish, antenna, or mast shall be placed in the rear or side of the home in such a manner that it is screened from view from adjacent streets and neighboring properties and shall not be constructed on any utility easement or other easement or right-of-way located on any lot. The installation of a satellite dish, antenna, or mast shall also comply with the following minimum conditions:



- Must be securely mounted to a base, so as to be able to withstand the effects of high winds or other extraordinary weather conditions; however, no guy wires or similar mounting apparatus will be allowed.
- No advertising slogans, logos, banners, signs or any other printint or illustration whatsoever shall be permitted.
- Shall not ever be used to send or receive any ham radio signal.
- Shall not be permitted to cause any distortion or interference whatsoever with respect to any other electronic device in the subdivision.
- Shall be one solid color only; either white or black or shades of either brown, gray or tan.
- Must be installed in a manner that complies with all applicable laws and regulations and manufacturer's instructions.

**Spas / hot tubs** - Spas shall be located in the side or rear yard in such a manner that it is screened from view from adjacent streets and neighboring properties. Spas should be designed as an integral part of the deck or patio area where they are located.

**Swimming Pools** – In reviewing requests for swimming pool installation, consideration will be given to, but not necessarily limited to, setback from and impact on neighboring properties and the size of the pool enclosure.

**Temporary Structures** - Temporary structures, other than playhouses and those used during the initial construction of a residence, are not allowed.

**Signs** - Founder's Review Committee shall have the right and privilege to develop and implement uniform signage specifications and requirements applicable throughout the community, including entryway signage, community signage, Builder signage and model home signage. Existing homes for sale or for lease shall have no more than one temporary sign per lot that advertises property, which stands no more than four (4) feet high, which has dimensions of no more that 18"x24", which is conservative in color and style and which does not display inflammatory, derogatory or foul language. Temporary signs may be displayed only while the lot / home is for sale or lease and shall be removed when the property is no longer for sale or lease. Homeowners shall be allowed to temporarily display a sign which promotes a political candidate, party or issue for a two (2) week period starting not earlier than two (2) weeks prior to the date of the election or referendum and which must be removed no later than the day after the date of the election or referendum, providing it follows the standards listed above as to size, shape, color and content. The Founder's Review Committee or its designees shall have the right to enter any Lot and remove any sign, billboard, poster or advertising device which is not permitted and in doing so will not be subject to any liability for trespassing or other tort in connection therewith or arising from such removal.

Trade signs, which include but are not limited to landscaping, painting, remodeling, etc., may only be displayed while work is in progress. Founder's Review Committee may dictate a specific uniform size, style and color for such trade signs.

**Addresses** - Each home shall provide a cast stone address sign incorporated into the masonry of the front of the residence and clearly visible from the street. Painting of address numbers on the street curb is prohibited. One security sign may be permitted in the front yard located either adjacent to the driveway or in close proximity to the front entrance of the main dwelling. Founder's Review Committee may impose size, shape and color restrictions on security signs.

**Fire Wood Storage** - Approval is not required for storage of firewood provided it is located in the enclosed rear yard only, is not visible from any street, and is neatly stacked.

### **MAILBOX REQUIREMENTS**

Brick double mailbox located on the common property line, constructed out of the brick from the first home built are required. The alternative is cluster box with brick or stone base, as permitted by the Postmaster.

### **Landscaping**

In order to provide an attractive environment for all residents of the community, it is important that all residential landscapes work in harmony with both the built and the surrounding natural environment. Careful integration of site grading, architecture, and landscaping will accomplish this, while also maximizing each site's potential.

- View corridors into public open space should be maintained when siting residences and designing residential landscapes.
- Homeowners are required to extend landscaping to the street curb or sidewalk where it is adjacent to the street.
- Each homeowner is required to maintain the landscaping on his or her lot, as described herein.

### **INITIAL LANDSCAPING**

The homeowner shall install landscaping no later than thirty days after a certificate of occupancy is issued. Sod shall be installed to cover 100% of the lot (exclusive of the area enclosed by the rear yard fence) before home completion and occupancy. Qualified landscaping professionals shall perform initial installation of all landscaping.

### **SOIL ENHANCEMENT**

Topsoil shall be natural, fertile, friable, soil possessing characteristics of representative productive soil in this vicinity. It shall not be excessively acid or alkaline or contain toxic substances, which may be harmful to plant growth. Topsoil shall be free from weeds and other noxious materials. Topsoil shall not be stripped, collected or deposited while wet.

### **LOT GRADING**

Homeowners shall not grade their property in a manner that interferes with the established drainage pattern over any property. Homeowners should work with the natural contours and seek solutions that minimize the impact of grading with respect to major alterations of existing grades. Grading shall not extend onto adjacent properties without approval of the Owners of those adjacent properties.

Berms, slopes and swales may be used to define spaces, screen undesirable views, and reduce noise and high winds but should not exceed three feet of horizontal distance to one foot of vertical height (3:1 slope). Extensive cut/fill slopes are discouraged. Fill slopes shall not exceed 3:1. Cut slopes may be 3:1 if the soil's natural angle of repose allows.

Terracing which utilizes retaining walls may be used where the space cannot accommodate the maximum slope, provided that retaining walls conform to the guidelines expressed herein

### **DRAINAGE**

Existing and proposed drainage and grading shall be indicated on the site plan. Homeowners may make drainage modifications to their Lots provided that they do not alter the established drainage pattern.

Landscape plans shall conform to the established drainage pattern, shall cause water to drain away from the foundation of the house, and shall prevent water from flowing under or ponding near or against the house foundation. Water shall flow fully over walkways, sidewalks or driveways into established drainage patterns. Obstruction of surface flows resulting in a backup of water onto any lot is strictly prohibited. If deemed necessary, Founder's Review Committee may require a report from a drainage engineer as part of landscaping or improvement plan approval.

As defined below, accepted erosion control measures shall be used during construction to reduce adverse silting impacts downstream.

### **EROSION CONTROL**

To prevent erosion and siltation, all erodable areas of disturbed soil shall be protected until the soil is stabilized. Failure to exercise proper soil and sediment control techniques, particularly in areas which drain directly into ponds, detention facilities, public open space, streets or storm sewer inlets may result in the installation of erosion control devices by Founder's Review Committee and the costs thereof assessed against the offending party. The builder (or homeowner) shall landscape slopes within seven days after grading is completed.

Accepted erosion control techniques include the use of sedimentation basins, filtration materials such as straw bales or permeable geotextiles, and slope stabilization fabrics or tackifiers.

### **PLANT MATERIALS**

Landscaping shall consist of a combination of sodded turf areas and shrub and groundcover bed areas. Front yard and side yards exclusive of the area enclosed by the rear yard fence shall be 100% sod where there are no beds. Shrub and groundcover bed area shall contribute no less than 15% nor more than 50% of the total front yard area. Large expanses of mulch or bed areas without substantial shrub or groundcover plantings are unacceptable. Stone or gravel mulch with harsh, unnatural or high contrast colors is prohibited.

**Tree Requirements** – One tree of 1"-1 ½" caliper size is required in the front yard of each residential property.

### **OTHER LANDSCAPING REQUIREMENTS: 50' LOTS**

- 100% of the lot should be sod (exclusive of the area enclosed by the rear yard fence and any planting beds).
- Eight (8) three to five (3-5) gallon shrubs are required in the front yard.
- Five (5) one (1) gallon shrubs are required in the front yard.
- All planting beds are to be mulched.

### **OTHER LANDSCAPING REQUIREMENTS: 60' LOTS**

- 100% of the lot should be sod (exclusive of the area enclosed by the rear yard fence and any planting beds).
- Twelve (12) three to five (3-5) gallon shrubs are required in the front yard.
- Five (5) one (1) gallon shrubs are required in the front yard.
- All planting beds are to be mulched.

### **LANDSCAPE MAINTENANCE**

To perpetuate the community's visual integrity by ensuring healthy well-maintained plant materials, each residential lot should receive routine maintenance. The following practices are suggested to help minimize maintenance problems:

- Plants should be selected with regard to growth rate, regional climate and to their ultimate size and shape.
- Plants and irrigation heads shall be located away from pedestrian/bicycle traffic.
- Irrigation systems should be maintained. Such maintenance should include draining and servicing sprinkler systems and conducting operational checks on a weekly basis to ensure proper performance of the system.
- Soil mixes should include sufficient organic material (30% per tilled depth).
- At least 2" of shredded hardwood mulch, or comparable, should be used in planting beds to hold soil moisture and to help prevent weeds and soil compaction.
- Fertilization, weed and pest controls, etc. should be provided only as required for optimum plant growth.
- Woody plants should be pruned only when needed, and never by more than one-third.
- Trees should be spaced to allow for efficient mowing.
- Plants with similar sun, water, and space requirements should be located together.

### **IRRIGATION**

Automatic irrigation systems are not required for residential properties. However, the following items apply when designing an irrigation system.

- The irrigation system shall provide 100% coverage of the landscaped areas in all front and side yards.
- The environment of the area - wind, rain, temperature, sun exposure and topography - should be considered when designing a system.
- The irrigation system shall be equipped with rain and freeze sensors.
- Drip or bubbler irrigation systems are recommended for trees.

- Regular maintenance of the irrigation system shall be performed so as to minimize waste of water.

### **WEED BLOCK**

The use of solid plastic sheeting or polyethylene over ground plane areas is strictly prohibited. If landscape fabric is used, such fabric shall be of an A.B.S. or Nylon A.B.S. composite type to allow the free flow of water, air, and gasses to and from the soil.

### **WALLS**

The installation of walls requires Founder's Review Committee approval. Walls should appear as extensions of the home's architecture and be complementary to the main structure. Walls may be used to enclose and define courtyards, extend and relate the building forms to the landscape, and provide security and privacy. In no case should they block community views to public open space. Freestanding walls shall not exceed six feet in height. Low decorative walls that are part of the landscape design will be considered. Front yard landscape walls shall not exceed three feet in height.

If a retaining wall is necessary, it shall be constructed from Milsap stone or interlocking masonry units. If greater than four (4) feet in height, it shall be engineer-certified. Walls shall be located so as not to alter established drainage patterns. The Owner/ Builder of the "high side" property shall be responsible for installation of side property line retaining walls.

The foregoing standards are intended as an aesthetic guide only. Neither Founder's Review Committee nor its designee ensures the soundness, structural integrity, or effectiveness of retaining walls constructed in conformity with this section. Neither Founder's Review Committee nor its designee shall be responsible for ensuring the structural integrity or soundness of any approved retaining wall.

### **FENCES**

Except as designated below, lots may have a wooden fence not to exceed eight (8) feet in height. No fence may painted but may be sealed in a natural color or allowed to weather naturally. The smooth side of each wooden fence shall face any street or public right-of-way.

**Community Identity Fencing** is intended to contribute to a community-wide design style or theme and shall consist of no less than least 80% masonry. Community identity fencing shall be located in areas of high visibility such as along the perimeter of a neighborhood. Certain lots adjacent to Ragland Road shall have community identity fencing along the back of the lot. Community identity fencing lots are listed in Exhibit B.

**Common Area Fencing** shall be placed along properties adjacent to open spaces and shall be constructed so as to create a sense of security and safety while allowing for visibility, allowing open spaces to function as integral parts of the community rather than residual space. Lots which back up to or side on common areas or green spaces must have a four foot (4') wrought iron fence. Common area lots which require a wrought iron fence are listed in Exhibit B.

**Powerline Fencing** shall be placed along the powerline. It shall be initially constructed using masonry columns and wrought iron or solid wood with border-trimmed panels and steel pipe posts. When homes are built on lots along the powerline, the Builder shall replace the wrought iron portions where they exist with steel pipe posts and solid wood with border-trimmed panels. Lots along the powerline are identified in Exhibit B.

**Conventional Privacy Fencing** is allowed for interior lots only and may be constructed of wood, masonry or a combination of these materials. If wood is used, sealed spruce or cedar is recommended. Either wood or steel pipe support posts will be allowed, provided that the smooth side of each wooden fence shall face any street or public right-of-way. No fence may be painted but may be sealed in a natural color or allowed to weather naturally.

All fences require Founder's Review Committee approval prior to installation. The following guidelines apply to fences within the community:

- Fencing shall not exceed eight feet (8') in height nor extend into the front setback of a lot. Columns shall not exceed nine feet (9').
- Double walls or double fences along common property lines are prohibited.
- Fences shall not extend beyond the front face of the exterior wall that contains the residence's primary front entrance.
- All fences, whether constructed by the homeowner or the builder, shall be well maintained. In the event a fence or wall is damaged or destroyed, the homeowner shall repair or recondition the same at homeowner's expense within three weeks of the damage.

## **Construction Guidelines**

### **CONSTRUCTION SITE PLAN**

Approval of construction site plan by Founder's Review Committee or its designee is required prior to the commencement of any residential construction. Procurement of applicable permits from other governmental agencies is the responsibility of the Owner and shall be obtained prior to commencement of construction. Once begun, construction shall be completed expeditiously and in accordance with approved plans.

Prior to the commencement of construction activity, the Owner shall provide to Founder's Review Committee a detailed plan for the construction site including: size and location of the construction material storage area, limits of excavation, erosion control measures, drive areas, parking areas, chemical toilet location, location(s) of temporary structure(s), dumpster location, location of debris storage, plan for utility trenching, and location of construction signs. This plan shall also identify the proposed methods of tree protection.

### **COMPLIANCE WITH PLANS**

Contractors are responsible for complying with the approved construction site plan and with these Design Guidelines. If trash, debris, or spillage is not cleaned up, or damage to protected or improved areas is not repaired, Founder's Review Committee reserves the right to complete the

cleanup or repairs needed and specifically assess all related costs to the contractor and/ or Owner. Contractors and Owners are encouraged to notify Founder's Review Committee of any potential issues related to compliance with approved plans.

## **FACILITIES**

**Hours of Operation** - Hours of operation for construction shall be from 7:00 a.m. to 6:00 p.m. during Central Standard Time and from 7:00 a.m. to 8:00 p.m. during Central Daylight Savings Time. Construction operation hours shall be from 8:30 a.m. to 6:00 p.m. on Saturdays. Exterior construction shall not occur on Sundays or holidays.

**Construction Trailers, Sheds, Temporary Structures** - All construction trailers, sheds, or temporary structures require approval by Founder's Review Committee prior to installation. All such shelters shall be removed upon completion of construction, with a maximum duration per approval of twelve months. Reapprovals may be granted by Founder's Review Committee prior to the end of any approval period. Temporary living quarters for workmen are strictly prohibited.

**Sanitary Facilities** - The contractor shall be responsible for providing adequate sanitary facilities for construction workers. Portable toilets or similar temporary toilet facilities shall be located on-site only and in areas approved by Founder's Review Committee.

## **MAINTENANCE**

**Protection of Natural Materials** - Owners are advised of the fact that building sites may contain trees and other plant materials to be protected during construction. Damage to natural materials or scarring of property, including but not limited to damage to offsite areas is prohibited. Should such damage occur, it shall be repaired and/or restored promptly at the expense of the offending party. Founder's Review Committee reserves the right to complete the cleanup or repairs needed and specifically assess all related costs to the contractor and/ or Owner.

Materials to be protected shall be marked by flagging and protected by fencing or other approved barriers. Founder's Review Committee shall have the right to flag plants to be fenced off for protection. Any trees or branches approved to be removed during construction shall be promptly removed from the construction site.

Prior to commencing work on a building site, the Owner shall have a water-permeable siltation fence installed along the streetside of the lot, and all locations where drainage is designed to flow from the lot under construction onto another lot or open space. The fence shall be a minimum of twenty inches tall, anchored with wooden or metal stakes no farther than eight feet apart, and shall be made of a tight woven nylon or synthetic mesh material. This fence shall be maintained at all times until the ground plane of the building site has been fully vegetated.

Upon completion of construction, each contractor shall clean the construction site and repair or replace all damaged property, including but not limited to restoring grades, planting shrubs and

trees as approved or required by Founder's Review Committee and repairing streets, driveways, pathways, culverts, ditches, signs, lighting, and fencing.

**Excavation Materials** - Excess excavation materials shall be hauled away from the project site except where written arrangements have been made with Founder's Review Committee to haul clean excavated fill dirt to another site within the community. Stockpiled materials shall not be placed within the street right-of-way, and shall remain behind the silt fence at all times.

**Dust** - The contractor shall be responsible for controlling dust from the construction site. Earthwork shall be sprayed with water as necessary to keep dust at a minimum.

**Trash** - Regular cleanup of the construction home site is mandatory. All trash and debris shall be stored in a fenced trash disposal area and shall be removed from the trash disposal area on a weekly basis or when full, whichever occurs first. Any soil and/or debris flowing into the street(s) or open spaces from the construction home site shall be removed daily. Founder's Review Committee reserves the right to initiate cleanup of untidy building sites and assess contractors, subcontractors, or Owners for clean-up cost.

**Construction Drainage** - The Owner shall provide temporary erosion control measures during the construction period as described above. .

**Vehicles & Access** - Construction-related vehicles and including personnel vehicles shall enter the construction site via the construction entrance as designated by Founder's Review Committee. Such vehicles shall be parked so as not to impede traffic or damage surrounding natural landscape. Vehicles shall not be left on community roads overnight. Founder's Review Committee may designate, at the time of plan review or during construction, specific areas for the parking of construction workers' vehicles and/or equipment. Washing of vehicles and/or construction equipment on streets within the community is prohibited, and such washing shall be carried out either fully off-site or within such area designated by the Founder's Review Committee.

**Utility Disruption** - If telephone, cable TV, electrical, water, or other utility lines are cut, it is the offending party's obligation to report the incident to Founder's Review Committee and the affected utility provider. It is the offending party's obligation to negotiate the repair of such damage with the affected utility provider.



EXHIBIT A  
Legal Description

NOTE: Also refer to the Phase 1 plat recording information listed immediately following the legal description.

BEING a tract of land situated in the Ralph Graves Survey, Abstract No. 569, City of Arlington, Tarrant County, Texas, being a portion of that tract of land as described in Special Warrant Deed to Kimball Hill Homes Dallas, L.P., recorded in Volume 16732, Page 126, Deed Records, Tarrant County, Texas (DRTCT), being all of SOUTHWIND ADDITION, PHASE 1, an addition to the City of Arlington, Tarrant County, Texas as recorded in Cabinet A, Slide 9856, Plat Records, Tarrant County, Texas (PRTCT) and being more particularly described as follows:

BEGINNING at a 1/2" rebar capped set at the intersection of the west line of State Highway No. 360 (Variable width R.O.W., adjoining R.O.W. per Volume 10156, Page 1419, DRTCT), with the north line of Southwind Drive (R.O.W. Varies per Cabinet A, Slide 9856, PRTCT), from which a broken concrete monument found bears N 01°57'31" E, 2746.30 feet;

THENCE S 01°57'31" W, along the west line of said State Highway No. 360, a distance of 100.00 feet to a 1/2" rebar capped set at the intersection with the south line of said Southwind Drive, from which a 3/4" rebar found at the most easterly southeast corner of said Kimball Hill tract bears S 01°57'31" W, 468.25 feet and a concrete monument found bears S 01°57'31" W, 522.51 feet;

THENCE departing the west line of said State Highway No. 360, along the south line of said Southwind Drive, as follows:

N 43°02'29" W, a distance of 21.21 feet to a 1/2" rebar capped set;

N 88°02'29" W, a distance of 136.46 feet to a 1/2" rebar capped set at the point of curvature of circular curve to the left, having a radius of 465.00 feet;

Southwesterly, along said curve, having a central angle of 19°07'53", an arc distance of 155.27 feet and a chord that bears S 82°23'34" W, 154.55 feet to a 1/2" rebar capped set at the northeast corner of Lot 1, Block ZZ of said SOUTHWIND ADDITION, PHASE 1;

THENCE departing the south line of said Southwind Drive, along east, south, and west lines of said Lot 1, Block ZZ, as follows:

S 20°28'12" E, non tangent to said curve, a distance of 159.19 feet to a 1/2" rebar capped set;

S 13°11'38" E, a distance of 47.12 feet to a 1/2" rebar capped set;

S 39°09'48" W, a distance of 106.87 feet to a 1/2" rebar capped set;

S 67°02'29" W, a distance of 65.54 feet to a 1/2" rebar capped set;

N 78°07'34" W, a distance of 112.25 feet to a 1/2" rebar capped set;

N 54°59'45" W, a distance of 116.26 feet to a 1/2" rebar capped set in the south line of said Southwind Drive at the northwest corner of said Lot 1, Block ZZ;

THENCE along the south line of said Southwind Drive, as follows:

S 29°43'57" W, a distance of 44.03 feet to a 1/2" rebar capped set at the point of curvature of a circular curve to the right, having a radius of 530.00 feet;

Southwesterly, along said curve, having a central angle of 25°31'10", an arc distance of 236.06 feet and a chord that bears S 42°29'32" W, 234.11 feet to a 1/2" rebar capped set in the west line of the 150 foot wide TRACT B easement and right of way as set out to Texas Electric Service Company (TESCO), recorded in Volume 6041, Page 5, DRTCT;

THENCE S 04°16'45" E, departing the south line of said Southwind Drive, non tangent to said curve, along the west line of said TESCO easement and the east line of said SOUTHWIND ADDITION, PHASE 1, a distance of 1173.28 feet to a 1/2" rebar capped set at southeast corner of said SOUTHWIND ADDITION, PHASE 1, said point lying in the southeasterly line of said Kimball Hill tract and the northwesterly line of a tract of land as described in deed to Joe G. Harris and wife, Joyce Harris, recorded in Volume 7544, Page 843, DRTCT, from which a 5/8" rebar capped found at the most southerly southeast corner of said Kimball Hill tract bears N 59°29'32" E, 167.22 feet (Call 167.17 feet);

THENCE S 59°29'32" W, departing the west line of said TESCO easement, along the southeasterly line of said SOUTHWIND ADDITION, PHASE 1, the southeasterly line of said Kimball Hill tract, and the northwesterly line of said Harris tract, at a distance of 668.78 feet passing a 1/2" rebar capped set at the southwest corner of said SOUTHWIND ADDITION, PHASE 1, continuing along the southeasterly line of said Kimball Hill tract, the northwesterly line of said Harris tract, and the northwesterly line of Lot 1, Ralph Graves Addition, an addition to the City of Arlington, Tarrant County, Texas as recorded in Volume 388-203, Page 1, PRTCT, a total distance of 2025.95 feet to the most southerly corner of the herein described tract of land, from which a "PK" nail found at the most southerly southwest corner of said Kimball Hill tract bears S 59°29'32" W, 20.00 feet;

THENCE N 30°05'08" W, departing the southeasterly line of said Kimball Hill tract and the northwesterly line of the final plat of said Lot 1, Ralph Graves Addition, along the proposed southwesterly line of S. Collins Road, traversing said Kimball Hill tract, a distance of 2814.22 feet to a "PK" nail set in concrete in Ragland Road and the northwesterly line of said Kimball Hill tract, from which a "PK" nail found at the most westerly corner of said Kimball Hill tract

bears S 59°43'19" W, 25.44 feet;

THENCE N 59°43'19" E, within said Ragland Road, along the northwesterly line of said Kimball Hill tract, a distance of 952.57 feet to a railroad spike set at the northwest corner of the final plat of said SOUTHWIND ADDITION, PHASE 1;

THENCE S 31°54'49" E, along the westerly line of said SOUTHWIND ADDITION, PHASE 1, a distance of 26.81 feet to a 1/2" rebar capped set at the southwest corner of a right-of-way dedication for Ragland Road and the northwest corner of Lot 10, Block A of said addition;

THENCE N 60°01'12" E, along the southeasterly line of said Ragland Road (70' R.O.W. per Cabinet A, Slide 7594 & Cabinet A, Slide 9856, PRTCT), at a distance of 580.53 feet passing a 1/2" rebar capped set at the intersection with the west line of Water Oak Drive (90' R.O.W. at this point per Cabinet A, Slide 9856, PRTCT), at a distance of 670.53 feet passing a 1/2" rebar capped set at the intersection with the east line of said Water Oak Drive, continuing a total distance of 765.53 feet to a 1/2" rebar capped set at the southeast corner of said right-of-way dedication for Ragland Road and the northeast corner of Lot 2, Block I of said addition;

THENCE N 29°58'48" W, along the easterly line of said SOUTHWIND ADDITION, PHASE 1, a distance of 31.02 feet to a railroad spike set in said Ragland Road at the northeast corner of the final plat of said SOUTHWIND ADDITION, PHASE 1 and the northwesterly line of said Kimball Hill tract;

THENCE N 59°37'49" E, within said Ragland Road, along the northwesterly line of said Kimball Hill tract, a distance of 539.96 feet to a point, from which a 1/2" rebar found bears N 59°37'49" E, 506.99 feet and N 59°59'06" E, 965.25 feet;

THENCE departing said Ragland Road, traversing said Kimball Hill tract, as follows:

S 30°04'15" E, a distance of 459.20 feet;

N 59°55'45" E, a distance of 902.72 feet to the west line of the aforementioned TESCO easement recorded in Volume 6041, Page 5, DRTCT;

THENCE S 04°16'45" E, along the west line of said TESCO easement, at a distance of 1022.99 feet passing a 1/2" rebar capped set at the northeast corner of Lot 48, Block I of said SOUTHWIND ADDITION, PHASE 1, continuing along the west line of said TESCO easement and the east line of said SOUTHWIND ADDITION, PHASE 1, a total distance of 1359.02 feet to a 1/2" rebar capped set in the north line of said Southwind Drive, said point being the point of curvature of a non tangent circular curve to the left, having a radius point that bears N 41°42'10" W, 470.00 feet;

THENCE departing the west line of said TESCO easement, along the north line of said Southwind Drive, as follows:

Northeasterly, along said curve, having a central angle of  $18^{\circ}33'53''$ , an arc distance of 152.29 feet and a chord that bears  $N 39^{\circ}00'53'' E$ , 151.62 feet to a 1/2" rebar capped set at the point of tangency;

$N 29^{\circ}43'57'' E$ , a distance of 59.38 feet to a 1/2" rebar capped set at the point of curvature of a circular curve to the right, having a radius of 535.00 feet;

Northeasterly, along said curve, having a central angle of  $62^{\circ}13'34''$ , an arc distance of 581.04 feet and a chord that bears  $N 60^{\circ}50'44'' E$ , 552.90 feet to a 1/2" rebar capped set at the point of tangency;

$S 88^{\circ}02'29'' E$ , a distance of 136.46 feet to a 1/2" rebar capped set;

$N 46^{\circ}57'31'' E$ , a distance of 21.21 feet to the POINT OF BEGINNING and containing 7,239,298 square feet or 166.191 acres of land.

SAVE & EXCEPT streets dedicated to the public use by the final plat of SOUTHWIND ADDITION, PHASE 1, an addition to the City of Arlington, Tarrant County, Texas as recorded in Cabinet A, Slide 9856, Plat Records, Tarrant County, Texas.

NOTE: The bearings shown hereon are referenced to City of Arlington monuments AR 27, AR 30 & AR 58.

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#### **PHASE 1 PLAT RECORDING INFORMATION**

Filed in the Office of the County Clerk of Tarrant County, Texas on January 21, 2005 in Cabinet A, Slides 9856, 9857, and 9858.

EXHIBIT B  
Lots With Special Requirements

Reserved Lots

The following lots are the Phase 1 reserved lots:

Block I: 52, 53  
Block P: 18, 19, 20, 21, 22  
Block Q: 1, 2, 8, 9  
Block T: 6, 7, 8, 9, 10

Trail System Lots:

The following lots are the Phase 1 trail system lots:

Block I: 1  
Block J: 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36  
Block P: 1, 2, 3, 4, 5  
Block Q: 1  
Block R: 1, 21  
Block S: 1  
Block T: 1, 7

Community Identity Fencing Lots

The following Phase 1 lots adjacent to Ragland Road require the fencing along the back of the lot to be community identity fencing:

Block A: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10  
Block I: 1, 2

Common Area Lots

The following are the Phase 1 common area lots and require wrought-iron fencing:

Block A: 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20  
Block Q: 9 (side yard)  
Block T: 6 (side yard)  
Block T: 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

Powerline Lots

The following are the Phase 1 powerline lots:

Block I: 48, 49, 50, 51, 52, 53  
Block Q: 1, 2



SAMUEL L WYSE III  
KIMBALL HILL HOMES DALLAS LP  
3010 LBJ FREEWAY 1100  
DALLAS TX 75234

Submitter: KIMBALL HILL HOMES

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SUZANNE HENDERSON  
TARRANT COUNTY CLERK  
TARRANT COUNTY COURTHOUSE  
100 WEST WEATHERFORD  
FORT WORTH, TX 76196-0401

**DO NOT DESTROY**  
**WARNING - THIS IS PART OF THE OFFICIAL RECORD.**

Filed For Registration: 09/02/2005 02:03 PM  
Instrument #: D205262169  
OPR 30 PGS \$128.00

By: 



**D205262169**

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL OR USE  
OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR  
RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.