

DECLARATION OF COVENANTS AND RESTRICTIONS
Restatement and Amendment Declaration
BEVERLY OAKS TOWNHOUSES

DECLARATION made this ____ day of ____ 2010 by the Beverly Oaks Homeowner's Association, Inc.,

Witnesseth:

WHEREAS, the **Beverly Oaks Homeowners' Association, Inc.**, ("Association"), is a domestic corporation organized in 1982 by the developer New Mac, Inc., as recorded with the Secretary of State of the State of Texas on May 24, 1982, (filing number 60888401) formed for the purpose of maintenance, preservation and architectural control of the residence lots and common areas within the Beverly Oaks subdivision.

WHEREAS, Beverly Oaks is a subdivision of 96 townhouses located in Irving, Texas also known as the Freeman Irving Heights Addition Block A /Lots 1 -22, Block B /Lots 1-48, and Lot C /Blocks 1-25.of the City of Irving, Dallas County, Texas according to the map recorded in Volume 811197, Page 1973, Map Records, Dallas County, Texas.

WHEREAS, the Beverly Oaks subdivision has common areas owned by the Association which includes the 2023 Wilshire building lots and fences, Brentwood and Wilshire roadways, water mains and valves under the street and fire hydrants, entryway gates and gardens, treadle and warning lights at the community exit, concrete screening fence separating the subdivision from the multifamily property to the west, storm drains running under the subdivision, concrete screening fences on either side of the exit alley, sewer mains, cul-de-sac gardens, and the community mailboxes collectively known as The Freeman Irving Heights Addition Block A /Lot 23 and Split A ACS 2.0804, as recorded in **Volume 83030, Page 2277, Dallas County Records.**

Editors Note: Confirmation of volume needed.
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WHEREAS, the Beverly Oaks Homeowners' Association, Inc., ("Association"), has declared that the real property described herein as the Beverly Oaks subdivision shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, assessments, charges and liens (hereinafter called collectively "Declaration of Covenants and Restrictions" or "Declaration") set forth in a Declaration of Covenants and Restrictions ("Original Declaration") recorded on June 16, 1982 (Volume 82117, Pages 151-165) with amendments recorded on February 11, 1983 (Volume 83030 Page 2277) and January __, 1991 (Vol ____ Pages _____).

Editors Note: Confirmation of volume needed.
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NOW THEREFORE, this Declaration restates, amends and replaces the Original Declaration of Covenants and Restrictions dated June 4, 1982 and recorded on June 16, 1982, and all amendments thereto.

ARTICLE I
REPLACEMENT OF THE ORIGINAL
COVENANT AND RESTRICTIONS

This Declaration is effective January 1, 2014, restates, amends and replaces the Original Declaration of Covenants and Restrictions dated June 4, 1982 and recorded on June 16, 1982, and all amendments thereto.

ARTICLE II

DEFINITION OF TERMS

Section 1: Definitions

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) **"Association"** shall mean and refer to the Beverly Oaks Homeowners' Association, Inc.
- (b) **"Properties"** shall mean and refer to all such existing properties, as are subject to this Declaration or any Supplemental Declaration
- (c) **"Common Properties"** shall mean and refer to those areas of land shown on any recorded subdivision plat of the Properties and intended to be devoted to the common use and enjoyment of the owners of the Properties, which includes but is not limited to the Brentwood and Wilshire roadways, 2023 Wilshire building lots and fences, water mains and valves under the street and fire hydrants, entryway gates and gardens, treadle and warning lights at the community exit, concrete screening fence separating the subdivision from the multifamily property to the west, storm drains running under the subdivision, concrete screening fences on either side of the exit alley, sewer mains, cul-de-sac gardens, and the community mailboxes.
- (d) **"Living Unit"** shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family, including and the Lot there under.
- (e) **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (f) **"Board of Directors" or "Board"** shall refer to the governance as created and defined in the Bylaws of the Beverly Oaks Homeowners' Association, Inc.
- (g) **"BS&DR"** shall refer to Building Standards and Design Requirements as set for in Article _____
- (h) **"Noncompliance"** shall refer to a Living Unit that does not conform to the Building Specification, Design Requirements under Article ____ or Community Covenants and Rules under Article _____.
- (i) **"Infraction"** shall refer to an Owner that has breached a Community Covenant or Community Rules under Article _____
- (j) **"Member"** shall mean and refer to all those Owners who are members of the Beverly Oaks Homeowners' Association, Inc. as provided in [Article __](#), [Section 1](#),.
- (k) **"Eligible Mortgage Holder"** shall mean a holder of a first mortgage on a Living Unit who has requested notice of certain matters from the Association pursuant to [Article ____](#).
- (l) **"Eligible Insurer or Guarantor"** shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters pursuant to [Article ____](#).

ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION
ADDITIONS THERETO

Section 1: Existing Property

The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Irving, Dallas County, Texas, and is more particularly described as the Freeman Irving Heights Addition, recorded in Map Records Volume 811197, Page 1973, and includes Block A /Lots 1 –through 23, Block B /Lots 1-through 48, and Lot C /Blocks 1-2 through 5 and the Freeman Irving Heights Addition Split A ACS 2.0804 and Block A /Lot 23, all of which real property shall hereinafter be referred to as “the property”.

ARTICLE IV
MEMBERSHIP AND VOTING
RIGHTS IN THE ASSOCIATION

Section 1: Membership

Every person or entity who is a recorded Owner of a fee or undivided fee interest in any Living Unit which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2: Voting Rights

Members shall be entitled to one vote for each Living Unit in which they hold the interest required for membership by [Section 1](#). If the Member is a firm, partnership, corporation, association or other legal entity, the authorized representative of such entity shall have all the rights of an individual owner. When more than one person holds such interest or interests in any Living Unit all such persons shall be members, and the vote for such Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Living Unit.

Section 3: Voting Eligibility

A member shall be deemed in good standing and entitled to vote at any annual or special meeting of the members, within the meaning of this Declaration or the Bylaws, if, and only if, Member shall have fully paid all assessments or installments thereof made or levied against him and the Living Unit owned by him.

ARTICLE V
RIGHTS OF ELIGIBLE MORTGAGE HOLDERS

**** EDITORS NOTE: This section to be reviewed by counsel to insure that the necessary language is in place to comply with FHA, lender, and insurance and other third party requirements.

Eligible mortgage holders shall have the following rights:

- (a) The rights of notice as set out in the Bylaws.

- (b) When professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity becomes an eligible mortgage holder or eligible insurer or guarantor at that time or later, the Association may elect to establish self management.
- (c) Any rebuilding or repair of the Common Properties, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the declaration and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on Living Units subject to eligible holder mortgages.
- (d) Any election to terminate the legal status of the Common Properties after substantial destruction or a substantial taking in condemnation of the project property must require the approval of eligible holders holding mortgages on Living Units which have at least 51 percent of the votes of Living Units subject to eligible holder mortgages.

ARTICLE VI
PROPERTY RIGHTS IN THE LIVING UNITS
AND COMMON PROPERTIES

Section 1: Members Easements of Enjoyment

Subject to the provisions of [Section 3](#), every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Living Unit.

Section 2: Title to Common Properties

The Beverly Oaks Homeowners' Association, Inc. holds the title to the common areas which include the Brentwood Dr/Ct and Wilshire Dr/Ct roadways and the 2023 Wilshire Drive are known as The Freeman Irving Heights Addition Split A ACS 2.0804 and Block A /Lot 23 as recorded in Volume 83030, Page 2277, Dallas County. The common areas includes but are not limited to Brentwood and Wilshire roadways, 2023 Wilshire building lots and fences, water mains and valves under the street and fire hydrants, entryway gates and gardens, treadle and warning lights at the community exit, concrete screening fence separating the subdivision from the multifamily property to the west, storm drains running under the subdivision, concrete screening fences on either side of the exit alley, sewer mains, cul-de-sac gardens, and the community mailboxes.

Section 3: Extent of Members Easements

The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) the right of the Association to have reasonable entry upon any Living Unit to make emergency repairs or perform exterior maintenance as provided for in Article ____ .
- (b) the right of the Association to unfettered access to the visitor parking easements on located in Block B Lots 1, 5, 8, 25, 29 & 32 (1900, 1908, 1914 Wilshire and 1609, 1615, 1623 Brentwood).
- (c) the right of the Association to suspend the enjoyment rights of any Member for any period during which any assessment or violation fine remains unpaid, and for any period not to exceed thirty (30) days for any infraction of Association Covenants and Rules as per Article__ and Article ____ .
- (d) the right of the Association to dedicate or transfer all or any part of the Common Properties, including but not limited to Brentwood and Wilshire Drive (Split A ACS 2.0804), to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association.
- (e) the right of the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Properties.
- (f) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lenders rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;
- (g) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;

Section 4: Parking Rights and Enforcement

The Association shall maintain upon the Common Properties and upon the various parking easements on Block B Lots 1, 5, 8, 25, 29 & 32 (1900, 1908, 1914 Wilshire and 1609, 1615, 1623 Brentwood), parking spaces for the sole use of the Member's guests.

The Association may designate from time to time a temporary alternate use or uses that may be made of such parking spaces and the persons by whom such use shall be permitted.

The use of such spaces by any Member or any person not authorized by the Association to park in these spaces may be enjoined by the Association.

The Association may tow or boot any vehicle not authorized by the Association to use such space or spaces. Prior to towing or booting a vehicle, the Board of Directors shall deliver a warning letter by taping it to the vehicle window and sending it via certified mail and to the Member, if known.

The letter shall contain the following information:

If vehicles owned or driven by you, your renters, workmen, or guests with the license number(s) _____ [insert license plate number] park in the designated visitor parking spaces located at _____ [insert address] the vehicle may be towed from these spaces without additional notices at any time during the next 12 months. You will receive no additional warnings. The Association does not routinely patrol the community so the vehicle may not be towed after every infraction.

When the vehicle is towed it may be retrieved by calling _____ [insert service company] at _____. _____ [insert service company phone number] is located at _____ [insert service company address] You will be liable for any towing, booting or other service fees.

The Association has no liability for service fees or damages to the vehicle as a result of this action. Please keep this letter for future reference.

Section 5: Easements For Encroachments

If any portion of the Common Properties encroaches upon any Living Unit or any Living Unit encroaches upon the Common Properties of another Living Unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements on the Properties, an easement for the encroachment and for the maintenance thereof shall exist so long as the encroachment exists.

**ARTICLE VII
COVENANT FOR ASSESSMENTS**

Section 1: Creation of the Lien and Personal Obligation of Assessments

Each Owner of a Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time. The Annual and Special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2: Annual Assessments

Annual Assessments shall be due and payable in advance on the first day of January of each calendar year. After Annual Assessments have been set by the Association, the Board of Directors shall prepare and deliver to each Owner an individual statement of the Annual Assessment.

Any Owner may apply to the Board of Directors for approval to pay the Annual Assessment on a quarterly basis. Such approval is within the sole discretion of the Board of Directors. If such quarterly installments are approved and then become delinquent, the unpaid balance of the Annual Assessment shall be automatically accelerated and become immediately due and payable in full.

The Association may offer an early payment incentive of up to 12% to Members paying the entire Annual Assessment in January .

Section 3: Purpose of Assessments

The assessments levied by the Association shall be used exclusively for the purpose of promoting recreation, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of Properties, and Common Properties.

Assessments will be used for the purposes of, but not limited to, capital repairs and capital reserves, insurance and emergency reserves, management services and administrative expenses, landscaping services, maintenance and improvements to the Common Areas, periodic painting and siding repairs to the Properties, irrigation and exterior lighting, and community functions.

Section 4: Basis of Annual Assessments

The Board of Directors shall prepare an Annual Budget for the Association to be approved by the Members prior to the calendar year. In the event an annual budget has not been voted on and approved by the Members on or before the first day of any calendar year, the Association shall only purchase essential services such as, but not limited to, taxes, insurance, legal and collection expenses, 50% of management fees, and any costs to correct material health and safety hazards until such time that a budget has been approved by the Members.

Section 5: Basis of Violation Fines

In addition to the Annual Assessments authorized by Section ___ hereof, the Association may levy fines to individual owners for "Violations" as provided for in Article ___ and Article _____.

The total cumulative fine on any violation or infraction shall not exceed 200% of a reasonable cost to correct the violation. The total cumulative fine shall be assessed in 12 equal monthly installments. No installments shall be assessed after a violation or infraction has been cured or corrected. Any assessed prior to the cure shall remain payable to the Association.

EXAMPLE: If the reasonable cost to replace a nonconforming roof is \$3,000, then the violation fine would be \$500 per month for a maximum of 12 months $[(\$3,000 * 2) / 12]$.

For violations or infractions where the cost to correct is less than \$300, a monthly fines in a sum equal to 1/24 of the Annual Assessment in the current year may be levied until the violations or infractions are cured or corrected .

Amendments to the fine schedule may be made from time to time, in accordance with the voting requirements of Article _____

Section 6: Special Assessments for Capital Improvements

In addition to the Annual Assessments authorized by Section _____ hereof, the Association may levy in any Assessment Year a Special Assessment, applicable to that year only for the purpose of defraying, in whole or in part,

the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto. Any Special Assessment levied as provided for herein shall become due and payable on the date set forth in the resolution establishing such Special Assessment. Such Special Assessment may be payable in equal monthly installments as set out in [Section 2](#) above.

Section 7: Notice of Annual or Special Assessments

Subject to the requirements of [Section 4](#) and [6](#) above, the Board of Directors of the Association shall:

- (a) fix the date of the commencement and the amount of the assessment whether annual or special against each Lot or Living Unit for each assessment period at least thirty (30) days in advance of the date such assessment shall become due and payable. Upon fixing the date of commencement and the assessment, the Board of Directors shall prepare a roster of the Properties and assessments applicable thereto which shall be kept in the Association office and shall be available for inspection by any Owner.
- (b) Written notice of any assessment, annual or special, shall be sent to every member subject thereto. Such notice shall state the name and address of the Owner subject to such assessment, the amount of the assessment, whether such assessment is annual or special, if the assessment is special, the purpose of such Special Assessment, and the date such assessment shall be due and payable to the Association.
- (c) The Board of Directors shall upon request furnish to any Owner liable for any such assessment a certificate in writing signed by a majority of the officers of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8: Capital Reserve Fund

The Association has a capital reserve of \$10,000 as of January 1, 2011. Thereafter the Association shall include as part of its Annual Assessment an amount which is reasonably necessary to achieve an adequate reserve fund for periodic maintenance, repair and replacement of improvements to the Common Properties and any other area which the Association may be obligated to maintain.

The Association shall routinely accumulate dedicated capital reserve funds in advance of anticipated capital expenditures such as, but not limited to replacement /repair of concrete sections of the roadway, replacement /repairs to the three storm drains running under the subdivision, replacement /repairs to water run off grading of the land and French drains, replacement /repair of the concrete screening fences on either side of the exit alley, replacement /repair of the concrete screening fence separating the subdivision from the multifamily property to the west, replacement /repair of the sewer mains, replacement /repair of the water mains and valves under the street, the replacement of roof and doors on 2023 Wilshire, replacement /repair and upgrading of the entry, exit, and cul-de-sac gardens, replacement of the mailboxes, and replacement /repair of the treadle and warning lights at the community exit.

The Capital Reserve allocations shall be based on a reserve study and shall be maintained in a dedicated bank account, separate from the Associations operating accounts and emergency reserves accounts, and used only to fund capital repairs and replacements.

Section 9: Emergency Reserve Fund

The Association shall have an emergency reserve of \$17,000 as of January 1, 2011. Thereafter, the Association shall include as part of its Annual Assessment an amount which is reasonably necessary to maintain an adequate emergency reserve fund for uninsurable losses including, but not limited to loss or damages to the roadways, underground water and sewer lines, storm drains, and foundations.

The Emergency Reserve shall be maintained in a dedicated bank account, separate from the Associations operating

accounts and capital reserves accounts, and used only to fund emergency repairs.

The minimal set aside each year will be sufficient to bring the reserve fund to \$60,000 in 5 equal annual set asides.

Section 9: Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association.

- (a) **Personal Obligation and Lien.** Any assessment levied shall be and remain the personal obligation of the Owner at the time such assessment was levied and shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid when due, then such assessment shall become delinquent and shall, together with any late charge, such interest thereon and costs of collection including, but not limited to reasonable and necessary attorneys fees, constitute and become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, personal representatives and assigns.
- (b) **Late Charge and Interest.** Any assessment not paid within ten (10) days of the date such assessment is due shall incur a late charge of five percent (5%) of the amount of the assessment not paid. Any assessment not paid within thirty (30) days of the date such assessment is due, shall, in addition to the late charge, bear interest on the amount of the unpaid assessment from the date such assessment was due, at the rate of eighteen percent (18%) per annum until such assessment is paid. Any attorney fees or legal fees incurred in collection of past due assessments will be paid by the member with the past due balances,
- (c) **Perfection and Foreclosure of Lien.** The Association shall perfect its lien by filing an Affidavit of Lien in the records of the County Clerk of Dallas County, Texas in a form prescribed by the Board of Directors. The Affidavit of Lien shall set forth the name and address of the Owner, the description of the property to which it applies, the amount of the indebtedness due and owing at the time of execution and the rate at which the indebtedness is accruing. Notice of the filing of the affidavit of lien along with a copy of the affidavit of lien filed shall be given to the Owner against whose property the affidavit of lien is claimed. The Association shall have the right to foreclose the lien against the property by judicial action or by non-judicial foreclosure sale pursuant to the requirements of Texas Property Code #51.001, et seq. In the event the Association elects to pursue non-judicial foreclosure of any lien, the Association shall designate in writing a trustee, which trustee shall give the required notices and conduct the foreclosure sale according to law.
- (d) **Remedies of the Association.** In addition to the right to foreclose its lien, the Association shall have all other remedies at law or in equity necessary to recover the sums due and owing to the Association by the Owners, including but not limited to, bringing a personal action against any Owner to recover a money judgment. Any such personal action shall include the sum of the unpaid assessments plus late charges, interest, costs and reasonable attorneys fees incurred to bring same. The exercise by the Association of one remedy shall not be an election of remedies nor shall same preclude the exercise of any other remedy available, all such remedies being cumulative.

ARTICLE VIII
BUILDING STANDARDS AND
DESIGN REQUIREMENTS

Section 1: Personal Obligation of to Comply with Building Standards and Design Requirements ("BS&DR")

Each Owner of a Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to comply with the Building Standards and Design Requirements and its shall also be the personal obligation of the person who is the Owner of such property to pay any fines levied by the Association as per Section ___ for any failure to comply or correct a deviation from the standards or requirements,

Compliance may be enforced by the Associations any Owner of a Living Unit.

Section 2: Building Standards

ROOFS. All replacement roofs on Living Units shall be constructed using a fiber glass-based 3-tab shingle manufactured by the CertainTeed Corporation (Valley Forge, PA), in the color Heather Blend or manufactured by the GAF Corporation in the color Ash Brown.

SIDING AND TRIM. All lapboard siding is to be 12 inch, smooth sided fiberboard in a 7/16" – 8/16" thickness. Thinner (4/16" - 5/16") concrete fiber lapboard, simulated wood grain lapboard, and real wood lapboard are prohibited.

All windows shall be trimmed with a 1" x 4" smooth cedar board.

GARAGE DOORS. All 16 foot wide garage doors must be of wood or metal composition with smooth surface without windows or patterns of any type.

FENCES. All fences facing the street shall be six (6) feet in height and shall be constructed of cedar pickets and stringers. No posts or stringers shall be visible from the street. Fences may be treated with colorless water protective sealants. No painting or color staining is permitted.

Replacement fences will be of a cap (2" x 6') and trim (1" x 4") design using overlapping 1"x 6" cedar pickets.

All perimeter fencing on the Lots shall be maintained in good condition with no missing pickets, slanted posts, or stringers, or excessive termite damage or wood rot.

FRONT ENTRY. All entry doors shall be 6 panel, 2 top panels 7" X 9", 4 lower panels 25" X 9" constructed of wood or metal, without a window. Door hardware shall be finished in a bright brass or steel color. Metal storm doors (glass) may be used in addition to the entry door; provided such doors have frames of the same color of the entry door. Screen doors made of wood are prohibited for use on the front entry. Security bars and awnings are prohibited

WINDOWS. All exterior windows should be Thermopane with brown window bars. Windows visible to the street may be used to mount air conditioners units or fans.

Satellite Dishes and Antennas. Satellite dish, outside television aerial or radio antenna shall be not be visible from the street. If an acceptable quality signal cannot be received under this standard, Members may apply for a variance.

Section 2: Design Requirements

Design requirements are administered by the Board of Directors and include, but are not limited to, specifications for exterior paint colors, lists of approved landscaping materials, and exterior lighting fixtures options,

Section 4: Approval Required Prior to Exterior Repairs

All exterior repair and construction requires written approval by the Board of Directors prior to the delivery of materials and the commencement of work. The purpose of this approval is to insure that Members are aware of the building standards and design requirements and to prevent BS&DS violations. **IGNORANCE OF THE BUILDING STANDARDS AND DESIGN REQUIREMENTS IS NOT A BASIS FOR A WAIVER OR REDUCTION OF A FINE.**

Section 5: Conflicts Between the Building Standards and Design Requirements (BS&DR)

If a conflict arises between Association's Building Standards and Design Requirements Document the Building Standards prevail.

Section 6: Approval of Changes to Elevations, Walks and Drives, and the Diversion of Water

Any proposed structural modification to a Living Unit, that alters the elevation, including but not limited to, room extensions, bay windows, enclosed porches, and alteration of the driveways or walkways requires a vote of Members

in accordance with the Article ____ Section 3, Paragraph b4.

Any diversion of water requires a vote of Members in accordance with the Article XVII Section 3, Paragraph b4. No structures, ditches, changes in the terrain or existing drainage system, or landscaping shall be allowed on any Living Unit that would materially cause an increase in the normal flow of water across other lots. Any request for variance shall be accompanied by an engineering study.

Section 7: Notice of Noncompliance

Any Notice of any Noncompliance with the BS&DR will be made in writing and delivered by certified mail and general mail to the Living Unit owner, with a notice posted on a primary entrance of the Living Unit. The notice shall specify the violation, the time allowed to cure (30 days), the date and amount of any potential violation fines that may be levied, a contact phone number and an address for correspondence. Failure to receive a notice of noncompliance is not a de facto approval.

Section 10: Levy of Violation Fines

In the event that any Living Unit remains noncompliant after the 30 day cure period, and there is no appeal on file with the Association, a Violation Fine shall be imposed as provide for in [Article ____](#).

The violation fines

Nonconforming roof , including but not limited to, the wrong color, or style.

Nonconforming garage door, including but not limited to, the wrong style.

Written notice of the Violation Fine shall be delivered by certified mail and general mail to the Owner, with a notice posted on a primary entrance of the Living Unit.

Section 11: Disputing a Notice of Non-Compliance

An Owner may dispute a Notice of Noncompliance, the period of time allowed to cure, or a violation fine. A dispute must be delivered by certified mail and general mail to the address listed on the Notice of Non-Compliance. No additional notices, fines, or actions will be taken by the Association and all fines will be temporarily suspended until the Owner receives a written answer from the Association in response to the dispute. Notwithstanding the above, the noncompliance shall be reported by the Board as part of any TREC Resale Certificate prepared on behalf of the Association

Section 12: Appeal a Notice of Noncompliance

Two levels of appeal are available.

- (a) A Notice of Noncompliance and the subsequent Violation Fines may be appealed to the Association by requesting an informal hearing. The Violation Fine will be temporarily suspended as described in Section 10 for any appeal received within 15 days after a final answer to a dispute (as per Section 11).
- (b) An Owner may appeal a Notice of Non-Compliance and subsequent Violation Fines as follows:
 - (1) UP TO \$5,000 Owner may file a claim in small claims court for Violation fines up to \$5,000. The findings of the court are final and not appealable.
 - (2) MORE THAN \$5,000 Owners may request arbitration for fines over \$5,000. An Owner shall recommend 3 qualified ,independent, arbitrators from which the Association will select 1, or reject all for material reasons, and request additional options.
 - (3) The Owner shall pay the arbitration fees in advance to the arbitrator. The arbitration hearing shall be

informal, attorneys are not required for any party, and hearings are not to exceed 3 hours in length. If an Owner prevails in arbitration, the Association will reimburse the arbitration fees and any award within 30 days of the hearing. Each party will pay its own attorney fees, if any.

Section 13: Amending Building Standards and Design Requirements ("BS&DR")

BUILDING STANDARDS. Amendments to the standards shall require a vote of the Members accordance with the Article __ Section __

DESIGN REQUIREMENTS. Amendments to the design requirements shall require a vote in accordance with the Article ____ Section 3, Paragraph b4.

**ARTICLE IX
COMMUNITY COVENANTS AND RULES**

Section 1: Personal Obligation of to Comply with Community Covenants and Rules

Each Owner of a Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to comply with the **Community Covenants and Rules** and its shall also be the personal obligation of the person who is the Owner of such property to pay any fines levied by the Association as per Section ___ for any failure to comply or correct a deviation from the covenants or rules,

Compliance may be enforced by the Associations any Owner of a Living Unit.

Section 2: Community Covenants

The community Covenants are:

- (a) All living units shall have a working lamp post in the yard that is illuminated from dusk to dawn.
- (b) No animals or poultry shall be kept on any lands within the Properties except ordinary household pets belonging to the household that conform to the requirements of the City of Irving. Animals shall not disturb the peace.
- (c) No garbage, refuse, rubbish or cuttings shall be deposited on any street, road or Common Properties and not on any Lot unless placed in a manner that complies with the collection requirements of the City of Irving. Trash should not be put out earlier than 5 PM of the day prior to collection with the exception of brush and limbs which shall not be put out earlier than 5 days before collection.
- (d) No boats, trailers, trucks, campers or commercial vehicles shall be parked or maintained in the Properties. Commercial vehicle is defined as any vehicle that has a commercial registration, or displays signage. This restriction shall not restrict trucks or commercial vehicles making pickups or deliveries to or in the Properties, nor shall this restriction prohibit trucks or commercial vehicles within the Properties which are necessary for the construction of residential dwellings or maintenance of the Common Properties.
- (e) No play equipment, swing sets, trampolines, basket ball goals and any other play equipment shall be permanently located anywhere but at the rear of the house.
- (f) No yard signs will exceed a customary and conventional size as to detract from the overall appearance the Property. Only signs for the purpose of selling, renting, or protection of the house and placed on the ground are permitted. Campaign signs shall be limited to one per candidate per Lot and removed the day after voting is complete.
- (g) No clotheslines, drying yard, service yards, woodpiles or storage areas shall be so located as to be visible from a street or Common Properties.

- (h) No exterior lighting installed on any Lot shall be either indirect or of such controlled focus and intensity as to disturb the residents of the adjacent property.
- (i) All leases or rental agreements for Living Units shall be in writing and specifically subject to this Declaration, the Association Bylaws and Rules and Regulations. No Living Unit may be leased or rented for a period of less than six months.
- (j) No inoperable motor vehicles, vehicles with out current registration and state inspection stickers, are permitted on The Property unless stored in the garage of a Living Unit. Vehicles cannot be repaired on The Property, unless repaired in the garage of a Living Unit with the door closed.
- (k) No structures that will be visible to an adjacent Lot, / or , that create noise during operation are permitted without the consent of the immediate neighbors.

Section 3: Conflicts Between the Community Covenants and Community Rules

If a conflict arises between Association's Community Covenants and Community Rules Document, the Community Covenants prevail.

Section 4: Notice of Infraction

Any Notice of any Infraction with the Covenants and Rukes will be made in writing and delivered by certified mail and general mail to the Living Unit owner, with a notice posted on a primary entrance of the Living Unit. The notice shall specify the violation, the time allowed to cure (30 days), the date and amount of any potential violation fines that may be levied, a contact phone number and an address for correspondence. Failure to receive a notice of infraction is not a de facto approval.

Section 5: Levy of Violation Fines

In the event that any Living Unit has not cured an infraction after the 30 day cure period, and there is no appeal on file with the Association, a Violation Fine shall be imposed as provide for in [Article ____](#).

Written notice of the Violation Fine shall be delivered by certified mail and general mail to the Owner, with a notice posted on a primary entrance of the Living Unit.

Section 6: Disputing a Notice of Infraction

An Owner may dispute a Notice of Infraction, the period of time allowed to cure, or a violation fine. A dispute must be delivered by certified mail and general mail to the address listed on the Notice of Infraction. No additional notices, fines, or actions will be taken by the Association and all fines will be temporarily suspended until the Owner receives a written answer from the Association in response to the dispute. Notwithstanding the above, the infraction shall be reported by the Board as part of any TREC Resale Certificate prepared on behalf of the Association

Section 7 : Appeal a Notice of Infraction

A Notice of Infraction and the subsequent Violation Fines may be appealed to the Board of Directors by requesting an informal hearing. The Violation Fine will be temporarily suspected as described in Section 10 for any appeal requested within 5 days of receipt of a Notice of Infraction.

Section 8: Amending Community Covenants and Community Rules

COMMUNITY COVENANTS Covenants may be amended from time to time, as required, by a vote of owners in accordance with Article____ Section 4

COMMUNITY RULES may be amended from time to time, as required, by a vote of owners in accordance with Article -
_____Section 3, Paragraph a.

ARTICLE X **EXTERIOR MAINTENANCE**

Section 1: Exterior Maintenance for All Living Units

In addition to maintenance upon the Common Properties, the Association shall provide exterior maintenance upon each Lot and Living Unit as follows:

- (a) routine mowing and trimming the front yard grass and shrubs not to include installation or removal;
- (b) routine maintenance of the irrigation in the front yards of each living unit;
- (c) periodic pruning of the trees not to include installation or removal;
- (d) painting, siding and trim repairs to the front and rear of each living unit in accordance with a 10 year schedule approved by a vote of the Owners;
- (e) any additional service approved by a vote of the Owners, provided that the service will provided on an ongoing basis;

Section 2: Painting and Siding Repairs

Painting and siding repairs shall be conducted annually to a portion of the Properties, unless prohibited by budget shortfall or other reason. The specific trim and siding repairs to be conducted on each Living Unit shall be determined by the Board of Directors.

The properties shall be painted in an orderly rotation. The schedule posted for the eight year period from 2009 – 2017 started with 1901– 1919 Wilshire (odd side of street), and was followed by 1601-1623 Brentwood (odd side of street), then 1900-1922- Wilshire (even side of street), 1500- 1526 Brentwood, 1600-1620 Brentwood (even side of street), 101-121 Brentwood Ct., 2001-2021 Wilshire (odd side of street), and finally 100-122 Brentwood Ct.

Section 3: Special Exterior Maintenance Requests and Payment of Cost

Special exterior maintenance shall be requested in writing and will be performed at the discretion of the Board of Directors. If the Board of Directors of the Association requires, the Owner shall execute and deliver a contract, promissory note and such other instruments as in the opinion of the Board or its attorney are reasonably necessary to fix a mechanic s and material man s lien against the Owner s Lot or Living Unit prior to the time that any of the work is done. The note shall be payable as directed by the Board or as a part of the assessment or charge as provided in [Article _____](#).

Section 3: Access at Reasonable Hours

For the purpose solely of performing the exterior maintenance authorized by this [Article](#), the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day except Saturday, Sunday or holidays.

ARTICLE XI **RECONSTRUCTION OR REPAIR**

**** EDITORS NOTE: This section also needs to include a requirement for homeowners to rebuild after fire or flood.

Section 1: Reconstruction or Repair of Common Properties

In the event of fire, casualty or other disaster involving substantial damage to the Common Properties, within ten (10) days of receipt of determination of the amount of insurance proceeds available to the Association, the Association shall cause notice to be given of a special meeting of Members to be held not less than twenty (20) nor more than thirty (30) days from the giving of such notice. Such notice shall specify the amount of insurance proceeds available, the estimated cost of restoration and any other data deemed pertinent to the determination called for by this Section.

Section 2: Sufficient Proceeds

In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the Properties, shall be applied to such reconstruction. Reconstruction of the Properties, as used in the Section, means restoring the Properties to substantially the same condition in which they existed immediately prior to the fire casualty or other disaster. Such reconstruction shall be caused to be accomplished by the Association or its duly authorized agents.

Section 3: Insufficient Proceeds

If the insurance proceeds are insufficient to reconstruct the Properties, damage to or destruction thereof shall be promptly caused to be repaired and restored by the Association, or its duly authorized agents, using proceeds of insurance, if any, on the Properties for that purpose, and the owners shall be liable for the Special Assessment or Assessments for any deficiency as hereinafter provided.

Section 4: Insurance Proceeds

The Association shall be and is hereby a designated Trustee to receive and administer all insurance proceeds received or to be received in the event of fire, casualty or other disaster involving substantial damage to the Common Properties.

ARTICLE XII CONDEMNATION

In the event of any taking of all or a portion of the Common Properties by eminent domain or sale or other transfer in lieu thereof, if any repair or rebuilding of the remaining portions of the Common Properties is required as a result of such taking, the award received for such taking shall be used for such purpose. If all of such award is not used or if no repair or rebuilding is required, such award or the balance thereof, shall be distributed in equal shares to all members.

ARTICLE XIII PARTY WALLS

Section 1: General Rules of Law to Apply

Each wall and fence which is built as part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this [Article](#), the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2: Sharing of Repair and Maintenance

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3: Destruction by Fire or Other Casualty

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4: Weatherproofing

Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5: Right to Contribution Runs with Land

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6: Arbitration

In the event of any dispute arising concerning party wall or under the provisions of this Article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all of the arbitrators shall be final and conclusive of the question involved.

ARTICLE XIV **ARCHITECTURAL CONTROL**

****** EDITORS NOTE: This is all new material. The flow is basically that everyone must apply for a permit for exterior work unless the work.**

Section 1: Requests for Variance

Applications may be submitted for an exception or variance to any Building Standards and Design Requirements (BS&DR) in Article ____, and must be approved by the Association prior to the delivery of materials and the commencement of work

The application must state, in narrative detail, the specific standard to be waived, the reason for the request, and, if applicable, the alternative proposed. The application process is further described in Section 7.

Section 23: Decisions of the Association

The Board shall respond to all applications in writing. Decisions will be annotated on the application, itself, and the application shall become prima facie evidence of the decision. A copy of the application shall be returned to the applicant and the original shall be archived by the Association.

Section 3: Appealing Denials of Variance

If an application for a variance has been denied by the Association, an Owner may make a one-time appeal. The decisions of the Association will be issued with a narrative explaining the basis of decision and, if possible, citing prior decisions.

All decision narratives will be maintained for review by any Owner on request.

ARTICLE XV **VOTING SYSTEM**

Section 1: Overview

The process to approve budgets, elect or recall directors, approve or reject referendums/initiatives, to change design requirements/building standards, or conduct other business of the Association shall begin at an Annual or Special meeting of the Association scheduled for the purpose of hearing all points of view and be followed by a polling period of between 2-4 weeks.

Section 2: One Time Registration

Owners shall register to vote by providing an e-mail address, mail address, phone number, and other information as requested by the Association. Owners shall select a reference for balloting as either e-mail/electronic or mail/paper. Any Owner that has not registered shall receive a ballot by mail at the address listed by the Dallas Central Appraisal District. Members are responsible to make timely notifications of changes to registration information on file.

Section 3: Eligibility

The Board shall have the authority to validate the eligibility of any Member consistent with ARTICLE _____. Only one ballot per living unit will be counted. If multiple ballots are cast, the last ballot received will be counted. If a ballot is cast by any member for more candidates than there are vacated board seats, none of the candidate votes will be counted on that ballot.

Section 4: Quorum

Participation by fifty-one percent (51%) of the Members eligible to vote shall constitute a quorum. Participation is defined as a ballot tendered by a Member eligible to vote.

If the required quorum is not achieved during the specified polling period, a notice extending the polling deadline by two weeks shall be sent by first class mail and certified mail to all Members that are eligible to vote and have not yet voted. A ballot will be included along with the notice. At the end of the two weeks, the ballots tendered since the Annual or Special Meeting shall constitute a quorum.

Notices to members that have not voted must contain the same text and be sent on the same day to each and every member that has not voted.

Section 6: Winner Determined by Plurality

Except as provide in Section 7, once a quorum is constituted, a plurality of votes shall determine the winners. A majority is not required. In the event of a tie, a coin toss will determine the winner.

Section 7: 67% Majority Required to Determine Winner

For any action by the Association regarding the following matters, once a quorum is constituted, a sixty-seven percent (67%) majority will be required to approve an action allowing the Association :

- (a) to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility as provided in Article ____, Section 3, Paragraph (f);
- (b) to levy a Special Assessment as provided in Article ____, Section 5;
- (c) to operate without a Managing Agent itself as required in Article ____, Paragraph C;

(d) to amend a Design Requirements or Building Standards as provided in Article ____, Section 1, Paragraph b.

Section 8: Notice

Notice of any Annual or Special meeting of the Association shall be given to each Owner of record at least thirty (30) days, but not more than sixty (60) days prior to an Annual or Special meeting. Notices may also be posted on the doors of resident owners in addition to, but not as a substitute, for electronic or mail notice.

The notice must specifically include the following elements for a vote to be valid:

- (a) a draft ballot showing all matters to be voted on and the voting options ;
- (b) the meeting date location and time;
- (c) the polling start and end date.
- (d) a draft ballot showing all matters to be voted on and the voting options ;
- (e) instructions on how unregistered members can register or and how registered members can update their registration;

In addition,

- (a) if the ballot is to include the Election of Directors, the notice must include the number of vacant director seats to be filled, a call for volunteers and nominations, the names and addresses of the directors that are still in office , and the names and addresses of any initial volunteers or nominates, and a link or a copy to any candidate statements provided by the candidates;
- (c) if the ballot is to include budget or spending approval, the notice must a link or a copy of the proposed budget or spending and the proposed assessment rate, a copy of the actual spending for the prior two years, and a year to date spending for the current year;
- (d) if the ballot is to include capital improvement expenditure, the notice must include a link or a copy of the proposed capital improvement, specifications, the costs, locations, and bids;
- (e) if the ballot is to include Amendment of the Bylaws or C&R, Building Standards, Design Requirements, Fine Schedule, or Community Rules, the notice must include a link or a copy to the proposed amendment or changes showing the original and proposed text.

The communication of a notice in the manner provided in this Article shall be considered notice served.

Section 9: Initiatives, Nominations, Equal Access

All candidates and points of view are entitled to equal access to the Members in order to ensure fair campaigning. Any Members may submit a position paper, nomination, or letter to the board of directors prior to a meeting or e-mail/ mailing and this document will be presented along with any other position papers, in an orderly fashion.

Initiatives. Ballots shall provide for the selection of “approve, disapprove, or abstain”. The initiative signed by 10% of the Members in good standing shall be placed on a next Association ballot. The initiative will be described in full and will include two impact statements, one authored by the Board and one authored by the sponsors describing the implications of approval or disapproval.

Recall of Directors. Ballots shall provide for the selection of “evidence exists that the director should be discharged, insufficient evidence exists to discharge. Directors may be discharged for misfeasance, violation of office, or neglect. A petition for discharge may be filed by any member in good standing. The petition must include

a written statement of misfeasance, violation of office, or neglect (not to exceed 400 words)
a notarized statement by the petitioner the charge(s) are true,
any document to substantiate the accusations,
signatures of 10% of the Members in good stating that in the charges satisfy the criteria for which a recall petition may be filed,

The recall shall be placed on a next Association ballot or in special ballot in 30 days, whichever is sooner. The recall will include the petitioners written statement of misfeasance, violation of office, and a statement by the director. At any time, a director may halt a recall effort by resigning from the Board of Directors.

Section 10: Ballots

The ballot shall be designed by the Board of Directors. Members will be provided with the option to vote electronically, by mail, by fax, and by paper ballot in a drop box.

Ballots shall provide for the selection of one candidate for each vacated seat on the board. All volunteers and nominees will be placed on the ballot provided the volunteers and nominees is Member in good standing and that has agreed to serve if elected. The volunteers and nominees shall be listed on the ballot in alphabetical order with a candidates statement of up to 50 words if provided by the candidate.

Referendums. Ballots shall provide for the selection of “approve, disapprove, or abstain”. The referendum must be approved by the Board to be placed on a ballot, The referendum will be described in full and will include an impact statement authored by the board describing the implications of approval or disapproval.

Section 11: Polling

The voting period shall be at least 14 days with one extension of 14 days if a quorum is not achieved.

At the discretion of the Board of Directors, polling may be initiated as early as the date of Annual or Special meeting but no later than 7 days after the meeting provided a final ballot with all the voting options printed on it is available.

At any time during the polling, all Owners that have not participated may be resolicited. Multiple notices and requests may be sent provided that same notice is sent to each and every Owner that has not voted.

Section 8: Ballot Counting and Archiving

Ballots must be counted by two or more Members at large. The ballots may initially be counted by the Board of Directors or the Managing Agent, but the vote is not official until counted by two or more Members at large.

All ballots shall be archived in the Association record.

Section 9: Unapproved Budgets

If a budget has not be voted on and approved by the first day of a calendar year, the Board will only be permitted to purchase essential services which include taxes, insurance, legal and collection expenses, 50% of management fees, and any expenses that effect health and safety until such time that a budget has been approved.

ARTICLE XVI **POWERS AND DUTIES OF THE**

BOARD OF DIRECTORS

**** EDITORS NOTE: This section is new. The prior document had no provisions for the power of the board. This information is taken from the bylaws with minor edits for clarity. Not all items in the bylaws were carried forward as some were not relevant to Beverly Oaks. Paragraph F, "Architectural Control", is new.

Section 1: Overview

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association. The Board of Directors shall do all such acts and things except those that may not be delegated to the Board of Directors by law, by this Declaration or by the Bylaws of the Beverly Oaks Homeowners' Association.

Section 2: Powers and Duties

Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following, all of which shall be done for and on behalf of the Owners:

- (a) GENERAL ADMINISTRATION. To employ for the Association a management agent (Managing Agent) who may be delegated and shall exercise some or all of the powers granted to the Board of Directors by the Declaration and Bylaws as determined by the Board, except as may be limited by the Declaration. Any agreement for professional management must have a maximum contract term of one (1) year and must provide for termination by either party without cause or payment of a termination fee on thirty (30) days' or less written notice.

To keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof at any reasonable time by each of the Owners, and to cause a complete audit of the books and accounts by a certified or public accountant, once each year.

To establish a bank account or accounts for the common treasury and for all separate funds which are required or may be deemed advisable by the Board of Directors.

To prepare an expense budget for the Association in accordance with the provisions of Article ____ Section 4.

To collect delinquent assessments by suit or otherwise and to enjoin and seek damages from an Owner who may be in default.

To prepare and file annual tax returns with the federal government and to make such elections as may be necessary to reduce or eliminate the tax liability of the Association. Without limiting the generality of the foregoing, the Board may, on behalf of the Association, elect to be taxed under Section 528 of the Internal Revenue Code or any successor statute conferring income tax benefits on homeowners' association. In connection therewith, the Board shall take such steps as are necessary to assure that the income and expenses of the Association for any taxable year shall meet the limitations and restrictions provided in said Section 528 of the Internal Revenue Code or any successor statute conferring.

To make such disclosures and filing to the State of Texas to maintain the Associations franchise tax exempt status.

To pay state sales taxes consistent with the Association's non-tax exempt status until such time that a sales tax exemption is applied for and granted.

To administer and enforce the covenants conditions, restrictions, easements uses, limitations, obligations and all other provisions set forth in the Declaration, and the Bylaws of the Association and supplements and amendments thereto.

To enter into contracts within the scope of these duties and powers. To protect and defend the Common Properties from loss and damage by suit or otherwise

(b) CAPITAL RESERVES. To plan for significant long term repair and replacement obligations such as, but not limited to, the replacement and maintenance of the Brentwood and Wilshire roadways, 2023 Wilshire building lots and fences, water mains and valves under the street and fire hydrants, entryway gates and gardens, treadle and warning lights at the community exit, concrete screening fence separating the subdivision from the multifamily property to the west, storm drains running under the subdivision, concrete screening fences on either side of the exit alley, sewer mains, cul-de-sac gardens, and the community mailboxes. Administration includes, but is not limited to, the ordering of reserve studies, forecasting of the future replacement costs, recommending adequate annual accruals. The Capital Reserve is to be maintained in a dedicated bank account, separate from the Associations operating accounts and emergency reserves accounts, and to be used only to fund planned accounts and emergency reserves accounts, and to be used only to fund planned capital repairs.

(c) INSURANCE. To obtain and maintain comprehensive public liability insurance covering all the Common Properties areas and public ways therein, amounts of at least \$1,000,000 for bodily injury, including deaths of persons and propriety damage arising out of a single occurrence. Such coverage shall include, without limitation, legal liability for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Properties and legal liability arising out of lawsuits related to employment contracts of the Association. Such policies must provide that they may not be cancelled or substantially modified without at least 10 days prior written notice to the Association. The Association shall maintain in effect at least insurance meeting standards established by FHLMC and FNMA for Planned Unit Developments, as published in the FHLMC "Servicer's Guide" and the FNMA Conventional Home Mortgage Selling Contract Supplement or otherwise, except to the extent such requirements shall have been waived in writing by FHLMC and/or FNMA, Workers compensation insurance shall at all times be carried to the extent required to comply with any applicable law with respect to the employees, if any, of the Association.

To insure and keep insured all of the insurable Common Proprieties (except land, foundation, excavation and other items normally excluded from coverage), against loss or damage by fire and all other perils customarily covered with respect to properties similar in construction, including if available, the standard "all risk" endorsement, in amounts equal to 100% of current replacement cost, such policies to provide for at least 10 days prior written notice to Association of cancellation or substantial modification. The limits and coverage shall be reviewed at intervals of not less than one (1) year and adjusted, if necessary .to provide such coverage and protection as deemed prudent.

NOTE: Each Owner shall obtain insurance at his own expense for his own benefit. Insurance coverage on a Living Unit, and the furnishings and other items of personal property belonging to an Owner, and casualty and public liability coverage within each Living Unit are specifically the responsibility of each Owner.

(d) EMERGENCY RESERVES. To administer an emergency reserve fund to cover losses or damages normally excluded from insurance coverage including, but not limited to loss or damages to the roadways, underground water and sewer lines, storm drains , and foundations. The Emergency Reserve is to be maintained in a dedicated bank account, separate from the Associations operating accounts and capital reserves accounts, and used only to fund emergency repairs.

(e) REPAIRS. To make repairs, additions, alterations and improvements to the Common Properties consistent in a manner in keeping with the character and quality of the Properties as originally constructed, the best interests of the Owners, this Declaration, and the Bylaws.

(f) ARCHITECTURAL CONTROL. To communicate and enforce the architectural standards of the Association to include:

- (1) providing the architectural standards to each owner at the time of purchase via a Resale Certificate or alternative document request by the prospective owner, title company, or lender;
- (2) providing copies of the architectural standards to each homeowner annually, and upon request;
- (3) monitoring owner compliance with established architectural standards;

- (4) notifying owners of non-compliance with established architectural standards;
- (5) levying and collecting Violation Fines;
- (6) monitoring and verifying cure of non-compliance with established architectural standards;
- (7) providing timely review of permit requests for repairs and construction ;
- (8) providing timely review of variance requests;
- (9) keeping and maintaining full and accurate records of all notices, fines, applications, appeal decision's for evidentiary and other business purposes of the Association;
- (10) bringing and/or defending lawsuits of behalf of the Association with respect to matters of non-compliance with architectural standards;
- (11) overseeing a fair and informed vote of the owners for amendments to the architectural; standards, from time to time,
- (12) overseeing a fair, and informed vote of the owners for any request for a material deviation from than the original building design, such as, but not limited to the addition of rooms, the relocation of windows, changing of walkways, conversion of garage doors to walls, and alterations in roof lines;
- (13) making available for inspection, upon request and within a reasonable time following such request, during normal business hours, to all owners, lenders, guarantors, and insurers, all books, and records of the committee.

Architectural Control does not include the following: oversight on internal renovations; oversight on yard renovations not visible to the street or from neighboring yards at ground level; the authority to approve variances that materially deviate from than the architectural standards determined by a vote of the owners; the authority to approve variances that change the flow of run-off water anywhere on the property without an adequate engineering study and without approval of 66% of owners that will be effected by the change; the authority to issue variances that materially deviate from than the original construction, such as, but not limited to the addition of rooms, the relocation of windows, changing of walkways, conversion of doors or windows to walls, and alterations of roof lines; the authority to issue variances that do not comply with Irving building code, plat restrictions, fire code, or postal requirements, or the authority to make any decision that requires a vote of the owners.

- (g) **NOTICES / DISCLOSURE.** To provide written notice of any assessment, annual or special, to every Owner subject thereto. Such notice shall state the name and address of the Owner subject to such assessment, the amount of the assessment, whether such assessment is annual or special, if the assessment is special, the purpose of such Special Assessment, and the date such assessment shall be due and payable to the Association.

To notify all Owners of actions and occurrences which may affect the Properties or the rights of the Association or Owners therein, including all legal actions affecting the Association or the Properties.

The Board of Directors shall upon request, furnish to any Owner liable for any such assessment, a certificate in writing signed by a majority of the officers of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

To make available for inspection, upon request and within a reasonable time following such request, during normal business hours or under other reasonable circumstances, to all Owners and lenders, holders, insurers and guarantors of any first mortgage on a Living Unit, current copies of the Declaration, these Bylaws, and rules and regulations concerning the Properties, and all books, records and financial statements of the Association.

To furnish upon written request by any holder, insurer or guarantor of a first mortgage upon any Living Unit, an audited financial statement for the Associations immediately preceding fiscal year, free of charge to the party so requesting.

Upon written request (including name, address and Living Unit Number or address) by the eligible holder, insurer or guarantor of any first mortgage on a Living Unit, to give such eligible holder, insurer or guarantor timely written notice of:

- (1) Any condemnation loss or any casualty loss which affects a material portion of the Proprieties or any Living Unit on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;
- (2) Any delinquency in the payment of assessment or charges owed by an Owner of a Living Unit subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of 60 days;
- (3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owners Association;
- (4) Any proposed action which would require the consent of eligible holders holding mortgages on Living Units which have at least 51 percent of the vote of Living Units subject to eligible holder mortgages,

Section 3: No Waiver of Rights

The omission or failure of the Association or any Owner to enforce the covenants, conditions, restrictions, easements, uses limitations, obligations or other provision of the Declaration, the Bylaws or the rules and regulations, shall not constitute or be deemed a waiver, modification or release thereof, and the Board of Directors or the Managing Agent shall have the right to enforce the same.

Section 4: Election and Term of Office

Directors shall serve fixed at two (2) years with the term beginning on January 1.. The Directors shall hold office until their successors have been elected and hold their first meeting, except as otherwise provided in this Declaration, and the Bylaws.

Section 5: Vacancies

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

Section 6: Fidelity Bonds

The Board of Directors shall require that all officers, directors, trustees and "employees of the Association or of the Managing Agent, if any, handling or responsible for Association funds shall furnish fidelity bonds in accordance with the Declaration. The premiums on such bonds shall be paid by the Association. Such bonds shall be in the aggregate not less than one and one-half (1 1/2) times the estimated annual expenses of the Association, and shall meet the following requirements: (a) name the Association as obligee; (b) contain waivers by the issuers of all defenses based upon exclusion of persons serving without compensation from the definition of "employees"; and (c) shall provide that they may not be cancelled or substantially modified without at least 10 days prior written notice to the Association.

Section 8: Compensation.

No member of the Board of Directors shall receive any compensation for acting as such.

ARTICLE XVII

GENERAL PROVISIONS

Section 1: Duration

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by The Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded or (May 30, 2007), after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of sixty seven percent (67%) of the Lots or Living Units and by sixty seven percent (67%) of the eligible holders holding mortgages on Living Units which have at least sixty seven percent (67%) of the votes of the Living Units subject to eligible holder mortgages has been recorded, agreeing to change said covenants and restrictions in whole or in part. For purposes of meeting the sixty seven percent (67%) requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 6: Notices

Any notice required to be sent under the provisions of this declaration shall be deemed to be properly sent and received when mailed postage prepaid, certified mail, return receipt requested, to the last known address of the person to receive such notice as that which appears on the records of the Association on the date such notice is given.

Section 7: Enforcement

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity by the Association or any Owner against any person or persons violating or attempting to violate any covenant or restriction or any decision of the Association which are made pursuant thereto, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association contained shall in no event be deemed a waiver of the right to do so thereafter. Likewise, Owners shall have similar rights of action against the Association.

Section 8: Conflict

To the extent that any conflict arises between this document and the Association Bylaws, this document shall control and govern.

Section 9: Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Irrevocably approved and executed by written vote the Owners to be effective the ____ day of _____ 2011__

An addition or amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. An eligible mortgage holder who receives written notice to approve additions or amendments to the Declaration who does not deliver or mail to the requesting party a negative response within three (3) days of receipt shall hereby be deemed to have approved such requests.

Members shall vote for as many directors as there are vacated seats.