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**DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
THE TRAILS AT REGAL PARK**

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that percentage or share of the lots, unless a different meaning is specified. For example, "a majority of owners" means owners of at least a majority of the lots.

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

1.19. "**Property**" means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is The Trails at Regal Park. The Property is located on land described in Appendix A of this Declaration, as it may be amended or supplemented from time to time, and includes every lot and any common area thereon.

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

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

1.22. "**Specifications Supplement**" means that certain instrument that is or will be publicly recorded separately from this Declaration, containing the covenants, conditions, and restrictions pertaining to the use, appearance, maintenance, and improvement of the house lots, as described more fully in Section 6.2 below.

ARTICLE 2 THE PROPERTY SUBJECT TO DOCUMENTS

2.1. SUBJECT TO DECLARATION & OTHER DOCUMENTS. The real property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms of all publicly recorded instruments which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each owner of the Property. Instruments publicly recorded in Lubbock County, Texas, that may affect the Property include (without limitation) (1) restrictions, easements, licenses, leases, and encumbrances of record, (2) the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's rights and reservations in the attached Appendix B, (3) all notes, easements, covenants, and restrictions shown or referenced on plats, and (4) the Specifications Supplement.

2.2. OWNER AGREES TO BE BOUND. Each owner, by impliedly or expressly accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded instruments affecting the Property. Each owner further agrees to be bound by subsequently-recorded instruments affecting the Property that are properly adopted and enacted pursuant to this Declaration, applicable law, or the amendment provision of a prior-recorded instrument. Each owner also agrees to maintain any easement that crosses his lot and for which the Association does not have express responsibility.

2.3. ADDITIONAL PROPERTY. During the Development Period, Declarant may unilaterally annex additional land to the Property, and subject it to this Declaration and to the jurisdiction of the Association (*with the consent of the owner of the real property being annexed if other than Declarant*), without the joinder or consent of the Association or any member of the Association, as permitted in Appendix B. Thereafter, additional land may be annexed to the Property and subjected to this Declaration and the jurisdiction of the Association on approval of owners representing at least two-thirds of the lots in the Property, and the consent of the owner of the real property being annexed. Annexation of additional property is accomplished by recording a declaration of annexation, including an amendment of Appendix A, in the Real Property Records of Lubbock County, Texas.

2.4. SPECIAL DISTRICT. On the date of this Declaration, it is not certain whether a special district may be created to cover land including all or portions of the Property, such as - by way of example only - a public

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the Governing Documents. An owner who does not occupy a lot delegates this right of enjoyment to the residents of his lot. Notwithstanding the foregoing, if a portion of the common area, such as a recreational area, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

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

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

4.5. **NEIGHBORHOODS.** On the date of this Declaration, The Trails at Regal Park is subject only to this Declaration and does not contain any "Neighborhoods" as defined in this Section. This Section will apply to any portion of the Property which has features or consumes services that are not common to the entire Property and for which it is appropriate to have a "Neighborhood" within the Property, such as a gated neighborhood with a private street, or a townhome neighborhood with yard maintenance. The following definitions are provided as concepts that may be suitable for future development in The Trails at Regal Park. On the date of this Declaration, none of the initial platted phases of the Property are expected to have features or attributes described by the following definitions.

4.5.1. **"Neighborhood Assessment"** means any charge levied against all the lots in a Neighborhood by the Association, to pay the actual and estimated expenses which the respective Association incurs or expects to incur for the benefit of lots in the Neighborhood.

4.5.2. **"Neighborhood Committee"** means a committee of three to five persons elected by owners of lots in the Neighborhood to represent the interests of the Neighborhood to the Association's board of directors.

4.5.3. **"Neighborhood Common Area"** means a common area created within a Neighborhood for the exclusive use of Neighborhood residents, the maintenance of which is paid for by lot owners in the Neighborhood, in the form of Neighborhood Assessments. This Declaration does not require a Neighborhood to have a Neighborhood Common Area. A common area of The Trails at Regal Park that is located within or in close proximity to a Neighborhood is not a Neighborhood Common Area merely by virtue of its proximity.

4.5.4. **"Neighborhood Restrictions"** means covenants, conditions, and restrictions contained in the supplemental declaration or amendment of annexation by which the Neighborhood is made subject to this Declaration, or an additional declaration of restrictive covenants to which the Neighborhood is subject. During the Development Period, Neighborhood Restrictions are not effective without the acknowledged consent of Declarant. This Declaration does not require a Neighborhood to have Neighborhood Restrictions.

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

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4.7. **ASSOCIATION'S ACCESS EASEMENT.** Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation all common areas and the owner's lot and all improvements thereon - including the house and yards - for the below-described purposes. In exercising this easement on an owner's lot, the Association is not liable to the owner for trespass.

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

- a. To inspect the lot for compliance with maintenance and architectural standards.
- b. To perform maintenance that is permitted or required of the Association by the Governing Documents or by applicable law.
- c. To perform maintenance that is permitted or required of the owner by the Governing Documents or by applicable law, if the owner fails or refuses to perform such maintenance.
- d. To enforce architectural standards.
- e. To enforce use restrictions.
- f. The exercise of self-help remedies permitted by the Governing Documents or by applicable law.
- g. To enforce any other provision of the Governing Documents.
- h. To respond to emergencies.
- i. To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- j. To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by applicable law.

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

4.8. **UTILITY EASEMENT.** The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property. Utilities may include, but are not limited to, water, storm drainage, sewer, trash removal, electricity, fuel, natural gas, telephone, cable television, Internet service, fiber optic cable, security, and other telecommunication receiving and distribution systems. This Section may not be construed as a representation that any particular utility will be provided.

4.9. **MINERAL INTERESTS.** In the era in which this Declaration is written, there is renewed interest in oil and gas exploration.

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security measures undertaken within the Property. Each owner and resident acknowledges and agrees that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

ARTICLE 5 COMMON AREA

5.1. **OWNERSHIP.** The designation of real property as a common area is determined by the plat and this Declaration, and not by the ownership of the property. Declarant may install, construct, or authorize certain improvements on common areas in connection with the initial development of the Property, and the cost thereof is not a common expense of the Association. Thereafter, all costs attributable to common areas, including maintenance, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the common areas, unless this Declaration elsewhere provides for a different allocation for a specific common area.

5.2. **USE.** On the date of this Declaration, the Property's common areas are intended for the exclusive use of the Property's owners and residents and their guests and are not intended to be a public accommodation or a public facility within the meaning of the Americans with Disabilities Act. This provision may not be construed to prevent the Association from enlarging the use of a common area if such expansion is deemed to be in the best collective interest of the Association's members, or from opening a common area to use by the public if public use is a condition of a status or benefit that is deemed to be in the best collective interest of the Association's members.

5.3. **CHANGE OF USE.** The Association may modify each common area over time, to respond to changing lifestyles, economies, and recreational values, if the board deems the modification to be in the best collective interest of the Association's members. Modification may include a change of use, or the removal, addition, re-location, or change of improvements on a common area. Unless required by a governmental entity, a modification does not require an amendment of this Declaration or of the plat, even if a common area has been platted or developed for a particular use.

5.4. **CONVEYANCE BY OR TO ASSOCIATION.** The Association may accept or convey real property interests from or to, as the case may be, a special district or any other public or quasi-public entity or agency, if the conveyance is required by the district, entity, or agency, or if the board deems such a conveyance to be in the best collective interest of the Association's members. Property interest capable of conveyance include fee title to all or part of a common area, an easement across real property, and a lease or license of real property. Notwithstanding anything to the contrary in this Declaration, if the Property is subject to a special district, the special district may acquire responsibility for, control of, and/or ownership of what has been designated a common area. The authority of the special district is superior to that of the Association.

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

5.6. **COMPONENTS.** Common area may be improved or unimproved, and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. The common area of the Property consists of the following components on or adjacent to the Property, even if located on a lot or a public right-of-way:

- a. All of the Property, save and except the house lots.
- b. The land described in Appendix A as common area and all improvements thereon.

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- c. Any area shown on the plat as common area or an area to be maintained by the Association.
- d. The formal entrances to the Property, such as (if any) the signage, landscaping, electrical and water installations, and planter boxes.
- e. The screening walls, fences, or berms (if any) along the perimeters of the Property.
- f. The grounds between the perimeter streets around the Property and the screening walls, fences, or berms, to the extent that the Association has a right or duty to maintain or regulate that portion of the right-of-way.
- g. Landscaping on street islands (if any), to the extent it is not maintained by the City.
- h. Any modification, replacement, or addition to any of the above-described areas and improvements.
- i. Personal property owned by the Association, such as books and records, office equipment, and supplies.

5.7. **LIMITED COMMON AREA.** If it is in the best interest of the Association, a portion of the common area may be licensed, leased, or allocated to one or more lots for their sole and exclusive use, as a limited common area, whether or not the area is so designated on the plat. Inherent in the limiting of a common area, maintenance of the limited common area becomes the responsibility of the lot owner, rather than the Association. For example, a common area that is difficult to access and maintain except via the adjoining house lot might be a candidate for limited common area.

5.8. **PERSONAL RESPONSIBILITY.** Each owner, by accepting an interest in or title to a lot in The Trails at Regal Park, whether or not it is so expressed in the instrument of conveyance, and each resident of The Trails at Regal Park, by occupying a home in The Trails at Regal Park, acknowledges, understands, and agrees to each of the following statements, for himself, the members of his household, and his and their guests:

- a. Each owner and resident agrees to be informed about and to comply with the published or posted common area rules of The Trails at Regal Park.
- b. The use and enjoyment of any recreation amenity on the common areas of The Trails at Regal Park involves risk of personal injury, risk of death, and risk of damage or loss to property.
- c. Each person using any common amenity in The Trails at Regal Park assumes all risks of personal injury, death, and loss or damage to property resulting from the use and enjoyment of any common area in The Trails at Regal Park.
- d. Parents, guardians, hosts, caretakers, and supervisors are at all times responsible for the well being and safety of their children and guests in their use of the common areas of The Trails at Regal Park. The parent, guardian, host, caretaker, and supervisor assumes responsibility for having skills appropriate for the facility being used by his charges.
- e. Declarant, the Builders, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of personal safety in or on the common areas of The Trails at Regal Park.
- f. Declarant, the Builders, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties - verbal or written - relating to safety or lack of risks pertaining to the common areas of The Trails at Regal Park.

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- a. If the applicant or a person affiliated with the applicant has not received the Architectural Reviewer's written response - approving, denying, or requesting additional information - within 60 days after delivering his complete application to the Architectural Reviewer.
- b. If the proposed improvement or modification strictly conforms to requirements and construction specifications contained in this Declaration or the Specifications Supplement, and in any design guidelines for the Property in effect at the time of application.

If those conditions are satisfied, the owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his application, and provided he initiates and completes the improvement in a timely manner. In exercising deemed approval, the burden is on the owner to document the Architectural Reviewer's actual receipt of the owner's complete application. Under no circumstance may approval of the Architectural Reviewer be deemed, implied, or presumed for an improvement or modification that would require a variance from the requirements and construction specifications contained in this Declaration or the Specifications Supplement, and in any design guidelines for the Property in effect at the time of application.

6.7.2. No Approval Required. No approval is required to repaint exteriors in accordance with the color scheme approved by the Architectural Reviewer, or to rebuild a dwelling in accordance with originally approved plans and specifications. Nor is approval required for an owner to remodel or repaint the interior of a dwelling.

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

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

6.7.5. Declarant Approved. Notwithstanding anything to the contrary in this Declaration or the Specifications Supplement, any improvement to the Property made or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer. If the improvement is of a nature that would require a variance by the Architectural Reviewer, such variance is deemed to have been granted.

THE TIMES THEY ARE A-CHANGING.

6.8. ENERGY CONSERVATION FEATURES. In the era in which this Declaration is written, the public is becoming interested in energy conserving technologies. Nothing in this Declaration or the Specifications Supplement may be construed to prohibit (1) the Association from adopting an energy conservation policy for the Property, or (2) the use of energy conserving practices, materials, and technologies by the Association and by individual owners, subject to the continuing right of the Association to regulate the overall appearance of the Property. The Architectural Reviewer may approve materials and technologies that are designed to enhance energy conservation, and may impose reasonable requirements for quality, location, and appearance to balance competing interests in the Property and to ensure that changes and improvements are integrated into the Property in a manner that is suitable for the neighborhood.

During the Development Period, Appendix B has priority over the main body of this Declaration.

ARTICLE 7
GENERAL CONSTRUCTION AND USE RESTRICTIONS

7.1. **VARIANCE.** The use of the Property is subject to the restrictions contained in this Article and in the Specifications Supplement recorded contemporaneously with this Declaration, as amended from time to time, and subject to rules adopted pursuant to this Article. The board or the Architectural Reviewer, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance, other than the limited exceptions authorized by this Declaration or the Specifications Supplement.

7.2. **SPECIFICATION SOURCES.** All specifications for the construction of the initial improvements in The Trails at Regal Park are not required to be published in this Declaration or in the Specifications Supplement, and may be part of a private agreement between Declarant and a Builder. The specifications contained in the Specifications Supplement were selected from the multitudes because of their potential applicability to the daily use of the Property and the expectation that owners may try to modify their houses, fences, and yards. Additional specifications or variations of the requirements in the Specifications Supplement may be included in an amendment of annexation or supplemental declaration, by which a phase or section of real property is added to The Trails at Regal Park, or in neighborhood-specific restrictions. The Association may also publish Design Guidelines for use by owners of The Trails at Regal Park. This Section serves as notice of multiple sources of specifications pertaining to the construction or modification of improvements in The Trails at Regal Park.

THE "DOs and DON'Ts" ARE IN THE SPECIFICATIONS SUPPLEMENT

7.3. **SITUATIONAL VARIATIONS.** All lots are not similarly situated. One lot may be more visible than others because of its location, size, or elevation. For example, a corner lot or a lot at the Property's entrance is typically more visible than an interior lot. The Architectural Reviewer may vary its interpretation and enforcement of construction specifications and use restrictions based, in part, on a lot's location or visibility - provided similarly situated lots are treated in like manner.

7.4. **CONSTRUCTION RESTRICTIONS.** Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every lot must have the characteristics described in the Specifications Supplement. In case of conflict between the terms of this Article or the Specifications Supplement, and a restriction or guideline that pertains directly to the portion of the Property in which a lot is located, the more lot-specific restriction controls. The Architectural Reviewer and the board (after the Development Period) may promulgate additional rules and restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article and in the Specifications Supplement. An owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his lot and dwelling.

7.5. **LIMITS TO RIGHTS.** No right granted to an owner by this Article, the Specifications Supplement, or any provision of any other Governing Document is absolute. The Governing Documents grant rights with the expectation that the rights will be exercised in ways, places, and times that are customary for the neighborhood. This Article, the Specifications Supplement, and the other Governing Documents as a whole do not try to anticipate and address every creative interpretation of the restrictions. For example, an owner's right to have a sign advertising the home for sale is not the right to mount the sign on the chimney and illuminate it with pulsating neon lights. The rights granted by this Article, the Specifications Supplement, and the other Governing Documents are at all times subject to the board's determination that a particular interpretation and exercise of a right is significantly inappropriate, unattractive, or otherwise unsuitable for the neighborhood, and thus constitutes a violation of the Governing Documents. In other words, the exercise of a right or restriction must comply with the spirit of the restriction as well as with the letter of the restriction.

During the Development Period, Appendix B has priority over the main body of this Declaration.

7.6. **SUBJECTIVE STANDARDS.** Standards for some rules and restrictions are inherently subjective, such as what is unattractive or offensive. The Association is not required to honor every resident's individual tolerances. The Use Restrictions, in particular, are not intended to shield a hypersensitive resident from actions or circumstances that would be tolerable to a typical resident of the Property. On lifestyle-related rules, the Association may refrain from acting on a perceived violation unless the board determines the violation to be significant or a community-wide problem. The Association may not be compelled by one resident to enforce rules and restrictions against another resident. Residents are expected to deal directly and peaceably with each other about their differences.

DON'T PUSH THE ENVELOPE, PLEASE.

7.7. **ASSOCIATION'S RIGHT TO PROMULGATE RULES.** The Association is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The right to make rules, or to regulate, includes the right to prohibit or to restrict. In addition to the restrictions contained in this Article and the Specifications Supplement, each lot is owned and occupied subject to the right of the board to establish Rules, and penalties for infractions thereof, governing:

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

**ARTICLE 8
ASSOCIATION OPERATIONS**

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

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

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

8.1.3. **Name.** A name is not the defining feature of the Association. Although the initial name of the Association is The Trails at Regal Park Maintenance Association, the Association may operate under any name that is approved by the board and (1) registered by the board with the County Clerk of Lubbock

During the Development Period, Appendix B has priority over the main body of this Declaration.

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

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

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

8.8. **VOTING.** One indivisible vote is appurtenant to each lot. The total number of votes equals the total number of lots in the Property. If the Property contains unplatted tracts of land, each tenth of an acre is allotted one vote. When the unplatted tracts are platted, the number of votes in the Property will be automatically adjusted by the number of platted lots - with one vote per lot, regardless of its size. If additional property is made subject to this Declaration, the total number of votes will be increased automatically by the number of additional lots or by the calculator for unplatted tracts. Each vote is uniform and equal to the vote appurtenant to every other lot, except during the Declarant Control Period as permitted in Appendix B. As long as the Declarant Class exists, Declarant has the right to veto any decision made by the other members of the Association. Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association's Bylaws.

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

8.10. **INDEMNIFICATION.** The Association indemnifies every officer, director, committee chair, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors and officers liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

8.11. **INSURANCE.** All insurance affecting the Property is governed by the provisions of this Section, with which the board will make every reasonable effort to comply. The cost of insurance coverages and bonds

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maintained by the Association is an expense of the Association. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each owner irrevocably appoints the Association as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

8.11.1. **General Features.** Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an owner or resident or their invitees, the owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

8.11.2. **Property.** To the extent it is reasonably available, the Association will obtain blanket all-risk insurance for insurable common area improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any lot owned by the Association.

8.11.3. **General Liability.** The Association will maintain a commercial general liability insurance policy over the common areas - expressly excluding the liability of each owner and resident within his lot - for bodily injury and property damage resulting from the operation, maintenance, or use of the common areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an owner's claim because of negligent acts of the Association or other owners.

8.11.4. **Directors & Officers Liability.** To the extent it is reasonably available, the Association will maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

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

ARE YOU COVERED?

The Association does NOT insure the individual houses or their contents.

8.11.6. **Owner's Responsibility for Insurance.** Each owner will obtain and maintain property insurance on all insurable improvements on his lot, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each owner will obtain and maintain general liability insurance on his lot. Each owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an owner fails to maintain required insurance, or to provide the Association with proof of same, the board may obtain insurance on behalf of the owner who will be obligated for the cost as an individual assessment. The board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by owners if the insurance is deemed necessary or desirable by the board to reduce potential risks to the Association or other owners. Each owner and resident is solely responsible for insuring his personal property in his dwelling and on the lot, including furnishings, vehicles, and stored items.

During the Development Period, Appendix B has priority over the main body of this Declaration.

8.12. **OBLIGATIONS OF OWNERS.** Without limiting the obligations of owners under the Governing Documents, each owner will: (1) maintain effective contact information with the Association, and promptly notify the Association of changes in the owner's addresses, phone numbers, and name; (2) pay assessments properly levied by the Association against the owner or his lot, and will pay regular assessments without demand by the Association; (3) pay the applicable transfer-related fees and contributions at time of closing; (4) comply with the Governing Documents as amended from time to time; (5) pay for damage to the Property caused by the negligence or willful misconduct of the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, contractors, agents, or invitees; (6) be liable to the Association for violations of the Governing Documents by the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

BUYING? SELLING? THE ASSOCIATION HAS CLOSING-RELATED FEES.

8.13. **HOME SALES & REALES.** In the era in which this Declaration is written, the law pertaining to the sale and resale of homes governed by a mandatory property owners association is evolving. The purpose of this Section is to bring attention to the Association-related aspects of transferring title to a lot in The Trails at Regal Park.

8.13.1. **Who Pays.** The contributions and fee referenced in this Section may be paid by the seller or buyer, and will be collected at closing. If the contributions and fees are not collected at closing, the buyer remains liable to the Association until fully paid. Closing-related fees and contributions are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments.

8.13.2. **New Home Sales.** This Subsection applies one time to a lot improved with a home when it is conveyed to an owner other than a Builder or successor Declarant. At time of closing a new home sale, both of the following contributions are due and payable to the Association:

- a. A one-time contribution for the Association's reserve funds in an amount to be determined by the board, but not to exceed **\$50.00** per lot.
- b. A one-time contribution for the Association's operating funds in an amount to be determined by the board, but not to exceed **\$100.00** per lot, which may be used to defray Declarant's obligation, if any, for the Association operating expenses that are not funded by regular assessments received from other owners.

8.13.3. **Home Resales.** This Subsection applies to every sale or conveyance of a lot or an interest in a lot that has been improved with a home, by an owner other than Declarant or a Builder. An owner intending to sell his home will notify the Association and will request a resale certificate from the Association. At time of closing a home resale, a contribution for the Association's reserve funds in an amount to be determined by the board, but not to exceed **one-half of the lot's regular annual assessment**, will be paid to the Association.

8.13.4. **Other Closing-Related Fees.** In addition to the above-described contributions paid at closing, a number of independent nonrefundable fees may be charged in relation to the transfer of title to a lot, such as fees for resale and estoppel certificates, provided the fees are customary in amount, kind, and number for the local marketplace.

8.13.5. **No Right of First Refusal.** This Declaration does not create a right of first refusal for the sale of homes in the Property. Neither the Association nor its individual members has a right of first refusal.

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

8.13.7. **Exclusions.** This requirements of this Article do not apply to the following transfers: (1) a conveyance by Declarant; (2) foreclosure of a mortgagee's deed of trust lien, a tax lien, or the Association's assessment lien; (3) conveyance by a mortgagee who acquires title by foreclosure or deed in lieu of foreclosure; (4) transfer to, from, or by the Association; (5) voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent; (6) a transfer by a fiduciary in the course of administering a decedent's estate, guardianship, conservatorship, or trust; (7) a conveyance pursuant to a court's order, including a transfer by a bankruptcy trustee; or (8) a disposition by a government or governmental agency. That a Builder who acquires a lot from Declarant is exempt from this Section may not be construed to impair a contractual obligation (if any) for Builder to make working capital or reserve fund contributions at time of closing a lot purchase.

ARTICLE 9 COVENANT FOR ASSESSMENTS

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

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

**IF YOU OWN A LOT IN THE TRAILS AT REGAL PARK,
YOU MUST PAY ASSESSMENTS TO THE ASSOCIATION.**

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

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

9.4.1. **Veto Increased Dues.** At least 30 days prior to the effective date of an increase in regular assessments, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless owners of at least a

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majority of the lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

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

9.5. TYPES OF ASSESSMENTS. There are 4 types of assessments: Regular, Special, Individual, and Deficiency.

9.5.1. Regular Assessments. Regular assessments are based on the annual budget. Each lot is liable for its equal share of the annual budget. If the board does not approve an annual budget or fails to determine new regular assessments for any year, or delays in doing so, owners will continue to pay the regular assessment as last determined. If during the course of a year the board determines that regular assessments are insufficient to cover the estimated common expenses for the remainder of the year, the board may increase regular assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

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

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

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

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

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

9.6. BASIS & RATE OF ASSESSMENTS. The share of liability for common expenses allocated to each lot is uniform for all lots, regardless of a lot's location or the value and size of the lot or dwelling; subject, however, to the exemption for Declarant provided below and in Appendix B.

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

9.8. DECLARANT OBLIGATION. Declarant's obligation for and exemption from assessments is described in Appendix B. Unless Appendix B creates an affirmative assessment obligation for Declarant, a lot that is owned by Declarant during the Development Period is exempt from mandatory assessment by the Association. Declarant has a right to reimbursement for any assessment paid to the Association by Declarant during the Development Period, but only after the Declarant Control Period. This provision may not be construed to prevent Declarant from making a loan or voluntary monetary donation to the Association, provided it is so characterized.

To avoid bad stuff, please pay timely and in full.

9.9. EFFECT OF NONPAYMENT OF ASSESSMENTS. An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association is responsible for taking action to collect delinquent assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the Bylaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the board nor the Association, however, is liable to an owner or other person for its failure or inability to collect or attempt to collect an

During the Development Period, Appendix B has priority over the main body of this Declaration.

- a. Operations Reserves at a level determined by the board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies.
- b. Deductible Reserves at a level determined by the board to be sufficient to cover the full amount of deductibles on insurance policies maintained by the Association.

9.10.3. Owners Contribute. The reserve accounts are funded by monies paid by owners other than Declarant. Owners' contributions may be in the form of initial contributions at time of purchase, special assessments, and/or set-asides from regular assessments.

9.10.4. Replacement Reserve Study & Schedule. At the end of the Declarant Control Period, and periodically thereafter, the board elected by the owners will adopt a replacement reserve schedule as the basis for the Association's reserve accounts. The replacement reserve schedule may be based on a replacement reserve study prepared by the Association's manager, by the board, or by a third party. The board will use the replacement reserve study to determine which components and repairs are to be covered by the replacement reserve schedule, and which are to be addressed as routine maintenance within the annual operating budget. The board will also determine:

- a. What percentage or portions of the replacement reserve schedule to fund on an ongoing basis, and which to fund by special assessment or an increase in the regular assessment at the time work is performed
- b. Whether to levy a special assessment to establish, increase, or replenish the reserve accounts.
- c. Whether to dedicate some or all of the reserve funds to specific uses.

9.10.5. Adequacy of Reserve Fund. A reserve fund is deemed to be adequate if (1) the fund identifies at least the major components of the common area improvements, estimates the remaining useful life of each major component, and estimates the cost of repairing or replacing each major component using current costs (without cost of living or inflation factors), and (2) there is a schedule for infusing the fund with monetary contributions from owners, even if years or decades are required to reach full funding.

9.10.6. Declarant Does Not Contribute. Declarant has no duty to contribute to the Association's reserve accounts. If the Declarant-controlled Association does not collect initial reserve contributions from owners at time of purchase, after the Declarant Control Period, the Association will levy a special assessment to establish initial reserve accounts, and will thereafter collect initial reserve contributions in connections with transfers of title.

9.11. DECLARANT'S RIGHT TO INSPECT & CORRECT ACCOUNTS. For a period of 5 years after termination of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association's financial books, records, and accounts from the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Governing Documents or applicable State law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each owner, by accepting an interest in or title to a lot, hereby grants to Declarant a right of access to the Association's books, records, and accounts that is independent of Declarant's rights during the Declarant Control and Development Periods, for the limited purpose of this Section and only to the extent necessary to enable Declarant to exercise its rights under this Section.

During the Development Period, Appendix B has priority over the main body of this Declaration.

9.12. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the owners hereunder. This Section does not apply to loans between the Association and Declarant made during the Development Period.

9.13. LIMITATIONS OF INTEREST. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Governing Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the owner if those assessments are paid in full.

ARTICLE 10 ASSESSMENT LIEN

10.1. ASSESSMENT LIEN. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the lot and is secured by a continuing lien on the lot. Each owner, and each prospective owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his lot.

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

10.3. EFFECT OF MORTGAGEE'S FORECLOSURE. Foreclosure of a superior lien extinguishes the Association's claim against the lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former owner, and does not extinguish the Association's lien for assessments that become due after the sale. The purchaser at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale, and for the owner's pro rata share of the pre-foreclosure deficiency as an Association expense.

Yes, the HOA *can* foreclose!

If you fail to pay assessments to the Association, you may lose title to your home
if the Association forecloses its assessment lien against your lot.

10.4. NOTICE AND RELEASE OF NOTICE. The Association's lien for assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Real Property Records of Lubbock County, Texas. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing owner.

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10.5. **POWER OF SALE.** By accepting an interest in or title to a lot, each owner grants to the Association a private power of nonjudicial sale in connection with the Association's assessment lien. The board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a board meeting.

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

ARTICLE 11 ENFORCING THE DOCUMENTS

11.1. **RIGHT TO ENFORCE.** The Association and each owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed on the Property, on the owners, or on the Association by the Governing Documents or by applicable public law. Failure by the Association or by any owner to enforce a provision of the Governing Documents or applicable public law is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Governing Documents at any future time. No officer, director, or member of the Association is liable to any owner for the failure to enforce any of the Governing Documents at any time.

STATE LAW APPLIES to many of the Association's enforcement rights and remedies.

11.2. **BOARD DISCRETION.** The board may use its sole discretion in determining whether to pursue a violation of the Governing Documents, provided the board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

11.3. **CONSISTENCY BY CIRCUMSTANCE.** The board may vary its enforcement by circumstance, provided (1) the board establishes a rational and reasonable basis for circumstantial enforcement, and (2) the board diligently tries to be consistent in dealing with similar circumstances. To illustrate, the Association may decide that circumstances warrant different procedures for collecting delinquent assessments from owner occupants and investor owners, or from owners who are selling their lots, or are temporarily unemployed, or are in bankruptcy, or are deceased. Similarly, there may be a basis for enforcing a construction specification or use restriction against lots that are highly visible because of their prominent location, versus lots that are not located in high traffic areas.

11.4. **NOTICE AND HEARING.** Before the Association may exercise certain of its remedies for a violation of the Governing Documents or damage to the Property, the Association must give an owner written notice and an opportunity for a hearing, according to the requirements and procedures in the Bylaws and in applicable law, such

During the Development Period, Appendix B has priority over the main body of this Declaration.

as Chapter 209 of the Texas Property Code. Notices are also required before an owner is liable to the Association for certain charges, including reimbursement of attorneys fees incurred by the Association.

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

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

11.5.2. **Fine.** The Association may levy reasonable charges, as an individual assessment, against an owner and his lot if the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate a provision of the Governing Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the owner's obligations under the Governing Documents.

11.5.3. **Suspension.** The Association may suspend the right of owners and residents to use common areas for any period during which the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate the Governing Documents. A suspension does not constitute a waiver or discharge of the owner's obligations under the Governing Documents.

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

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

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

ARTICLE 12 MAINTENANCE AND REPAIR OBLIGATIONS

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

During the Development Period, Appendix B has priority over the main body of this Declaration.

- a. The common areas.
- b. Any real and personal property owned by the Association but which is not a common area, such as a lot owned by the Association.
- c. Any property adjacent to The Trails at Regal Park if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property.
- d. Any area, item, easement, or service - the maintenance of which is assigned to the Association by this Declaration or by the plat.

12.2. **OWNER RESPONSIBILITY.** Every owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the Specifications Supplement and the architectural control requirements and the use restrictions of this Declaration:

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

12.2.2. **Avoid Damage.** An owner may not do any work or to fail to do any work which, in the reasonable opinion of the board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

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

You have a "legal duty" to maintain your home and yard.

12.3. **OWNER'S DEFAULT IN MAINTENANCE.** If the board determines that an owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the owner is responsible, the board may give the owner written notice of the Association's intent to provide the necessary maintenance at owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the owner fails or refuses to timely perform the maintenance, the Association may do so at owner's expense, which is an individual assessment against the owner and his lot. In case of an emergency, however, the board's responsibility to give the owner written notice may be waived and the board may take any action it deems necessary to protect persons or property, the cost of the action being the owner's expense.

12.4. **FENCES & WALLS BETWEEN LOTS.** A fence, retaining wall, or other type of partition located on or near the dividing line between 2 lots and intended to benefit both lots constitutes a "Party Wall" and, to the extent not inconsistent with the provisions of this Section, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

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

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portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

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

12.4.3. Right of Access. The owner of the lot on each side of the Party Wall hereby grants to the owner of the lot on the other side of the Party Wall a reciprocal access easement for maintenance, repair, replacement, or reconstruction of the Party Wall, as appropriate and necessary to effect the purposes and provisions of this Section.

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

12.4.5. Alterations. The owner of a lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the other lot, without the prior written consent of the owner of the other lot. Unless both owners reach a mutual decision to the contrary, the Party Wall will always remain in the same location as where initially erected.

12.4.6. Retaining Walls. This Subsection applies if adjoining lots in portions of The Trails at Regal Park have elevations that are sufficiently different to require a retaining wall, such as occurs in properties with rolling or sloping terrain. Two adjoining lots with significantly different elevations may have a retaining wall located on or near the dividing line between the two lots and intended to benefit both lots. The lot having the higher elevation is referred to in this Subsection as the "**Higher Lot**," and the lot having the lower elevation is referred to as the "**Lower Lot**." The owner of the Lower Lot is hereby granted a non-exclusive and perpetual right and easement of enjoyment and use over the exterior surface of the Party Wall for use as a perimeter wall or fence of the Lower Lot. The owner of the Lower Lot is responsible for maintaining the grounds up to the Party Wall, even if the Party Wall is inside the boundaries of the Higher Lot. The owner of either the Higher Lot or the Lower Lot may construct a fence in connection with the retaining wall. The owner of the Higher Lot may construct or install a fence inside the Party Wall on the elevated surface of the Higher Lot, or, with the prior approval of the Lower Lot owner, on the Party Wall itself. The owner of the Lower Lot may construct or install a fence on his lot, provided the fence does not interfere with his duty to maintain the grounds up to the Party Wall. The fences permitted by this Subsection are not considered a part of the Party Wall for purposes of the remainder of this Section.

ARTICLE 13 MORTGAGEE PROTECTION

13.1. MORTGAGEE RIGHTS. This Article establishes certain standards for the benefit of Mortgagees. For purposes of this Article, "**Mortgagee**" means a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a lot, or any renewal, modification, or refinancing thereof. In dealing with the Association, a Mortgagee may be represented by a mortgage servicer, agent, or representative. Each Mortgagee has the following rights under this Declaration:

During the Development Period, Appendix B has priority over the main body of this Declaration.

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

13.1.2. Termination. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by the Mortgagees on at least a majority of the lots that are subject to an outstanding purchase money mortgage, in addition to the required consents of owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by the Mortgagees on at least two-thirds of lots that are subject to an outstanding purchase money mortgage.

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

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

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

13.1.6. Amending Governing Documents. If a Mortgagee requests from the Association compliance with the mortgage underwriting guidelines of Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or U. S. Department of Veterans Affairs (VA), singly or collectively, the board, without approval of owners or Mortgagees, may amend this Article and other provisions of the Governing Documents, as necessary, to meet the requirements of the aforementioned national institutional underwriting lenders. This Article is supplemental to, not a substitution for, any other provision of the Governing Documents. In case of conflict, this Article controls.

13.1.7. Meetings. A Mortgagee may attend and address any meeting which an owner may attend.

13.2. LIMITS ON ASSOCIATION'S DUTIES.

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

13.2.2. Communications with Mortgagee. If the Governing Documents or public law require the consent of Mortgagees for an act, decision, or amendment by the Association, the approval of a Mortgagee is implied when the Mortgagee fails to respond within 60 days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

ARTICLE 14 AMENDMENTS

14.1. AMENDMENT BY DECLARANT. Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Appendix B. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's

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rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

14.2. **AMENDMENT BY BOARD.** The board may not unilaterally amend this Declaration or the Specifications Supplement, except for the following two limited purposes, which must be clearly identified in the instrument of amendment, and then only to the extent necessary to achieve the permitted goal, and only with the unanimous written consents of all directors, there being no vacancy on the board:

- a. To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, or any governmental or quasi-governmental program or benefit, if doing so is in the best interests of the Association and its members.
- b. To correct an obvious error that affects the validity or enforceability of the document, if doing so is in the best interests of the Association and its members.

14.3. **AMENDMENT BY MEMBERS.** Except for certain amendments of this Declaration that may be executed by Declarant alone, or by the board alone, amendments to this Declaration must be approved by owners of at least a majority of the lots. Approval of owners does not require that the amendment be signed by the consenting owners, or that consents be executed and acknowledged by the approving owners. For an amendment that requires the approval of owners, this Declaration may be amended by any method selected by the board from time to time, pursuant to the Bylaws, provided the method gives an owner of each lot the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

This Declaration can be changed in ways that apply to you.

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

14.5. **ANNEXATION.** Additional real property may be annexed to the Property and subjected to this Declaration and the jurisdiction of the Association by either of two methods: (1) during the Development Period, by Declarant alone, as permitted in Appendix B, or (2) with the approval of owners representing at least two-thirds of the lots in the Property. Annexation of additional property is accomplished by recording an amendment of annexation or a supplemental declaration, including an amendment of Appendix A, in the Real Property Records of Lubbock County, Texas.

14.6. **APPENDIXES.** To amend an Appendix of this Declaration, it is not necessary to restate and re-record this entire Declaration. Each Appendix of this Declaration may be amended, restated, and supplemented individually as an amendment of this Declaration.

14.7. **SPECIFICATIONS SUPPLEMENT.** To amend a Chapter of the Specifications Supplement, it is not necessary to restate and re-record the entire Specifications Supplement. Each Chapter of the Specifications Supplement may be amended, restated, and supplemented individually as an amendment of the Specifications Supplement. In addition to reciting the recording data for the Declaration, the amendment must recite the recording data for the Specifications Supplement.

14.8. **MERGER.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by owners of at least a majority of the lots.

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agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

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

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

15.10.1. **Owner Approval.** The Association may not initiate any judicial or administrative proceeding without the prior approval of owners of at least a majority of the lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of owners in order to preserve the status quo.

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

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

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

15.11. **CONSTRUCTION-RELATED DISPUTES.** In addition to the above procedures, a claim relating to an alleged construction defect may be governed by Texas statutes relating to residential construction, such as Chapter 27 of the Texas Property Code, the Residential Construction Liability Act.

ARTICLE 16 GENERAL PROVISIONS

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

During the Development Period, Appendix B has priority over the main body of this Declaration.

16.2. **COMPLIANCE.** The owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Governing Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property. Users of this Declaration and the other Governing Documents should periodically review statutes and court rulings that may modify or nullify a provision or its enforcement, or may create rights or duties not anticipated by a Governing Document.

Laws change. (What doesn't?)

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

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

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

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

16.7. **CAPTIONS.** In all Governing Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

16.8. **INTERPRETATION.** Whenever used in the Governing Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

16.9. **DURATION.** Unless terminated or amended by owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

16.10. **APPENDIXES.** The following appendixes are attached to this Declaration incorporated herein by reference: Appendix A - Description of Subject Land, Appendix B - Declarant Rights & Reservations, and Appendix C - Purchaser's Covenants During Development Period.

During the Development Period, Appendix B has priority over the main body of this Declaration.

SIGNED AND ACKNOWLEDGED

SIGNED on this 29th day of September 2010.

THE TRAILS AT REGAL PARK DEVELOPMENT, INC.,
a Texas business corporation

By: *Charlie Hamilton*
Charlie Hamilton, President

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on the 29th day of September 2010 by Charlie Hamilton, president of The Trails at Regal Park Development, Inc., a Texas business corporation, on behalf of said corporation.

Brenda B. Hawkins
Notary Public, The State of Texas



During the Development Period, Appendix B has priority over the main body of this Declaration.

B.2.4. **"Unilaterally"** means that the Declarant may take the authorized action without the consent, approval, vote, or joinder of any other person, such as owners, mortgagees, Builders, and the Association. Certain provisions in this Appendix and elsewhere in the Governing Documents authorize the Declarant to act unilaterally. Unilateral action by Declarant is favored for purposes of efficiency and to protect the interests of Declarant.

B.3. **DECLARANT CONTROL PERIOD RESERVATIONS - GOVERNANCE**. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

B.3.1. **Incorporation of Association**. Declarant will incorporate the Association as a Texas nonprofit corporation before the end of the Declarant Control Period.

B.3.2. **Association Formalities**. Before the Association is incorporated, Declarant may delay the initiation of annual meetings, the keeping of minutes of meetings, and other corporation-type requirements of the Bylaws until such time as Declarant, in its sole discretion, deems appropriate.

B.3.3. **Officers & Directors**. During the Declarant Control Period, the Board may consist of 3 persons. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader." Declarant's unilateral right to remove and replace officers and directors applies to officers and directors who were elected or designated by lot owners other than Declarant, as well as to Declarant's appointees.

Declarant appoints the leaders until almost all the homes are built and sold.

B.3.4. **Weighted Votes**. During the Declarant Control Period, the vote appurtenant to each lot owned by Declarant is weighted 3 times that of the vote appurtenant to a lot owned by another owner. In other words, during the Declarant Control Period, Declarant may cast the equivalent of 3 votes for each lot owned by Declarant on any issue before the Association. On termination of the Declarant Control Period and thereafter, the vote appurtenant to Declarant's lots is weighted uniformly with all other votes.

B.3.5. **Association Meetings**. During the Declarant Control Period, meetings of the Association may be held at a location, date, and time that is convenient to Declarant, whether or not it is mutually convenient for the owners.

B.3.6. **Transition Meeting**. Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call a transition meeting of the members of the Association for the purpose of electing, by vote of the owners, directors to the board. Written notice of the transition meeting must be given to an owner of each lot at least 10 days before the meeting. For the transition meeting, owners of 10 percent of the lots constitute a quorum. The directors elected at the transition meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

B.4. **DECLARANT CONTROL PERIOD RESERVATIONS - FINANCIAL**. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

B.4.1. **Association Budget**. During the Declarant Control Period, the Declarant-appointed board will establish a projected budget for the Property as a fully developed, fully phased, fully constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant or by Builders to facilitate the marketing of new homes in the Property. During the Declarant Control Period, the budget is not a warranty or representation by Declarant or by the Association that the

Association will annually incur or fund every category of expense that is shown on the budget, or that the relative size of an expense category will be achieved. Neither the Association nor any owner has a right or expectation of being reimbursed by Declarant or by the Association for a budgeted line item that was not realized, or that was not realized at the budgeted level.

B.4.2. Declarant Assessments & Reserves. During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association. During the Declarant Control Period, Declarant is not required to make contributions to the Association's reserve funds for the lots owned by Declarant. Declarant's obligation to fund shortfalls in the Association's operating expenses may not be construed to require Declarant to fund reserve accounts.

B.4.3. Commencement of Assessments. During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of regular assessments until a certain number of lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies regular assessments against the lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.

B.4.4. Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant or by Builders and are not expenses of the Association.

B.4.5. Closing Related Fees. During the Declarant Control Period, Declarant may unilaterally determine, from time to time, the amount of contributions and fees to be collected at closing of new home sales and home resales. For the remainder of the Development Period, Declarant may unilaterally determine the amount of contributions and fees to be collected at closing of new home sales.

B.4.6. Budget Control. During the Declarant Control Period, the right of owners to veto assessment increases or special assessments is not effective and may not be exercised.

B.5. RIGHT TO REIMBURSEMENT. While Declarant controls the Association, Declarant may provide financial assistance to the Association. The purpose of this Section is to describe the relationship between Declarant and the Association regarding Declarant's financial support and the duty of the Association to reimburse Declarant for some of Declarant's contributions under certain circumstances. In case of conflict between this Section and other provisions of the Declaration, this Section controls.

B.5.1. Definitions. As used in this Section, the following terms have specified meanings.

- (1) **"shortfall"** is money paid by Declarant to the Association or for the Association's benefit to fund the difference between the Association's actual operating expenses, whether budgeted or not, and money received in hand by the Association from owners other than Declarant during the Declarant Control Period.
- (2) **"shortfall loan"** is money paid by Declarant to the Association or for the Association's benefit that represents the difference between the Association's actual operating expenses, whether budgeted or not, and the Association's accrued income - including assessments payable from owners other than Declarant, as if all those owners paid their assessments in full and on time.
- (3) **"build-out budget"** is the projected annual operating budget adopted by Declarant for the Association at the inception of the development. As is the practice in the local market, the build-out budget assumes the community is fully phased, fully constructed, fully populated, and that it is built and used in the ways envisioned by Declarant at the inception of the development. The build-out budget typically uses pre-construction costs that are typical for similar types of communities in the same market area, assumes no inflation or increase in costs, and assumes that each lot has a house that is owned by a homeowner who pays his pro-rata share of the Association's budget in full and on time.

B.5.2. Purposes of Build-Out Budget. The build-out budget has three primary purposes. First, to inform homebuyers about the types and relative sizes of expenses that the Association may be expected to incur in the future when their community is fully developed and their Association is controlled by owners. Second, to yield a rate of assessment that is more affordable for the initial homebuyers than if the Association's expenses were divided among the completed homes during the build-out. Third, to serve as a budget snapshot that can be used in the home marketing program for a relatively long period of time during the community's development.

B.5.3. Flexibility. Declarant hereby reserves the right during the Declarant Control Period to revise and republish the Association's annual operating budget from time to time, as Declarant desires. Declarant does not warrant or represent that the types of budgeted expenses or their relative sizes are accurate or complete. During the Declarant Control Period, the budget is not a warranty or representation by Declarant or by the Association that the Association will annually incur or fund every category of expense that is shown on the budget, or that the relative size of an expense category will be achieved.

B.5.4. Reserves. A build-out budget for the homeowner-controlled Association after build-out may show an annual contribution to reserves or to a contingency fund. During the Declarant Control Period, a budgeted line item for reserves is not a guaranty that the Association's reserves will be funded from regular assessments.

Declarant is *not* a bottomless deep pocket.

B.5.5. Budget Funding by Declarant. During the Declarant Control Period only, Declarant is responsible for the shortfall. Under any circumstance, Declarant is not liable to the Association for more than the amount that Declarant would pay if Declarant were liable for assessments on the unsold lots in the same manner as any other owner. This may not be construed to create a per lot assessment liability for Declarant. On termination of the Declarant Control Period, Declarant ceases being responsible for the shortfall and the owner-elected board of directors will adopt a budget for the Association that is capable of being funded completely by owners without contribution by Declarant. The Association's duties under this Subsection do not terminate at the end of the Declarant Control Period. In case of conflict between this Subsection and other provisions of the Declaration, this Subsection controls.

B.5.6. Right of Reimbursement. Declarant has an affirmative right to be reimbursed by the Association for shortfall loans. Declarant hereby reserves the right to be reimbursed by the Association for any shortfall loan and creates an affirmative duty for the Association to fund the reimbursement if and when Declarant exercises this right. The Association's duties under this Section do not terminate at the end of the Declarant Control and Development Periods.

B.5.7. Security for Shortfall Loan. A shortfall loan arises automatically, with or without formality. A shortfall loan may be evidenced by a promissory note executed by the Association in favor of Declarant or a person or entity designated by Declarant. A shortfall loan may be further secured by a lien against the common areas contained in a publicly recorded lien instrument executed by the Association. The Association will execute loan and security documents if so requested by Declarant. After the Declarant Control Period, a shortfall loan incurs interest at the rate stated in the note, or at the rate of 10 percent if no rate is stated. Unless a promissory note specifies a different plan of payment, the Association will budget for shortfall loan repayment in a manner that retires 10 percent of the shortfall loan each year for 10 years.

B.6. DEVELOPMENT PERIOD RESERVATIONS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

B.6.1. Platting. If the Property includes unplatted parcels, they may be platted in whole or in part, and in phases. The right to plat belongs to the owner of the unplatted parcel, provided, however, that a plat that creates common areas or obligations for the Association must also be approved by Declarant.

- l. To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, and any public or quasi-public program or benefit.
- m. To enable a reputable company to issue title insurance coverage on the lots.
- n. To change the name or entity of Declarant.
- o. To change the name of the addition in which the Property is located.
- p. To change the name of the Association.
- q. **For any other purpose.**

B.6.6. **Completion.** During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the common area and lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

B.6.7. **Easement to Inspect & Right to Correct.** During the Development Period, Declarant reserves for itself and Builders, and their respective architects, engineers, other design professionals, materials manufacturer, and general contractors, the right, but not the duty, to inspect, monitor, test, redesign, correct, relocate, and replace any structure, improvement, material, or condition that may exist on any portion of the Property, including the lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant or Builder, as applicable, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant, a Builder, or the Association.

DIFFERENT RULES

Declarant and Builders have rights and privileges to use the Property in ways that are not available to other owners and residents.

B.6.8. **Promotion.** During the Development Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other owners and residents, for purposes of promoting, identifying, and marketing the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers parties - at the Property to promote the sale of lots.

B.6.9. **Access.** During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property and the Additional Land, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the homebuying public through any existing or future gate that restricts vehicular access to the Property or to the Additional Land in connection with the active marketing of lots and homes by Declarant or Builders, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

B.6.10. **Utility Easements.** During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water,

sewer, trash removal, electricity, gas, telephone, television, cable, internet service, and security. To exercise this right as to land that is not a common area of the Property or not owned by Declarant, Declarant must have the prior written consent of the land owner.

B.6.11. Assessments. For the duration of the Development Period, any lot owned by Declarant is not subject to mandatory assessment by the Association until the date Declarant transfers title to an owner other than Declarant. If Declarant owns a lot on the expiration or termination of the Development Period, from that day forward Declarant is liable for assessments on each lot owned by Declarant in the same manner as any owner.

THE PROPERTY WILL CHANGE AS IT EVOLVES.

B.7. NOTICE OF POSSIBLE CHANGES. Until every lot in the Property is improved with a home, Declarant reserves the following exclusive rights which Declarant may exercise unilaterally from time to time when circumstances warrant.

B.7.1. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the owner of the land or lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of lots and streets; (b) change the minimum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

B.7.2. Change of Architectural Styles. Declarant reserves the right to periodically change the types of architectural styles, building materials, and elevations that are eligible for approval by the Architectural Reviewer. On the date of this Declaration, Declarant does not contemplate that the Property will have a single uniform architectural style.

B.7.3. Change of Construction Specifications. Declarant has the right to establish specifications for the construction of all initial improvements in the Property, to establish different specifications for each phase of the Property, and to grant variances or waivers from community-wide standards to certain phases of the Property.

B.7.4. Change of Community Features. The initial plans for use and development of the Property may change in response to a number of circumstances, influences, and opportunities that may not be apparent or applicable at the inception of the development. An owner who acquires a lot while the Property is being developed is hereby given notice that a common area improvement or community feature that is not installed at the time an owner contracts is subject to change. Representations given to a prospective purchaser about a proposed community feature are based on a development plan that makes assumptions that are subject to change.

B.8. VETO OVER MANAGEMENT OF ASSOCIATION. Management of the Association affects the appearance and condition of the Property, the quality of life for residents, the costs of home acquisition and ownership, and marketability of homes in the Property. For itself and Builders, Declarant has a vested interest in the below-described aspects of management until every lot in the Property has been improved with a home and sold to an owner other than a Builder. After the Declarant Control Period - until every lot in the Property has been improved with a home and sold to an owner - Declarant has the continuing unilateral right to approve the Association's choice of manager or managing agent. A manager or agent who purports to represent the Association without Declarant's continuing approval acts without authority, violates the Declaration, and is not eligible for indemnification or insurance by the Association. This Section applies even if Declarant voluntarily terminates control of the Association earlier than the maximum period of Declarant control.

B.9. RELATIONSHIP WITH BUILDERS. Declarant does not intend to construct dwellings on the lots. Instead, Declarant intends to sell the lots to one or more Builders to improve the lots with dwellings to be sold and occupied. Declarant reserves the following rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

B.9.1. Builders. From time to time, Declarant may invite a Builder to share in the exercise of any, some, or all of its easements and rights, without any formality other than the consent of Declarant and Builder. Notwithstanding such sharing, a Builder will not become a Successor Declarant, or assume the duties and liabilities of Declarant under this Declaration unless Builder and Declarant join in an instrument that assigns and transfers Declarant rights and duties under this Declaration, signed and acknowledged by both Declarant and Builder, and recorded in the Real Property Records of Lubbock County, Texas.

B.9.2. Builder Obligations. During the Declarant Control Period only, Declarant has the right but not the duty (1) to reduce or waive the assessment obligation of a Builder, and (2) to exempt a Builder from any or all liabilities for transfer-related fees charged by the Association or its manager, provided the agreement is in writing. Absent such an exemption, any Builder who owns a lot is liable for all assessments and other fees charged by the Association in the same manner as any owner.

BUILDERS ARE OWNERS, TOO.

B.9.3. Builder Transfer Fees. During the Declarant Control Period only, Declarant has the right but not the duty to exempt a Builder from any or all liabilities for transfer-related fees charged by the Association or its manager, provided the agreement is in writing.

B.9.4. Approval of Builder Plans. If a Builder intends to construct a number of pre-designed homes in a phase of the Property, the Builder may submit the set of house plans and elevations to Declarant for approval by the Architectural Reviewer. Such plans may be submitted and approved prior to Builder's purchase of lots in the Property. House plans and elevations that are pre-approved by Declarant for use by Builder in a particular phase of the Property may be constructed by Builder without re-submitting plans on a lot by lot basis as the houses are constructed, unless the actual house plan or elevation deviates substantially from the pre-approved plan and elevation. Examples of substantial deviation include (1) reversing a garage from rear entry to front entry, or vice versa, (2) reducing the size of the dwelling by more than 15 percent, (3) reducing the amount of masonry exterior material by more than 15 percent, (4) changing the style of the front elevation, such as from Cape Cod to Spanish, and (5) replacing a garage with a porte cochere or carport.

B.9.5. Individual Lot Application. Builder must apply to the Architectural Reviewer for approval of any substantial modifications or variations from or additions to the pre-approved plans for the Property, as well as the plot plan for each house. Builder may presume that its request has been approved by the Architectural Reviewer if Builder has not received the Architectural Reviewer's written response - approving, denying, or requesting additional information - within 45 calendar days after delivering his complete application to the Architectural Reviewer.

B.9.6. Promotion. During the Development Period, Declarant may authorize Builders to exercise any or all of the promotional rights, reservations, and easements that Declarant reserves for itself in this Declaration. Without the prior written approval of Declarant, a Builder may not market its off-site products from its offices, models, or signs in the Property.

B.9.7. Builder Signs. During the Development Period, Declarant also reserves (1) the right to permit Builders to place signs and promotional materials on the Property and (2) the right to exempt a Builder from the sign restriction in this Declaration. Any sign used by Builders in the Property may be approved in writing by Declarant prior to installation, and is subject to summary removal if not approved and if Declarant finds it objectionable. As used in this Section, "sign" includes, without limitation, lettering,

and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and by the Co- or Successor Declarant, and recorded in the Real Property Records of Lubbock County, Texas. The designation instrument may subject the Co- or Successor Declarant to limitations and restrictions.

B.14.2. Involuntary Designation. A person who acquires Declarant's entire remaining interest in the Property by an involuntary method, such as court order, deed in lieu of foreclosure, foreclosure, or bankruptcy proceeding, may - but is not required to - designate itself, or its successor or assign, as Declarant for all purposes, or for specified purposes. To be effective, the designation must be in a writing that (1) describes the involuntary circumstance, (2) is signed and acknowledged by designator and designatee, and (3) is recorded in the Real Property Records of Lubbock County, Texas. This Subsection is not invalidated by a trustee, beneficiary, or executor's temporary interim ownership of the Property without benefit of a designation of Declarant rights.

B.14.3. Presumption. The rights, reservations, and responsibilities of Declarant may not be informally acquired or transferred. A Co- or Successor Declarant has the burden of proving its authority with appropriate publicly recorded documentation. The legal role of Declarant may not be presumed from events, circumstances, or the inaccurate use of the title "Declarant." Ownership of all or portions of the Property does not - alone - bestow the rank of Declarant.

B.14.4. Subsequent Designations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

B.15. PARDON OUR DUST. A person who occupies a home during the construction phase of the Property is living in a construction site that may experience periodic and temporary inconveniences during the build-out and sell-out of the Property. Declarant - for itself and the Builders - apologizes in advance for these disturbances, many of which cannot be avoided. The sooner the construction work is completed, the sooner owners will be able to enjoy the community of which they are a part. Declarant hopes the construction and marketing of the Property occurs swiftly and with minimal disruption of residents' lives and households. Declarant thanks residents in advance for their patience and tolerance of what may be a relatively short but difficult period for The Trails at Regal Park community.

(End of Appendix B)

APPENDIX C
PURCHASERS 10 COVENANTS
DURING DEVELOPMENT PERIOD
OF THE TRAILS AT REGAL PARK

By the act of accepting an interest in or title to a lot during the Development Period, each owner of a home in The Trails at Regal Park agrees to each of the following statements:

- 1.** The Trails at Regal Park is a planned community being developed in phases, for which the build-out and marketing may extend over many years. The initial concept plan for The Trails at Regal Park may be significantly modified over time to respond to perceived or actual changes and opportunities in the marketplace. *Declarant is not required to provide or complete a proposed feature of The Trails at Regal Park that is not in place on the date of an owner's decision to buy a home in The Trails at Regal Park.*
- 2.** Subject to the approval of governmental entities, if applicable, Declarant may (1) change the sizes, dimensions, and configurations of lots and streets; (2) change minimum dwelling sizes; (3) change building setback requirements; (4) change the nature, number, and location of components of common areas in The Trails at Regal Park; (5) change the construction specifications; (6) approve a mix of architectural styles; and (7) eliminate or modify any other feature of the Property.
- 3.** Builders have rights and opportunities for marketing homes in The Trails at Regal Park that are not available to individual homeowners who desire to market their homes for sale. If owner tries to resell his home during the Development Period he will be competing against Declarant and/or Builders with new houses and a marketing advantage.
- 4.** Owner has read and understands the significance of the Declaration of Covenants, Conditions & Restrictions for The Trails at Regal Park, and the Specifications Supplement, which contains important information about the nature of The Trails at Regal Park and owner's obligations.
- 5.** Annual assessments (the "dues") are subject to change and WILL change over time, at the direction of the Association's board of directors.
- 6.** Declarant has reserved for itself the right to control the Association until The Trails at Regal Park is fully phased and developed, and after 90 percent of the lots are improved with homes that have been sold and closed to homebuyers.
- 7.** Declarant or its appointees are the Architectural Reviewer during the Development Period. Owners do not have a voice in the architectural review and approval of new homes on vacant lots.
- 8.** In purchasing his lot, owner has not relied on any representation, warranty, or assurance - verbal or otherwise - by any person as to (1) the design, construction, completion, development, use, benefits, or value of The Trails at Regal Park; (2) the number, types, sizes, prices, or designs of homes to be built in any part of The Trails at Regal Park; or (3) the type, number, or quality of common area improvements.
- 9.** Owner understands that he cannot do "anything he wants" with his yard and the outside of his home. Even the color of his fence stain must conform to the architectural standards for The Trails at Regal Park.
- 10.** Whether or not executed by owner, these covenants run with the land and bind owner and owner's successors and assigns.