

Denton County
Juli Luke
County Clerk

Instrument Number: 94209

ERecordings-RP

MISCELLANEOUS

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

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Station: Station 10

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STATE OF TEXAS
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke
County Clerk
Denton County, TX

**SUPPLEMENTAL
NOTICE OF FILING OF DEDICATORY INSTRUMENTS
FOR THE TRAILS OF WEST FRISCO
[First Amended Assessment Collection Policy]**

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

THIS SUPPLEMENTAL AMENDMENT TO THE NOTICE OF FILING OF DEDICATORY INSTRUMENTS FOR THE TRAILS OF WEST FRISCO (this “Supplement”) is made this 31st day of August, 2023, by The Trails of West Frisco Community Association, Inc. (the “Association”).

WITNESSETH:

WHEREAS, West Frisco Development Corporation, a Florida corporation (the “Declarant”), prepared and recorded an instrument entitled “Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for The Trails of West Frisco” recorded on October 28, 1998, under Instrument No. 98-R0097188, of the Deed Records of Denton County, Texas (the “Declaration”); and

WHEREAS, the Association is the property owners’ association created by the Declarant to manage or regulate the planned development covered by the Declaration; and

WHEREAS, on or about February 28, 2014, the Association recorded a First Supplemental Certificate and Memorandum of Recording of Dedicatory Instruments which filed of record the Association’s Original Assessment Collection Policy (the “Collection Policy”) as Document No. 2014-17611 of the Real Property Records of Denton County, Texas (the “Notice”); and

WHEREAS, the Association desires to replace in its entirety the Collection Policy with the “First Amended Assessment Collection Policy” (the “Amended Collection Policy”) attached hereto as **Exhibit “A-1”**; and

NOW, THEREFORE, the dedicatory instruments attached hereto as **Exhibit “A-1** is a true and correct copy of the original and is hereby filed of record in the real property records of Denton County, Texas, in accordance with the requirements of Section 202.006 of the Texas Property Code.

Exhibits

A-1 First Amended Assessment Collection Policy

THE TRAILS OF WEST FRISCO COMMUNITY ASSOCIATION, INC.

FIRST AMENDED ASSESSMENT COLLECTION POLICY

WHEREAS, The Trails of West Frisco Community Association, Inc. (the "**Association**") has authority pursuant to Article V of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens on and for The Trails of West Frisco (the "**Declaration**") to levy assessments against Owners of Lots located within The Trails of West Frisco, a planned community located in Denton County, Texas (the "**Development**"); and

WHEREAS, in order to facilitate the timely collection of assessments and other amounts owed by Owners, and in order to comply with the Declaration and state law then in effect regarding the collection of unpaid amounts, the Board established on February 24, 2014, an Assessment Collection Policy which sets forth certain procedures for the collection of assessments that remain unpaid beyond the prescribed due dates (the "**Original Assessment Collection Policy**"); and

WHEREAS, the Original Assessment Collection Policy was recorded as Exhibit A to the First Supplemental Certificate and Memorandum of Recording of Dedicatory Instruments for The Trails of West Frisco Community Association, Inc., recorded on February 28, 2014, under Document No. 2014-17611 of the Deed Records of Denton County, Texas; and

WHEREAS, in order to comply with recent changes to Section 209.0094 of Chapter 209 of the Texas Property Code, the Board desires to replace the Original Assessment Collection Policy with the following procedures for the collection of assessments which shall be known herein as the "**First Amended Assessment Collection Policy**" or the "**Policy**."

NOW, THEREFORE, IT IS RESOLVED that the Original Assessment Collection Policy is hereby replaced with this First Amended Assessment Collection Policy:

1. **Generally**. The steps and procedures contained in this Policy serve as a general outline of the Association's collection process. The Association is not bound to follow these exact procedures in every collection matter except as required by the Declaration and the laws that govern assessment collection. The procedures below are not intended to constitute a prerequisite or condition precedent to the Association's legal ability to collect unpaid assessments and other amounts except as required by the Declaration or by law.

2. **Delegation to Management**. To facilitate cost-effective and timely collection of all amounts owed by Owners, including but not limited to assessments, dues, charges and/or related costs, the Association may delegate to management those duties determined by the Board in its sole discretion to be necessary to assist collection efforts.

3. **Ownership Interests**. As used herein, the term "**Delinquent Owner**" refers to that person who held title to a Lot on the date an assessment became due. As used herein, the term "**Current Owner**" refers to that person who then holds title to a Lot. Unless expressly denoted otherwise, the "**Owner**" of a Lot refers to the Delinquent Owner or the Current Owner or both, as may be appropriate under the circumstances in question.

4. **Due Dates.** Pursuant to Article V of the Declaration, the due date for the annual assessment is the first day of January of each year. The Board may, at its option, change the annual assessment due date to a quarterly or monthly assessment. The due date for a special assessment, special group assessment or an individual assessment is the date stated in the notice of assessment or, if no date is stated, within thirty (30) days after the notice of the assessment is given. The due date for any assessment shall be collectively referred to in this Policy as the "**Due Date.**" Any assessment which is not paid in full within thirty (30) days after the Due Date is delinquent (the "**Delinquency Date**") and shall be assessed interest and handling charges as provided below.

5. **First Written Notice of Delinquency.** The Association and/or its managing agent may send various notification letters to a Delinquent Owner regarding a delinquency. Prior to sending a delinquent account to the Association's legal counsel for collection, the Association will first send written notice of the delinquency to the Owner via first class mail or electronic mail (the "**First Notice**"). The First Notice will provide the Owner a period of at least thirty (30) days to cure the delinquency before further collection action is taken.

6. **Second Written Notice of Delinquency.** No sooner than thirty (30) days after the First Notice, the Association will send a second written notice of the delinquency to the Owner via certified mail, return receipt requested (the "**Default Letter**"). The Default Letter shall: (i) specify each delinquent amount and the total amount owed; (ii) describe the options the Owner has to avoid having the account turned over to the Association's legal counsel, including the availability of a payment plan; and (iii) provide the Owner a period of at least forty-five (45) days to cure the delinquency before further collection action is taken.

7. **Payment Plans.** The Association shall offer a payment plan to a delinquent Owner with a minimum term of at least three (3) months and a maximum term of twelve (12) months from the date the payment plan is requested for which the Owner may be charged reasonable administrative costs and interest. The Association is not required to offer a payment plan to an Owner who failed to honor the terms of a previous payment plan during the two (2) years following the Owner's default under the previous payment plan. The Association is not required to allow an Owner to enter into a payment plan more than once in any twelve (12)-month period. The Association will determine the actual term of each payment plan offered to an Owner. If an Owner is in default under a payment plan at the time the Owner submits a payment, the Association is not required to follow the application of payments schedule set forth in Paragraph 11 below.

8. **Interest.** In the event any assessment, or any portion thereof, is not paid in full by the Delinquency Date, interest on the principal amount due may be assessed against the Owner, the rate of said interest to be the highest non-usurious rate of interest allowed by Texas law or eighteen percent (18%) per annum, whichever is less, and shall accrue from the Due Date until paid. Such interest, as and when it accrues hereunder, will become part of the assessment upon which it has accrued and, as such, will be subject to recovery in the manner provided herein for assessments.

9. **Handling Charges and Return Check Fees.** In order to recoup for the Association the costs incurred because of the additional administrative expenses associated with collecting delinquent assessments, collection of the following fees and charges are part of this Policy:

a. Any handling charges, administrative fees, collection costs, return check fees, postage or other expenses incurred by the Association in connection with the collection of any assessment or related amount owing beyond the Delinquency Date for such assessment will become due and owing by the Delinquent Owner.

b. Any fee or charge becoming due and payable pursuant to this paragraph will be added to the amount then outstanding and is collectible to the same extent and in the same manner as the assessment, the delinquency of which gave rise to the incurrence of such charge, fee, or expense.

10. **Late Charge.** In the event any assessment, or any portion thereof, is not paid in full on or before the Delinquency Date, a late charge in the amount of \$25.00 shall be assessed against the Owner and the Owner's Lot. The Board may, from time to time, without the necessity of seeking membership approval, change the amount of the late charge. Such late charge, as and when levied, will become part of the assessment upon which it has been levied and, as such, will be subject to recovery in the same manner provided herein for assessments.

11. **Application of Funds Received.** All monies received by the Association will be applied to the Owner's delinquency in the following order of priority:

- a. First, to any delinquent assessment;
- b. Second, to any current assessment;
- c. Next, to any attorney's fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- d. Next, to any attorney's fees incurred by the Association that are not subject to Subparagraph 11(c) above;
- e. Next, to any fines assessed by the Association; and
- f. Last, to any other amount owed to the Association.

If the Owner is in default under a payment plan entered into with the Association at the time the Association receives a payment from the Owner, the Association is not required to apply the payment in the order of priority specified in this Section, except that a fine assessed by the Association may not be given priority over any other amount owed to the Association.

12. **Ownership Records.** All collection notices and communications will be directed to those persons shown by the records of the Association as being the Owner of a Lot for which assessments are due and will be sent to the most recent address of such Owner solely as reflected by the records of the Association. Where notice is permitted to be sent by electronic mail, the notice will be sent to the Owner's registered email address with the Association or, if the Owner has failed to register his or her email address, to the last known email address as shown in the Association's books and records. Any notice or communication directed to a person at a physical

address, in both cases reflected by the records of the Association as being the Owner and physical address for a given Lot, will be valid and effective for all purposes pursuant to the Declaration and this Policy until such time as there is actual receipt by the Association of written notification from the Owner of any change in the identity or status of such Owner or such Owner's mailing address or both. Any notice or communication directed to a person at an email address, in both cases reflected by the records of the Association as being the Owner and the Owner's email address, will be valid and effective for all purposes pursuant to the Declaration and this Policy until such time as there is actual receipt by the Association of written notification from the Owner of any change in the identity or status of such Owner or such Owner's email address or both.

13. **Notification of Owner's Representative.** Where the interests of an Owner in a Lot have been handled by a representative or agent of such Owner or where an Owner has otherwise acted so as to put the Association on notice that its interests in a Lot have been and are being handled by a representative or agent, any notice or communication from the Association pursuant to this Policy will be deemed full and effective for all purposes if given to such representative or agent.

14. **Remedies and Legal Actions.** If an Owner fails to cure the delinquency within the forty-five (45) day period stated in the Default Letter (as provided for above), the Association may, at its discretion and when it chooses, refer the delinquency to legal counsel for the Association. Any attorney's fees and related charges incurred by virtue of legal action taken will become part of the Owner's assessment obligation and may be collected as such as provided herein.

At the direction of Management and/or the Board, legal counsel for the Association may pursue any and all available legal remedies with regard to the delinquencies referred to it including, but not limited to, the following:

a. **Notice Letter.** As the initial correspondence to a Delinquent Owner, counsel will send a notice letter (the "**Notice Letter**") to the Owner advising the Owner of the Association's claim for all outstanding assessments and related charges, adding to the charges the attorney's fees and costs incurred for counsel's services.

b. **Notice of Lien.** If an Owner fails to cure the delinquency indicated in the Notice Letter, upon being requested to do so by the Board and/or Management, counsel may prepare and record in the Real Property Records of Denton County, a written notice of lien (referred to as the "**Notice of Lien**") against the Lot. A copy of the Notice of Lien will be sent to the Owner, together with an additional demand for payment in full of all amounts then outstanding. The Notice of Lien shall not be recorded before the 90th day after the date the Association sends the Default Letter.

c. **Foreclosure.** In the event that the Owner fails to cure the delinquency, the Board may direct legal counsel to pursue foreclosure of the lien. In any foreclosure proceedings, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees.

i. **Expedited Foreclosure Pursuant to Rules 735 & 736 of the Texas Rules of Civil Procedure.** The Board may decide to foreclose its lien by exercising its power of

sale granted by the Declaration. In such event, counsel may commence an expedited foreclosure lawsuit under Rules 735 and 736 of the Texas Rules of Civil Procedure ("**Expedited Foreclosure**"). Upon receipt from the Court of an order authorizing foreclosure of the Lot, counsel may post the Lot for foreclosure at an upcoming foreclosure sale. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The Association may institute a personal judgment suit against the former Owner for any deficiency resulting from the Association's foreclosure of its assessment lien.

ii. **Judicial Foreclosure**. The Association may file suit for judicial foreclosure ("**Judicial Foreclosure**") of the assessment lien, which suit may also seek a personal money judgment. Upon receipt from the Court of an order foreclosing the Association's assessment lien against the Lot, the sheriff or constable may post the Lot for sheriff's sale at an upcoming foreclosure sale. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

d. **Lienholder Notification**. In pursuing Expedited Foreclosure or Judicial Foreclosure, the Association shall provide the 61-day notice letter to lienholders pursuant to Section 209.0091 of the Texas Property Code.

e. **Lawsuit for Money Judgment**. The Association may file suit for a money judgment in any court of competent jurisdiction.

f. **Bankruptcy**. Upon notification of a petition in bankruptcy, the Association may refer the account to legal counsel.

g. **Suspension of Rights to Use Recreational Facilities**. If authorized by the Declaration, Bylaws or rules and regulations, and in accordance with Chapter 209 of the Texas Property Code, the Association may suspend an Owner's privileges to use the Association's recreational facilities.

h. **Remedies Not Exclusive**. All rights and remedies provided in this Policy and hereinabove are cumulative and not exclusive of any other rights or remedies that may be available to the Association, whether provided by law, equity, the Association's governing documents or otherwise.

15. **Lock Boxes**. The Association may establish a lock box for the receipt of assessment payments. Payments made to the lock box are deposited in the Association's bank account without regard to communications or other notices enclosed with or stated on the payment. Any notice or communication (including, without limitation, a dispute of the debt) enclosed with or stated on the payment to the lock box will be ineffective and not binding on the Association. Any dispute of an assessment or related charge, any proposed tender of an amount less than the entire amount claimed to be due which is intended to satisfy the Owner's debt in full, or any change in the identity, status, or address of an Owner, must be in writing, sent to and received by Management at the address listed on the Association's most recent management certificate.

16. **Compromise of Assessment Obligations.** In order to expedite the handling of collection of delinquent assessments owed to the Association, the Board may, at any time, compromise or waive the payment of any assessment, interest, late charge, handling charge, collection cost, legal fee or any other applicable charge. The Association may, at its option, notify the Internal Revenue Service of the waiver or forgiveness of any assessment obligation.

17. **Severability and Legal Interpretation.** In the event that any provision herein shall be determined by a court with jurisdiction to be invalid or unenforceable in any respect, such determination shall not affect the validity or enforceability of any other provision, and this Policy shall be enforced as if such provision did not exist. Furthermore, in the event that any provision of this Policy is deemed by a court with jurisdiction to be ambiguous or in contradiction with any law, this Policy and any such provision shall be interpreted in a manner that complies with an interpretation that is consistent with the law. In the event any provision of this Policy conflicts with the Declaration, the Declaration controls.

IT IS FURTHER RESOLVED that this Policy replaces and supersedes in all respects all prior policies and resolutions with respect to the collection of assessments by the Association (save and except the Payment Application & Payment Plan Policy which shall remain in full force and effect) and is effective upon adoption and recordation hereof, to remain in force and effect until revoked, modified or amended.

This is to certify that the foregoing resolution was adopted by the Board of Directors at a meeting of same on August 29, 2023, and has not been modified, rescinded, or revoked.

DATE: 8/30/23


Secretary