

# **WATER' S EDGE**

**Granbury, Texas**

## **Phase IIa Covenants**

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RESTRICTIVE COVENANTS FOR WATER'S EDGE ~ AN ADDITION TO THE CITY OF GRANBURY,  
HOOD COUNTY, TEXAS :

A. COVENANT

1. KNOW ALL MEN AND WOMEN BY THESE PRESENTS that Ken W. Hackett d.b.a. Water's edge, and A.M.J. Development, L.C. as Owner of all these lots in the WATER'S EDGE real estate subdivision do hereby place the following restrictions, easements, charges and liens hereinafter set forth to be binding on the undersigned as well as subsequent owners of the following described lots:

Block 4 Lots 40 through 51, Block 4 (Second Filing), of the WATER'S EDGE ADDITION to the City of Granbury, Hood County, Texas, as shown on the Plat recorded on October 18, 1996, Slide A-357-b, of the Plat Records, Hood County, Texas.

Said restrictions, easements, charges and liens being placed, thereon to maintain, preserve and promote the beautification and utility of the Water's Edge Addition, and the Canal Waterway and Wall System, and any Common Areas; and to provide and enforce certain protective covenants for the above described lots.

2. The Owners have or will incorporate under the laws of the State of Texas, as a nonprofit corporation, Water's Edge Homeowners' Association. The corporation will be delegated and assigned the powers of maintaining the entire Addition, in particular, the Canal Waterway System and Common Areas, and, for that purpose, collecting and disbursing the assessments and charges hereinafter created.

3. The above described lots shall be held, transferred, sold, conveyed and occupied subject to all covenants, restrictions, easements, charges and liens hereinafter set forth, or set forth on the Plats of the Water's Edge Addition.

4. These restrictions are for the benefit of and shall inure to each and every property owner of the lots above described and may be enforced by any property owner therein. Should the owner and/or tenant of any of the above described lots violate any of these restrictive covenants and/or conditions contained herein, and thereafter refuse to correct same and to abide by said restrictions and conditions after reasonable notice, then in such event, the Water's Edge Homeowners' Association or any owner of these above described lots may institute legal proceedings to enjoin, abate, and/or correct such violation or violations, and the owner of the lot permitting the violation of such restrictions and/or conditions shall pay all attorneys' fees, court costs, and other necessary expenditures incurred by the person or entity instituting such legal proceedings and to maintain and enforce the aforesaid restrictions and conditions, said attorneys' fees to be fixed by the court. The amount of said fees, costs and expenses allowed shall become a lien upon the land, as of the date legal proceedings were originally instituted and said lien shall be subject to foreclosure in such action, so brought to enforce such restrictions, in the same manner as any other lien upon real estate, the procedure which is fixed by statute.

5. Validation of any aspect of any of these restrictions by judgement or court order shall in no wise affect any of the other provisions which shall remain in full force and effect. Failure by the Water's Edge Homeowners' Association or any owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

6. These covenants and restrictions shall run with and bind the land subject thereto, and shall inure to the benefit of and be enforceable by the Water's Edge Homeowners' Association, or the owner of any land subject to this declaration, and their respective legal representatives, heirs, successors and assigns, for a term of thirty years (30) years from the date that this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by two-thirds (2/3) of the votes of the membership of the association then entitled to vote, or voting by proxy, at a meeting duly called for that purpose.

7. Anything herein to the contrary notwithstanding, each and every provision herein contained may be abandoned, terminated, modified, altered or in any other way changed, PROVIDED that the same shall have the assent of at least two-thirds (2/3) of the votes of the membership of the Association then entitled to vote, voting in person or by proxy, at a meeting duly called for that purpose.

8. Additional lots may become subject to these restrictions at any time when plats of additional increments or phases of the Water's Edge Addition showing additional lots are filed of record with the County Clerk of Hood County, Texas and are designated by recorded restrictions as being held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens herein set forth.

#### B. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. The following lot owners shall be a member of the corporation:

a. Every person or entity who is or may hereafter become the record owner of a fee interest in any lot or lots located in the Water's Edge Addition (whether in the subject increment or in any other increment) which lot or lots are intended for use solely as single family residences shall automatically be and become a member of the Water's Edge Homeowners' Association; PROVIDED, however, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member; and PROVIDED, further, that any member who sells or otherwise disposes of (by operation of law or otherwise) such interest required for membership as aforesaid shall thereupon automatically cease to be a member of the corporation.

b. Any person or entity who is or may hereafter become the record owner of a fee interest in any lot or lots located in the Water's Edge Addition (whether in the subject increment or in any other increment), and who desires to develop such lot or lots as a condominium project, the person or entity owning said lot or lots must file and record in the Hood County "Condominium Records" a Condominium Declaration in full compliance with Title 7, Chapter 81 of the Texas Property Code. For the lot or lots covered by the Condominium Association shall automatically be and become a member of the Water's Edge Homeowners' Association. The individual owners of the condominium units shall not be or become members of the Water's Edge Homeowners' Association, their interest being represented by the Council of Owners or Condominium Owner's Association.

c. Any person or entity who is or hereafter may become the record owner of a fee simple interest in any lot or lots located in the Water's Edge Addition (whether in the subject increment or in any other increment) and upon which a multi-family dwelling, duplex, or apartment complex is built shall automatically be and become a member of the Water's Edge Homeowners' Association. Only the fee simple owner of the lot or lots upon which the multi-family dwelling, duplex, or apartment complex is located shall become a member of the corporation, no tenant or lessee shall become a member of the corporation, not tenant or lessee shall become a member of the corporation.

d. The owners of any lot or lots in the Water's Edge Addition not specifically listed above shall not be members of the corporation or otherwise have any interest in its business or affairs, but shall be subject to the remaining covenants, restrictions and easements provided for herein.

2. The corporation shall have two classes of voting membership.

a. CLASS A. Class A members shall be all those owners defined in paragraph B.1.a, B.1.b and B.1.c, above, except the Developers. Class A members described in paragraph B.1.a. shall be entitled to one vote for each lot in which they hold the interest required for membership by said paragraph B.1.a. When more than one person holds such interest in any lot, all such persons shall be members, and the vote for such lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such lot. Class A members described in paragraph B.1.b shall be entitled to one vote for each 10,000 square feet of property or part thereof of any lot or lots covered by the Condominium Declaration which are subject to the control of the Council of Owners or Condominium Owners Association. Class A members described in paragraph B.1.c shall be entitled to one vote for each 10,000 square feet of property or part thereof of any lot or lots on which the multi-family dwelling, duplex, or apartment complex is located.

b. CLASS B. Class B members shall be the Developers of Water's Edge Addition. Developers are defined as the business entities or their designees undertaking the platting, improving, marketing, and selling of lots or tracts in said subdivision so that they are suitable for construction purposes. Class B members shall at all times be entitled to three votes for each lot in which it holds the interest required for membership, PROVIDED, however, that at any time when the total number of lots owned by the Class A membership exceeds two-thirds (2/3) of the total number of lots owned by the Class A and Class B members combined, the Class B membership shall be entitled to only one vote for every such lot. It is understood that other lots may be developed in subsequent increments of the Water's Edge Addition which lots also shall be subject to the Covenants of Record and to assessments by the corporation. The provisions set forth above granting Class B members three votes for each lot shall in all events be operative until two-thirds (2/3) of all such lots (both those included in present and subsequent increments of the Water's Edge Addition as they are platted and placed of record) are owned by the Class A membership.

#### C. COVENANT FOR MAINTENANCE ASSESSMENTS

1. Each Class A member hereby covenants and agrees, and each purchaser of any lot by acceptance of a deed therefore and his successors in title, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay the Association; (1) annual assessments for maintenance and improvements of the Canal Waterway System; and (2) special assessments for maintenance and improvements of the entire Addition. All of such assessments to be established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the lots liable therefore and shall be a lien upon the particular lot or lots against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be a personal obligation of the person who was the Owner or Owners of such property at the time when the assessment fell due.

2. Annual assessment herein provided for shall be used in the following manner:

a. To maintain, preserve and promote the beautification and utility of the Canal Waterway and Wall System, including, without limiting the generality of the foregoing, the regulation of silt, plant growth, and other

debris accumulating in the Canal Waterway System, and the control of the breeding and proliferation of mosquitoes and the pests in or around the Canal Waterway System, including specifically maintenance, construction, replacement or repair necessary to maintain the structural facilities of the Canal Waterway System as well as the designated flow and capacity characteristics of the System.

b. To incur legal and/or administrative expenses on behalf of the Owner's Association including, but not limited to the expenses for the enforcement of the restrictive covenants and the Bylaws of the Owner's Association after said expenses have been duly authorized by the Board of Directors. In no event shall the Board of Directors incur more expenses in any one year than the amount of money assessed or to be assessed in the same year without the approval of at least two-thirds of the votes of those members voting, whether in person or by proxy, at a meeting duly called for that purpose.

c. For the maintenance, preservation, beautification, utility, and improvement of any and all real property owned by the Owner's Association ("Common Area(s)") or any real property adjacent or contiguous to the lots or Common Area(s) within the subdivision, and for the purchase of such equipment, materials and/or supplies as are necessary to facilitate said maintenance, preservation, beautification, utility, and improvement of such Common Area(s) and said real property.

3. Each Class A member whose lot is adjacent to, or has a connecting boundary line with either Lake Granbury or the Canal Waterway System shall pay an annual assessment equal to \$1.00 per foot of lake shore or Canal Waterway System boundary located on his lot or lots up to a maximum charge of: \$100 per single family platted lot; \$100 per 10,000 square feet of property covered by a Condominium Declaration; or \$100 per 10,000 square feet of property upon which a multi-family dwelling, duplex, or apartment complex is located; commencing with the calendar year 1987, PROVIDED, however, that no member or lot shall be subject to any assessment prior to the time of recording by the developer of a plat of the increment of Water's Edge Addition, covering such lot in the Plat Records of Hood County, Texas. Class A members whose lot is not adjacent to and does not have the Canal Waterway System shall not be liable for any annual assessment.

4. The Association may increase or decrease the amount or change the basis of the annual assessment specified in Section 3 hereof for any future period, PROVIDED that any such increase, decrease, or change shall have the assent of at least two-thirds of the votes of those members voting, whether in person or by proxy, at a meeting duly called for that purpose. Only those members, save and except for Class B Members, whose lots are subjected to liability for annual assessment shall be entitled to vote on any change in the annual assessment or upon the uses of the funds collected as a result of the annual assessments.

5. The annual assessment for each calendar year shall become due and payable on the first day of January of each such year. The due date of any special assessment under Section 6 hereof shall be fixed in the resolution authorizing such assessment.

6. In addition to the annual assessment specified in Section 3 hereof, the Association may levy at any time a special assessment for the purpose of defraying whole or in part, the cost of any construction, repair, replacement or maintenance of any structure or facility connected with, or capital improvement relating to, the Water's Edge Addition other than the Canal Waterway System, PROVIDED that any such special assessment shall have the assent of at least two-thirds of the votes of these members voting, whether in person or by proxy, at a

meeting duly called for that purpose. All members of the Association shall be eligible to vote and all lots, save and except for Class B Members shall be subjected to liability for special assessments.

7. In conjunction with every annual and special assessment, the Board of Directors of the Association shall prepare a roster of the lots to which the assessment is applicable, which roster shall be kept in the office of the Association and shall be open to inspection by the Owner. Written notice of the assessment shall be sent out to the Owner of every lot subject thereto at least thirty (30) days prior to the due date thereof. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence payment of any assessment therein stated to have been paid.

8. If any assessment is not paid on the date when due, then such assessment shall thereupon become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the lot or lots to which the same is applicable and shall bind such property in the hands of the ~~then~~ Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall pass to his successors in title.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law either against the Owner or entity personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

9. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any lot subject to such assessment; PROVIDED, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such mortgage. Such sale shall not relieve such lot from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

#### D. USAGES

1. Each lot, unless otherwise specifically designated on the Water's Edge Addition Plat, is hereby designated solely as a site for one single-family detached dwelling and may not be occupied unless it meets all requirements of these covenants, and all the requirements of the City of Granbury, Texas.

2. All houses and structures permitted shall be completed within eight (8) months, once construction had started. No structure shall be occupied unless and until the premises are connected in a proper way to the underground utilities including the city sewage and water system, and underground electrical system.

3. No livestock, poultry or animals of any kind (or pens and coops for the same) shall be kept other than the usual and ordinary household pets, provided said household pets are not kept, bred, or maintained for any commercial or remunerative purpose. No waterfowl shall be kept.

4. The placement by Class A members or their designees of signs, billboards, or advertising structures of any kind on any lot is prohibited, except that one sign advertising the rental or sale of property is permitted,

provided it does not exceed 18 inches x 24 inches in size; the Developer may display such signs, not to exceed 4 feet x 8 feet each, for the purpose of advertising the rental or sale of property and other such amenities or activities deemed pertinent by Developer for such purposes.

5. Other than the Developer, engaging in a trade or business is prohibited as also is any activity which may become an **annoyance or nuisance** to the neighborhood.

6. Open storage of any type is strictly prohibited on any lot or dock, including a boat, trailer, or recreational type vehicle unless specifically approved by variance of the Architectural Control Committee. One radio, television, or other receiving or transmitting tower may be placed on each lot but may not project above the highest point on the roofline. One satellite dish may be placed, with variance approval by the Architectural Control Committee, on the side yard of each lot and shall not extend above the highest point of the roof adjacent to that specific location.

7. No drying of clothes out of doors nor clothes lines suitable for the drying of clothes will be permitted in this subdivision.

8. No member of the Association will restrict the use of the Canal Waterway System by any other member, and each member is granted an easement and right to reasonably use the entire Canal Waterway System in common with each other member, PROVIDED that such reasonable use of the Canal Waterway System shall extend only to the water surface thereof and such easement granted herein shall not grant any member the right to use any other part of the Utility, Wall Maintenance or Flowage Easement shown on the recorded plat existing on any other member's property.

9. The owner of such lot shall comply in every manner with the rules and regulations of the Brazos River Authority regarding docks and the pumping of water from the Canal Waterway System. Further, no dock attached to any lot shall extend more than thirty (30) feet from the shoreline of such lot. No enclosed docks or enclosed boat sheds shall be permitted. Construction of any dock or boat shed shall be subject to approval of the Architectural Control Committee and shall have a 4 feet in 12 feet sloped roof of like roofing material as the residence.

10. Grass, weeds and vegetation on each lot in this addition must be kept mowed at regular intervals so as to maintain the same in a neat and attractive manner. Upon failure to so maintain a lot, the Architectural Control Committee of the Water's Edge Homeowners' Association may as its option, have the grass, weeds and vegetation cut when, and as often as necessary in its judgement and the owner of the property shall be obligated to reimburse it for cost of such work, and the claim for such reimbursement will constitute a lawful lien against the lot when properly filed with the County Clerk.

11. All trash, ash, residues, and garbage must be collected in suitable covered containers and removed from the lot regularly by the garbage service licensee of the City of Granbury which service each lot owner herein shall subscribe to. No trash or garbage may be disposed of by burning on any of the aforesaid lots. No trash, ashes, or other residue may be thrown or dumped on any lot in this addition, or allowed to remain thereon. Each owner and designated contractor will be solely and completely responsible to keep all construction site (lot) free of debris and shall provide said site with a enclosed pen or container during construction.

12. No trucks or other commercial type vehicles shall be stored or parked on any resident's lot except while parked in a closed garage nor parked on any residential street in the Water's Edge addition except while engaged in

transporting to or from a residence in the Addition. No vehicles of any type shall be parked on yard areas for any reason.

13. No structure except docks, piers, or pilings permitted by paragraph D.9 hereof shall be constructed nor any fill used to extend the property beyond the lot line of any waterfront property. Any boat dock, pier or similar structure shall be located no closer than fifteen (15) feet of any side lot line, save and except those lots deemed by Developer at the end or corners of the Canal Waterway System with smaller water frontage. No construction, destruction, alteration, penetration, attachment to or removal of Canal Waterway retaining walls (bulkhead) is permitted, without variance approval from the Architectural Control Committee.

14. There are hereby reserved for the purpose of installing and maintaining municipal and public utility facilities and for such purposes incidental to the development of the property the easements shown upon the Water's Edge addition plat, as recorded in the records of Hood county, Texas. All claims for damages, if any, arising out of construction, maintenance, and repair of the utilities or on account of temporary or other inconvenience caused thereby against the developer, or any utility company or municipality, or any of its agents or servants are hereby waived by the owners. Developer does further reserve the right to change, lay out a new, discontinue any street, avenue or way shown on the plan of development not necessary for ingress and egress to or from the owner's premises, subject to the approval of the City of Granbury, if required. No substantial changes in the elevation of the land shall be made on any lot.

15. Specifically exempted from the provisions of this section are activities by the Developers carried out in the regular pursuit of construction, maintenance, marketing and sales within the subdivision which exemption shall end when all development activity including sales by them are deemed completed.

16. All the above listed covenants, restrictions, and usages are equally applicable to any lot or lots designated as Condominiums, Apartments, or Commercial on the Water's Edge Addition Plat. Additionally, the Architectural Control committee may make additional restriction on the usage for lots designated for Condominiums, Apartments or Commercial, such additional restrictions being subject to repeal by vote of at least two-thirds (2/3) of the members of the Association voting, whether in person or by proxy, at a meeting called for such purposes.

#### E. ARCHITECTURAL STANDARDS

1. Lots may not be re-platted so as to create more separate building sites or lots than existed in the original platting of said combined lots.

2. No structure shall exceed (except by Architectural Control Committee approval) two stories in height. Servants quarters may be built when the plans thereof are approved in writing by the Architectural Control Committee.

3. Every residence must meet all applicable requirements established by the City of Granbury and any alteration or addition to any residence must meet these same City of Granbury requirements, as well as the restrictive covenants.

4. The main dwelling of every residence shall have a living area of not less than 2000 square feet, unless specifically approved by variance by the Architectural Control committee. However, no 1 1/2 story, split level, or two story houses shall have less than 1500 square feet of the living area on the ground floor of the main dwelling of every residence shall not be less than \$90,000, exclusive of the value of the real property.

5. The exterior walls of each house shall be of seventy five (75%) per cent masonry, stone or brick construction on all floor or living areas regardless of height, unless a variance is specifically approved in writing by the Architectural Control Committee.

6. Every residence must have a garage sufficient to house at least two automobiles and must be attached to the residence and can be of any square footage, provided, however, that the square footage of the garage shall not be used to reduce the minimum 1500 2000 square residence required in paragraph E.4. Application for exception to the restriction must be made in writing and approval granted prior to commencement of construction. In the event that the garage doors should face the street, then Owner shall make every effort to embellish the exterior as to mitigate the impact to the architecture of the residence, as deemed reasonable by the Architectural Control Committee.

7. Boundary fences shall be no more than six (6) feet in height without variance by the Architectural Control Committee. No fence shall be erected or maintained on any lot or plot nearer the front street than the front wall of the residence building, and on all corner lots to the side street, not nearer than the building line as shown on said plat. Only fences constructed of wrought iron (or similar), masonry, wood and/or hedge can be placed between the front wall of the residence and the rear property line, unless specifically approved otherwise by variance by the Architectural Control Committee. As referenced above, wood fences may be installed, but where the fence faces the street and/or canal waterway, it shall be constructed with masonry columns approximately eight (8) foot on center, and in no case shall horizontal supports face the street or canal waterway. Additionally, all lots whose rear property line connects in whole or in part to Lake Granbury or the Canal Waterway System can have (1) no solid fence of any type within thirty (30) feet of the Lake or the Canal Waterway System, (2) must be "wrought iron" (or similar) with masonry and/or both, (3) must be open and decorative in nature, and (4) and cannot extend nearer than six feet of the rear retaining wall.

8. All residences will face the front line of the lot and shall not protrude forward of the front building lines as set forth on the dedicated plat. Side and rear building lines shall meet the requirements of the City of Granbury subject to approval by the Architectural Control Committee.

9. New structures only shall be erected on and permitted to remain in the addition. No structures may be moved into the addition.

10. No trailer or residence of a temporary character shall be permitted, other than by Developer. No building material of any kind or character shall be placed or stored upon the property until the owner is ready to commence improvement.

11. Roof shall have a minimum pitch of 8 feet in 12 feet and be of tile, or 300 pound per square heavy composition shingles with a weathered wood look or charcoal gray; any exceptions will be approved by the Architectural Control Committee.

12. Every residence must provide a masonry mailbox of similar material of the residence and is to be placed at the corner of the property lines where indicated on the plat, as approved by the local U.S. Post Master.

13. A five (5) foot concrete sidewalk shall be placed by each Owner along the rear retaining wall, at or prior to the construction of the residence, and the face of said sidewalk shall be "rubbed" and be provided with pipe "sleeves" on ten (10) foot centers for the extension of water and electrical lines to and from dock.

14. Lawn irrigation pumps shall be located and screened, or submerged at the dock, and in no case shall the pumps be located within the ten (10) foot rear canal maintenance easement.
15. Playground equipment for children will be allowed on an individual basis and approved by temporary variance of the Architectural Control Committee; basketball goals shall be located along the side lot lines of the front yard, be freestanding, and beyond the twenty (20') foot front yard setback.
16. Each owner or building contractor shall install or effect the installation of a home security system for every residence to the prewire stage.
17. Any rear yard retaining or terrace wall is to be specifically approved by the Architectural Control Committee as to shape, height, and type of materials prescribe by Developer; separate drawings and specifications will be required from the standard plot plans submitted at start of construction.

#### F. ARCHITECTURAL CONTROL

1. No structure shall be erected, placed, or altered on any lot until the construction plans, specifications and a lot plan (to scale showing the location of the structure and all improvements) shall have been submitted and approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to the location with respect to topography and finished grade elevation. A full set of plans will be filed and left with the Architectural Control committee prior to construction. Notwithstanding anything contained herein to the contrary, the Architectural Control Committee may, in addition to restrictions contained herein, require lot owners to comply with additional restrictions so long as the additional restrictions have been passed by unanimous vote of the committee and communicated to all lot owners by mail or by posting in a conspicuous place located within the Addition.

2. The Committee's approval or disapproval as required by this covenant shall be in writing. In the event the Committee fails to approve or disapprove plans in 30 days after submission or in any event *if* no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the restrictive covenants herein contained shall be deemed to have been fully complied with.

3. The Architectural Control Committee shall be composed of (5) members appointed by the Board of Directors of the Water's Edge Homeowners' Association, consisting of Owners or Class A Members, and not less than one (1) Developer representative. A majority of the committee may designate a representative to act for it. In the event of the death or resignation of any member of the committee, the remaining members shall have full authority to nominate a successor to be approved by majority vote of the Board of Directors of the Association. Members of the Committee can be removed by a two-thirds (2/3) vote of the Board of Directors of the Association. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.