SCANNED

AFTER RECORDING RETURN TO:

ROBERT D. BURTON, ESQ.
ARMBRUST & BROWN, L.L.P.
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

LT1-77-20070269900-1

LT2-13222-2076-87

TOWNHOME DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

VILLAS OF SILVERADO HILLS

(A Residential Townhome Community in Bexar County, Texas)

DECLARANT: CENTEX HOMES, a Nevada general partnership

VILLAS OF SILVERADO HILLS

TABLE OF CONTENTS

ARTICLE 1

DEFINITIONS 1

1.01 Definitions 1

ARTICLE 2

PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS 5

2.01 General 5

2.02 Owner's Easement of Enjoyment 5

2.03 Owner's Maintenance Easement 5

2.04 Owner's Ingress/Egress Easement 6

2.05 Owner's Encroachment Easement 6

2.06 Easement Of Cooperative Support 6

2.07 Association's Access, Maintenance and Landscape Easement 6

2.08 Utility Easement 7

2.09 Security 8

2.10 Injury to Person or Property 8

2.11 Easement to Inspect and Right To Correct 8

ARTICLE 3

DISCLOSURES 9

3.01 General 9

3.02 Contract Services Disclosure 9

3.03 Pest Control Tubes Disclosure 9

3.04 Adjacent Thoroughfares 9

3.05 Zoning 9

3.06 Outside Conditions 9

3.07 Concrete. 10

3.08 Construction Activities 10

3.09 Moisture 10

3.10 Codes and Permits 11

3.11 Name of Property 11

3.12 Encroachments 11

3.13 Budgets 11

3.14 Light and Views 12

3.15 Schools 12

3.16 Recreational Facilities 12

3.17 Sounds 12

3.18 Suburban Environment 12

3.19 Dwelling Plans and Dimensions 12

3.20 Water Runoff 13

3.21 Dwelling Systems 13

3.22 Upgrades 13
3.23 Dryer Vents 13
3.24 Location of Utilities 13
3.25 Wood 13
3.26 Stone 13
3.27 Chemicals 14
3.28 Paint 14
3.29 Fixtures 14
3.30 Marketing 14
3.31 Private Streets 15
3.32 Entry Gate 16

ARTICLE 4

ASSESSMENTS 16
4.01 Purpose of Assessments 16
4.02 Personal Obligation 16
4.03 Types of Assessments 16
4.04 Regular Assessments 16
4.05 Annual Budget-Regular 17
4.06 Basis of Regular Assessments 17
4.07 Supplemental Increases 17
4.08 Special Assessments 17
4.09 Utility Assessments 18
4.10 Individual Assessments 18
4.11 Deficiency Assessments 18
4.12 Working Capital Fund 18
4.13 Due Date 19
4.14 Reserve Funds 19
4.15 Declarant's Right To Inspect And Correct Accounts 19
4.16 Association's Right To Borrow Money 19
4.17 Limitations of Interest 20
4.18 Exempt Property 20

ARTICLE 5

ASSESSMENT LIEN 20
5.01 Assessment Lien 20
5.02 Superiority of Assessment Lien 20
5.03 Effect of Mortgagee's Foreclosure 21
5.04 Notice and Release of Notice 21
5.05 Power of Sale 21
5.06 Foreclosure of Lien 21

ARTICLE 6

EFFECT OF NONPAYMENT OF ASSESSMENTS 21
6.01 Interest 22
6.02 Late Fees 22

6.03 Collection Expenses 22
6.04 Acceleration 22
6.05 Suspension of Vote 22
6.06 Assignment Of Rents 22
6.07 Money Judgment 23
6.08 Notice to Mortgagee 23
6.09 Application of Payments 23

ARTICLE 7

MAINTENANCE AND REPAIR OBLIGATIONS 23
7.01 Association Maintains 23
7.02 Annual Inspection 24
7.03 Area of Common Responsibility 24
7.04 Owner Responsibility 25
7.05 Disputes 26
7.06 Sheetrock 26
7.07 Mold 26
7.08 Warranty Claims 27
7.09 Owner's Default In Maintenance 27
7.10 Party Walls. 27

ARTICLE 8

ARCHITECTURAL REVIEW 29
8.01 Purpose 29
8.02 Declarant Rights 29
8.03 Architectural Reviewer 29
8.04 Limits on Liability 30
8.05 Prohibition of Construction, Alteration and Improvement 30
8.06 No Deemed or Verbal Approval 30
8.07 Application to Board 31
8.08 Owner's Duties 31
8.09 Prohibited Acts 31

ARTICLE 9

INSURANCE AND INDEMNITY 32
9.01 General Provisions 32
9.02 Unavailability 32
9.03 No Coverage 32
9.04 Requirements 32
9.05 Association as Trustee 32
9.06 Notice of Cancellation or Modification 33
9.07 Deductibles 33
9.08 Property Insurance 33
9.09 Liability Insurance 33
9.10 Worker's Compensation 34
9.11 Fidelity Coverage 34

9.12 Directors And Officers Liability 34
9.13 Other Policies 34
9.14 Owner's Responsibility For Insurance. 34

ARTICLE 10

RECONSTRUCTION OR REPAIR AFTER LOSS 35
10.01 Restoration Funds 35
10.02 Costs And Plans 36
10.03 Owner's Duty to Repair. 36
10.04 Owner's Liability For Insurance Deductible 36

ARTICLE 11

GENERAL USE AND CONSTRUCTION RESTRICTIONS 37
11.01 General 37
11.02 Rules and Regulations 37
11.03 Subdividing 38
11.04 Mining and Drilling 38
11.05 Animals - Household Pets 38
11.06 Annoyance 38
11.07 Driveways 38
11.08 Garages 38
11.09 Landscaping 39
11.10 Decks 39
11.11 Noise And Odor 39
11.12 Occupancy 39
11.13 Residential Use 39
11.14 Structural Integrity 40
11.15 Antenna 40
11.16 Signs 41
11.17 Window Treatments 41
11.18 Sheds 41
11.19 On Street Parking Prohibited; Use of Common Area 41
11.20 Mobile Homes, Travel Trailers and Recreational Vehicles 42
11.21 Liability of Owners for Damage to Common Area 42
11.22 Fences 42
11.23 Palm Trees 42
11.24 Permanent Basketball Goals 42
11.25 Drainage 43
11.26 Clotheslines; Window Air Conditioners 43
11.27 City Requirements 43
11.28 Construction Activities 43
11.29 No Warranty of Enforceability 43
11.30 Compliance with Restrictions 44

ARTICLE 12

LEASING 45

12.01 Leasing Conditions 45
12.02 Eviction of Tenants 45
12.03 Exemption 45

ARTICLE 13

ASSOCIATION MEMBERSHIP, VOTING RIGHTS, AND PURPOSES 46
13.01 Organization 46
13.02 Membership. 46
13.03 Voting Rights 47
13.04 Powers 48
13.05 Acceptance of Common Area 51
13.06 Indemnification 51
13.07 Insurance 52
13.08 Control by Declarant 52
13.09 Bulk Rate Contracts 52
13.10 Community Systems 53
13.11 Declarant's Right to Contribute to Revenues of the Association 53
13.12 Protection of Declarant's Interests 53
13.13 Notices and Disclaimers as to Security Systems 54

ARTICLE 14

ENFORCING THE RESTRICTIONS 55
14.01 Notice And Hearing 55
14.02 Remedies 55
14.03 Board Discretion 56
14.04 No Waiver 56
14.05 Recovery of Costs 56

ARTICLE 15

TERMINATION AND CONDEMNATION 57
15.01 Association As Trustee 57
15.02 Termination 57
15.03 Eminent Domain 57

ARTICLE 16

DEVELOPMENT RIGHTS 57
16.01 Development by Declarant 57
16.02 Special Declarant Rights 58
16.03 Assignment of Declarant's Rights 58
16.04 Annexation and Withdrawal. 58

ARTICLE 17

DISPUTE RESOLUTION 59
17.01 Introduction and Definitions 59
17.02 Mandatory Procedures 60
17.03 Notice 60
17.04 Negotiation 60

17.05 Mediation 60
17.06 Termination of Mediation 61
17.07 Binding Arbitration-Declarant Claims 61
17.08 Allocation of Costs 63
17.09 General Provisions 63
17.10 Approval and Settlement 63
17.11 Period of Limitation. 64

ARTICLE 18
MORTGAGE PROVISIONS 65
18.01 Notice of Action 65
18.02 Examination of Books 66
18.03 Taxes, Assessments and Charges 66

ARTICLE 19
GENERAL PROVISIONS 66
19.01 Term 66
19.02 Amendment 66
19.03 Enforcement 67
19.04 Higher Authority 67
19.05 Severability 67
19.06 Conflicts 68
19.07 Gender 68
19.08 Acceptance by Grantees 68
19.09 Notices 68
19.10 View Impairment 68
19.11 Safety and Security 68
19.12 Declarant as Attorney in Fact and Proxy 69

TOWNHOME DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Villas of Silverado Hills

This Townhome Declaration of Covenants, Conditions and Restrictions (the "**Declaration**") is made by **CENTEX HOMES**, a Nevada general partnership (the "**Declarant**"), and is as follows:

This Declaration does not and is not intended to create a condominium within the meaning of Chapter 82 of the Texas Property Code (the Texas Uniform Condominium Act).

RECITALS:

A. Declarant is the owner of that certain real property located in Bexar County, Texas, being more particularly described on Attachment 1, attached hereto and incorporated herein by reference (the "**Property**").

B. Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property.

NOW, THEREFORE, it is hereby declared: (i) that the Property (or any portion thereof) will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

ARTICLE 1
DEFINITIONS

1.01 **Definitions**. In addition to any other terms defined elsewhere in this Declaration, the following words when used in this Declaration (unless the context shall otherwise prohibit) shall have the following respective meanings:

(a) "**Area of Common Responsibility**" means those portions of Lots and Structures that are designated, from time to time, by the Association to be maintained, repaired, and replaced by the Association, as a common expense, as if the portions were Common Area, as shown on the Maintenance Responsibility Chart attached to this Declaration as Exhibit "C".

(b) "**Architectural Reviewer**" means Declarant during the Development and Sale Period. After expiration of the Development and Sale Period, the rights of the Architectural Reviewer will automatically be transferred to the Board.

(c) "**Assessment**" or "**Assessments**" means assessments imposed by the Association under this Declaration.

(d) "**Association**" means the Villas of Silverado Hills Townhome Association, Inc., a Texas non-profit corporation, which will be created by Declarant to exercise the authority and assume the powers set forth in this Declaration.

(e) "**Board**" means the Board of Directors of the Association.

(f) "**Bulk Rate Contract**" or "**Bulk Rate Contracts**" means one or more contracts which are entered into by the Association for the provision of services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick up services, propane service, natural gas service, lawn maintenance services and any other services of any kind or nature which are considered by the Board to be beneficial to the Association or any of its Members.

(g) "**Bylaws**" means the Bylaws of the Association as adopted and as amended from time to time.

(h) "**Certificate**" means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

(i) "**City**" means the City of San Antonio, Texas.

(j) "**Common Area**" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations. Common Area includes any property that the Association holds under a lease, license, or any easement in favor of the Association.

(k) "**Community Systems**" means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by Declarant or pursuant to any grant of easement or authority by Declarant within the Property.

(l) "**Declarant**" means Centex Homes, a Nevada general partnership, its successors or assigns; provided that any assignment(s) of the rights of Centex Homes, as Declarant,

must be expressly set forth in writing and recorded in the Official Public Records of Bexar County, Texas.

The "Declarant" is the party who causes the Property to be developed for actual residential use. Declarant enjoys special privileges to help protect its investment in the Property. These special rights are described in this Declaration. Many of these rights do not terminate until either Declarant: (i) has sold all Lots which may be created out of the Property; or (ii) voluntarily terminates these rights by a written instrument recorded in the Official Public Records of Bexar County, Texas.

(m) "**Development and Sale Period**" means the period of time that Declarant owns all or any portion of the Property. Declarant may terminate the Development and Sale Period by an instrument executed by Declarant and recorded in the Official Public Records of Bexar County, Texas.

(n) "**Dwelling**" means the Improvement located on each Lot that is designed to be or appropriated for use as a single-family residence, together with any garage incorporated therein, whether or not the Dwelling is occupied for residential purposes.

(o) "**Improvement**" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

(p) "**Lot**" means any portion of the Property designated by Declarant or as shown as a subdivided lot on a Plat other than Common Area.

(q) "**Manager**" has the meaning set forth in *Section 13.04(h)*.

(r) "**Members**" means every person or entity that holds membership privileges in the Association.

(s) "**Mortgage**" or "**Mortgages**" means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

(t) "**Mortgagee**" or "**Mortgagees**" means the holder(s) of any Mortgage(s).

(u) "**New Home Limited Warranty**" means the express limited warranty providing coverage for the Dwelling which Declarant has provided to Owners.

(v) "**Owner**" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

(w) "**Plat**" means Townhouse Subdivision Plat of Villas at Silverado Hills (an Enclave Subdivision) recorded on even date herewith in the Official Public records of Bexar County, Texas, and any amendments thereto.

(x) "**Property**" means that certain real property located in Bexar County, Texas, being more particularly described on Attachment 1, attached hereto and incorporated herein by reference.

(y) "**Resident**" means an occupant or tenant of a Lot, regardless of whether the person owns the Lot.

(z) "**Restrictions**" means the restrictions, covenants, and conditions contained in this Declaration, Bylaws, or in any rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time. See Table 1 for a summary of the Restrictions.

(aa) "**Structure**" means a building containing two (2) or more Dwellings that: (i) is located on two (2) or more adjacent Lots; and (ii) has one (1) or more party walls separating the Dwellings comprising such building.

TABLE 1: RESTRICTIONS	
Declaration (recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
Certificate of Formation: (filed with the Secretary of State)	The Certificate of Formation of the Association, which establishes the Association as a not-for-profit corporation under Texas law.
Bylaws: (adopted by the Association)	The Bylaws of the Association which governs the Association's internal affairs, such as elections, meetings, etc.
Rules: (adopted by the Board of the Association)	The use restrictions and rules of the Association adopted pursuant to *Section 13.04(a)*, which regulate use of property, activities, and conduct within the Property.
Board Resolutions: (adopted by the Board of the Association)	The resolutions adopted by Board which establish rules, policies, and procedures for internal governance and activities of the Association.

ARTICLE 2
PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

2.01 **General**. In addition to other easements, rights and restrictions established by the Restrictions, the Property is subject to the easements, rights and restrictions contained in this Article.

2.02 **Owner's Easement of Enjoyment**. Every Owner is granted a right and easement of enjoyment over the Common Area and to use of improvements therein, subject to other rights and easements contained in the Restrictions. An Owner who does not occupy a Dwelling delegates this right of enjoyment to the Residents of his Dwelling, and is not entitled to use the Common Area.

2.03 **Owner's Maintenance Easement**. Each Owner is hereby granted an easement over and across any adjoining Dwelling and Lot and the Common Area to the extent reasonably necessary to maintain or reconstruct such Owner's Dwelling, subject to the consent of the Owner of the adjoining Lot and Dwelling and the consent of the Board as provided below, or the consent of the Board in the case of Common Area, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Lot and/or Dwelling or Common Area. Requests for entry into an adjoining Lot must be made to the Owner of such Lot in advance. The consent of the adjoining Lot Owner will not be unreasonably withheld; however, the adjoining Lot Owner may require that access to its Lot be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Area for the purpose of maintaining or reconstructing any Dwelling must be made in advance to the Board. The consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common Area be limited to Monday trough Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. In addition, the Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Common Area during any such maintenance or reconstruction. If an Owner damages an adjoining Dwelling or Common Area in exercising the easement granted hereunder, the Owner will be required to restore the Dwelling or Common Area to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Dwelling.

Notwithstanding the foregoing, no Owner shall perform any work to any portion of his Dwelling or Lot if the work requires access to, over or through the Common Area or other Lots and/or Dwellings without the prior consent of the Board except in case of an emergency. All such work may only be performed by a person who shall deliver to the Board prior to commencement of such work, in form satisfactory to the Board:

(a) releases of the Board and the Association for all claims that such person may assert in connection with such work;

(b) indemnities of the Board and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Area, or other Lots and Dwellings;

(c) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and

(d) all other information and assurances which the Board may reasonably require.

2.04 **Owner's Ingress/Egress Easement**. Each Owner is hereby granted a perpetual easement over the Property, including the Lots (but excluding any portion of the Lot enclosed by a private fence installed by the Declarant or approved by the Architectural Reviewer creating a private yard space for the Lot Owner), as may be reasonably required, for vehicular and pedestrian ingress to and egress from his Dwelling.

2.05 **Owner's Encroachment Easement**. Every Owner is granted an easement for the existence and continuance of any encroachment by his Dwelling on any adjoining Lot, Dwelling or Common Area now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a Dwelling, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the improvement stands.

2.06 **Easement Of Cooperative Support.** Each Owner is granted an easement of cooperative support over each adjoining Lot and Dwelling as needed for the common benefit of the Property, or for the benefit of Dwellings in a Structure, or Dwellings that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Lot, each Owner: (i) acknowledges the necessity for cooperation in a townhome; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to his Dwelling and Lot when needed by the Association to fulfill its duties; and (iv) agrees to try refraining from actions that interfere with the Association's maintenance and operation of the Property.

2.07 **Association's Access, Maintenance and Landscape 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, maintenance and entry over, across, under, and through the Property, including without limitation, each Lot and each Dwelling and all improvements thereon for the following purposes:

(a) To perform inspections and/or maintenance that is permitted or required of the Association by the Restrictions or by applicable law.

(b) To perform maintenance that is permitted or required of the Owner by the Restrictions or by applicable law, if the Owner fails or refuses to perform such maintenance.

(c) To enforce the Restrictions, including without limitation, the architectural standards and use restrictions.

(d) To exercise self-help remedies permitted by the Restrictions or by applicable law.

(e) To respond to emergencies.

(f) To have the exclusive right to maintain landscaping and make, erect or install non-structural improvements (such as fences, irrigation systems, lighting systems, walking or biking paths, and the like) in or on those portions of each Owner's Lot (but excluding any portion of such Lot enclosed by a private fence installed by the Declarant or approved by the Architectural Reviewer creating a private yard space for the Lot Owner).

(g) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.

(h) To perform any and all functions or duties of the Association as permitted or required by the Restrictions or by applicable law.

2.08 **Utility Easement**. The Association and Declarant (during the Development and Sale Period) may grant permits, licenses, and easements over the Common Areas and Lots for utilities, and other purposes reasonably necessary for the proper operation of the project. Declarant (during the Development and Sale Period) and the Association may grant easements over and across the Lots and Common Areas to the extent necessary or required to provide utilities to Dwellings and/or Lots; provided, however, that such easements will not unreasonably interfere with the use of any Dwelling for residential purposes. 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, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

NOTICE

PLEASE READ CAREFULLY THE FOLLOWING PROVISIONS ENTITLED "SECURITY" AND "INJURY TO PERSON OR PROPERTY". THE PROVISIONS LIMIT THE RESPONSIBILITY OF DECLARANT AND THE ASSOCIATION FOR CERTAIN CONDITIONS AND ACTIVITIES.

2.09 **Security**. The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Resident acknowledges and accepts as his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglary, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of any failure to provide adequate security or the ineffectiveness of security measures undertaken.

2.10 **Injury to Person or Property**. Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Resident or their guests: (a) to supervise minor children or any other person; (b) to fence or otherwise enclose any Lot or Common Areas; or (c) to provide security or protection to any Owner, Resident, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Lot, each Owner agrees that the limitations set forth in this section are reasonable and constitute the exercise of ordinary care by the Association and Declarant. Each Owner agrees to indemnify and hold harmless the Association and Declarant, and Declarant's agents from any claim of damages, to person or property arising out of an accident or injury in or about the Property to the extent and only to the extent caused by the acts or omissions of such Owner, his tenant, his guests, employees, contractors, or invitees to the extent such claim is not covered by insurance obtained by the Association at the time of such accident or injury.

2.11 **Easement to Inspect and Right To Correct**. For a period of ten (10) years and one (1) day after the expiration of the Development and Sale Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Dwellings, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights 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 mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant, the Association, any architect, engineer, other design professionals, builder, or general contractor, 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 an easement of access and entry over, across, under, and through the Property, including without limitation, each Lot and all Improvements thereon for the purposes contained in this Section.

ARTICLE 3
DISCLOSURES

3.01 **General**. This Article discloses selective features of the Property that may not be obvious to potential Owners and Residents. Because features may change over time, no disclosure in this Article should be relied upon without independent confirmation.

3.02 **Contract Services Disclosure**. In connection with construction of the Property, the Dwellings may have been wired or fitted for one or more services to be provided by vendors to the individual Lot Owners on a contract basis. Such services may include intrusion monitoring and cable television. In exchange for such installations, Declarant may have contracted on behalf of the Owners for a period of service to all Dwellings. In that event, whether or not an Owner chooses to use the service, the Owner is required to pay the Lots' share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Regular Assessments or Individual Assessments. However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.

3.03 **Pest Control Tubes Disclosure**. The Property is being constructed with tubes in some walls for the delivery of chemicals to deter, control, or eliminate certain common pest populations via an external port. By acquiring an ownership or occupancy interest in the Property, each Owner and Resident grants to the Association the right to use the tubing system for pest control. The Association has the right, but not the duty: (i) to treat the Property for pest control; and (ii) to use the tubing system for that purpose. The Association or its designee, acting alone, will have exclusive control over the tubing system and may determine if, when, and to what extent to use the tubing system as part of a pest control program within the Property.

3.04 **Adjacent Thoroughfares.** The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

3.05 **Zoning.** No representations are made regarding the zoning of adjacent property. The zoning and use of adjacent property may change in the future.

3.06 **Outside Conditions.** Since in every neighborhood there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Property that an Owner or Resident may find objectionable, and it shall be the

sole responsibility of an Owner or Resident to become acquainted with neighborhood conditions which could affect the Property and Dwelling.

3.07 **Concrete**.

(a) Cracks. Minor cracks in poured concrete, including foundations, garage floors, sidewalks, driveways and terraces, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of a Structure. Such minor cracking in poured concrete may not warrant repair. The Association's duty to maintain and repair foundations and other concrete or cementitious components of the Structure does not extend to minor or cosmetic cracking.

FACT: CONCRETE CRACKS

(b) Exposed Floors. This Section applies to Dwellings with exposed concrete floors. This notice is given because some Owners are inexperienced with concrete and expect it to be as forgiving as wood or sheetrock. In deciding whether, when, and how to fill cracks in exposed concrete floors, an Owner is hereby made aware that the color and texture of the fill material may not match the rest of the concrete floor. On some exposed concrete floors, fill materials make minor cracks more noticeable than if the cracks had been left in their natural state. In addition, an Owner is hereby made aware that any specification for polished concrete means that the concrete will be polished to a high degree of light reflectivity, but this does not mean an Owner will actually be able to see the Owner's reflection in the floor.

3.08 **Construction Activities.** Declarant will be constructing portions of the Property and engaging in other construction activities related to the construction of Structures and Common Area. Such construction activities may, from time to time, produce certain conditions on the Property, including, without limitation: (a) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (b) smoke; (c) noxious, toxic or corrosive fumes or gases; (d) obnoxious odors; (e) dust, dirt or flying ash; (f) unusual fire or explosion hazards; (g) temporary interruption of utilities; and/or (h) other conditions that may threaten the security or safety of persons on the Property. Notwithstanding the foregoing, all Owners and Residents agree that such conditions on the Property resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

3.09 **Moisture.** The Dwellings may trap humidity created by general use and occupation of the Dwellings. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Residents, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and

sheetrock, and potentially, mildew and/or mold. **Mold and/or mildew can grow in any portion of the Property that is exposed to elevated levels of moisture.** *(See Section 7.07 for certain duties of an Owner with respect to mold).*

3.10 **Codes and Permits.** The Structures were constructed pursuant to plans and specifications prepared by licensed professionals and permits issued by the City and Bexar County, Texas. During the course of the construction of any building, including the Structures, variations from the original plans and specifications, some of which add scope, some of which reduce scope, and some of which alter scope, are inevitable and can, do, and did occur as a matter of intention and/or as a matter of necessity.

3.11 **Name of Property.** "Villas of Silverado Hills" contains commonly used phrases and may have been used by third parties in connection with many different types of real estate properties. As a result, there is a risk that one or more third parties may assert that the term "Villas of Silverado Hills" has trademark significance and may assert claims for trademark infringement against the Declarant claiming a likelihood of confusion, and may attempt to force Declarant to change the name or recover for damages for trademark infringement. Declarant believes that it has reasonable defenses to such claims on the grounds, *inter alia*, that the term is merely descriptive, primarily geographically descriptive, and/or dilute, to the extent that no third party can claim exclusive rights in use of the term in connection with real estate development projects, including but not limited to the Property, or that the overall circumstances of use of the term by Declarant is in different channels of commerce, such that there is no likelihood of confusion with any third party's use of the term. It is believed that due to the fact that the name is not known to be in common usage in San Antonio, Texas, or more generally in connection with a residential townhome community, the term "Villas of Silverado Hills" cannot be lawfully appropriated as a trademark by any third party and is not protectable as a trademark under federal or state law; provided, however, that: (A) Declarant shall have no liability should the project be forced to change its name; (B) Declarant shall have no duty to contest any claim asserting that the name should be changed: and (C) each Owner, by taking title to a Lot, acknowledges that the name "Villas of Silverado Hills" was in no way an inducement to purchase, to not sell after purchase, or to expend funds in detrimental reliance on the name remaining "Villas of Silverado Hills". During the Development and Sale Period, Declarant shall have the right in its sole discretion to change the name of the project without notice to any person.

3.12 **Encroachments.** Improvements may have been constructed on adjoining lands that encroach onto the Property. Declarant gives no representations or warranties as to property rights, if any, created by such any such encroachments.

3.13 **Budgets.** Any budgets are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.

3.14 **Light and Views.** The natural light available to and views from a Lot can change over time due to among other things, additional development and the removal or addition of landscaping. **NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.**

3.15 **Schools.** No representations are being made regarding which schools may now or in the future serve the Property.

3.16 **Recreational Facilities.** The Property will not contain any common recreational facilities, including, but not limited to, playscapes and pools. In addition, any neighboring community or community located near or adjacent to the Property with recreational facilities is not part of the Property, and Owners will not be entitled to use such recreational facilities by virtue of owning a Lot.

3.17 **Sounds.** No representations are made that the Dwellings are or will be soundproof or that sound and/or vibrations may not be transmitted from one Dwelling to another or from the Common Area (including, but not limited to, any amenity areas) to a Dwelling. Sound transmission and/or vibrations between Dwellings and the Common Area is inherent in multi-family construction and is not a construction defect. The plumbing and concrete, tile, and hardwood surfaces and other uncovered surfaces within a Dwelling may transmit noise, and such noise shall not constitute a use of a unit that interferes with or causes disruption to the use and quiet enjoyment of another unit by its respective Owner and/or Resident.

3.18 **Suburban Environment.** The Property is located in a suburban environment. Land adjacent or near the Property contains residential and commercial uses. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains and other generators of sound and vibrations typically found in a suburban area. In addition to sound and vibration, there may be odors (from restaurants, food being prepared and dumpsters) and light (from signs, streetlights, other buildings, car headlights and other similar items) in suburban areas. The Dwellings are not constructed to be soundproof or free from vibrations. Sounds and vibrations can also be generated from sources located within a Dwelling or the Common Area including heating and air conditioning equipment, pump rooms, other mechanical equipment, dogs barking and the playing of certain kinds of music.

3.19 **Dwelling Plans and Dimensions.** Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Dwelling to be constructed or any portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Room dimensions, Dwelling size and elevations may vary due to the nature of the construction process and site conditions. If Owner is concerned about any representations regarding the floor plans, the Owner should conduct its own investigation as to the dimensions, measurements and square footage of the Dwelling.

3.20 **Water Runoff.** While the drainage system for surface water runoff on the Property will be constructed in accordance with applicable governmental standards, the Property may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. Water may pond on various portions of the Property having impervious surfaces, such as porches. In addition, swales or berms may be located on a Lot to help control and direct water runoff and shall not be disturbed, redirected or blocked.

3.21 **Dwelling Systems.** No representations are made that the systems in a Dwelling including, by way of example only, heating and air conditioning and electrical systems, will operate or perform at a level or standard greater than the minimum specifications of the manufacturer. In addition, the performance and methods and practices of operating heating and cooling systems can be directly affected by the orientation and location of a room or Dwelling in relation to the sun. Declarant has no obligation other than to install a heating and cooling system at the Dwelling which has been sized and designed based on industry standards for the type and size of Dwelling to be constructed.

3.22 **Upgrades.** The cost of upgrades may not necessarily result in a commensurate increase in the value of the Dwelling.

3.23 **Dryer Vents.** Certain Dwellings in a Structure may require long vents for the dryer. Each Owner is responsible for determining whether such a vent is required for any dryer to be located in the Owner's Dwelling. The failure to utilize the appropriate dryer vent may create a fire hazard for which the Owner shall be responsible.

3.24 **Location of Utilities.** Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

3.25 **Wood.** Natural wood has considerable variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular. Wood from different areas of the same tree can also have variations in pattern or texture. These wood variations add to its aesthetic appeal. In turn, the variations in grain will accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Furthermore, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some irregularities will be apparent. Additionally, wood and wood products may be subject to warping, splitting, swelling and/or delamination. Wood floors may require more maintenance than some man-made materials. Owners of Dwellings with wood floors should educate themselves about wood floor care. Each Owner agrees that the foregoing conditions are normal conditions and shall not constitute a construction defect.

3.26 **Stone.** Veins and colors of any marble, slate or other stone in a Dwelling, if any, may vary drastically from one piece of stone to another. Each piece is different. Marble, granite, slate and other stone can also have chips and shattering veins, which look like

scratches. The thickness of the joints between marble, granite, slate and other stone and/or other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble and other stone finishes may be dangerously slippery and Declarant assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use of professionally approved and applied sealant is needed to ensure proper maintenance of the marble, granite, slate and other stone and it is the Owner's responsibility to properly maintain these materials. Marble, granite and other stone surfaces may scratch, chip or stain easily. Such substances, as part of their desirable noise attenuating properties, may flex or move slightly in order to absorb impacts. Such movement may in turn cause grout to crack or loosen or cause some cracking in the stone flooring which may need to be repaired as part of normal home maintenance.

3.27 **Chemicals.** The Structures contain products that have water, powders, solids and industrial chemicals used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. Declarant is not responsible for any illness or allergic reactions that a person may experience as a result of mold, mildew, fungus or spores. It is the responsibility of the Owner to keep the Dwelling clean, dry, well ventilated and free of contamination.

3.28 **Paint.** Due to the large quantity of paint used in the Structures and Dwellings, Owner should be aware that slight variations in paint shade may exist within and between Structures. Due to the properties within today's paints, Owner should expect paint to yellow with time. This is a normal occurrence and is neither a construction defect nor a warrantable item. Avoid washing or scrubbing painted walls. Lightly soiled areas may be cleaned using a sponge with water and lightly wiping over the soiled areas.

3.29 **Fixtures.** Certain materials used for fixtures in the Dwelling (including, but not limited to, brass/chrome plumbing fixtures, brass/chrome bathroom accessories and brass/chrome light fixtures) are subject to discoloration and/or corrosion over time. This is a normal occurrence and is neither a construction defect or a warrantable item.

3.30 **Marketing.** Declarant's use of a sales center and/or model Dwellings or reference to other construction by Declarant is only intended to demonstrate the quality of possible finish details, the basic floor plans, and styles of Dwellings available for purchase. The Dwelling may not conform to any model Dwelling in any respect, or contain some or all of the amenities featured, such as furnishings and appliances. Likewise, any model Dwelling or residence is only intended to demonstrate the size and basic architectural features of the project. The project, as completed, may not conform to the models displayed by Declarant. Declarant may have shown prospective purchasers model homes, floorplans, sketches, drawings, and scale models of Dwellings or the project (collectively "**Promotional Aids**"). Owner understands and agrees that the Promotional Aids are conceptual, subject to change, for display purposes only,

and may not be incorporated into the project or a Dwelling. Declarant retains the right to obtain and use photography of the Property (including the Dwellings) for publication and advertising purposes.

3.31 **Private Streets**. The streets located outside the Property are public streets and maintained by applicable governmental authorities. The Common Area includes internal streets which are private and maintained and administered by the Association. The Association, acting through the Board has the express authority to adopt, amend, repeal, and enforce the rules, regulations and procedures for use of private streets, including but not limited to:

(a) Identification of vehicles used by Owners and Residents and their guests.

(b) Designation of parking or no-parking areas.

(c) Limitations or prohibitions on curbside parking.

(d) Removal or prohibition of vehicles that violate applicable rules and regulations.

(e) Failure to operate a motorized vehicle at or below the posted maximum rate of speed or in a safe, reasonable and prudent manner on the private streets within the Property.

(f) Fines for violations of applicable rules and regulations and/or the suspension of such person's right to traverse the private streets within the Property *via motorized vehicle* for a period not to exceed 30 days. In the event speed and traffic control in the Property are assumed by the City of San Antonio or by some other public agency having the authority to issue penalties for infractions thereof, the penalties prescribed herein may not be imposed in addition to the penalties imposed by said public entity.

Declarant has made an effort to preserve native trees wherever possible. Each Owner should carefully note the width of the paved portion of the streets, the proximity of trees to the pavement, and the location of trees within various esplanades. By purchasing a Lot, an Owner specifically assumes the risk for himself, his family, employees, guests, contractors and all other invitees of driving in narrow streets bordered closely by native trees and agrees to do so in a safe manner. Each Owner is also notified that the drainage ditches, culverts and other drainage facilities within the Property are not publicly owned and may be privately owned. Each Owner should carefully note the location of the facilities and avoid unsafe conduct in those areas. By purchasing a Lot, an Owner specifically assumes the risk for himself, his family, employees, guests, contractors and all other invitees of knowing the location of such drainage facilities and agrees to refrain from unsafe conduct in the proximity of such facilities.

3.32 **Entry Gate**. Vehicular access to the Property will be via a controlled entry gate. Except as herein provided, the Association may make rules governing access to the Property and the use (including parking) of streets within the Property and the entry gate. Absent Declarant's written consent to the contrary, the Property entry gate, when constructed, shall be kept open to the public everyday from 7:00 a.m. to 6:00 p.m. (or 7:00 p.m. in relation to daylight savings time), until six (6) months following the completion of the last Dwelling within the Property and future phases of development to be annexed to the jurisdiction of the Association. This right of entry is to ensure access to Lots by prospective new townhome purchasers and builders to complete construction of townhomes.

ARTICLE 4
ASSESSMENTS

4.01 **Purpose of Assessments**. The Association will use Assessments for the general purposes of preserving and enhancing the Property, and for the 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.

4.02 **Personal Obligation**. An Owner is obligated to pay Assessments levied by the Board against the Owner or the Owner's Lot. Payments are made 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 Owner's Lot.

4.03 **Types of Assessments**. There are five (5) types of Assessments: Regular, Special, Utility, Individual, and Deficiency Assessments.

4.04 **Regular Assessments**. Regular assessments are used for common expenses related to the recurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

(a) Maintenance, repair, and replacement, as necessary, for the Dwellings and Improvements in accordance with *Section 7.01* below, and improvements, equipment, signage, and property owned by the Association.

(b) Annual maintenance examination and report, as required by *Section 7.02*.

(c) Utilities billed to the Association.

(d) Services obtained by the Association and available to all Dwellings.

(e) Taxes on property owned by the Association and the Association's income taxes.

(f) Management, legal, accounting, auditing, and professional fees for services to the Association.

(g) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.

(h) Insurance premiums and deductibles.

(i) Contributions to the reserve funds.

Any other expense which the Association is required by law or the Restrictions 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 Restrictions.

4.05 **Annual Budget-Regular**. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association for each fiscal year. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to the Owner of each Lot, although failure to receive a budget or budget summary will not affect an Owner's liability for Assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

4.06 **Basis of Regular Assessments**. Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. Regular Assessments are allocated equally among all Lots and each Lot is liable for its allocated 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.

4.07 **Supplemental Increases**. 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. Supplemental increases are allocated equally among all Lots.

4.08 **Special Assessments**. In addition to Regular Assessments, 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

may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the following purposes must be approved by at least a majority of the votes in the Association: (i) acquisition of real property; and (ii) construction of additional Improvements within the Property (excluding the repair or replacement of existing Improvements). Special Assessments are allocated equally among all Lots.

4.09 **Utility Assessments**. This Section applies to utilities serving the individual Dwellings or Lots and consumed by the Residents that are billed to the Association by the utility provider, and which may or may not be submetered by or through the Association. In addition to Regular Assessments and Special Assessments, the Board may levy a Utility Assessment against each Lot. If the Lots are submetered for consumption of a utility, the Utility Assessment will be based on the submeter reading. If the Lots are not submetered, the Board may allocate the Association's utility charges among the Lots by any conventional method for similar types of properties. The levy of a Utility Assessment may include a share of the utilities for the Common Areas, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or submetering services. The Board may, from time to time, change the method allocation, provided the same type of method or combination of methods is used for all Lots.

4.10 **Individual Assessments**. In addition to Regular, Special, and Utility Assessments, the Board may levy an individual Assessment against an Owner and the Owner's Lot. 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 the Owner's Lot into compliance with the Restrictions; fines for violations of the Restrictions; transfer-related fees and resale certificate fees; fees for estoppel letters and project Restrictions; insurance deductibles; sub-metered utilities serving the Lot; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Lot, 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.

4.11 **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 of any portions of the Improvements the Association is required to insure if insurance proceeds or condemnation awards prove insufficient. Deficiency Assessments are allocated equally among all Lots.

4.12 **Working Capital Fund**. Upon the transfer of a Lot (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in an amount equal to two (2) months of Regular Assessments will be paid by the transferee of the Lot to the Association for the Association's working capital fund. Upon

termination of the Development and Sale Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Lot. Each working capital contribution will be collected from the transferee of a Lot upon the conveyance of the Lot from one Owner (including Declarant) to another (expressly including any re-conveyances of the Lot upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Contributions to the fund are not advance payments of Regular Assessments and are not refundable.

4.13 **Due Date**. Regular Assessments are due on the first calendar day of each month or on such other date as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Special, Individual, and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Special, Individual, or Deficiency Assessment is given.

4.14 **Reserve Funds**. The Association may establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association may budget for reserves and may fund reserves out of Regular Assessments.

(a) Operations Reserves. The Association may maintain operations reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association.

(b) Replacement & Repair Reserves-Area of Common Responsibility and Common Area. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Area and the Area of Common Responsibility

4.15 **Declarant's Right To Inspect And Correct Accounts.** For a period of 5 years after termination of the Development and Sale 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 financial records and accounts. 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 Restrictions 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.

4.16 **Association's Right To Borrow Money**. The Association is granted the right to borrow money, subject to the consent of Owners representing at least a majority of the votes in

the Association 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, or pledge 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.

4.17 **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 Restrictions 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.

4.18 **Exempt Property**. The following area within the Property will be exempt from the Assessments provided for in this Article:

(a) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Public Records of Bexar County, Texas;

(b) The Common Area; and

(c) Any portion of the Property owned by Declarant.

ARTICLE 5
ASSESSMENT LIEN

5.01 **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. An express lien on each Lot is hereby granted and conveyed by Declarant to the Association to secure the payment of Assessments.

5.02 **Superiority of Assessment Lien**. The Assessment lien is superior to all other liens and encumbrances on a Lot, except only for: (i) real property taxes and assessments levied by governmental and taxing authorities; (ii) a recorded deed of trust lien securing a loan for acquisition of the original Lot and Improvements constructed thereon; (iii) a deed of trust or vendor's lien recorded before this Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became

due. The Assessment lien is superior to any recorded assignment of the right to insurance proceeds on the Lot, unless the assignment is part of a superior deed of trust lien.

5.03 **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. 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 a common expense.

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.

5.04 **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 Official Public Records of Bexar 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. The Association may require reimbursement of its costs of preparing and recording the notice before granting the release.

5.05 **Power of Sale**. By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of non-judicial 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.

5.06 **Foreclosure of Lien**. The Assessment lien may be enforced by judicial or non-judicial foreclosure. A non-judicial 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 will be required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

ARTICLE 6
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, acting through the Board, is responsible for taking action to collect delinquent Assessments. 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 Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association may have pursuant to the Restrictions or applicable law.

6.01 **Interest**. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

6.02 **Late Fees**. Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

6.03 **Collection Expenses**. The Owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager.

6.04 **Acceleration**. If an Owner defaults in paying an Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

6.05 **Suspension of Vote**. Subject to the below-described limitations, if an Owner's account has been delinquent for at least 30 days, the Association may suspend the right to vote appurtenant to the Lot during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a Member of the Association for the following activities: (i) be counted towards a quorum; (ii) attend meetings of the Association; (iii) participate in discussion at Association meetings; (iv) be counted as a petitioner for a special meeting of the Association; and (v) vote to remove a Director and for the replacement of the removed Director. If the number of suspended Members exceeds 20 percent of the total Members (Co-Owners of a Lot constituting one member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace Directors.

6.06 **Assignment Of Rents.** Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of assessments to the Association. If a Lot's account become delinquent during a period in which the Lot is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must

account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount. A tenant's delivery of rent to the Association under the authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

6.07 **Money Judgment**. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

6.08 **Notice to Mortgagee**. The Association may notify and communicate with any holder of a lien against a Lot regarding the Owner's default in payment of Assessments.

6.09 **Application of Payments**. The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order: Individual Assessments, Deficiency Assessments, Special Assessments, Utility Assessments, and (lastly) Regular Assessments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot Owner's account.

ARTICLE 7
MAINTENANCE AND REPAIR OBLIGATIONS

7.01 **Association Maintains.** The Association maintains, repairs and replaces, as a common expense:

(a) the exterior of each Dwelling, including the roof, foundation, exterior building surfaces, e.g., masonry, but excluding the windows, doors, garage doors, lighting serving a particular Dwelling, and any Improvement not otherwise installed on the exterior of a Dwelling by the Declarant or the Association;

(b) all driveways, sidewalks, roadways, streets and gates located on the Common Area or an Area of Common Responsibility;

(c) all landscaping and irrigation located on a Lot (but excluding any portion of such Lot enclosed by a private fence installed by the Declarant or approved by the Architectural Reviewer creating a private yard space for the Lot Owner and any landscaping not installed by the Declarant or the Association);

(d) the portion of landscaping along Canyon Golf Road that is adjacent to the Property and the portion of landscaping along Canyon Golf Road that is directly across

Canyon Golf Road from the portion of landscaping along Canyon Golf Road that is adjacent to the Property;

(e) any areas designated on the Maintenance Responsibility Chart for maintenance by the Association; and

(f) that certain variable width water quality control easement, recorded as Volume 9572, Page 115-118 in the Official Public Records of Bexar County, Texas.

7.02 **Annual Inspection**. From the period commencing on the date that is three (3) years after the date this Declaration is recorded, at least biennially (every two (2) years), the Association must examine the condition of all Improvements required to be maintained and insured by the Association in accordance with this Declaration to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer, or professional contractors such as landscapers and brick masons. Within 15 days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair, and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. An expert's report is a record of the Association that is available to Owners for inspection and copying. To assist the Board in its examination of the condition of Improvements, a Guide to Association's Examination of Improvements is attached to this Declaration as Exhibit "A".

7.03 **Area of Common Responsibility**. The Association, acting through its members only, has the right but not the duty to designate, from time to time, portions of Lots or Structures as Area of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense. A designation applies to every Lot having the designated feature. The cost of maintaining components of Lots or Structures as Area of Common Responsibility is added to the annual budget and assessed uniformly against all Lots as a Regular Assessment, unless Owners of at least a majority of the Lots decide to assess the costs as Individual Assessments.

(a) Easement. The Association is hereby granted an easement over and across each Lot and Structure to the extent reasonably necessary or convenient for the Association or its designee to maintain, repair and/or replace those portions of a Lot and Structure which have been designated as Area of Common Responsibility. Unless otherwise agreed to by the Owner of the Lot or Structure to be accessed, access to the Lots and Structures is limited to Monday through Friday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual maintenance activities. If the Association damages any Improvements located within a Lot in exercising the easement granted hereunder, the

Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

(b) Change in Designation. The Association may, from time to time, include additional components of Lots or Structures within the Area of Common Responsibility; however, in no event may the Association at any time remove from the Area of Common Responsibility components of Lots or Structures previously designated as an Area of Common Responsibility under this Declaration. Any addition must be approved by owners of two-thirds of the Lots represented at a meeting of the Association called for the purpose of changing the Area of Common Responsibility. Although the Maintenance Responsibility Chart is attached to this Declaration as Exhibit "C", it may be amended, restated, and published as a separate instrument. Any amended or restated Maintenance Responsibility Chart must be: (1) published and distributed to an Owner of each Lot; (2) reflected in the Association's annual budget and reserve funds; and (3) recorded in the Official Public Records of Bexar County, Texas.

(c) Initial Designation. On the date of this Declaration, the initial designation of components of Lots and Structures as Area of Common Responsibility is shown on Exhibit "C" of this Declaration.

7.04 **Owner Responsibility.** Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

(a) To maintain, repair, and replace his Dwelling and all Improvements located on the Owner's Lot except for components expressly assigned and allocated to the Association by this Declaration.

(b) All driveways and sidewalks located on the Owner's Lot.

(c) Any free standing deck or patio area located on the ground level within the Owner's Lot, and the maintenance of any portion of an Owner's lot enclosed by a fence installed by the Declarant or approved by the Architectural Reviewer, keeping same in a neat, clean, odorless, orderly, and attractive condition.

(d) To maintain, repair, and replace all portions of the Property for which he is responsible under this Declaration or by agreement with the Association.

(e) To 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 thereof, or impair any easement or real property right thereto.

(f) To be 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 of any component of the Property for which the Association has maintenance or insurance responsibility.

(g) Each Owner, by acceptance of a deed to a Lot, acknowledges and agrees that such Owner is responsible for properly maintaining the components of such Owner's Lot that are designated for maintenance by the Owner on the Maintenance Responsibility Chart. All such maintenance shall be performed in accordance with any commonly accepted maintenance practices, any maintenance obligations set forth in this Declaration, in the New Home Limited Warranty, and any other maintenance obligations, schedules, operating instructions, and/or practices provided to the Owner by the Declarant or the Association (collectively, "**Owner Maintenance Requirements**").

(h) If an Owner fails to perform the Owner Maintenance Requirements, the Board shall give written notice to such Owner, stating with particularity the work or maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be completed and shall assess the cost thereof to such Owner as an Individual Assessment in accordance with the procedures set forth in this Declaration.

7.05 **Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by delegating responsibility to the individual Owners. Improvement maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this Article that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners.

7.06 **Sheetrock.** Notwithstanding anything to the contrary in the Restrictions, the Association is not responsible for the repair and replacement of sheetrock in any Dwelling, or for any surface treatments on the sheetrock, regardless of the source of damage and the availability of insurance. This provision is provided for the benefit of the Association and is warranted by the difficulty of scheduling interior sheetrock work and the possibility that the Owner may not be satisfied with the quality or appearance of spot repairs. If the Association receives insurance proceeds for sheetrock damage to a Dwelling and chooses not to perform the repairs, the Owner of the damaged Dwelling is entitled to the proceeds in exchange for identification of the damage and a release from future claims for the same damage.

7.07 **Mold.** In the era in which this Declaration is written, the public and the insurance industry have a heightened awareness of and sensitivity to anything pertaining to mold. This Section addresses that environment. For more information about mold and mold prevention, an Owner should consult a reliable source, such as the U.S. Environmental Protection Agency.

To reduce the risks associated with concentrations of mold, Owners should be proactive in preventing circumstances conducive to mold, identifying mold, and eliminating mold. Accordingly, each Owner is responsible for:

(a) regularly inspecting their Dwelling for evidence of water leaks or penetrations or other conditions which may lead to mold growth;

(b) repairing promptly any water leaks, breaks, or malfunctions of any kind in their Dwelling that may cause damage to another Dwelling or the Common Area;

(c) regularly inspecting their Dwelling for visible surface mold and promptly removing same using appropriate procedures; and

(d) reporting promptly to the Association any water leak, penetration, break, or malfunction in any portion of their Dwelling or any Improvements for which the Association may have maintenance responsibility.

Many insurance policies do not cover damages related to mold. The Association will not maintain insurance coverage applicable to mold damage with respect to any Dwelling. Accordingly, an Owner who wants insurance coverage with respect to mold and mold-related damages is advised to purchase such insurance coverage as part of his homeowners insurance policy.

7.08 **Warranty Claims.** If the Owner is the beneficiary of a warranty against defects of any Improvements insured or maintained by the Association, the Owner irrevocably appoints the Association, acting through the Board, as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to such Improvements.

7.09 **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.

7.10 **Party Walls**.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwellings and placed on the dividing line between two (2) Dwellings

constitutes a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law of the State of Texas regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than non-structural alterations to the interior surfaces of such walls (i.e., the surfaces of such walls facing the interior of a Dwelling); provided, however, that under no circumstance or event will an Owner install or attach in or on a party wall any speaker, alarm, or any other device, item, component, or system designated for the creation or emission of sound. Without limitation on the foregoing, to the extent that the actions of an Owner result in damage to a party wall, the Owner responsible for such damage is obligated to restore and pay any and all costs associated with restoring the wall to its pre-damage condition.

(b) Sharing of Repair and Maintenance. Subject to the last sentence of the preceding paragraph, the cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who use the wall in proportion to the interior surface area of the wall within their Dwelling.

(c) Destruction of Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner of the Dwelling served by the party wall may restore the party wall to its condition prior to the damage or destruction. Each additional Owner of a Dwelling served by such party wall will contribute to the cost of restoration in proportion to the interior surface area of the wall within their Dwelling without prejudice, however, to the right of any Owner to seek a larger contribution from an Owner due to such Owner's negligent or willful acts.

(d) Right to Contribute Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to such Owner's Lot.

(e) Dispute Resolution. In the event any dispute arising concerning a party wall under the provisions of this Article, such dispute will be resolved in accordance with *Article 17* of this Declaration.

ARTICLE 8
ARCHITECTURAL REVIEW

8.01 **Purpose**. Because the Dwellings and Lots are part of a single, unified community, the Association has the right to regulate every aspect of the exterior of the Property, including the exterior design, use and appearance of Dwellings and Common Area. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to allow the Association to respond to changes in technology, style, and taste. The Association has the right to regulate every aspect of proposed or existing Improvements on the Property, including replacements or modifications of original construction or installation. During the Development and Sale Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

8.02 **Declarant Rights.** During the Development and Sale Period, neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with architectural control over the Property. Until expiration of the Development and Sale Period, architectural control over the Property is discharged by the Declarant or its designee. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization.

(a) Owner Agrees. Each Owner, by accepting an interest in or title to a Lot, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market Lots and Dwellings in the Property or in Declarant's other developments. Accordingly, during the Development Period architectural approval may be granted or withheld at Declarant's sole discretion.

(b) Delegation by Declarant. During the Development and Sale Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to: (i) an architectural control committee appointed by the Board; or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant: (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

8.03 **Architectural Reviewer.** Until expiration or termination of the Development and Sale Period, the Declarant is the Architectural Reviewer and shall exercise all architectural control of the Property. After the Development and Sale Period, the Board or a committee

appointed by the Board is the Architectural Reviewer and shall exercise all architectural control over the Property .

8.04 **Limits on Liability.** Until expiration or termination of the Development and Sale Period, the Declarant has sole discretion with respect to taste, design, and all standards specified by this Article. After expiration or termination of the Development and Sale Period, or after a delegation of duties as provided by *Section 8.02(b)*, the Board has sole discretion with respect to taste, design, and all standards specified by this Article. Neither the Declarant, nor the Board, or their directors, officers, committee members, employees or agents will have any liability for decisions made in good faith, and which are not arbitrary or capricious. Neither the Declarant, nor the Board, or their directors, officers, committee members, employees or agents are responsible for: (i) errors in or omissions from the plans and specifications submitted to the Board; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws. Approval of a modification or Improvement may not be deemed to constitute a waiver of the right to withhold approval of similar proposals, plans or specifications that are subsequently submitted.

8.05 **Prohibition of Construction, Alteration and Improvement**. Without the Architectural Reviewer's prior written approval, a person may not commence or continue any construction, alteration, addition, Improvement, installation, modification, redecoration, or reconstruction of or to the Property, or do anything that affects the appearance, use, or structural integrity of the Property.

YOU CANNOT CHANGE THE EXTERIOR OF YOUR UNIT UNLESS YOU HAVE THE SIGNED CONSENT OF THE ARCHITECTURAL REVIEWER.

8.06 **No Deemed or Verbal Approval.** Approval by the Architectural Reviewer may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by an Association or Declarant director or officer, a member or chair of the Board-appointed architectural control committee, the Association's manager, or any other representative of the Association or Declarant. To be valid, approval of the Architectural Reviewer must be: (i) in writing; (ii) on a form or letterhead issued by the Architectural Reviewer; (iii) signed and dated by the Architectural Reviewer or another officer designated by the Architectural Reviewer for that purpose; (iv) specific to a Lot; and (v) accompanied by detailed plans and specifications showing the proposed change. If the Architectural Reviewer fails to respond in writing – negatively, affirmatively, or requesting information – within sixty (60) days after the Board's actual receipt of the Owner's application, **the application is deemed denied**. **Under no circumstance may approval of the Architectural Reviewer be deemed, implied or presumed**. If the Architectural Reviewer approves a change, the Owner or the Architectural Reviewer may require that the architectural approval be recorded. Architectural Reviewer approval of an architectural change automatically terminates if work on the approved Improvement has not started by the commencement date stated in the Architectural Reviewer's approval or, if no

commencement date is stated, within ninety (90) days after the date of approval by the Architectural Reviewer.

8.07 **Application to Board.** To request approval by the Architectural Reviewer, an Owner must make written application and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer may return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "Submit Additional Information." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Association's files. The Architectural Reviewer has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Property.

8.08 **Owner's Duties.** If the Architectural Reviewer approves an Owner's application, the Owner may proceed with the Improvement, provided:

(a) The Owner complies with *Section 2.03.*

(b) The Owner must adhere strictly to the plans and specifications that accompanied the application.

(c) The Owner must initiate and complete the Improvement in a timely manner.

(d) If the approved application is for work that requires a building permit from the City, the Owner must obtain the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the City's requirements. Alternatively, approval by the City does not ensure approval by the Architectural Reviewer.

8.09 **Prohibited Acts.** The types of acts affecting the exterior of the Property that may not be commenced without the Architectural Reviewer's written approval include, but are not limited to the following:

(a) Installation of ornamental iron or burglar bars, storm window or door, awnings, shutters, exterior lighting, deck cover, or skylight.

(b) Installation of equipment that may create a noise annoyance, such as noise-producing security devices, exterior pumps, and speakers.

(c) Installation of walls, screens, fences or gates.

(d) Enclosure of decks or garages.

(e) Installation of impermeable decking or other Improvement that may interfere with established drainage patterns.

ARTICLE 9
INSURANCE AND INDEMNITY

9.01 **General Provisions.** The broad purpose of this Article is to require that the Property be insured with the types and amounts of coverage that are customary for similar types of properties and that are acceptable to mortgage lenders, guarantors, or insurers that finance the purchase or improvement of Lots. Because the insurance requirements of mortgage underwriters are subject to change, as are State-promulgated insurance regulations and policies, this Articles tries to balance the need for certain minimum insurance requirements with the desire to adapt to a periodically changing insurance environment.

9.02 **Unavailability**. The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

9.03 **No Coverage**. Even if the Association and the Owner have adequate amounts of recommended and required coverages, the Property may experience a loss that is not covered by insurance. In that event, the Association is responsible for restoring the Common Areas and the Improvements maintained by the Association as a common expense, and the Owner is responsible for restoring his Dwelling at his sole expense. This provision does not apply to the deductible portion of a policy.

9.04 **Requirements**. The cost of insurance coverages and bonds maintained by the Association is a common expense. 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. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns." The loss payee clause should show the Association as trustee for each Owner and Mortgagee. Policies of property and general liability insurance maintained by the Association must provide that the insurer waives its rights to subrogation under the policy against an Owner. The Association's insurance policies will not be prejudiced by the act or omission of any Owner or Resident who is not under the Association's control.

9.05 **Association as Trustee**. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

9.06 **Notice of Cancellation or Modification**. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give 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.

9.07 **Deductibles**. An insurance policy obtained by the Association may contain a reasonable deductible. In the event of an insured loss, the deductible is treated as a common expense of the Association in the same manner as the insurance premium. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner or Resident or their invitee, then the Board may levy an Individual Assessment against the Owner and his Lot for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with this Declaration.

9.08 **Property Insurance**. The Association will obtain blanket all-risk insurance if reasonably available, for all Improvements insurable by the Association. If blanket all-risk insurance is not reasonably available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard.

(a) Common Areas and Areas to be Maintained by the Association Insured. The Association will insure: (i) all Common Areas; (ii) the Improvements required to be maintained by the Association in accordance with *Section 7.01;* and (iii) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies.

(b) Dwellings Insured by Association. In addition to insuring the above-listed areas against casualty loss, the Association will maintain property insurance on the Dwellings as originally constructed. The Association may insure betterments and Improvements installed by current or previous Owners, but will have no obligation to insure such items. In insuring Dwellings, the Association may be guided by types of policies customarily available for similar types of properties.

(c) Endorsements. To the extent reasonably available, the Association will obtain endorsements to its property insurance policy if required by an underwriting lender, such as Inflation Guard Endorsement and a Building Ordinance or Law Endorsement,.

9.09 **Liability Insurance**. The Association will maintain a commercial general liability insurance policy – expressly excluding the liability of each Owner and Resident within his Dwelling – over the Common Areas and on any Improvements required to be maintained by the Association in accordance with *Section 7.01* for bodily injury and property damage resulting from the operation, maintenance, or use. The amount of coverage should be at least that required by an underwriting lender, to the extent reasonably available. The purpose of this

requirement is, in part, to assure mortgage companies that the Association maintains at least minimum levels of insurance coverage. 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.

9.10 **Worker's Compensation.** The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of State law or if the Board so chooses.

9.11 **Fidelity Coverage.** The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to 3 months of Regular Assessments on all Lots. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages. If the Property has more than twenty (20) Lots, the Association must maintain fidelity coverage to the extent reasonably available.

9.12 **Directors And Officers Liability.** The Association may 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.

9.13 **Other Policies.** The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

9.14 **Owner's Responsibility For Insurance**.

(a) Insurance by Owners. Notwithstanding the foregoing, the Board may establish 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. If an Owner fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as an Individual Assessment.

(b) Owners' Responsibilities. Upon request, an Owner will give the Board written notification of any and all structural changes, additions, betterments, or Improvements to his Dwelling, and any other information the Board may require to maintain adequate levels of insurance coverage. Each Owner will comply with reasonable requests by the Board for periodic inspection of the Dwelling for purposes of insurance appraisal. Each Owner, at his expense, will maintain any insurance coverages required by the Association pursuant to this Article. Each Owner at his expense, may obtain additional

insurance coverage of his real property, Improvements, and betterments thereto, or personal property.

(c) Association Does Not Insure. The Association does not insure an Owner or Resident's personal property. Each Owner and Resident is solely responsible for insuring his personal property in his Dwelling and on the Property, including furnishings, vehicles, and stored items. The Association strongly recommends that each Owner and Resident purchase and maintain insurance on his personal belongings.

ARTICLE 10
RECONSTRUCTION OR REPAIR AFTER LOSS

10.01 **Restoration Funds**. For purposes of this Article, "**Restoration Funds**" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Property. All funds paid to the Association for purposes of repair or restoration will be deposited in a financial institution in which accounts are insured by a federal agency. Withdrawal of Restoration Funds requires the signatures of at least two (2) Association directors or that of an agent duly authorized by the Board.

(a) Sufficient Proceeds. If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damaged or destroyed Property, the Association, as trustee for the Owners, will promptly apply the funds to the repair or restoration.

(b) Insufficient Proceeds. If Restoration Funds are not sufficient to pay the estimated or actual costs of restoration as determined by the Board, the Board may levy a Deficiency Assessment against the Owners to fund the difference.

(c) Surplus Funds. If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows: If Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by him, and further provided that any Delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board.

10.02 **Costs And Plans**.

(a) Cost Estimates. Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged Property. Costs may include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.

(b) Plans and Specifications. Common Areas will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Improvements insured by the Association will be repaired and restored substantially in accordance with original construction plans and specifications. Alternate plans and specifications for repair and restoration of either Common Areas or Improvements insured by the Association must be approved by seventy percent (70%) of the total votes of the Association.

10.03 **Owner's Duty to Repair**.

(a) Uninsured Loss. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of his Dwelling not covered by the Association's insurance policy, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof.

(b) Insured Loss. If the loss to a Dwelling is covered by the Association's insurance policy, the Owner will begin repair or restoration of damage upon receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association to supervise, approve, or disapprove the repair or restoration during the course thereof.

(c) Failure to Repair. If an Owner fails to repair or restore damage as required by this Section, the Association may effect the necessary repairs and levy an Individual Assessment against the Owner and Lot for the cost thereof, after giving an Owner reasonable notice of the Association's intent to do so.

10.04 **Owner's Liability For Insurance Deductible**. If repair or restoration of Common Area or any Improvement is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE 11
GENERAL USE AND CONSTRUCTION RESTRICTIONS

11.01 **General.** The use of the Property is subject to the following:

(a) Variance. The use of the Property is subject to the restrictions contained in this Article, and subject to Rules adopted pursuant to this Article. The Board or the Declarant, 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.

(b) Association's Right to Promulgate Rules and Adopt Community Manual. The Association, acting through the Board, 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 Association, acting through the Board, is further granted the right to adopt, amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines.

EVERY RESIDENT MUST COMPLY WITH ALL RULES ADOPTED BY THE BOARD OF DIRECTORS

11.02 **Rules and Regulations**. In addition to the restrictions contained in this Article, 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 Area.

(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 anything visible from the street, Common Area, or other Lots.

(f) The occupancy and leasing of Dwellings.

(g) Animals.

(h) Vehicles.

(i) Disposition of trash and control of vermin, termites, and pests.

(j) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Restrictions, or the quality of life for Residents.

11.03 **Subdividing**. No Lot may be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Architectural Reviewer.

11.04 **Mining and Drilling**. No portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted by Declarant or Declarant permitted assigns in conjunction with the construction of Improvements and/or the development of the Property.

11.05 **Animals - Household Pets**. No animal, bird, fish, reptile, or insect of any kind, may be kept, maintained, raised, or bred anywhere on the Property for food or for any commercial purpose. Customary domesticated household pets may be kept subject to the rules adopted from time to time by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 2 dogs, or 2 cats, or one dog and one cat, may be maintained on each Lot. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the rules.

11.06 **Annoyance**. No Lot may be used in any way that: (i) may reasonably be considered annoying to neighbors; (ii) may be calculated to reduce the desirability of the Property as a residential neighborhood; (iii) may endanger the health or safety of Residents of other Lots; (iv) may result in the cancellation of insurance on any portion of the Property; (v) violates any law; or (vi) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

11.07 **Driveways**. Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access.

11.08 **Garages**. The original garage area of a Dwelling may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein, without the

Architectural Reviewer's written authorization. The automatic garage door opener is to be maintained by the Owner.

11.09 **Landscaping.** No person may perform landscaping, planting, or gardening anywhere upon the Property without the Architectural Reviewer's prior written authorization.

11.10 **Decks**. No unsightly object may be located on a deck serving a Dwelling if such object is readily visible from outside the Dwelling; provided, however, that the flag of the United States may be displayed subject to rules adopted by the Board to the extent permitted by applicable law, e.g., The Freedom to Display the American Flag Act of 2005 (HR 42) or any successor statute. Decks may not be used for storage and no combustible materials may exist on a deck at any time.

Objects shall not be permitted to hang over or be attached to any exterior surface of a deck wall or to otherwise protrude outside of the vertical plane formed by the exterior surface of a deck wall.

11.11 **Noise And Odor.** A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Lots. Rules adopted from time to time by the Board may limit, discourage, or prohibit noise-producing activities and items on the Lots and on the Common Area.

NOT SOUNDPROOFED
THE DWELLINGS ARE NOT SOUNDPROOFED.
NOISE TRANSMISSION BETWEEN ADJOINING DWELLINGS WILL OCCUR.

11.12 **Occupancy**. The Board may adopt rules regarding the occupancy of Dwellings and Lots. If the rules fail to establish occupancy standards, no more than 2 persons per bedroom may occupy a Dwelling and Lot, subject to the exception for familial status. The Association's occupancy standard for Residents who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (*i.e., the fewest people per Dwelling*) permitted by the U.S. Department of Housing and Urban Development. A person may not occupy a Dwelling if the person constitutes a direct threat to the health or safety of other persons, or if the person's occupancy would result in substantial physical damage to the property of others.

11.13 **Residential Use.** The use of a Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using the Lot and Dwelling for personal business or professional pursuits provided that: (i) the uses are incidental to the use of the Lot for residential purposes; (ii) the uses conform to applicable governmental ordinances; (iii) there is no external evidence of the uses; (iv) the uses do not entail visits to the Lot by employees or the public; and (v) the

uses do not interfere with Residents' use and enjoyment of neighboring Lots. Other than the air conditioned part of a Dwelling, no thing or structure on the Property may be occupied as residence at any time by any person. This provision applies, without limitation, to the garage.

11.14 **Structural Integrity.** No person may directly or indirectly impair the structural soundness or integrity of a Structure or Dwelling, nor do any work or modification that will impair an easement or real property right.

11.15 **Antenna.** Except as expressly provided below, no exterior radio, television or communications antenna or aerial or satellite dish or disc, nor any solar energy system (collectively, an "**Antenna/Dish**"), shall be erected, maintained, or placed on a Dwelling without the prior written approval of the Architectural Reviewer.

(a) Dishes Over One Meter Prohibited. A satellite dish antenna which is over one meter in diameter is prohibited within the Property.

(b) Notification. An Owner or Resident who wishes to install a satellite dish one meter or less in diameter (a "**Permitted Antenna**") must submit a written notice to the Board or its designee, which notice must include the Owner or Resident's installation plans for the satellite dish.

(c) One Dish Limitation. Only one Permitted Antenna per Dwelling is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner must provide written notification to the Board or its designee. Upon notification, the Owner will be permitted to install an additional Permitted Antenna if a single Permitted Antenna is not sufficient for the reception of an acceptable quality signal and the use of an additional Permitted Antenna results in the reception of an acceptable quality signal.

(d) Permitted Installation Locations. An Owner or Resident may erect a Permitted Antenna (after written notification has been provided to the Board or its designee) if the Owner or Resident has an exclusive use area in which to install the antenna. An "exclusive use area" is an area in which only the Owner or Resident may enter and use to the exclusion of all other Owners and Residents. Unless otherwise approved by the Board or its designee, the Permitted Antenna must be entirely within the exclusive use area of the Owner's Dwelling.

A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Dwellings or the Common Elements, or otherwise be a nuisance to Residents of other Dwellings or to the Association. A Permitted Antenna exists at the sole risk of the Owner and/or Resident of the Dwelling. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the Association, its directors, officers, and Members,

individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The Board of Directors may determine what constitutes a nuisance to the Association. The Board may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

(e) Association Controls. To the extent permitted by public law, the Association may adopt and amend reasonable standards for the color, appearance, location, method of installation, maintenance, camouflaging, screening, and use of an Antenna/Dish.

11.16 **Signs**. No sign of any kind, including signs advertising Lots for sale, for rent or for lease, may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Dwellings. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Board may, but is not required to, authorize a sign, and such authorization may specify the location, nature, dimensions, number, and time period of a sign. This prohibition against signs also applies to any object visible from a street or driveway which the Board deems to be unsightly or inappropriate. The Association may effect the immediate removal of any sign or object that violates this Section or which the Board deems inconsistent with Property standards without liability for trespass or any other liability connected with the removal.

11.17 **Window Treatments**. The Property is designed to have a uniform window appearance for all Dwellings. Therefore, the color and condition of all window panes, window screens, and window treatments must conform to the building standard. All window treatments within the Dwellings, that are visible from the street or another Lot, must be maintained in good condition and must not detract from the appearance of the Property. The Board may require an Owner to change or remove a window treatment, window film, window screen, or window decoration that the Board determines to be inappropriate, unattractive, or inconsistent with the Property's uniform window standard. The Board may prohibit the use of certain colors or materials for window treatments. No reflective or mirrored film will be allowed on window or door panes.

11.18 **Sheds**. Sheds or other similar storage buildings shall be permitted within the private yard space of a Lot enclosed by a private fence provided such shed or storage building covers no more then forty (40) square feet and is no taller than eight (8) feet. Notwithstanding the foregoing, no shed or similar storage building that is barn-shaped, "lean-to", or metal shall be permitted.

11.19 **On Street Parking Prohibited; Use of Common Area**. No Owner, Resident or guest may park a vehicle on any road or street within the Property unless in the event of an emergency or as otherwise approved in writing by the Board. Guests and/or visitors may park in designated visitor parking spaces for not more than seventy two (72) consecutive hours except as otherwise approved in writing by the Board. Owners and Residents are not permitted

to park in visitor parking spaces. "Emergency" for purposes of the foregoing sentence shall mean an event which jeopardizes life or property. "Parked" as used herein shall be defined as a vehicle left unattended by a licensed operator for more than ten (10) consecutive minutes. Except as otherwise designated by Declarant or the Board, motor vehicles including, but not limited to, mini-bikes, snowmobiles and motorcycles, may not be driven on the Common Area by any Owner, Resident, or their guests or invitees.

11.20 **Mobile Homes, Travel Trailers and Recreational Vehicles**. No mobile homes may be parked or placed on any portion of the Property or used as a residence, either temporary or permanent, at any time.

11.21 **Liability of Owners for Damage to Common Area**. No Owner or Resident may in any way alter, modify, obstruct, add to, store items in or on or otherwise perform any work upon the Common Area without the prior written approval of the Board. Each Owner and/or Resident will be liable to the Association for any and all damages to: (i) the Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner, or the Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage will be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided for the collection of assessments hereunder.

11.22 **Fences**. The design, construction materials, height and location of all fences must be approved by the Architectural Reviewer. NO PEDESTRIAN GATE WILL BE ALLOWED on any back or side yard fence, even if the yard is part of a Lot at the end of the Structure. All items for the backyard must be brought through the Dwelling. Fences may not be painted; provided, however, that an owner may treat a fence located upon his or her Lot with a clear preservative or clear sealant, or may match or choose a color lighter than the perimeter parkway fence along Canyon Golf Road. Prior to any staining or painting, the Architectural Reviewer must approve the use of the color tint stain and/or sealant to be used, and sample colors) must be provided to the Architectural Reviewer. Any color(s) that is darker or of a different color palette will not be permitted.

11.23 **Palm Trees**. Palm Trees are expressly prohibited on any Lot.

11.24 **Permanent Basketball Goals**. No permanent basketball goals may be constructed, installed or maintained upon a Lot. For the purposes of the foregoing sentence, permanent basketball goals shall mean any in-ground poles for basketball goals that are installed in appropriate footing (concrete) and are not meant to be removed unless the pole is replaced or basketball goals attached to the Dwelling or garage. Portable basketball goals may be permitted as more particularly set forth in the rules.

11.25 **Drainage**. There may be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Architectural Reviewer.

11.26 **Clotheslines; Window Air Conditioners**. No clotheslines and no outdoor clothes drying or hanging shall be permitted within the Property, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the residence, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of residences, or any part thereof, nor relocated or extended, without the prior written consent of the Architectural Reviewer. Notwithstanding the foregoing, customary seasonal decorations for holidays are permitted but shall be removed within twenty (20) days of the applicable holiday. Window air conditioners are prohibited.

11.27 **City Requirements**. In the event any of the rules, regulations, requirements, laws, or restrictions of the City are more restrictive than the covenants, conditions, and restrictions contained in this Declaration, all Owners shall abide by and comply with the rules, regulations, requirements, laws, and restrictions of the City, in addition to the covenants, conditions, and restriction of this Declaration. In no event shall the terms and provisions of the Declaration supersede or take the place of any rule, regulation, requirement, law, or restriction of the City.

11.28 **Construction Activities**. This Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. No Improvement constructed by Declarant need be approved in advance by the Architectural Reviewer. No such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Architectural Reviewer in its sole good faith judgment, the Architectural Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Architectural Reviewer may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection therewith.

11.29 **No Warranty of Enforceability**. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Declaration. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

11.30 **Compliance with Restrictions**. Each Owner shall maintain their Lot and any and all Improvements thereon in a safe, clean and sanitary manner and condition and in good order and repair. Each Owner, Resident, and their family, occupants of a residence, tenants, and the guests, invitees, and licensees of the preceding must comply strictly with the provisions of the Restrictions, the Declaration and Bylaws as the same may be amended from time to time. Failure to comply with any of the Restrictions will constitute a violation of the Restrictions may result in a fine against the Owner or Resident in accordance with *Article 6* of this Declaration, and will give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by Declarant, the Manager, the Board on behalf of the Association, the Architectural Reviewer, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but will not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied will be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. The Association shall have the right (but not the obligation) to enter upon a Lot to maintain such Lot or Improvements located thereon after giving the Owner at least fifteen (15) days written notice to cure any maintenance problems or deficiencies. In the event that the Association exercises its right of entry for maintenance purposes, the Association shall have the right to assess the particular Owner for the cost of such maintenance. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot will be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner will indemnify and hold harmless the Association and its officers, directors, committee members, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 11.26* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

IF YOU FAIL TO COMPLY WITH THE RESTRICTIONS, INCLUDING THIS DECLARATION, AND ANY RULES ADOPTED BY THE BOARD, YOU CAN BE FINED OR A CLAIM MAY BE PURSUED AGAINST YOU IN COURT.

ARTICLE 12
LEASING

12.01 **Leasing Conditions.** The leasing of Dwellings is subject to the following conditions: (i) no Dwelling may be rented for transient or hotel purposes or for a period less than one hundred eighty (180) days; (ii) no Dwelling or Lot may be subdivided for rent purposes, and not less than an entire Dwelling or Lot may be leased; (iii) all leases must be in writing and must be made subject to the Restrictions; (iv) an Owner is responsible for providing his tenant with copies of the Restrictions and notifying him of changes thereto; and (v) each tenant is subject to and must comply with all provisions of the Restrictions, federal and State laws, and local ordinances.

12.02 **Eviction of Tenants.** Every lease agreement on a Dwelling, whether written or oral, express or implied, is subject to and is deemed to include the following provisions:

(a) Violation Constitutes Default. Failure by the tenant or his invitees to comply with the Restrictions, federal or State law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the tenant, subject to the terms of this Section.

(b) Association as Attorney-in-Fact. Notwithstanding the absence of an express provision in the lease agreement for enforcement of the Restrictions by the Association, each Owner appoints the Association as his attorney-in-fact, with full authority to act in his place in all respects, solely for the purpose of enforcing the Restrictions against his tenants, including but not limited to the authority to institute forcible detainer proceedings against his tenant on his behalf, provided the Association gives the Owner at least ten (10) days' notice, by certified mail, of its intent to so enforce the Restrictions.

(c) Association Not Liable for Damages. The Owner of a leased Dwelling or Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Restrictions against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Restrictions against the Owner's tenant.

12.03 **Exemption.** A Mortgagee that acquires title to the Lot by foreclosure of its deed of trust lien or by deed in lieu of foreclosure of its lien is exempt from the effect of this Article. During the Development and Sale Period, Declarant is exempt from the effect of this Article.

ARTICLE 13
ASSOCIATION MEMBERSHIP, VOTING RIGHTS, AND PURPOSES

13.01 **Organization.** The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

13.02 **Membership**.

Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

IF YOU ACQUIRE A LOT, YOU AUTOMATICALLY BECOME A MEMBER OF THE ASSOCIATION. MEMBERSHIP IS MANDATORY!

(a) If required by the Board, each Owner, other than Declarant, must execute a Membership Agreement and deliver the same to the Association prior to or concurrently with the recording of a deed conveying fee title to a Lot to such Owner. Each Owner must notify the immediate transferee of his Lot of such transferee's obligation to execute and deliver a Membership Agreement, but the failure to notify a transferee will not relieve such transferee of his obligations under this *Section 13.02(a)*. The failure to execute a Membership Agreement will not prevent any person from being a Member or Owner under the terms of the Certificate, Bylaws or Restrictions, or excuse any Member from the payment of Assessments. If a Membership Agreement is required by the Board, an Owner who has not executed and delivered a Membership Agreement will automatically forfeit his right to vote as a Member and additionally forfeit his right to the use and enjoyment of the Common Area. Such Owner will not be entitled to restoration of his voting privileges and rights in the Common Area until execution and delivery of a Membership Agreement by such Owner. However, the Board may, at the Board's sole discretion, provide that a Member will be entitled to the full privileges of membership in the Association, notwithstanding the failure to execute a Membership Agreement. In the event Members are entitled to a key, membership card or other token evidencing or facilitating the right to use any Improvements erected or placed on the Common Area, the Board may require any Member who has not executed a Membership Agreement to return the same to the Board immediately.

(b) Within thirty (30) days after acquiring legal title to a Lot, each Owner must provide the Association with: (1) a copy of the recorded deed by which the Owner has

acquired title to the Lot; (2) the Owner's address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name and phone number of any Resident other than the Owner.

YOU MAY BE REQUIRED TO EXECUTE A MEMBERSHIP AGREEMENT BEFORE USING THE COMMON AREA. YOUR OBLIGATION TO PAY ASSESSMENTS TO THE ASSOCIATION AND COMPLY WITH RESTRICTIONS WILL NOT BE AFFECTED BY YOUR FAILURE TO EXECUTE A MEMBERSHIP AGREEMENT. ALSO, YOU MUST PROVIDE CERTAIN INFORMATION TO THE ASSOCIATION UPON ACQUIRING A LOT.

13.03 **Voting Rights.** The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members will be calculated as set forth below. **Notwithstanding any provision to the contrary in this Declaration, as provided in *Section 13.03(b)* below, until expiration or termination of the Development and Sale Period, Declarant will be entitled to appoint and remove all members of the Board.**

(a) The Owner of each Lot will have one (1) vote for each Lot so owned. In the event of the re-subdivision of any Lot into two or more Lots, the number of votes to which such Lot is entitled will be increased as necessary to ensure that Regular Assessments are allocated equally among all Lots and each Lot is liable for its allocated share of the annual budget and to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single Dwelling thereon, voting rights and Assessments will continue to be determined according to the number of original Lots contained in such consolidated Lot.

(b) In addition to the votes to which Declarant is entitled by reason of *Section 13.03(a)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development and Sale Period. Notwithstanding any provision to the contrary in this Declaration, until such time as Declarant no longer owns any portion of the Property, Declarant will be entitled to appoint and remove all members of the Board. Declarant may terminate its right as to the appointment and removal of one or all the Board members by the recordation of a termination notice executed by Declarant and recorded in the Official Public Records of Bexar County, Texas.

(c) When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot (or in the Membership Agreement

relating to such Lot if required by the Board), and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 13.03*.

(d) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) remain past due, for any period during which such Owner or such Owners' Lot(s) are in violation of this Declaration, and, as provided in *Section 13.02(b)* above, for any period during which such Owner has failed to execute and deliver a Membership Agreement.

13.04 **Powers**. The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property (including the operation, maintenance and preservation thereof) or the Association.

When you acquire a Lot, you will be required to comply with the terms of this Declaration and any rules and regulations adopted by the Board.

(b) Insurance. To obtain and maintain in effect, policies of insurance required by this Declaration and that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect assessments, as provided in *Article 7* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a

personal obligation of the Owner of the Lot so entered, will be deemed a special Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in for the collection of Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or their successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 13.04(e)* (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or Mortgages, out of, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining the following:

(i) Parks, parkways or other recreational facilities or structures;

(ii) Roads, streets, alleys, sidewalks, signs, street lights, walks, driveways, trails and paths;

(iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;

(iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(v) Any similar improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by any governmental authority.

(h) Manager. To retain and pay for the services of a person or firm (the "**Manager**"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager.

(i) The Board may delegate the performance of certain functions to the Manager. To assist the Board in determining whether to delegate a function, a Guide to Association's Major Management & Governance Functions is attached to this Declaration as Exhibit "B". The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association and its officers, directors, members, employees, and agents that are not justified by the needs of the Association. Rather, the Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board's duties, responsibilities, or functions. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.

(ii) Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon thirty (30) days written notice to the Manager. To the extent permitted by law, the Board may delegate any other duties, powers and functions to the Manager. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for the Property, Common Area, private or public recreational facilities, easements, roads,

roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes and basins.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law (including Chapter 22 of the Texas Business Organizations Code) or under the terms of the Restrictions or as determined by the Board.

(k) Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise.

(n) Membership Privileges. To establish rules and regulations governing and limiting the use of the Common Area and any Improvements thereon.

13.05 **Acceptance of Common Area.** The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, or the Property and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Such property will be accepted by the Association and thereafter will be maintained as Common Area by the Association for the benefit of the Property and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment to the extent conveyed in error or needed to make minor adjustments in property lines.

13.06 **Indemnification.** To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether

civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

13.07 **Insurance.** The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability or otherwise.

13.08 **Control by Declarant.** Notwithstanding anything to the contrary, Declarant, or its successors or assigns, will have the absolute right to appoint members of the Board and their successors (any appointment of a successor will be a deemed removal of the Board member being replaced by such appointment) until expiration or termination of the Development and Sale Period. Declarant, at its option, may assign or delegate, in whole or in part, its rights and powers to the Association, the Board or any other entity provided such designation is in writing.

13.09 **Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 13.04* hereinabove, the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any

charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the occupant of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the occupant of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

13.10 **Community Systems**. The Association is specifically authorized to provide, or to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Property ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

13.11 **Declarant's Right to Contribute to Revenues of the Association**. Declarant shall have the right, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to Declarant, at the discretion of Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made until the date of its repayment, at the short term Applicable Federal Rate ("**AFR**"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

13.12 **Protection of Declarant's Interests**. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development and Sale Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the

same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development and Sale Period.

13.13 **Notices and Disclaimers as to Security Systems**. Declarant, the Association, AND their successors or assigns may enter into contracts for the provision of security services through any Community Systems. DECLARANT, THE ASSOCIATION, AND THEIR SUCCESSORS OR ASSIGNS DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS NOTIFY AUTHORITIES OF FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY RECEIVING SECURITY SERVICES THROUGH THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND ANY SUCCESSOR OR ASSIGN ARE NOT INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE LOT AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure of the party of a security service provider to perform any of its obligations with respect to security services and, therefore, every owner or occupant of property receiving security services through the Community Systems agrees that Declarant, the Association, and any successor or assign assumes no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of (a) any failure of the Owner's security system, (b) any defective or damaged equipment, device, line or circuit, (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees, or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every Owner and Tenant obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of the Declarant, its affiliated entity, the Association, their successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding Two Hundred Fifty U.S. Dollars ($250.00), which limitation apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Declarant, its affiliated entity, the Association, their successor or assign of any of same. Further, in no event will Declarant, its affiliated entity, the Association, their successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

ARTICLE 14
ENFORCING THE RESTRICTIONS

14.01 **Notice And Hearing**. Before levying a fine for violation of the Restrictions (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by applicable law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the 30th day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine - - unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearing, provided they are consistent with the requirements of applicable law.

14.02 **Remedies**. The remedies provided in this Article for breach of the Restrictions are cumulative and not exclusive. In addition to other rights and remedies provided by the Restrictions and by law, the Association has the following rights to enforce the Restrictions:

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

(b) Fine. The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Lot if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Restrictions. 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 Restrictions.

(c) Suspension. The Association may suspend the right of Owners and Residents to use Common Area (except rights of ingress and egress) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Restrictions. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Restrictions.

(d) Self-Help. The Association has the right to enter a Lot and/or Dwelling to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Restrictions. 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. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Lot without judicial proceedings.

(e) Suit. Failure to comply with the Restrictions 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.

14.03 **Board Discretion**. The Board may use its sole discretion in determining whether to pursue a violation of the Restrictions, 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: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with applicable law; (iii) 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 (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

14.04 **No Waiver**. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Restrictions. Failure by the Association or by any Owner to enforce a provision of the Restrictions is not a waiver of the right to do so thereafter.

14.05 **Recovery of Costs**. The costs of curing or abating a violation are the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Restrictions or the restraint of violations of the Restrictions, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

ARTICLE 15
TERMINATION AND CONDEMNATION

15.01 **Association As Trustee**. Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Property in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Property. As trustee, the Association will have full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property as permitted by this Declaration; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

15.02 **Termination**. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by seventy percent (70%) of the total votes of the Association. In the event of condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners. In all other circumstances, an amendment to terminate must be approved by eighty percent (80%) of the total votes of the Association.

15.03 **Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated equally among all Lots and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot.

ARTICLE 16
DEVELOPMENT RIGHTS

16.01 **Development by Declarant.** It is contemplated that the Property will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to create and/or designate Lots and Common Areas and to subdivide with respect to any of the Property pursuant to the terms of this *Section 16.01.* These rights may be exercised with respect to any portions of the Property. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area.

16.02 **Special Declarant Rights.** Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 16.02* until two (2) years after expiration or termination of the Development and Sale Period.

16.03 **Assignment of Declarant's Rights**. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

16.04 **Annexation and Withdrawal**.

(a) **Annexation by Declarant.** While Declarant owns any real property subject to this Declaration, Declarant may, at its sole option, amend and expand the definition of Property by annexing real property into the Declaration and subjecting such real property to the terms hereof; provided, however, Declarant shall not have the right to annex real property that is located more than one-half (1/2) mile from the Property (as such term may be amended) boundary, without a vote as provided in Section 10.2 below.

(b) **Annexation by Association.** The Association may annex any real property into the Association and subject such real property to the terms hereof by an affirmative vote of 67% or greater of all outstanding votes that are entitled to be cast.

(c) **Recording of Annexation**. The annexation of such real property shall be evidenced by a written document recorded in the Official Public Records of Bexar County, Texas.

(d) **No Duty to Annex**. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any real property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

(e) **Withdrawal of Property**. While Declarant owns any real property subject to this Declaration, Declarant may amend this Declaration to withdraw any real property that is not subject to a recorded plat from the definition of the Property and from the coverage of this Declaration, provided that the owner of real property to be withdrawn consents to such withdrawal.

ARTICLE 17
DISPUTE RESOLUTION

17.01 **Introduction and Definitions.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

(a) "**Claim**" means any claim, grievance, or dispute between Parties involving the Property, except Exempt Claims as defined below, and including without limitation:

(i) Claims arising out of or relating to the interpretation, application, or enforcement of the Restrictions.

(ii) Claims relating to the rights and/or duties of Declarant as Declarant under the Restrictions.

(iii) Claims relating to the design, construction, or maintenance of the Property.

(b) "**Claimant**" means any Party having a Claim against any other Party.

(c) "**Exempt Claims**" means the following claims or actions, which are exempt from this Article:

(i) The Association's claim for Assessments and any action by the Association to collect Assessments.

(ii) An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.

(iii) The Association's enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.

(iv) A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

(v) A dispute that is subject to alternate dispute resolution – such as mediation or arbitration – by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

(d) **"Respondent"** means any Party against which a Claim has been asserted by a Claimant.

17.02 **Mandatory Procedures.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in *Section 17.07* below, a Claim asserted against the Declarant will be resolved by binding arbitration unless Declarant specifically waives arbitration in writing; otherwise, the terms and provisions to this Article apply to Claims asserted against Declarant.

17.03 **Notice.** Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section.

17.04 **Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

17.05 **Mediation.** If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the thirty (30) day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

17.06 **Termination of Mediation.** If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit, initiate arbitration, or commence administrative proceedings on the Claim, as appropriate and permitted by this Article.

17.07 **Binding Arbitration-Declarant Claims.** All Claims in which Declarant is the Respondent must be settled by binding arbitration unless binding arbitration is specifically waived in writing by the Declarant. Declarant may, by summary proceedings (*e.g.*, a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 17.07*. This *Section 17.07* may not be amended without the written consent of the Declarant and any assignee of Declarant's rights hereunder.

(a) Governing Rules. If a Claim asserted against the Declarant has not been resolved after Mediation as required by *Section 17.05*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 17.07* and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Declarant in Bexar County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules to govern the arbitration of any Claim as provided above, if the AAA has, by the time of the Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this *Section 17.07*, this *Section 17.07* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) One arbitrator shall be selected by Declarant, in its sole and absolute discretion;

(ii) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Declarant and the Claimant, in their sole and absolute discretion.

(b) Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 17.07* will limit the right of Claimant or Declarant, and Claimant and the Declarant will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party, including the Claimant, to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(c) Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 17.07*.

(d) Arbitrator. Unless the parties to the arbitration agree in writing to the contrary, all arbitration proceedings shall be arbitrated by at least one arbitrator, which shall be appointed in accordance with the AAA Rules.

(e) Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this *Section 17.07*; provided, however, that in no event shall the arbitrator's award damages which exceed the damages for construction defects a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings in which the amount in controversy exceeds $50,000.00, in the aggregate, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings in which the amount in controversy exceeds $50,000.00, in the aggregate, the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the Claim within fifteen (15) days from the date the award is rendered. The arbitrator's findings of fact shall be binding on all parties and shall not be subject to further review except as otherwise allowed by applicable law.

(f) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one-hundred eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Bexar County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

17.08 **Allocation of Costs.** Except as otherwise provided in this Article, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

17.09 **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 that has an Exempt Claim may submit it to the procedures of this Article. Notwithstanding anything to the contrary in this Article 17, to the extent of the a conflict between the terms and provisions of this Article and the terms and provisions of the New Home Limited Warranty, the terms and provisions of the New Home Limited Warranty shall control including, without limitation, the dispute resolution procedures set forth herein.

17.10 **Approval and Settlement.** The initiation of litigation or binding arbitration as required by this Article, or 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 Dwelling, 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 eighty percent (80%) of the Dwellings and, the written consent of Declarant and any assignee of Declarant's rights hereunder.

(a) 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 Dwellings, except that no such approval is required: (i) to enforce provisions of this Declaration, including collection of assessments; (ii) to challenge condemnation

proceedings; (iii) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (iv) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (v) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consent of Owners in order to preserve the status quo.

(b) Proceedings. Also, the Association may not initiate any judicial, arbitration, or administrative proceeding against Declarant without the approval of Owners representing at least eighty percent (80%) of the Lots.

(c) 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 or arbitration prior to initiating a judicial, arbitration, or administrative proceeding. The Association may not use its annual operating income or reserve funds or savings to fund litigation or arbitration, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation and arbitration reserve fund.

(d) 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 agreement and waiver or release of claims.

17.11 **Period of Limitation**.

(a) For Actions by an Owner or Occupant of a Dwelling. The exclusive period of limitation for any of the Parties to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of a Dwelling or any Improvement constructed on the Property shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no event shall the limitation period exceed four (4) years and one (1) day from the date Declarant conveyed the Lot to the original Owner unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant conveyed the Lot to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom Declarant initially conveyed the Lot, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the applicable law governing the limitation period and period of repose shall apply to the Claim; or (iii) the end of the

statutory period provided under applicable law governing the limitation period and period of repose.

(b) For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of the Common Area, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim, provided, however, that in no event shall the limitation period exceed four (4) years and one (1) day from the date Declarant substantially completed the Common Area unless the basis of the Claim was intentionally concealed or willfully concealed by Declarant or its contractors, in which case, the state law governing the limitation period and period of repose shall apply to the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Area, two (2) years and one (1) day after the date the Development and Sale Period has expired or is terminated, unless the basis of the Claim was intentional fraud or willful misconduct, in which case, the applicable law governing the limitation period and period of repose shall apply to the Claim; or (iii) the end of the statutory period provided under applicable law governing the limitation period and period of repose.

ARTICLE 18
MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this Article apply to the Declaration and the Bylaws of the Association.

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

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

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

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

18.02 **Examination of Books.** The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

18.03 **Taxes, Assessments and Charges.** All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law will relate only to the individual Lots and not to any other portion of the Property.

ARTICLE 19
GENERAL PROVISIONS

19.01 **Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Public Records of Bexar County, Texas, and continuing through and including January 1, 2057, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Bexar County, Texas. Notwithstanding any provision in this *Section 19.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire (twenty one) 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

19.02 **Amendment.** This Declaration may be amended or terminated by the recording in the Official Public Records of Bexar County, Texas, of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (unless Declarant has relinquished such right by written instrument recorded in the Official Public Records of Bexar County, Texas) and Members entitled to cast at least seventy percent (70%) of the number of votes entitled to be cast by members of the Association. Specifically, and not by way of limitation, Declarant may unilaterally amend this Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or

governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development. Notwithstanding any provision in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) provision of this Declaration that benefits Declarant; (ii) rights, privileges, easements, protections, or defenses of Declarant; or (iii) rights or obligations of the Owners or the Association in relationship to Declarant, without the written consent of Declarant attached to and recorded with such amendment. Furthermore, notwithstanding the foregoing provision, after expiration of the Development and Sale Period, any amendment affecting the insurance required to be maintained by the Association under this Declaration, or any amendment reducing the maintenance responsibility of the Association under this Declaration (including any rights granted to the Association necessary or required to discharge or pay for such maintenance or repair), must be approved by one hundred percent (100%) of the of the number of votes entitled to be cast by members of the Association, unless such amendment could be unilaterally prosecuted by the Declarant in accordance with the prior sentence, whereupon, the amendment must be approved by a majority of the number of votes entitled to be cast by members of the Association.

19.03 **Enforcement.** The Association or Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

19.04 **Higher Authority.** The terms and provisions of this Declaration are subordinate to federal and state law, and local ordinances. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

NOTICE

Users of this Declaration should periodically review statutes and court rulings that may modify or nullify the terms and provisions of those Restrictions or their enforcement, or which may create rights or duties not contemplated therein.

19.05 **Severability.** If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

19.06 **Conflicts.** If there is any conflict between the provisions of this Declaration, the Certificate, the Bylaws, or any rules and regulations adopted pursuant to the terms of such Restrictions, the provisions of this Declaration will govern.

19.07 **Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

19.08 **Acceptance by Grantees.** Each grantee of Declarant of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

19.09 **Notices.** Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered personally, by mail or by a nationally recognized overnight courier. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. If delivery is made by overnight courier, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such address may be changed from time to time by notice in writing given by such person to the Association.

19.10 **View Impairment.** Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space within the Property will be preserved without impairment. Declarant and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

19.11 **Safety and Security.** Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote or enhance the level of safety

or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

19.12 **Declarant as Attorney in Fact and Proxy**. To secure and facilitate Declarant's exercise of the rights reserved by Declarant in this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and person's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant in this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. In addition, each Owner, by accepting a deed to a Lot, and each Mortgagee, by accepting the benefits of a Mortgage against a Lot and any person, by accepting the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien, and/or any other security interest against any Lot, shall thereby appoint Declarant the proxy of such Owner, Mortgagee, or person, with full power of substitution in the premises, to do and perform each and every act permitted or required pursuant to this Declaration, and which may otherwise be reasonably necessary in connection therewith, including without limitation, to cast a vote for such Owner, Mortgagee, or Person at any meeting of the Members for the purpose of approving or consenting to any amendment to this Declaration in order to effect and perfect any such act permitted or required pursuant to this Declaration and to execute and record amendments on their behalf to such effect; and the power hereby reposed in Declarant, as the attorney-in-fact for each such Owner, Mortgagee, or person includes, without limitation, the authority to execute a proxy as the act and deed of any Owner, Mortgagee, or Person and, upon termination or revocation of any Owner's proxy as permitted by the Chapter 22 of the Texas Business Organizations Code the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or person authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. All such proxies shall be non-revocable for the maximum lawful time and upon the expiration of non-revocable period, new proxies shall again be executed for the maximum non-revocable time until Declarant's right to require such successive proxies expires.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Bexar County, Texas.

DECLARANT:

CENTEX HOMES, a Nevada general partnership

By: CENTEX REAL ESTATE CORPORATION, a Nevada corporation, its Managing General Partner

By: _____
J. B. Gonzales, Division Controller

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on this 16 day of November, 2007 by J. B. Gonzales, Division Controller of Centex Real Estate Corporation, a Nevada corporation, Managing General Partner of Centex Homes, a Nevada general partnership, on behalf of said corporation and general partnership.

[SEAL]

_____
Notary Public Signature

BARBARANN KANUTE
MY COMMISSION EXPIRES
September 6, 2011

ATTACHMENT 1

DESCRIPTION OF PROPERTY

All lots located in Villas of Silverado Hills, a subdivision located in Bexar County, Texas, according to the map or plat thereof recorded as Document No. _____, Official Public Records of Bexar County, Texas, **SAVE AND EXCEPT** Lots 153 through 159, Block 146.

EXHIBIT "A"

GUIDE TO THE ASSOCIATION'S EXAMINATION OF IMPROVEMENTS

This Guide provides information to assist the Board in conducting an annual examination of all Improvements required to be maintained by the Association for the purpose maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of such Improvements. The annual examination is required by *Section 7.02* of the Declaration and is a necessary prerequisite to establishing sufficient reserves as required by *Section 4.14* of the Declaration. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute.* See www.caionline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration or current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Improvements required to be maintained by the Association. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

Developing a Plan

In developing a plan, the age and condition of Improvements maintained by the Association must be considered. The possibility that new types of material, equipment, or maintenance processes associated with the repair and/or maintenance of Improvements should also be taken into account. The individual or company who prepares the examination calculates a suggested annual funding amount and, in doing so, may consider such factors as which components are included, estimated replacement costs of the components, useful lives of the components, inflation, and interest on reserve account balances or other earnings rates. Annual contributions to the replacement fund from annual assessments are based on this examination or reserve study. A reserve study generally includes the following:

- Identification and analysis of each major component of Improvements maintained by the Association
- Estimates of the remaining useful lives of the components
- Estimates of the costs of replacements or repairs
- A cash flow projection showing anticipated changes in expenditures and contributions over a time period generally ranging between 20 and 30 years
- The "Funding Goal" which is generally one of the following:
    - Component Full Funding: Attaining, over a period of time, and maintaining, once the initial goal is achieved, a cumulative reserve

account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or

- Threshold Funding: Maintaining the reserve account cash balance above a specified dollar or percent funded amount.

Note that Threshold Funding will increase the likelihood that special assessments will be required to fund major repairs and replacements. For example, one study has shown that a Threshold Funding goal of 40 to 50% results in a 11.2% chance that the Association will be unable to fund repairs and replacement projects in the next funding year. See "Measuring the Adequacy of Reserves", *Common Ground*, July/August 1997. The same study found that Component Full Funding reduces this likelihood to between .09 and 1.4%.

Finding Improvement Component Replacement Information

Improvement component replacement information may be obtained from contractors, suppliers, technical specialists (IT, cable, fiber optics, etc), a "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. As provided in *Section 7.02* of the Declaration, the Board must reevaluate its funding level each year based upon changes to the Improvements as well as changes to replacement costs and component conditions. Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually. Typically, the deferred maintenance account would include such components as painting, staining, and caulking.