

SCANNED

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WILD HORSE VISTAS HOMEOWNERS ASSOCIATION, INC.**



THE STATE OF TEXAS §

COUNTY OF BEXAR §



THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WILD HORSE VISTAS HOMEOWNERS ASSOCIATION, INC.(this "Declaration") is made by Kerby Development LLC, a Texas limited partnership (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the owner of certain property in Bexar County, Texas, known as Wild Horse Vistas Homeowners Association, Inc. , a subdivision of 35.347 acres of land according to the map or plat thereof, filed on April 25, 2006, Volume 9750, Page 4 of the Real Property Records of Bexar County, Texas (the "Property"); and

WHEREAS, Declarant desires to develop the Property as a residential subdivision; and to provide and adopt a uniform plan of development including assessments, conditions, covenants, easements, reservations and restrictions designed to govern, control and preserve the values and amenities of the Property for the development, improvement, sale, use and enjoyment of the Property as residential subdivision; and

WHEREAS, Declarant desires to subject the Property, together with additional land as may hereinafter be made subject hereto, to the assessments, conditions, covenants, reservations and restrictions hereinafter set forth, for the benefit of the Property, additions thereto, and each Owner of any part thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the amenities in said subdivision and enforcement of this Declaration, to create an Association (hereinafter defined) to which shall be delegated and assigned the power of administering and enforcing these assessments, conditions, covenants, easements, reservations and restrictions, including levying, collecting and disbursing the assessments; and

WHEREAS, there has been or will be incorporated Wild Horse Vistas Homeowners Association, Inc., a non-profit corporation created under the laws of the State of Texas, whose directors have established By-Laws by which said Association shall be governed through its Board of Directors, for the purpose of exercising the functions aforesaid and any other duties as set out in the By-Laws and/or other dedicatory instruments.

NOW, THEREFORE, Declarant hereby declares that the Property shall be developed, improved, sold, used and enjoyed in accordance with, and subject to the following plan of development, including the assessments, conditions, covenants, easements, reservations and restrictions hereinafter set forth, all of which are hereby adopted for, and placed upon said Property and shall run with the Property and be binding

on all parties, now and at anytime hereinafter, having or claiming any right, title or interest in the Property or any part thereof, their heirs, executors, administrators, successors or assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired, and shall inure to the benefit of each Owner of any part of the Property.

ARTICLE I.

Definitions

Section 1. Specific Definitions.

"Annual Assessment" shall mean the assessment levied pursuant to Article X, Section 2, hereof,

"Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of **Wild Horse Vistas Homeowners Association, Inc.**, as filed with the Secretary of State of the State of Texas,

"Assessment" shall mean an Annual Assessment, a Special Assessment, or a Reimbursement Assessment.

"Assessments" shall mean the Annual Assessment, the Special Assessment and the Reimbursement Assessment, collectively.

"Association" shall mean and refer to **Wild Horse Vistas Homeowners Association, Inc.**, a Texas non-profit corporation, its successors or assigns.

"Board of Directors" or "Board" shall mean the elected body of the Association having its normal meaning under Texas law pertaining to non-profit corporations.

"Builder" shall mean each Owner who (a) purchases a Lot directly from Declarant; (b) is in the construction business; and (c) has a contractual obligation to build a Dwelling Unit on the Lot owned by such Owner.

"Bylaws or By-Laws" shall mean and refer to the By-Laws of **Wild Horse Vistas Homeowners Association, Inc.**, which may be amended from time to time.

Commercial Unit shall mean and refer to the improvements including without limitation, buildings and parking and exterior site improvements constructed on a Commercial Property.

"Common Area" shall mean all real property and improvements within the Properties, if any, owned, acquired or leased by the Association, dedicated for the common use of the Owners, Declarant and Developer.

"Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of Lot Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and/or the Articles of Incorporation.

"Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties, which may be more specifically determined by the Board of Directors and the Architectural Control Committee.

"Developer" shall mean and refer to Kerby Development, LLC., its successors and assigns.

" Dwelling Unit " shall mean a residential building designed for, and limited and restricted to, occupancy by a single family on a Lot, not including an accessory building or garage. A mobile home is not a Dwelling Unit.

"Improvement to Property" includes, without limitation: (a) the construction, installation or erection of any building, structure, fence, Dwelling Unit or other Improvement, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure, fence, or other Improvements; (c) the grading, excavation, filling, or similar disturbance to the surface of any Lot, including, without limitation, change of grade, change of ground level, change of drainage pattern, or change of stream bed; (d) installation or changes to the landscaping on any Lot; and (e) any exterior modification, expansion, change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture not expressly permitted by this Declaration, Minimum Construction Standards, or Rules and Regulations.

"Improvements" shall mean all structures and any appurtenances thereto of every type or kind, which are visible on a Lot, including, but not limited to: a Dwelling Unit, buildings, outbuildings, swimming pools, spas, hot tubs, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, sidewalks, walkways, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening, walls, retaining walls, stairs, decks, fixtures, windbreaks, basketball goals, flagpoles, or any other type of pole, signs, exterior tanks, exterior air conditioning fixtures and equipment, water softener fixtures, exterior lighting, recreational equipment or facilities, radio, conventional or cable or television antenna or dish, microwave television antenna, and landscaping that is placed on and/or visible from any Lot.

"Lot" shall mean and refer to any plot or tract of land shown upon any recorded map(s) or plat(s) of the Properties, as same may be amended from time to time, which is designated as a lot therein and which is or will be improved with a Dwelling Unit in conformity with the building restrictions set forth herein.

"Maintenance Fund" shall mean any accumulation of the Assessments collected by the Association in accordance with the provisions of this Declaration and any Supplemental Declaration together with interest, attorney's fees, penalties and other sums and revenues collected by the Association pursuant to the provisions of this Declaration and any Supplemental Declaration.

"Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

"Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed affecting a Lot.

"Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

"Mortgagor" shall mean and refer to any Owner who gives a Mortgage.

"Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot, but

excluding in all cases any Mortgagee or other party holding an interest merely as security for the performance of an obligation. For the purpose of exercising all privileges of membership in the Association, privileges of ownership are exclusive to each Owner unless otherwise conveyed to a specific Person in writing, with a copy of such written authority given to the Association.

"Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

"Plans" shall mean the final construction plans and specifications (including a related site plan) of any Dwelling Unit, building or improvement of any kind to be erected, placed, constructed, maintained or altered on any Lot.

"Plat" shall mean the official plat of Wild Horse Vistas Homeowners Association, Inc., as recorded in Volume 9570 Page 4 in Bexar County, Texas on April 25, 2006.

"Property" or **"Properties"** shall mean the real property described on the Plat, together with any improvements thereon or appurtenances thereto. "Property" or "Properties" includes such additional property as is hereafter annexed into the jurisdiction of the Association.

"Reimbursement Assessment" shall mean a charge against a particular Owner and his Lot for the purpose of reimbursing the Association for expenditures and other costs of the Association incurred in curing any violation, directly attributable to the Owner, of this Declaration or the Rules and Regulations, pursuant to Article X, Section 9, hereof.

"Rules and Regulations" shall mean those rules and regulations which may be established from time to time by the Board of Directors pursuant to this Declaration.

"Special Assessment" shall mean a charge against a particular Owner and his Lot representing a portion of the cost to the Association for the purpose of funding major capital repairs, maintenance, and replacement of Improvements, as more particularly described in and imposed by Article X, Section 4, hereof

"Supplemental Declaration" shall mean any amendment or supplement to this Declaration executed by or consented to by Declarant which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

"Two-Thirds Member Vote" shall mean the approval of two-thirds (2/3) of the total number of eligible votes of all Members (regardless of class) entitled to be cast by Members who either (i) are voting in person or by proxy at a meeting duly called for this purpose and at which the necessary quorum exists, or (ii) execute a written consent in lieu of a meeting for such purpose.

"Voting Conversion Date" shall mean the earlier of (a) until the Declarant has sold seventy-five percent (75%) of the platted lots, or (b) the Declarant desires to release such control and authority to the Association as evidenced by a written instrument executed by Declarant and recorded in the Official Public Records of Real Property, Bexar County, Texas.

Section 2. **Other Defined Terms.** Other terms which are defined herein shall have the meanings given in this Declaration.

ARTICLE II.

Easement of Enjoyment

Section 1. Use of Common Area. Each Owner shall have a nonexclusive right and easement of enjoyment to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- a) This Declaration, as it may be amended from time to time;
- b) Any restrictions or limitations contained in any deed conveying such Common Area to the Association;
- c) The right of the Board to limit the number of guests who may use the Common Area, and to adopt other Rules and Regulations regulating the use and enjoyment of the Common Area;
- d) The right of the Board to suspend the right of an Owner to use any recreational facilities within the Common Area (i) for any period during which any Assessment or portion thereof owed by such Owner remains delinquent, and (ii) for a period not to exceed sixty (60) days for a single violation, or for a longer period in the case of any continuing violation, of the Declaration, By-Laws, or Rules and Regulations of the Association;
- e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area;
- f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other fees (which fees shall be separate from Assessments) for the use of any recreational facility situated upon the Common Area;
- g) The right of the Board to permit nonmember use of any recreational facility situated on the Common Area upon payment of user fees established by the Board;
- h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; hereof, and
- i) The right of the Association to grant easements pursuant to Article IV, Section 10 hereof; and
- j) The right of the Association to enter into and execute contracts with any party (including without limitation, Declarant, Developer or their affiliates) for the purpose of providing maintenance or other materials or services consistent with the purposes of the Association and this Declaration.

Section 2. Delegation. Any Owner may delegate his or her right of use and enjoyment of Common Area to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot must provide written notice to the Association conveying such privileges of use to Common Areas.

Section 3. Conveyances to the Association. Declarant may retain the legal title to easements or fee

simple parcels designated as Common Area. Declarant may, at any time after the date hereof, convey legal title to all or a portion of such Common Area to the Association. The Association shall be obligated to accept title to, operate and maintain the Common Area conveyed to the Association as elsewhere provided in this Declaration; provided, however, such parcels shall be conveyed to the Association by the Declarant free and clear of all encumbrances, except such encumbrances as may be set forth herein or on the Plat.

ARTICLE III.

Establishment of General Plan

Section 1. General Plan and Declaration. This Declaration is hereby established pursuant to and in furtherance of a common and general plan for the improvement and sale of Lots within the Properties, and for the purpose of enhancing and protecting the desirability and attractiveness of the Properties. The undersigned Owners, for themselves, their heirs, executors, administrators, legal representatives, successors, and assigns hereby declare that the Properties and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, easements, exceptions, equitable servitudes, and other provisions set forth in this Declaration, for the duration thereof. The Lots and Common Areas in the Properties shall be subject to the jurisdiction of the Association.

Section 2. Equitable Servitudes. The covenants, conditions, restrictions, limitations, reservations, easements, and exceptions of this Declaration hereby are imposed as equitable servitudes upon each Lot, and the Common Areas within the Properties, as a servient estate, for the benefit of each and every other Lot and parcel of Common Area within the Properties, as the dominant estate.

Section 3. Covenants Appurtenant. The covenants, conditions, restrictions, limitations, reservations, easements, exceptions, equitable servitudes, and other provisions set forth in this Declaration shall be binding upon and inure to the benefit of: (a) the Properties; (b) Declarant and its successors and assigns; (c) Developer and its successors and assigns; (d) the Association and its successors and assigns; and (e) all Persons (including Owners) having, or hereafter acquiring, any right, title, or interest in all or any portion of the Properties and their heirs, executors, successors, and assigns.

ARTICLE IV.

Management & Operation of Properties

Section 1. Management by Association.

(a) General. The affairs of the Properties shall be administered and managed by the Association. The Association shall have the right, power and obligation to provide for the management, acquisition, construction, maintenance, repair, replacement, administration, and operation of the Properties as herein provided for and as provided for in the Articles of Incorporation, Bylaws, and the Rules and Regulations. In the event of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control; and in the event of a conflict between the Articles of Incorporation or the Bylaws and the provisions of the Declaration, the provisions of the Declaration shall control. The principal purposes of the Association are the collection, expenditure, and management of the Maintenance Fund, enforcement of the restrictions contained herein and in Supplemental Declarations, ensuring architectural control of the Lots,

and establishing a method for the administration, maintenance, preservation, use and enjoyment of the Properties.

(b) **Additional Powers of the Association.** The Association, acting through the Board, shall be entitled to enter into such contracts and agreements concerning the Properties as the Board deems reasonably necessary or appropriate to maintain and operate the Properties in accordance with the Declaration, including without limitation, the right to enter into agreements with adjoining or nearby land owners or governmental entities on matters of maintenance, trash pick-up, repair, administration, traffic, operation of recreational facilities, or other matters of mutual interest. The Association, acting through its Board of Directors, shall also have the power to make and to enforce Rules and Regulations governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. The Rules and Regulations shall be binding upon all Owners, occupants, invitees and licensees, if any.

(c) **Common Area.** The Association, subject to the rights of Declarant, Developer and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all Improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

(d) **Personal Properties and Real Property for Common Use.** The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by Declarant or Developer pursuant to the terms of this Declaration.

(e) **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration, the By-Laws or by statute, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 2. Board of Directors.

The business and affairs of the Association shall be managed by and the decisions and actions of the Association shall be made or taken by the Board of Directors, unless otherwise reserved to the Members of the Association by law, the terms of the Declaration, Articles of Incorporation, or the Bylaws.

Section 3. Membership And Voting Rights.

Eligibility. Eligibility to vote or serve as a representative, director or officer, after the expiration of the term of the initial Board of Directors, shall be predicated upon a Member being in good standing with the Association. To be in good standing, the Member must have all assessments of every type and category paid up to date and have no outstanding financial obligations to the Association that are delinquent. Additionally, no Member shall be allowed to vote or hold office if that Member is noted of record (or within the records of) the Association to have a deed restriction violation.

Membership. The sole criteria to become a Member of the Association is to hold title to a Lot within the WILD HORSE VISTAS Homeowners Association, Inc. This is not to imply that any holder of a mere security interest (such as a mortgagee, or holder of any other lien against property) would be a Member,

unless that holder of the security interest foreclosed and thereby became the Owner of the Lot(s). Membership is appurtenant to and runs with the land. Membership is not severable as an individual right and cannot be separately conveyed to any party or entity. Multiple owners of any single Lot must vote in agreement (under any method devised among themselves), but in no case shall such multiple Owners cast portions of votes. The vote attributable to any single Lot must be voted in the same manner (i.e. all votes for, or all votes against a particular issue).

All duties and obligations set forth in this Declaration are the responsibility of each Member. No waiver of use of rights of enjoyment created by this Declaration shall relieve Members or their successors or assigns of such duties or obligations. Mandatory membership shall begin with the execution of this Declaration and pass with title to the land (regardless of any method of conveyance) to any subsequent grantee, successor or assignee of Members.

Voting Rights.

Class A Membership: Class A Members shall be all Owners as defined in Section 3 Membership. Each Class "A" Member shall be entitled to one (1) vote for each Lot such Class "A" Member owns. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. After the voting conversion date (as hereinafter defined) the Declarant shall become a Class "A" Member with respect to the Lots it owns.

Class B Membership: Class B Members include the Declarant and such Owners as the Declarant, may, in its sole discretion, confer Class "B" Membership status upon. Each Class B Member's voting rights shall be based on the number of Lots owned, and shall be determined as follows: The Class "B" Member shall be entitled to ten (10) votes for each platted lot.

Section 4. Voting.

Unless otherwise stated herein, in the Articles, in the By-Laws, or required by law, any action which requires the approval of the Members of the Association shall require the approval of a two-thirds vote of the total eligible votes of all Members represented in person or by proxy at any duly called meeting. Any action of the Board shall require the approval of a majority of the total members thereon. Any Owner who is delinquent in the payment of any Assessment shall not be entitled to vote during any period in which any such Assessment is delinquent.

Section 5. Compensation of Board. No person serving on the Board shall be entitled to compensation for services performed; however, (a) any member of the Board maybe reimbursed for his actual expenses incurred in the performance of his duties, and (b) the Board may employ one or more architects, engineers, land planners, management companies, accountants, bookkeepers, collection agencies, attorneys or other consultants to assist the Board in carrying out its duties hereunder, and the Association shall pay such consultants for services rendered to the Board, such payment to be made out of the Assessments.

Section 6. Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and any Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause compliance by each Member and each Member's family,

guests, or tenants. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of the Rules and Regulations of the Association by any one or more of the following means: (a) by entry upon any Lot within the Properties after notice (unless a bona fide emergency exists in which event this right of entry may be exercised without notice [written or oral] to the Owner, but in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use, or enjoyment of the Improvements situated thereon by the Owner or any other Person), without liability by the Association to the Owner, tenant, or guest thereof, for the purpose of enforcement of this Declaration or Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (d) by exclusion, after notice, of any Member or Member's family, guests, or tenants from use of any recreational facilities in the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or Member's family, guests, or tenants, unless the breach is a continuing breach in which case, such exclusion shall continue for so long as such breach continues; (e) by suspension, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or Member's family, guests, or tenants, of this Declaration or such Rules and Regulations unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (f) by levying and collecting, after notice, a Reimbursement Assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or Member's family, guests, or tenants; and (g) by levying and collecting, after notice, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Member's family, guests, or tenants, for breach of this Declaration or such Rules and Regulations by such Member or Member's family, guests, or tenants.

Section 7. Limitation on Liability. The officers of the Association and Board members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Board members may also be Members of the Association). Further, a member of the Board shall not be liable to the Association, any Member, or any other person for any action taken or not taken as a member of the Board if he acts in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the Association. The officers of the Association and the members of the Board shall also be entitled to the benefit of any provision limiting their liability provided by the By-Laws and the Texas Non-Profit Corporation Act.

Section 8. Reimbursement of Declarant or Developer. Recognizing that the Association may have to be subsidized by Declarant or Developer, or both, the Board (whether the Board is the same as Declarant or Developer, its agents, servants, or employees and without being liable for any claim made by any Member of the Association that the Board's fiduciary duty to the other Members of the Association has been breached due to a conflict of interest) may execute promissory notes and/or other instruments evidencing any debt the Association owes the Declarant or Developer for monies expended by the Declarant or Developer or loaned to the Association by Declarant or Developer for and on behalf of the Association; provided, however, such promissory notes shall not be secured by a lien on any of the Common Area conveyed by Declarant or Developer to the Association.

Section 9. Indemnification.

a) **Generally.** Except as provided in Subsection (f) of this Section 9, the Association shall defend and

indemnify every officer, member of the Board and committee member and their respective agents, managers or administrators (each, an "Indemnified Party") against any and all liabilities and expenses, including legal fees, incurred by or imposed upon such Indemnified Party in connection with any action, claim, demand, suit, or other proceeding (each a "Proceeding") to which he or she may be a party by reason of being or having been an officer, Board member, agent or committee member. This indemnification shall also apply to any liability and expense incurred with the settlement of any Proceeding, if such settlement is approved in advance by the then Board of Directors. The Association shall also indemnify and forever hold each Indemnified Party free and harmless against any and all personal liability to others on account of any contract or commitment made by them, in good faith, on behalf of the Association, except to the extent such indemnified Party may also be a Member of the Association.

- b) Continuation. Indemnification under this Section 9 shall continue as to each Indemnified Party who has ceased to serve in the capacity which initially entitled such Indemnified Party to the indemnity hereunder. The rights granted pursuant to this Section 9 shall be deemed contract rights, and no amendment, modification or repeal of this Section 9 shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal.
- c) Advance Payment. The right to indemnification conferred in this Section 9 shall include the right to be paid or reimbursed by the Association the reasonable expenses incurred by an Indemnified Party who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination as to the Indemnified Party's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any Indemnified Party in advance of the final disposition of a Proceeding, shall be made only upon delivery to the Association of a written affirmation by such Indemnified Party of his or her good faith belief that he has met the standard of conduct necessary for indemnification under this Section 9 and a written undertaking, by or on behalf of the Indemnified Party, to repay all amounts so advanced if it shall ultimately be determined that the Indemnified Party is not entitled to be indemnified under this Section 9 or otherwise.
- d) Appearance as a Witness. Notwithstanding any other provision of this Section 9, the Association may pay or reimburse expenses incurred by an Indemnified Party in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.
- e) Non-exclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Section 9 shall not be exclusive of any other right which an Indemnified Party may have or hereafter acquire under any law.
- f) Limitation on Indemnification. No indemnification shall be provided under this Section 9 to any Indemnified Party with respect to any Proceeding in which an Indemnified Party shall be determined not to have acted in good faith with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner which he does not believe to be in the best interests of the Association. However, it is the intent of this Section 9 not to subject an Indemnified Party to standards of any professional background they may have and therefore not subject such Indemnified Party to any professional liability. An Indemnified Party is intended to serve as a volunteer regardless of their professional background.

Section 10. Power to Grant Easements. Developer, while Declarant or Developer owns the Common Area and thereafter the Association, shall have the power to grant access, utility, drainage, water, facility, cable television, and other easements, in, on, over, or under the Common Area.

Section 11. Inspection of Records. The Members shall have the right to inspect the books and records of the Association at reasonable times during normal business hours by appointment.

Section 12. Right of Entry: Enforcement by Self Help. The Association shall have the right, but not the obligation, in addition to and not in limitation of all the rights it may have under this Declaration, to enter upon any unoccupied, vacant or abandoned Lot, including any Improvements located thereon, if deemed reasonably necessary by the Board of Directors of the Association for emergency, health, safety and/or security purposes to make repairs to Improvements, secure the Properties or abate or remove things or conditions which are potentially hazardous or which violate any provisions of this Declaration. Such right maybe exercised by the Association's Board, officers, agents, employees, managers, and all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, the Association shall first attempt to provide reasonable notice to the last known Owner of the Lot. All costs of such efforts, including reasonable attorneys' fees actually incurred, shall be assessed against the Owner of the Lot and shall be collected as provided for herein for the collection of the Assessments.

ARTICLE V.

Maintenance

Section 1. Association's Responsibility.

(a) Generally. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements, including any private streets, situated upon the Common Areas, landscaped medians within public rights-of-way throughout the Properties, landscaping and other flora on any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto), and such portions of any additional property as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association. The Association shall maintain such facilities and equipment in continuous operation, except for reasonable periods as necessary to perform required maintenance or repairs, unless Members holding seventy-five percent (75 %) of all votes agree in writing (subject to the written agreement of the Developer during the Developer Control Period) to discontinue such operation. The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) Maintenance Easements. There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill the Association's maintenance responsibility described in Section I of this Article V.

(c) Maintenance Expenses. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement performed by the Association shall be a Common Expense to be allocated among all Lots as part of the Assessment, notwithstanding that the Association may be entitled to

reimbursement from the owners(s) of certain portions of the Property pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof

(d) **Additional Maintenance Responsibility.** The Association shall also be responsible for maintenance, repair and replacement of any property within the Properties to the extent designated in any Supplemental Declaration affecting the Association. The Association may also assume maintenance responsibilities with respect to any Common Area that may be designated by any Supplemental Declaration. This assumption of responsibility may take place either by agreement or because, in the opinion of the Board, the level and quality of service then are being provided is not consistent with the Community-Wide Standard of the Properties.

Section 2. Owner's Responsibilities.

- (a) **Generally.** Each Owner shall maintain his or her Lot and all structures, parking areas and other improvements on the Lot in a neat, orderly condition. Owners of Lots which are adjacent to any portion of the Common Area on which walls, or fences, other than walls which form part of a building, have been constructed shall maintain and irrigate that portion of the boundary. Owners of Lots adjacent to any roadway within the Properties shall maintain driveways serving their respective Lots, whether or not lying within the Lot boundaries, and shall maintain landscaping on that portion of the Common Area, if any, or right-of-way between the Lot boundary and the back-of-curb of the adjacent street.
- (b) **Standard of Maintenance by Owner.** All maintenance required by this Section 2 shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or pursuant to any Supplemental Declaration affecting such Lot.
- (c) **Enforcement of Owner's Responsibilities.** In addition to any other enforcement rights available to the Association, in the event of violation of any covenant or restriction herein by any Owner or occupant of any Lot and the continuance of such violation after ten (10) days' written notice thereof, or in the event the Owner or occupant has not proceeded with due diligence to complete appropriate repairs and maintenance after such notice, the Association shall have the right (but not obligation), through its agents or employees, to repair, maintain and restore the Lot and/or the exterior of the residence, not limited to include gutters, siding, broken windows, fencing, mowing, etc., and any other existing Improvements located thereon, to the extent necessary to prevent rat infestation, diminish fire hazards, protect property values and accomplish necessary repairs, maintenance and/or restoration. The Association may render a statement of charge to the Owner or occupant of such Lot for the cost of such work. The Owner and occupant agree by the purchase and occupation of the Lot to pay such statement immediately upon receipt. Any and all related costs, including but not limited to legal fees, plus interest thereon at the maximum rate permitted under the laws of the State of Texas, shall become a part of a Reimbursement Assessment payable by said Owner and payment thereof shall be secured by the lien created pursuant to this Declaration. The Association, its agents and employees shall not be liable, and are hereby expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized herein.

ARTICLE VI.

No Partition

Except as is permitted in the Declaration or any Supplemental Declaration, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VII.

Architectural Approval

Section 1. Architectural Control Committee. As used in this Declaration, the term "Architectural Control Committee" shall mean a committee of three (3) members, all of whom shall be appointed by Developer, except as otherwise set forth herein. Developer shall have the continuing right to appoint all three (3) members of the Architectural Control Committee until the earlier of (a) ninety (90) days after the date that Developer or Declarant no longer own WILD HORSE VISTAS Homeowners Association, Inc., or any portion thereof; or (b) such date as Developer elects to discontinue such right of appointment by written notice to the Board of Directors of the Association (the "Developer Control Period") or the date on which Developer has sold and conveyed all of its Lots within the Development and the last Lot sold by Developer has been occupied as a residence. Thereafter, the Board of Directors of the Association shall have the right to appoint three (3) Owners in good standing with the Association. The Board of Directors reserves the right to appoint replacements as necessary by reason of resignation, removal or incapacity. Such removal and/or appointment shall be at the sole discretion of the Board of Directors. The Architectural Control Committee is authorized but not obligated to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys, which need not be a Member of the Association. Members of the Architectural Control Committee may, but need not be, Members of the Association. Members of the Architectural Control Committee appointed by Developer may be removed at any time by the Developer and shall serve until death, resignation or removal by Developer. The initial members of the Architectural Control Committee are representatives of the Declarant. Members of the Architectural Control Committee appointed by the Board of Directors of the Association may be removed at any time by the Board, and shall serve for such term as may be designated by the Board of Directors of the Association or until death, resignation or removal by the Board of Directors of the Association. The Architectural Control Committee may, at its sole discretion, retain and/or delegate review of the plans and specifications to Retained Professionals to review same, who may then render an opinion to the Architectural Control Committee.

Section 2. Approval of Improvements Required. Notwithstanding anything contained in the Declaration to the contrary, the approval of a majority of the members of the Architectural Control Committee (or an agent appointed by the Developer for such purpose) shall be required for the construction of the initial dwelling unit on a Lot ("New Construction") and the approval of a majority of the Board of Directors of the Association (the "Board") (or the approval of any subcommittee appointed by the Board for such purpose) shall be required for any other Improvement to Property on any of the Properties before commencement of construction of such Improvement to Property. After the Developer no longer has the right

to appoint the members of the Architectural Control Committee as set forth herein, the Architectural Control Committee appointed by the Board will then be in charge of approving all Improvements to Property. For purposes of Article VII herein, the Board and the Architectural Control Committee are each sometimes referred to as the "Approval Entity". No approval is required for an Improvement to Property made by Developer.

Section 3. Address of Approval Entity. The address of the Architectural Control Committee shall be the office address of the Developer in Austin, Texas. The address of the Board shall be at the principal office of the Association.

Section 4. Submission of Plans. Before commencement of work to accomplish any proposed Improvement to Property, the Owner proposing to make such Improvement to Property (the "Applicant") shall submit to the proper Approval Entity at its respective office copies of such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Approval Entity reasonably shall request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property, as maybe more particularly described from time-to-time in any minimum construction standards and/or architectural guidelines adopted by the Architectural Control Committee (in the case of New Construction) or the Board (in the case of all Improvements to Property other than New Construction) (the "Architectural Guidelines"). The Approval Entity may require submission of additional plans, specifications, or other information before approving or disapproving the proposed Improvement to Property. Until receipt by the Approval Entity of all required materials in connection with the proposed Improvement to Property, the Approval Entity may postpone review of any materials submitted for approval.

Section 5. Criteria for Approval. The proper Approval Entity shall approve any proposed Improvement to Property only if it determines in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Properties as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Properties, including, without limitation, quality and color of materials and location with respect to topography and finished grade elevation; that the Improvement to Property will comply with the provisions of this Declaration and any applicable plat, ordinance, governmental rule, or regulation; that the Improvement to Property will not detract from the beauty, wholesomeness, and attractiveness of the Property or the enjoyment thereof by Owners; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association. Each Approval Entity is specifically granted the authority to disapprove proposed Improvements because of the unique characteristics or configuration of the Lot on which the proposed Improvement would otherwise be constructed, even though the same or a similar type of Improvement might or would be approved for construction on another Lot. The Approval Entity may condition its approval of any proposed Improvement to Property upon the making of such changes thereto as the Approval Entity may deem appropriate. The Architectural Control Committee shall have the authority hereunder to require any Owner or Builder or Owner's or Builder's Agents or contractors to cease and desist in constructing or altering any Improvements on any Property, where such actions constitute a violation of the Declaration, the Design Guidelines or any other documents promulgated by the Architectural Control Committee. The violating Owner or Builder shall remove such violating improvements or site work, at its sole expense, and without delay, returning same to their original condition or bringing the Lot into compliance with the Declaration, Design Guidelines and any plans and specifications approved by the Architectural Control Committee for construction on that Lot. This Declaration is notice of such liability for violation and Owners in violation hereby agree to bear the cost and expense to cure any violations according to this provision, regardless of how substantial the cost, time or loss or business involved. Written notice

may be delivered to Owner or Builder or the Owner's or Builder's agent or contractor with apparent authority to accept same and notice shall be binding on Owner or Builder as if actually delivered to Owner or Builder. The Architectural Control Committee or its agents or assigns shall have the right, but not the obligation to; enter the Property to determine if a violation of this Declaration, the Design Guidelines, or any Architectural Control documents exists.

Section 6. Architectural & Design Guidelines. Each Approval Entity from time to time may supplement or amend the Architectural Guidelines. The Architectural Guidelines serve as a guideline only and an Approval Entity may impose other requirements in connection with its review of any proposed Improvements. If the Architectural Guidelines impose requirements that are more stringent than the provisions of this Declaration, the provisions of the Architectural Guidelines shall control.

Differing guidelines may be prepared for different circumstance, such as guidelines for new Dwelling Unit construction. The Design Guidelines shall be those of the Association, and the Architectural Control Committee shall have sole and full authority to prepare different guidelines for different phases of the Property and to modify and to amend them from time to time without the consent of any Owner. The Architectural Control Committee shall make the Design Guidelines available to Builders or Owners who seek to engage in development of, or construction upon, all or any portion of the Property and such Builders or Owners shall conduct their operations strictly in accordance therewith. The Design Guidelines may be amended by the Architectural Control Committee without notice, but they shall not be applied retroactively to reverse a prior approval granted by the Architectural Control Committee. The rules, standards and procedures set forth in the Design Guidelines, as may be amended from time to time, shall be binding and enforceable against Builders and Owners in the same manner as any other provision of this Declaration.

Section 7. Landscaping Approval. To preserve the aesthetic appearance of the Property, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented or installed on a Lot by any Owner unless and until the plans therefore have been submitted to and approved in writing by the Architectural Control Committee. The provisions of the Article regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, and so forth shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Weather permitting, each Lot shall be fully landscaped

Section 8. Decision of Approval Entity. The decision of the Approval Entity shall be made within thirty (30) days after receipt by the proper Approval Entity of all materials required by the Approval Entity. The decision for approval shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefore shall be stated except as provided in section 8 hereafter. The decision of the Approval Entity promptly shall be transmitted to the Applicant at the address furnished by the Applicant to the Approval Entity. The Owner, however, is responsible under all circumstances to conform to the provisions of these restrictions in their entirety.

Section 9. Failure of Approval Entity to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed disapproved by the appropriate Approval Entity, unless written approval is transmitted to the Applicant by the Approval Entity, within thirty (30) days after the date of receipt by the appropriate Approval Entity of all required materials.

Section 10. Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in strict conformity with the description of the proposed Improvement to Property in the materials submitted to the Approval Entity. Failure to complete the proposed Improvement to Property within nine (9)

months after the date of approval or such other period of time as shall have been designated in writing by the Approval Entity (unless an extension has been granted by the Approval Entity in writing) or to complete the Improvement to Property in strict conformity with the description and materials furnished to the Approval Entity, shall operate automatically to revoke the approval by the Approval Entity of the proposed Improvement to Property. No Improvement to Property shall be deemed completed until the exterior fascia and trim on the structure have been applied and finished and all construction materials and debris have been cleaned up and removed from the site and all rooms in the dwelling unit, other than attics, have been finished. Removal of materials and debris shall not take in excess of thirty (30) days following completion of the exterior.

Section 11. Inspection of Work. The Approval Entity or its duly authorized representative shall have the right, not the obligation, to inspect any Improvement to Property before or after completion.

Section 12. Notice of Noncompliance. If, as a result of inspections or otherwise, the Approval Entity finds that any Improvement to Property has been constructed or undertaken without obtaining the approval of the Approval Entity or has been completed other than in strict conformity with the description and materials furnished by the Owner to the Approval Entity or has not been completed within the required time period after the date of approval by the Approval Entity, the Approval Entity shall notify the Owner in writing of the noncompliance ("Notice of Noncompliance"). The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance within the period of time set forth therein.

Section 13. Correction of Noncompliance. If the Approval Entity finds that a noncompliance continues to exist after such time within which the Owner was to remedy the noncompliance as set forth in the Notice of Noncompliance, the Association may, at its option but with no obligation to do so, (a) record a Notice of Noncompliance against the Lot on which the noncompliance exists in the Office of the County Clerk of Bexar County, Texas; (b) remove the noncomplying Improvement to Property; and/or (c) otherwise remedy the noncompliance (including, if applicable, completion of the Improvement in question), and, if the Board elects to take any action with respect to such violation, the Owner shall reimburse the Association upon demand for all expenses incurred therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board may levy an assessment for such costs and expenses against the Owner of the Lot in question and such assessment will become a part of the assessment provided for in Article X hereof. The permissive (but not mandatory) right of the Association to remedy or remove any noncompliance (it being understood that no Owner may require the Association to take such action) shall be in addition to all other rights and remedies that the Association may have at law, in equity, under this Declaration, or otherwise.

Section 14. No Implied Waiver or Estoppel. No approval by the Approval Entity shall operate to permit any Owner to construct or maintain any Improvement to the Property that violates any provision of this Declaration or the Architectural Guidelines. The Approval Entity shall at all times retain the right to object to any Improvement to Property that violates any provision of this Declaration or the Architectural Guidelines. No action or failure to act by an Approval Entity shall constitute a waiver or estoppel with respect to future action by the Approval Entity with respect to any Improvement to Property. Specifically, the approval by the Approval Entity of any Improvement to Property shall not be deemed a waiver of any right or an estoppel against withholding approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement to Property by such Person or otherwise.

Section 15. Power to Grant Variances. Each Approval Entity may authorize variances from compliance with any of the provisions of Article VIII of this Declaration (except for the provisions relating to single family residential construction and use), including restrictions upon placement of structures, the time for completion of construction of any Improvement to Property, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, environmental, or other relevant considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Approval Entity. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. Provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of any variance affect the jurisdiction of the Approval Entity other than with respect to the subject matter of the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot concerned.

Section 16. Compensation of Architectural Control Committee. The members of the Architectural Control Committee shall be entitled to reimbursement by the Association for reasonable expenses incurred by them in the performance of their duties hereunder as the Board of Directors from time to time may authorize or approve.

Section 17. Non-liability for Approval Entity Action. None of the members of the Architectural Control Committee, the Association, any member of the Board of Directors, Declarant or Developer shall be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of any Approval Entity except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Approval Entity shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of, the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes, or other governmental laws or regulations. Furthermore, none of the members of the Architectural Control Committee, any member of the Board of Directors, the Declarant or the Developer shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association, or for a tort of another of such individuals, whether such other individuals were acting on behalf of the Association, the Architectural Control Committee, the Board of Directors, or otherwise. Finally, neither Declarant, the Developer, the Association, the Board, the Architectural Control Committee, or their officers, agents, members, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements, or portion thereof, or for failure to repair or maintain the same.

Section 18. Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the Approval Entity may temporarily suspend certain provisions of this Declaration as to the Lot upon which the construction is taking place to the extent necessary to permit such construction; provided, however, that during the course of any such construction, nothing shall be done that will result in a violation of any of the provisions of this Declaration upon completion of construction or that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within the Property.

ARTICLE VIII.

Architectural Restrictions

Section 1. Dwelling Unit Size. Each Dwelling Unit constructed on a Lot shall contain a minimum of 900 square feet of living area (exclusive of porches and garages) and a maximum of 3000 square feet of living area.

Section 2. Height and Character of Dwelling Unit. No Dwelling Unit shall be erected, altered, or permitted to remain on any Lot other than one Dwelling Unit used for single family residential purposes only, not to exceed two (2) stories in height, and a fully enclosed garage as provided in Section 8.

Section 3. Location of Dwelling Unit and Improvements. No Dwelling Unit or Improvement shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded Plat. No Dwelling Unit or Improvement shall be located nearer than five (5) feet to an interior lot line, and ten (10) feet to the rear lot line. However, a garage or other permitted accessory building which is located more than sixty-five (65) feet from the front lot line may be located not less than three (3) feet from any interior lot line. No Dwelling Unit nor any part thereof shall encroach upon any utility easement. For the purpose of this covenant, eaves, steps and open porches shall not be considered a part of the Dwelling Unit; provided, however, this shall not be construed to permit any portion of a Dwelling Unit or Improvement to encroach on any other Lot. For the purpose of these restrictions, the front of each Lot shall coincide with and be the property line having the smallest or shortest dimension abutting a street. Unless otherwise approved by the Architectural Control Committee, each Dwelling Unit will face the front of the Lot, and each detached or attached garage will either face upon the front lot line or face upon a line drawn perpendicular to the front lot line, and shall not be located nearer to the front lot line than the minimum building setback lines shown on the recorded Plat; provided, however, that upon approval of the Architectural Control Committee, any detached garage located more than sixty-five (65) feet from the front lot line shall not be required to face upon said lot line. Driveway access will be provided from the front of the Lot only, except that said access may be provided to corner Lots from a side street.

Section 4. Exterior Walls and Chimneys. Exterior walls may be of masonry, hardiplank, brick, stone, wood or other suitable material approved by the Architectural Control Committee and, unless otherwise approved by the Architectural Control Committee, the surface area of all exterior walls of the residence shall consist of at least fifty percent (50%) brick or stone on first story. No structure of any kind or character that incorporates frame construction on the exterior shall be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is of redwood or cedar material. All chimneys are to be made of brick, masonry, hardiplank or stucco materials.

Section 5. Use of Temporary Structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn, or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that Declarant and Developer reserve the exclusive right to erect, place, and maintain such facilities in or upon any portion of the Property as in their sole discretion may seem necessary or convenient while selling Lots, selling or constructing residences, or constructing other Improvements within the Property. The right to use temporary structures in connection with the construction of Improvements may be assigned from time-to-time, in whole or in part, by Declarant or Developer to Builders. All permitted temporary structures shall be properly maintained at all times.

Section 6. Drainage. No Owner of a Lot shall be permitted to construct Improvements on such Lot or grade such Lot or permit such Lot to remain in or be placed in such condition that surface water on such Lot drains to any other Lot or the Common Area.

Section 7. Driveways. Unless the Architectural Control Committee agrees otherwise, each Lot shall have drive-way access to the street on which the Dwelling Unit constructed thereon faces. Subject to the foregoing limitations, the Owner of each Lot shall construct and maintain at his expense a reinforced concrete driveway from his garage to an abutting street. The Owner shall repair at his expense any damage to the street associated by connection of the driveway thereto.

Section 8. Roofs. Unless otherwise approved, the roof of all buildings on the Lot shall be covered with fiberglass composition shingles with a life of twenty (20) years or better, or comparable to minimum specifications as defined by the Federal Housing Authority. Tile or metal roofing may be used if approved in writing by the Architectural Control Committee. The color of the composition shingles, tile and metal shall be subject to written approval by the Architectural Control Committee prior to installation. Any other type roofing material may be used only if approved in writing prior to installation. Additionally, to further maintain exterior harmony, all chimneys must be finished with materials as permitted by the Architectural Guidelines.

Section 9.. Grass, Shrubbery and Landscaping. Prior to the sale thereof, the Builder or Owner of each Lot with a residence thereon shall: (i) solid sod with grass the area between the Dwelling Unit and the curb line(s) of the abutting street(s); and (ii) sprig with grass all other areas visible from any street and not located between the Dwelling Unit and the curb line(s) of the abutting street(s). All grass, plants, and shrubs shall be maintained by the Owner of the Lot. The grass, plants, shrubs and trees shall be of a type and within standards approved by the Architectural Control Committee. The landscaping requirements of the Architectural Control Committee maybe revised from time-to-time. No landscaping shall be done in the front of any Dwelling Unit in any part of the Properties until the landscape layout and plans shall have been first approved by the Architectural Control Committee. Grass and weeds shall be kept mowed and edged to prevent unsightly appearance. Dead or damaged trees or other shrubbery, which might create a hazard to property or person within the Subdivision shall be promptly removed and repaired. Vacant Lots shall be mowed and maintained in a neat and orderly appearance. In the event any Owner of any Homesite within the Property fails to maintain the landscaping, grass or vegetation of a Homesite in a manner consistent with the overall standard established within the Property and satisfactory to the Board of Directors of the Association, the Association after ten (10) days notice to the Owners of the Homesite setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3rd) vote of the Board of Directors, shall have the right but not the obligation, through its agent, contractors and/or employees to enter upon said Homesite and to maintain, cut, trim and/or restore such landscaping, grass or vegetation at the Owner's expense.

Section 10. Antennas and Dish-Type Devices.

(a) Dish-Type Devices in Excess of One Meter (39 inches). No direct broadcast satellites, multi-channel multipoint distribution type devices, and microwave broadband transmitters and receivers (referred to herein collectively as "Dish-Type Devices") which exceeds one meter (39 inches) in diameter is permitted on any Lot.

(b) Dish-Type Devices of One Meter (39 inches) or Less, Antennas and Related Masts, A Dish-Type Device of one meter (39 inches) or less, television broadcast antennas ("Antennas") and related masts,

are permitted to be placed on a Lot provided any such item complies with all of the below set forth minimum conditions. Further, the Association must receive written notification at its then current address from the Owner of the applicable Lot, on or before the installation of any Dish-Type Device, Antenna or related mast provided for in this Section 11(b). Such notification must include the type and color of the Dish-Type Device, Antenna and any related mast to be installed, and the method, manner, and site of installation. The site must be shown in a plot plan.

If the Owner of a Lot proposes to install a Dish-Type Device, Antenna and any related mast as set forth in this Section 11(b) in any manner whatsoever which does not strictly comply with the below set forth minimum conditions, such Owner must submit an application to the Architectural Control Committee and obtain the written approval of the Architectural Control Committee prior to commencing such installation. In connection with the Architectural Control Committee's decision, the Architectural Control Committee shall consider such factors as it deems appropriate, in its reasonable discretion. The application to the Architectural Control Committee must be made on a form approved by the Architectural Control Committee and contain such information as may be required by the Architectural Control Committee, including a statement which specifically describes the manner in which it is proposed that such Dish-Type Device, Antenna and related mast will vary from such minimum conditions. The Architectural Control Committee shall endeavor to make its decision regarding the proposed Dish-Type Device, Antenna and any related mast on an expedited basis within seven (7) days after receipt by the Architectural Control Committee of the completed application and all information required therein. The granting of a variance from such minimum conditions shall in no way affect the Owner's obligation to comply with all governmental laws and regulations and other regulations affecting the Lot concerned.

(c) **Minimum Conditions.** In addition to the foregoing requirements, no Dish-Type Device, Antenna, or any related mast shall be erected, constructed, placed, or permitted to remain on any Lot unless such installation strictly complies with the following minimum conditions (however, each Minimum Condition shall not apply if it unreasonably delays installation of the applicable Dish-Type Device, Antenna, and any related mast, or unreasonably increases the cost of such items or their installation, or precludes reception of an acceptable quality signal):

- a. The Dish-Type Device, Antenna and any mast must be located to the rear one-half (1/2) of the Lot and must serve only improvements on the particular Lot in which it is located.
- b. To the extent feasible, the Dish-Type Device, Antenna and any mast, including its base and anchoring structure, shall not extend above the roofline of the house located on the Lot and shall not be visible from the frontage street or any adjoining street.
- c. To the extent feasible, no Dish-Type Device, Antenna or mast shall be constructed or placed or permitted to remain on any utility easement or other easement or right-of-way located on any Lot.
- d. The Dish-Type Device, Antenna and any mast must be securely mounted to a base, so as to be able to withstand the effects of high winds or other extraordinary weather conditions; however, no guy wires or similar mounting apparatus will be allowed.
- e. No advertising slogans, logos, banners, signs or any other printing or illustration whatsoever shall be permitted upon or be attached to the Dish-Type Device, Antenna or mast.

- f. No Dish-Type Device or Antenna shall ever be used to send or receive any ham radio signal.
- g. No Dish-Type Device or Antenna shall be permitted to cause any distortion or interference whatsoever with respect to any other electronic device in the Subdivision.
- h. The Dish-Type Device or Antenna and any mast shall be one solid color only, either white or black or shades of either brown, gray or tan.
- i. Any Dish-Type Device, Antenna or related mast installed hereunder shall be installed in a manner that complies with all applicable laws and regulations and manufacturer's instructions.
- j. If any provision of this Section 11 is ruled invalid, the remainder of the provisions in Section 11 shall remain in full force and effect.

Section 11. Private Utility Lines. All electrical, telephone and other utility lines and facilities which are located on a Lot and which are not owned and maintained by a governmental entity or a public utility company shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Architectural Control Committee, and shall be maintained at all times by the Owner of the Lot upon which it is located.

Section 12. Animals. No animals, reptiles, livestock, poultry or birds of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, not to exceed a total of two (2) such animals, provided that they are not kept, bred, maintained for commercial purpose. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. Horses, reptiles, ponies, goats, sheep, hogs, pigs, monkeys, chickens, ducks, peacocks, pigeons and Guinea fowl shall not be deemed as household pets and are expressly prohibited. Pets shall not be permitted to roam free. Dogs shall be securely tethered to an appropriate leash held by a responsible person whenever they are outside a Dwelling Unit or the fenced portion of a Lot not visible from the public street right-of-way directly in front of the Dwelling Unit.

Section 13. Exterior Noise. No external horns, whistles, bells, or other sound devices, except for security systems used exclusively to protect the Dwelling Unit, shall be placed or used on any Lot or Improvements. This paragraph shall not preclude the use of outdoor speakers for hi-fis, stereos, or radios if the sound level is maintained at a reasonably low level with respect to adjoining property.

Section 14. Window Treatment. No window in any Dwelling Unit or other Improvement that is visible from any other Lot or a street may be covered with any aluminum foil or other reflective material. Window coverings must be compatible with the design of the Dwelling Unit and the overall appearance of the Properties and from the exterior must be neutral or white if visible from the street. The Architectural Control Committee shall have the sole authority to determine whether particular window coverings are compatible with the design and color of the Dwelling Unit and the overall appearance of the Properties. Permanent window coverings must be installed within sixty (60) days of occupancy of the Dwelling Unit.

Section 15. Air Conditioners. No window, roof or wall-type air conditioner that is visible from any street shall be used, placed or maintained on or in any garage or other Improvement.

Section 16. Pools. No above-ground swimming pools shall be erected, constructed or installed on any Lot.

Section 17. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain on any corner lot within fifteen (15) feet of the point formed by the intersection of the building set back lines of such Lot.

Section 18. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation is permitted. No exterior sculpture, fountains, flags, birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted unless approved in writing by the Architectural Control Committee in accordance with Article VII of this Declaration. Except for flags on free-standing flagpoles approved by the Architectural Control Committee as set forth herein, flags are not permitted. No such decorative embellishment or similar items shall be permitted on the front portion of any Lot or yard. However, notwithstanding the foregoing, flags mounted on the front of the primary dwelling with a bracket shall be allowed for one (1) week before a nationally recognized holiday and one (1) week after such holiday only.

Section 19. Playground and Decks. No decks, wooden or otherwise, jungle gyms, swing sets or similar playground equipment shall be erected or installed on any Lot without prior written approval of the Architectural Control Committee in accordance with Article VII hereof. These items shall be positioned on the Lot so as not to be visible from any street and jungle gyms, swing sets or similar playground equipment must not exceed twenty feet (20') in height. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof. Decks, jungle gyms, swing sets or similar playground equipment must be placed on the rear of the Lot no closer to the side and rear lot lines than ten feet (10').

Section 20. Walls, Fences and Hedges. No hedge in excess of three feet (3') in height shall be erected or maintained nearer to the front Lot line than the building set-back line adjacent to the walls of the dwelling existing on such Lot. No side or rear fence or wall shall be more than six feet six inches (6'6") or less than six feet (6') in height. All fences and walls shall be of cedar construction or as approved by the Architectural Control Committee. Unless approved by the Architectural Control Committee, no chain link, chicken wire, or other open fencing on a Lot if it is visible from the street along the front or side of any Dwelling Unit. No fence or wall shall be erected on any Lot nearer to the Street than the building setback lines as shown on the Plat. The Architectural Control Committee has the right to deviate its approval for the style and materials to be used based on the location within the Properties. It is the intent to maintain visual continuity especially along entryways and/or main thoroughfares and/or the perimeter of the Properties and/or adjacent to Common Area properties and therefore, the Board, in its sole discretion may elect to maintain, repair and replace such fencing as a Common Expense and using the monies from the Maintenance Fund. Title to any wall, fence, or hedge shall pass ownership with title to the Lot and it shall be the Owner's responsibility to maintain said wall, fence or hedge thereafter in the manner prescribed by the Association. The foregoing restrictions shall not be applicable to the construction or erection of any fence, wall or hedge on any Lot or the Common Property by Declarant.

Section 21. Development Activity. Notwithstanding any other provision herein, Declarant and its successors and assigns shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sales of Lots within the Property and a Dwelling Unit on each Lot.

Section 22. Signs and Picketing. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling Unit, fence or other improvement upon such Lot so as to be visible from public view except the following which shall be subject to the rules and regulations enacted by the Board;

- (a) **For Sale/For Lease Signs.** An Owner may erect one (1) sign on the Owner's Lot, not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of such Lot advertising the property for sale.
- (b) **Declarant's Signs.** Declarant may erect and maintain such signs as Declarant, in Declarant's sole discretion, deems desirable for or concerning the Subdivision or the Properties or the construction, development, operation, promotion, leasing and sale of the Lots.
- (c) **Builders' Signs.** Any Dwelling Unit builder may utilize one professional sign (of not more than five (5) square feet in size) per Lot for advertising and sales promotion of such Dwelling Unit.
- (d) **Model Home Sign.** The one allowable yard sign will be a maximum of twelve (12) square feet in area on a standard lot and twenty-four (24) square feet in area on a corner lot. This sign will be allowed for a period of time commensurate with the homes model or sales program only. Additionally, builders will be allowed only one (1) builder sign per model park. Model homes are allowed one (1) model name sign, each which includes only the model's name. These model identification signs may not exceed three (3) square feet in surface area.
- (e) **Political Signs.** Political signs (of not more than three (3) square feet in size) may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than thirty (30) days in advance of the election to which they pertain and shall be removed within two (2) days after such election.
- (f) **School Spirit Signs.** Signs containing information about one or more children residing in the Dwelling Unit and the school they attend shall be permitted so long as the sign is not more than 36" x 36". There shall be no more than one sign for each child under the age of eighteen (18), residing in the Dwelling Unit.
- (g) **Security Signs/Stickers.** Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the Dwelling Unit shall be permitted so long as the sign is of more than 12" x 12" or the sticker is no more than 4" x 4". There shall be no more than one sign or sticker on no more than ten percent (10%) of the windows and one on a front door.

Section 23. Exterior Paint. The exterior surfaces of buildings, fences or walls located in the Properties shall not be painted or stained unless the Architectural Control Committee gives its prior written approval of the color of paint or stain to be used; such approval is not required when painting with the existing color. The purpose of this covenant is to maintain harmony of the exterior paint colors of the buildings throughout the

Properties. Iridescent colors or tones considered to be brilliant are not permitted. Accordingly, the Architectural Control Committee shall not be obligated to approve any color of exterior paint that is different from the original paint applied to the exterior of the buildings. Any perimeter fence or wall shall be maintained in its natural state. All painted improvements and other painted surfaces on each Lot shall be repainted by the Owner thereof at the Owner's sole cost and expense as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Lot or dwelling unit.

Section 24. Solar Collections. No solar collectors shall be installed without the prior written approval of the Architectural Control Committee. Such installation shall be in harmony with the design of the Dwelling Unit. Solar Collectors shall be installed in a location that is not visible from the street in front of or to the side of any Dwelling Unit.

Section 25. Clotheslines. Clotheslines are prohibited on any Lot. No clotheslines shall be erected or installed and no clothing, linens or other material shall be aired or dried so as to be visible from the Common Property or any street.

Section 26. Trash Receptacles and Collection. All trash receptacles shall be screened by fences or shrubbery so as not to be generally visible by the public or from the Common Property, or any street, unless otherwise approved in writing by the Architectural Control Committee. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the applicable governmental authority and/or the Association, in connection with the storage and removal of trash and garbage. All Lots shall at all times be kept in a healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly-fitting lids, and which shall be maintained in a clean and sanitary condition. No lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonably delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot. No garbage, trash, debris or other waste matter of any kind shall be burned on any Lot. No woodpiles, yard equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Dwelling Units, streets, the Lake system and the Common Property. All rubbish, trash and garbage shall regularly be removed from the Property and shall not be allowed to accumulate thereon.

Section 27. Truck Weight Limits. Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways or on any Lot.

Section 28. Athletic Facilities. Basketball goals or backboards, or any other similar sporting equipment of either a permanent or temporary nature shall not be placed closer to the front property line of any Lot than as specified in the Design Guidelines.

Section 29. Lighting. Except for traditional holiday decorative lights, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved by the Architectural Control Committee.

ARTICLE IX.

Use Restrictions

Section 1. **General**. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by Declarant or the Association). Any Supplemental Declaration imposed on the Properties may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

Section 2. **Single Family Residential Use**. Each Owner shall use his Lot and the Dwelling Unit on his Lot, if any, for single family residential purposes only. As used herein, the term "single family residential purposes" shall be deemed to specifically prohibit, by way of illustration but without limitation, the use of any Lot for a duplex apartment, a garage apartment or any other apartment or for any multifamily use or for any business, educational, church, professional or other commercial activity of any type, except that an Owner may use his residence as a personal office for a profession or occupation, provided: (a) the public is not invited, permitted, or allowed to enter the Dwelling Unit or any structure or Improvement upon such Lot and conduct business therein; (b) no signs advertising such profession or business are permitted; (c) no on-site employees are permitted; (d) no offensive activity or condition, noise, odor, or traffic (vehicular or pedestrian) is generated and; (e) such use in all respects complies with the laws of the State of Texas, any applicable ordinances, and the laws, rules, and regulations of any regulatory body or governmental agency having authority and jurisdiction over such matters. No Dwelling Unit shall be occupied by more than a single family. For purposes of these restrictions, a single family shall be defined as: (a) one or more persons related by blood, marriage, or adoption, which may include only parents, their children (including foster children and wards), their dependent brothers and sisters, their dependent parents, their dependent grandparents, and domestic servants; or (b) no more than two unrelated persons living together as a single housekeeping unit and their children (including foster children and wards), their dependent brothers or sisters, their dependent parents, their dependent grandparents, and their domestic servants. A person shall be deemed to be a dependent hereunder only if they are considered to be a dependent by the Internal Revenue Service, such that the person supporting the dependent person properly qualifies for an exemption with regard to federal income taxes, as a result of furnishing such support. It is not the intent of this Declaration to exclude from a Dwelling Unit any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision in this Declaration, is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

Section 3. **Occupants Bound**. All provisions of the Declaration, By-Laws and of any Rules and Regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the Rules and Regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and Rules and Regulations adopted pursuant thereto.

Section 4. **Quiet Enjoyment**. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any structure, thing, or material be kept upon any portion of the Properties

that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on any Lot. The use and discharge of firecrackers and other fireworks is prohibited within the Properties. No musical group may perform or play and no outside instruments may be played without the prior written approval of the Architectural Control Committee.

Section 5. Business Use. No garage sales, moving sales, rummage sales or similar activity (provided, however, an Owner of a Lot may have one total of the following types of sales): (i) garage, moving, (iii) rummage, of no more than one (1) full weekend during each one (1) year period of ownership) and no trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Property; (e) and does not constitute a nuisance or a hazardous or offensive use, or threatens peaceful enjoyment, the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The Board is authorized to promulgate rules and regulations to insure that home businesses comply with the above standards and to make factual determinations regarding the impact of a home business on the residential character of the Properties, if, in the judgment of the Board, a home business has a detrimental impact on the residential quality of the Properties or otherwise constitutes a nuisance, it is authorized to require that the Owner cease the home business or alter it to the Board's satisfaction.

Section 6. Definition of "Business" and "Trade". The terms "business" and "trade", as used herein, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or a license is required therefore. Notwithstanding the above, the leasing of a Lot pursuant to Section 8 of this Article IX shall not be considered a trade or business within the meaning of this Section. The definition of "business" and "trade" shall not apply to any activity conducted by Declarant or Developer or conducted by a Builder with the approval of Developer with respect to its development and sale of any and all Lots or its use of any Dwelling Units which it owns within the Property, including the operation of a timeshare or similar program.

Section 7. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be

permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours.

Section 8. Leasing of Lots.

(a) Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner for which the Owner received any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

(b) Leasing Provisions. Lots may only be leased for single family residential purposes as defined in this Declaration. No Owner shall be permitted to lease his Lot for hotel or transient purposes, which for purposes of this Section is defined as a period of less than thirty (30) days. No Owner shall be permitted to lease less than the entire Lot. Every such lease shall be in writing. Every such lease shall provide that the tenant shall be bound by and subject to all of the obligations of the Owner under this Declaration. The Owner making such lease shall not be relieved from any of such obligations. Upon the execution of a lease agreement, the Owner shall notify the Association in writing of the Owner's designated address and the name of Owner's lessee. No lessee shall be entitled to use the recreational facilities or Common Area of the Association until the information specified in this Section is provided to the Association in writing and the Owner further notifies the Association in writing that the Lessee has been granted the authority to use the recreational facilities and Common Area of the Association by such Owner. The use of the Common Areas and/or recreational facilities is limited to the benefit of one (1) family per residence and the granting of such rights to a tenant excludes the right of the Owner during such period.

Section 9. Compliance with Declaration, By-Laws and Rules and Regulations. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the Rules and Regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and maybe sanctioned for any violation of the Declaration, By-Laws, and Rules and Regulations adopted pursuant thereto.

Section 10. Laws and Ordinances. Every Owner and occupant of any Lot, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 11. Subdivision of Lots. Declarant hereby expressly reserves the right to replat any Lot or Lots owned by Declarant in accordance with all applicable subdivision and zoning regulations.

Section 12. Parking and Prohibited Vehicles.

- (a) No motor vehicles or non-motorized vehicle, boat, trailer, marine craft, recreational vehicle, camper rig off of truck, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement or right-of-way, unless such vehicle or object is completely concealed from public view inside a garage or enclosure approved by the ACC. Passenger automobiles, passenger vans, motorcycles, or pick-up trucks that are (a) are in operating condition; (b) as qualified by current vehicle registration and inspection stickers; (c) are in daily

use as motor vehicles on the streets and highways of the State of Texas; (d) do not exceed six feet nine inches (6'9") in height, or eight feet (8') in width and (e) have no commercial advertising located thereon, may be parked in the driveway on a Lot, however, no vehicle shall be parked so as to obstruct or block a sidewalk or be parked on a grassy area. The restriction concerning commercial advertising shall not apply to any vehicles, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity. Overnight parking of any vehicles in the street is prohibited. Owners of occupants of Lots may seek a temporary variance from this restriction for their guests; however, any such request for a variance must receive the prior written approval of the Board.

- (b) No more than three (3) vehicles (passenger cars or non-commercial trucks or vans consistent with the residential use of a Homesite) may be parked on the driveway of a Homesite at any time. Such vehicles to be parked on a Homesite must meet the restrictions of this Declaration and at all times be operable, unless otherwise completely concealed in an enclosed garage, have current license tags, state inspection stickers, and comply with current mandatory insurance under the laws of the State of Texas. Any vehicle not in daily use as a motor vehicle on the streets and highways of the State of Texas and not in compliance with the foregoing shall be considered stored on the property and such storage is strictly prohibited unless same is completely concealed in an enclosed garage. All vehicles parked within the Wild Horse Vistas Homeowners Association, Inc. shall also be maintained in a manner such that the appearance of the vehicles do not detract from the marketability and appearance of Wild Horse Vistas Homeowners Association, Inc. No vehicle that cannot physically fit within the designed garage of the Dwelling with the door closed will be construed as a vehicle incident to residential use of a Homesite. Additional rules and regulations for the use and parking on private and/or public streets may be promulgated by the Association.
- (c) Recreational vehicles such as mobile homes, campers and boats are not considered vehicles incident to the residential use of a Homesite and therefore are not permitted to be stored on Homesites for any period of time. A recreational vehicle with not more than two (2) axles may be parked in front of or on the Homesite for up to forty-eight (48) hours for loading and unloading only.
- (d) Parking of any vehicle other than in a driveway or within an enclosed garage of a Homesite or other paved area provided for parking is expressly prohibited.

Section 13. Commercial or Institutional Use. No Lot, and no building erected or maintained on any Lot, shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes.

Section 14. Mailboxes. Mailboxes, house numbers and similar matter used in the Property must be harmonious with the overall character and aesthetics of the community. This provision with respect to mailboxes shall not apply when cluster box units are required by the United States Postal Service.

Section 15. Detached Buildings. No detached accessory buildings, except for detached garages, shall be erected, placed or constructed upon any Lot without the prior written consent of the Architectural Control Committee. The Architectural Control Committee shall have the right without the obligation to promulgate rules, regulations and guidelines regarding the size, quality, location and type of these structures.

Section 16. No Hazardous Activities. No activity shall be conducted on and no Improvements shall be constructed on any property within the Properties that is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior or exterior fireplace.

Section 17. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Properties except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools of equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 18. Removal of Trash and Debris During Construction. During the construction, repair, and restoration of Improvements, Declarant or each Builder shall remove and haul from the Lot all tree stumps, tree limbs, branches, underbrush, and all other trash or rubbish cleared from the Lot to permit construction of the Improvements, including landscaping. No burning of trash or other debris is permitted on any Lot, and no materials or trash hauled away from any Lot may be placed elsewhere within the Properties, unless approved in writing by the Architectural Control Committee. Additionally, Declarant or each Owner or Builder, during construction of the Improvements, shall continuously keep the Lot in a reasonably clean and organized condition. Papers, rubbish, trash, scrap, and unusable building materials are to be kept, picked up, and hauled from the Lot on a regular basis. Other useable building materials are to be kept stacked and organized in a reasonable manner. No trash, materials, or dirt shall be placed in the street. Any such trash, materials, or dirt inadvertently spilling or getting into the street or street gutter shall be removed, without delay.

Section 19. Excavation and Tree Removal. The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as maybe necessary in conjunction with the landscaping of or construction on such Lot. No trees shall be cut or removed except to provide room for construction of Improvements or to remove dead or unsightly trees; provided, however, that removal of any tree in excess of a four inch (4") caliper requires the approval of the Architectural Control Committee and the replacement, one for one, of such tree with a tree of equal or greater caliper. Any void, depression or hole created by the removal of dirt or a tree must be filled in accordance with the requirements of the Architectural Control Committee.

Section 20. Damage or Destruction of Improvements. Owners are bound and obligated through the purchase of a Lot to maintain the Lot and all Improvements thereon in a neat and habitable manner. In the event of damage to any Improvement, the Owner shall have the shorter of the period permitted by applicable laws or sixty (60) days to begin repairing or demolishing the destroyed or damaged portion, and, once timely commenced, such repairs or demolition must be pursued diligently to completion. If, however, damage to the Improvements is not covered by insurance, or if the Owner's claim is not approved by the Owner's insurance company, or if the Owner decides not to restore the Improvements at such time, then the Owner may apply for a "hardship" extension to the operation of this restriction to be submitted to the Board within sixty (60) days from the date of such destruction or damage. The Board shall rule on the Owner's application for a "hardship" extension within thirty (30) days from the date of submission. In no event shall the granting of a "hardship" extension in a particular case be deemed a waiver of the right to enforce this restriction thereafter. If a hardship extension is granted, the Owner thereafter immediately shall cause the damaged or destroyed Improvement to be demolished and the Lot to be suitably landscaped, subject to the approval of the Architectural Control Committee, so as to present a pleasing and attractive appearance. Such Lot will be properly mowed, cleaned and maintained after the removal of such Improvement.

Section 21. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall any walls, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 22. Treatment Facilities. No Lot shall be used for the operation of a boarding or rooming house, a residence for transients, a "group home", "family home", "community home", "half-way house", day-care center, rehabilitation center, treatment facility, or residence of unrelated individuals who are engaging in, undertaking, or participating in any group living, rehabilitation, treatment, therapy, or training with respect to previous or continuing criminal activities or convictions, alleged criminal activities, alcohol or drug dependency, physical or mental handicap, or illness, or other similar matters, unless otherwise allowed by the terms of any law specifically negating the provisions of restrictive covenants prohibiting same.

ARTICLE X.

Covenants for Assessments

Section 1. Creation of the Lien and Personal Obligation for Assessments. The undersigned Owners hereby covenant and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all sums assessed against any property subject to this Declaration pursuant to this Declaration, together with interest, collection costs, other costs and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on the property owned by each Owner in favor of the Association. All sums assessed against any property together with interest, collection costs, other costs and reasonable attorney's fees, shall be a charge on the Lot and shall be secured by a continuing lien upon the Lot against which each such assessment is made. Each such assessment and other charges, together with interest, collection costs, other costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time when the assessments fell due and shall not be affected by any change in the ownership thereof. All persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the real property records of Bexar County, Texas shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for Assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 2. Purpose of Assessment. The assessments provided for in this Declaration shall be used by the Association to maintain and keep in good repair the Common Property and for the general purposes of promoting the common benefit of the Owners and Occupants in the Properties. The judgment of the Board of Directors as to the expenditure of Assessments shall be final and conclusive so long as its judgment is exercised in good faith. Funds obtained by the Association from Assessments may be used to finance all or any of the following:

- (a) Operation, mowing, maintenance, repair and improvement of the Common Property, including road right-of-ways, drainage and detention areas.
- (b) Payment of taxes and premiums for insurance coverage in connection with the Common Property and for directors and officers liability insurance;
- (c) Paying the cost of labor, equipment (including expense of leasing any equipment),

material and any associated management or supervisory services and fees;

- (d) Paying the cost and fees of a manager or firm retained to carry out the duties of the Association or to manage the affairs and property of the Association;
- (e) Maintaining or replacing landscaping in the Common Property;
- (f) Designing, purchasing and installing any improvements to the Common Property;
- (g) Removing debris from the Common Property;
- (h) Payment of legal fees and expenses incurred to collect assessments and enforce this Declaration;
- (i) Employing entry personnel and watchmen;
- (j) Contracting for insect and pest control such as mosquito fogging;
- (k) Carrying out the duties of the Board of Directors of the Association;
- (l) Creation and funding of such reserve funds as the Board of Directors of the Association deems necessary; and,
- (m) Carrying out such purposes of the Association as generally benefit the Members of the Association, as determined by the Board of Directors.

Annual Assessments.

(a) Generally. Each Lot in the Properties is hereby subjected to an annual assessment (the "Annual Assessment"). The Annual Assessment will be paid by the Owner or Owners of each Lot within the Properties to the Association in advance on or before January 1 of each year. The rate at which each Lot will be assessed will be determined annually and may be adjusted from year to year by the Association, as hereinafter provided, or as the needs for the Properties may, in the judgment of the Association, require. The Annual Assessment shall be assessed on a per Lot basis, except as hereinafter provided for Declarant, Developer and any Builder to whom Declarant or Developer sells a Lot.

(b) Uses. The Association may use the Maintenance Fund for any purpose provided by this Declaration, including by way of clarification and not limitation, at its sole option, any or all of the following: constructing and maintaining paths, parks, landscape reserves, parkways, easements, esplanades, fences, cul-de-sac and street medians, recreational facilities, including tennis courts, play courts, and other-common areas, payment of all legal and other expenses incurred in connection with the enforcement of all charges, Assessments, covenants, restrictions and conditions affecting the Properties, payment of all reasonable and necessary expenses in connection with the collection and administration of the Assessments, employing instructors and operators, caring for vacant Lots, garbage collection, and doing other things necessary or desirable, in the opinion of the Board of Directors to keep the Properties neat and in good order or which is considered of general benefit to the Owners or occupants of the Properties. It is understood that the judgment of the Board of Directors in the expenditure of the Maintenance Fund shall be final and conclusive so long as

said judgment is exercised in good faith. Nothing herein shall constitute a representation or obligation that any of the above will, in fact, be provided by the Association.

(c) **Rendition and Notice.** Annual Assessments shall be payable in advance on or before January 1 of each year. The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum, and shall fix the amount of the Annual Assessment against each Lot by December 1 preceding the Annual Assessment period. The Annual Assessment period shall begin on January 1 of each year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto at the address of each Lot or at such other address provided to the Association in writing. Annual Assessments shall be considered delinquent if not received by January 31st of the year for which the Annual Assessment pertains.

(d) **Treatment of Lots Owned by Declarant, Developer or Builder.** Lots owned by the Builders shall be assessed at fifty (50%) percent of the amount assessed against Lots owned by other Owners other than Declarant. Lots owned by Declarant shall be assessed at fifty (50%) percent of the amount assessed against Lots owned by other Owners other than Builders unless Declarant elects to pay as herein provided. Subject to the further provisions hereof, Declarant, on behalf of itself and its successors and assigns to whom its rights as Declarant are expressly assigned, covenants and agrees to pay Assessments as provided herein for the assessable Lots that it owns (Declarant Lots). However, the Declarant may annually elect to pay assessments on Declarant Lots as herein provided or to pay the Association the difference between the amount of the assessments collected on all other Lots subject to assessment and the amount of the actual expenditures incurred to operate the Association during such calendar year (the subsidy). The payment by Declarant of a subsidy in any year in lieu of assessments shall under no circumstances obligate the Declarant to pay a subsidy in a future year or years even if the subsidy is less than the assessment that would otherwise have been payable by the Declarant. The subsidy may be paid by the Declarant in increments throughout the year as funds are needed by the Association. During any period that the Declarant is comprised of one (1) person, the Declarant's option to pay a subsidy in lieu of assessments shall be contingent upon such Persons reaching an agreement among themselves as to the portion of the subsidy to be paid by each of them. In the event an agreement is reached and any such Person fails to pay its agreed share of the subsidy, it shall be obligated to pay assessments on Declarant Lots as if no subsidy election has been made.

The Declarant may also elect to make loans to the Association. In the event of a loan, the loan and interest thereon at the prime rate of interest announced from time to time Community Association Bank, N.A. or another bank designated by the Board at the time the loan is made plus 1% per annum, shall be payable by the Association to the Declarant from future annual assessments collected by the Association. All loans, if any, shall be evidenced by promissory notes executed by the Association.

Section 3. Maximum Annual Assessments.

(a) **Without Vote of Members.** The maximum Annual Assessment for calendar year 2006 shall be in the amount of \$215.00. Beginning with Annual Assessment for calendar year 2006 the maximum Annual Assessment may be increased once a year by the Board of Directors of the Association, at its sole discretion, by an amount equal to a twenty percent (20%) increase over the residential assessment for the previous year.

(b) **With Vote of Members.** The Annual Assessment may be increased above that allowed by Section 3(a) of this Article X, if, and only if, the increase is approved by the affirmative vote of the majority Member Vote or Members who are present in person or by proxy at a meeting of the Members called for such purposes. The Board shall in good faith attempt to cause notice of the Assessments to be levied against each Owner for the following year to be delivered to each Member at least thirty (30) days prior to the end of the

current year.

Section 4. Special Assessments. In addition to the other Assessments authorized herein the Board may levy one or more special assessments in any year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located upon the Common Property, including fixtures and personal property related thereto; provided, however, any such special assessment must have the written consent of the Declarant during the Class B Control Period and a per Lot special assessment in an amount greater than twenty percent (20%) of the residential assessment per Lot for such year, must be approved by a Majority Member Vote of Members who are present in person or by proxy at a meeting of the Members called for such purposes.

The Board may also levy one or more special assessments in any fiscal year for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, or repair or replacement of a capital improvement located upon Exclusive Common Property, including fixtures and personal property related thereto; provided, however, that any such special assessment shall have the affirmative vote or written consent of the Owners of a majority of the Lots in the Neighborhood or Neighborhoods entitled to exclusive use of such Exclusive Common Property.

If a special assessment is approved as herein required and levied, it shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. Special assessments shall be allocated among all Owners in the same manner as Residential Assessments unless the purpose of the special assessment is to provide funds to be used for Exclusive Common Property facilities, in which event the special assessment shall be allocated solely among the Owners of the Property in the Neighborhood or Neighborhoods entitled to use the applicable Exclusive Common Property in the same manner as a Neighborhood Assessment.

Section 5. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

- (i) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and
- (ii) to cover costs incurred in bringing a Lot into compliance with this Declaration or the Design Guidelines, or costs incurred as a consequence of the conduct of the Owner or Occupants of a Lot, their agents, contractors, employees, licensees, invitees or guests.

Section 6. Capitalization Fee. Upon the sale of a Lot from builder to owner, the purchaser of such Lot shall be obligated to pay to the Association a fee equal to two months of the then current Annual Assessment amount per Lot, as a capitalization fee (herein "Capitalization Fee"), regardless of the size or projected usage of such Lot at the time of sale. Such funds from the Capitalization Fee collected at each sale shall initially be used to defray operating costs and other expenses of the Association, as the Developer (and later the Association) shall determine in its sole discretion. Such Capitalization Fee shall be non-refundable and shall not be considered an advance payment of any Assessments levied by the Association pursuant to the Declaration. Such Capitalization Fee will be billed to the Owner directly at the time of purchase of the Lot. If any Lot is subdivided and/or platted into multiple Lots, then the multiple Lots will thereafter be subject to the Capitalization Fee at the time of each sale of each of the multiple Lots. This Capitalization Fee shall be deemed an Assessment for collection purposes, if necessary.

Section 7. Notice and Quorum of any Action Authorized. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case maybe, shall apply to determine the time required for and proper form of notice of any meeting for the purposes set forth in Section 3(b) or Section 4, as applicable, of this Article X, and to ascertain the presence of a quorum at such meeting.

Section 8. Reimbursement Assessments. The Board of Directors, subject to the provisions hereof, with approval of the Declarant, may levy a Reimbursement Assessment against any Member if the failure of the Member or the Member's family, guests, or tenants to comply with this Declaration, the Articles of Incorporation, the Bylaws, Minimum Construction Standards, or the Rules and Regulations shall have resulted in the expenditure of funds or the determination that funds will be expended by the Association to cause such compliance. The amount of the Reimbursement Assessment shall be due and payable to the Association ten (10) days after notice to the Member of the decision of the Board of Directors that the Reimbursement Assessment is owing.

Section 9. Estoppel/Resale Certificates. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association or its agent setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 10. Attribution of Payments. If any Owner's Assessment payment is less than the amount assessed and the payment does not specify whether it should be applied against a Annual Assessment, Special Assessment, or Reimbursement Assessment, the payment received by the Association from the Owner shall be credited in the following order of priority: (a) Reimbursement Assessment until the Reimbursement Assessment has been satisfied; (b) Special Assessment until the Special Assessment has been satisfied; and (c) Annual Assessment until the Annual Assessment has been satisfied. In each of the foregoing cases, payments received shall be credited first to interest, attorney's fees, and other costs of collection, and then to Assessment reduction, satisfying the oldest obligations first, followed by more current obligations, in accordance with the foregoing order of priority.

Section 11. Effect of Nonpayment of Assessments. Any of the Assessments which are not paid within thirty (30) days after the due date shall be delinquent and shall be subject to the following:

(a) interest at the rate of eighteen percent (18%) per annum from the due date or the maximum rate of interest allowed by law, if less than eighteen percent (18%), and all casts of collection, including reasonable attorney's fees;

(b) a monthly late fee of \$15.00 per month;

(c) all rights of the Owner as a Member of the Association (but not such Owner's responsibilities as a Member of the Association), including usage of the Common Area, shall be automatically suspended until all Assessments and related costs are paid in full, and during such suspension, such Owner shall not be entitled to vote upon any matters on which Members are entitled to vote;

(d) an action at law against the Owner personally obligated to pay the same, and/or foreclose on the lien herein retained against the Lot. Interest, costs of court, and reasonable attorneys' fees (when placed with an attorney for collection, whether with or without suit) incurred in any such action shall be added to the amount of such Assessment or charge; and

- (e) a late charge in an amount as may be determined by the Board of Directors from time to time.

Section 12. Contractual Lien.

- a) **Generally.** Assessments (together with interest and reasonable attorney's fees if it becomes necessary for the Association to enforce collection of any amount in respect of any Lot) shall be a charge on each Lot and shall be secured by a continuing lien upon each Lot against which such assessment is made until paid.
- b) **Notice of Lien.** Additional notice of the lien created by this Section maybe effected by recording in the Office of the County Clerk of Bexar County, Texas, an affidavit, duly executed, sworn to and acknowledged by an officer of the Association, setting forth the amount owed, the name of the Owner or Owners of the affected Lot, according to the books and records of the Association, and the legal description of such Lot.
- c) **Creation of Lien.** Each Owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association a lien for the purpose of securing payment of Assessments upon such Lot. The Association, acting by and through the Board of Directors may, but shall not be obligated to, prepare and record in the Real Property Records of Bexar County, Texas, a notice of such lien which will constitute further evidence of the lien for Assessments against a Lot. In addition to and in connection therewith, by acceptance of the deed to his Lot, each Owner expressly GRANTS, BARGAINS, SELLS and CONVEYS to the President and/or Vice President or agent of the Association from time to time serving, as Trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the Assessments levied hereunder, and other sums due hereunder remaining unpaid hereunder from time to time. The Trustee herein designated may be changed for any reason and at any time and from time to time by execution of an instrument in writing signed by the President or a Vice-President of the Association and attested to by the Secretary or an Assistant Secretary of the Association and filed in the Office of the County Clerk of Bexar County, Texas.
- d) **Enforcement of Lien.** The Association shall have the right to enforce the aforesaid lien by all methods available for the enforcement of such liens, both judicially and by nonjudicial foreclosure pursuant to Section 51.002 of the Texas Property Code (as may be amended or revised from time to time hereafter). In the event of the election by the Board of Directors of the Association to foreclose the lien herein provided for non-payment of sums secured by such lien, then it shall be the duty of the Trustee, or his successor, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such request Lot, and all rights appurtenant thereto in accordance with Section 51.002 of the Texas Property Code (as said statute shall read at the time of enforcement) and to make due conveyance to purchaser or purchasers by deed binding upon the Owner or Owners of such Lot and his heirs, executors, administrators and successors. The Trustee shall give notice of such proposed sale as required by Section 51.002 of the Texas Property Code (as said statute shall read at the time notice is given).
- e) **Additional Matters Pertaining to Foreclosure.** At any foreclosure, judicial or nonjudicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure the occupants of such Lot shall

be required to pay a reasonable rent for the use of such lot and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice.

Section 13. Subordination of the Lien to First Mortgages. The lien securing the Assessments provided for herein shall be subordinate to (i) liens of ad valorem taxes and (ii) the lien of any first Mortgage which has been recorded in the real property records of Harris County, Texas. Sale or transfer of any Lot subject to this Declaration shall not affect the lien hereby created. However, the sale or transfer of any Lot pursuant to foreclosure of a first Mortgage or any conveyance in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 14. Non-Use, Etc. No Owner may waive or otherwise escape said lien and liability for the assessments provided for herein by non-use of the Common Area, or abandonment, non-use or divestiture of ownership of a Lot for any Assessment which became due and payable during the time when such Owner owned the Lot.

Section 15. Exempt Portions of the Properties. All portions of the Properties dedicated to, and accepted by, a local public authority exempt from taxation by the laws of the State of Texas, and all Common Area shall be exempt from the Assessments and other charges created herein. Notwithstanding the foregoing, no Lot which is used, or is intended for use, as a residence shall be exempt from Assessments and charges and the lien herein securing-payment thereof.

Section 16. No Offsets. The Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, (a) any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration, (b) any claim by the Owner of non-use of the Common Areas or abandonment of his Lot, (c) any claim by the Owner of inconvenience or discomfort arising from the making of repairs or Improvements to Common Area, or (d) any claim by the Owner of inconvenience or discomfort arising from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

ARTICLE XI.

Easements and Utilities

Section 1. Title to Utility Lines. The title conveyed to any Lot within the Properties shall be subject to any easement affecting same for utility or other purposes and shall not be held or construed to include the title to the water, gas, electricity, telephone, cable television, security, storm sewer, or sanitary lines, poles, pipes, conduits, or other appurtenances or facilities constructed upon, under, along, across, or through such utility easements. No Lot Owner shall own the pipes, wires, conduits, or other service lines running through his Lot that are used for or serve other Lots, but each Owner shall have an easement to use such facilities to the extent necessary for the use, maintenance, and enjoyment of his Lot.

Section 2. Association Easements. The Association, its agents, servants, and employees shall have and be entitled to all easements specifically referenced throughout this Declaration.

Section 3. Easements for Utilities, Etc.

(a) **Generally.** Declarant hereby reserves unto Declarant (so long as Declarant owns any portion of the Properties), Developer, the Association, and the designees of each, a blanket easement upon, across, over, and under all of the Properties of ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, alarm monitoring systems, and similar systems, roads, walkways, bicycle pathways, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner thereof.

(b) **Specific Easements.** Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

(c) **Dedications to Public.** The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to Bexar County, Texas, or to any other local, state, or federal governmental entity.

Section 4. Easement Regarding Electric Service Cables. Declarant hereby reserves for itself and for Developer an easement for access to easement area occupied and centered on electric company service wires immediately adjacent to the Owner's Lot for the purpose of installing, repairing, and maintaining the underground service cables each Owner is obligated to furnish, install, own, and maintain pursuant to Article XII, Section 2 below.

ARTICLE XII.

Underground Electrical Distribution System

Section 1. General. An underground electrical distribution system (the "System") will be installed within that part of the Properties which, according to the Plat, contain Lots (the "Underground Residential Subdivision"). The System shall embrace all Lots in the Underground Residential Subdivision. The System shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available to the Lots. For so long as underground service is maintained in the Underground Residential Subdivision the electric service to each Dwelling Unit shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current,

Section 2. Owner's Responsibility. The Owner of each Lot containing a Dwelling Unit shall, at his own cost, furnish, install, own, and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of the electric company's metering at the structure to the point of attachment at such company's installed

transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot containing a Dwelling Unit shall, at his own cost, furnish, install, own, and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation on the meter of such electric company for the Dwelling Unit constructed on such Owner's Lot.

Section 3. Conditions. The electric company has installed the System in the Underground Residential Subdivision (except for certain conduits, where applicable and except as hereinafter provided). As used in this Declaration, the term "Dwelling Units" excludes mobile homes. Should this Declaration be amended to permit erection of one or more mobile homes within the Underground Residential Subdivision, the electric company shall not be obligated to provide electric service to any such mobile homes unless (a) there has been paid to the electric company an amount representing the excess in cost, for the entire Underground Residential Subdivision, of the System over the cost of equivalent overhead facilities to serve the Underground Residential Subdivision, or (b) the Owner of each affected Lot, or the applicant for services to any mobile home, shall pay to the electric company the sum of (i) \$ 1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the System to serve such Lot or Dwelling Unit over the cost of equivalent overhead facilities to serve such Lot or Dwelling Unit, plus (ii) the cost of rearranging and adding any electric facilities serving such Lot, which arrangement and/or addition is determined by electric company to be necessary.

Section 4. Applicability to Reserves. The provisions of this Article XII shall also apply to any future residential development in reserve(s), if any, shown on the Plat. Specifically, but not by way of limitation, if an Owner in a former reserve undertakes some action which would have invoked the per front lot foot payment referenced in Section 3 of this Article XII if such action had been undertaken in the Underground Residential Subdivision, such Owner or applicant for service shall pay the electric company as described in Section 3 of this Article XII. The provisions of this Article X11 do not apply to any future non-residential development in such reserve(s).

Section 5. Easement Grants. Declarant has either by designation on the Plat, this Declaration, or by separate instrument granted the necessary easements to the electric company providing for the installation, maintenance, and operation of the System and has also granted to the various Owner's reciprocal easements providing for access to the area occupied by and centered on the service wires of the various Owners to permit installation, repair, and maintenance of each Owner's owned and installed service wires.

Section 6. Rights to Build on Easement Area. Easements for the System may be crossed by driveways and walkways provided the Builder or Owner makes prior arrangements with the utility company furnishing electric service and provides and installs the necessary electric conduit of approved type and size under such driveways or walkways prior to construction thereof. The easement for the System shall be kept clear of all other Improvements, including buildings, patios, or other paving, and the utility company using the easements shall not be liable for any damage done by it, its assigns, agents, employees, or servants, to shrubbery, trees, or Improvements (other than crossing driveways or walkways provided the conduit has been installed as outlined above) of the Owner and located on the land covered by said easements.

ARTICLE XIII.

Annexation

Section 1. Annexation. Additional real property and/or Common Area may be unilaterally annexed by Developer at any time without the consent or approval of Members of the Association, the Board or any other party. Further, additional real property may be unilaterally annexed hereto from time to time by the Board, with the approval of the Declarant, without the consent or approval of the Members of the Association or any other party. Annexation of additional property shall encumber said property with similar covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration and shall become effective on the date a Supplemental Declaration is signed and acknowledged by the owner of said annexed property and the appropriate annexing authority (either Developer or the Board), is filed for record in Bexar County, Texas, evidencing the annexation. Each such instrument evidencing the annexation of additional property shall describe the portion of the property comprising the Lots and Common Area and any covenants, conditions and restrictions which differ from those set forth in the Declaration. The funds resulting from any assessment, whether annual or special, levied against any property hereinafter annexed to the Properties maybe combined with the funds collected from the Owners of Lots within the Properties and maybe used for the benefit of all property and all Owners in the manner hereinabove provided.

ARTICLE XIV.

General Provisions

Section 1. Duration and Amendment. The covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration shall run with the land and shall be binding upon and inure to the benefit of the Association, all owners, their respective legal representatives, heirs, successors, and assigns for a term of forty (40) years from the date this Declaration is filed with the County Clerk of Bexar County, Texas, after which time said covenants, conditions, restrictions, reservations, liens, and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed by the then Owners of not less than two-thirds (2/3) of the total number of Lots within the Properties, and subject to the written consent of the Developer during the Developer Control Period, a is filed for record with the County Clerk of Bexar County, Texas, altering, rescinding, or modifying said covenants and restrictions, in whole or in part, as of said renewal date. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that, subject to the written consent of the Developer during the Developer Control Period, the Owners of two-thirds (2/3) of the total number of Lots within the Properties shall always have the power and authority to amend this Declaration and such amendment shall become effective on the date any instrument signed by the then Owners of not less than two-thirds (2/3) of the total number of Lots within the Properties and signed by the Developer (if applicable) is filed for record in Bexar County, Texas, so amending this Declaration. In addition, Developer shall have the right at any time and from time-to-time, without the joinder or consent of any other party, to unilaterally amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record in Bexar County, Texas.

Section 2. Perpetuities. Invalidation of any term or provision of this Declaration by judgment or otherwise shall not effect any other term or provision of this Declaration, and this Declaration shall remain in full force and effect except as to any terms and provisions which are invalidated.

Section 3. Cumulative Effect; Conflict. The covenants, conditions, restrictions, and provisions of this Declaration shall be cumulative with any others pertaining to the Properties (the "Additional Covenants") and the Association may, but shall not be required to, enforce the Additional Covenants; provided, however, in the event of conflict between or among (a) the covenants, conditions, and restrictions of this Declaration; and (b) the terms of the Additional Covenants, and provisions of any articles of incorporation, By-Laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, the Additional Covenant shall be subject and subordinate to those of this Declaration. The foregoing priorities shall apply, but not be limited to, the lien for Assessments created in favor of the Association.

Section 4. Compliance. It shall be the responsibility of each Owner or occupant of a Dwelling Unit to obtain copies of and become familiar with the terms of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, and Minimum Construction Standards. Every Owner of any lot shall comply with all lawful provisions of this Declaration, the By-Laws, and Rules and Regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Lot Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws.

Section 5. Security. NEITHER THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND AGENTS, THE DECLARANT, THE DEVELOPER, NOR ANY SUCCESSOR DECLARANT OR DEVELOPER SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES. NEITHER THE ASSOCIATION, THE DECLARANT, THE DEVELOPER, NOR ANY SUCCESSOR DECLARANT OR DEVELOPER SHALL BE FIELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, ITS AGENTS, DECLARANT, THE DEVELOPER, OR ANY SUCCESSOR DECLARANT OR DEVELOPER AND THE ARCHITECTURAL CONTROL COMMITTEE DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT, THE DEVELOPER OR THE ARCHITECTURAL CONTROL COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLARALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLARS ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED, EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, ITS DIRECTORS, OFFICERS AND AGENTS AND COMMITTEES, DECLARANT, THE DEVELOPER, OR ANY SUCCESSOR DECLARANT OR DEVELOPER ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY DWELLING UNIT AND EACH

TENANT, GUEST, AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, ITS DIRECTORS, OFFICERS AND AGENTS AND COMMITTEES, DECLARANT, THE DEVELOPER, OR ANY SUCCESSOR DECLARANT OR DEVELOPER HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

Section 6. Assignment of Declarant's Rights or Developer Rights. Any or all of the special rights and obligations of the Declarant or of the Developer set forth in this Declaration or the By-Laws may be transferred to other Persons, provided the transfer shall neither reduce an obligation nor enlarge a right beyond that contained herein or in the By-Laws, as applicable, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the Office of the County Clerk of Bexar County, Texas. This Section may not be amended without the express written consent of Developer.

Section 7. Additional Restrictions Created by Those Other Than Declarant. No Person shall record any covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Developer's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Developer.

Section 8. Severability. In the event of the invalidity or partial invalidity or partial unenforceability of any provision in this Declaration, the remainder of the Declaration shall remain in full force and effect.

Section 9. Number and Gender. Pronouns, whenever used herein, and of whatever gender, shall include natural persons and corporations, entities and associations of every kind and character, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 10. Delay in Enforcement. No delay in enforcing the provisions of this Declaration with respect to any breach or violation thereof shall impair damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time.

Section 11. Enforceability. This Declaration shall run with the Properties and shall be binding upon and inure to the benefit of and be enforceable by the Association and each Owner of a Lot in the Properties, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. In the event

any action to enforce this Declaration is initiated against an Owner or occupant of a Lot by the Association, the Association or other Owner, as the case may be, shall be entitled to recover reasonable attorneys' fees from the Owner or occupant of a Lot who violated this Declaration.

Section 12. Remedies. In the event any person shall violate or attempt to violate any of the provisions of the Declaration, the Association, each Owner of a Lot within the Properties, or any portion thereof, may institute and prosecute any proceedings at law or in equity to abate, preempt or enjoin any such violation or attempted violation or to recover monetary damages caused by such violation or attempted violation.

Section 13. Violations of Law. Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any Lot hereby is declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 14. No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Association or its agents or employees in connection with any portion of the Properties, or any Improvement thereon, its or their physical condition, compliance with applicable laws, fitness for intended use, or in connection with the sale, operation, maintenance, cost of maintenance, taxes, or regulation thereof, unless and except as specifically shall be set forth in writing.

Section 15. Captions for Convenience. The titles, headings, captions, articles and section numbers used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration. Unless the context otherwise requires, references herein to Articles and Sections are to articles and sections of this Declaration.

Section 16. No Condominium. This Declaration does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code Ann. §81.001-81.210 (Vernon 1983).

Section 17. Governing Law. This Declaration shall be construed and governed under the laws of the State of Texas.

Section 18. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage pre-paid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

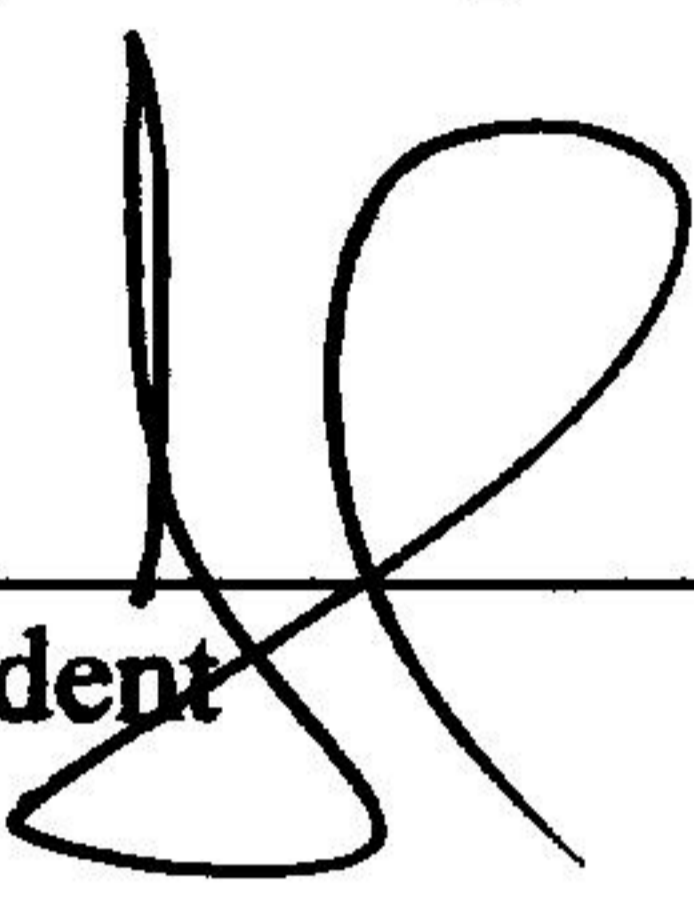
Section 19. Multiple Counterparts. This Declaration may be executed in one or more counterparts which taken together shall constitute one instrument without the necessity of each party executing the same counterpart.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration to be effective as of the ____ day of _____, 2006.

DECLARANT:

By: Kerby Development LLC, a Texas limited partnership

By:

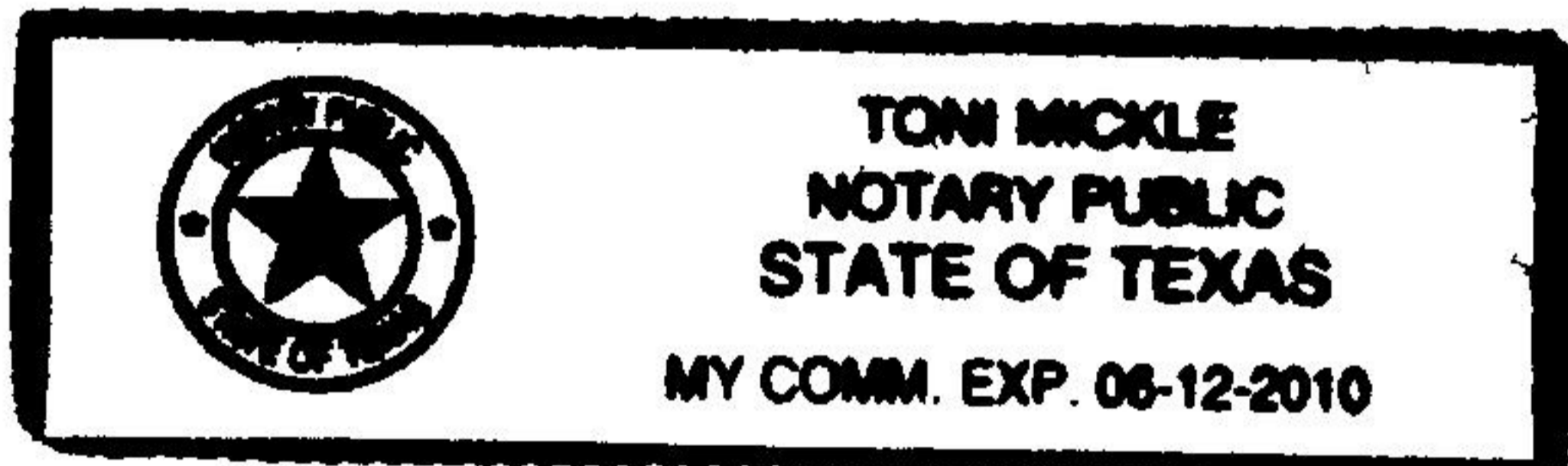


President

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me this 15th day of December, 2006 by James Kerby
President of Kerby Development, LLC





Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law
STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

DEC 22 2006

Doc# 20060311229 Fees: \$184.00
12/22/2006 12:41PM # Pages 43
Filed & Recorded in the Official Public
Records of BEXAR COUNTY
GERRY RICKHOFF COUNTY CLERK





COUNTY CLERK BEXAR COUNTY, TEXAS