

**DECLARATION OF RESTRICTIVE COVENANTS**  
**(TEXAS – THE WILLOWS AT KENDALL BROOK)**

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “**Declaration**”) is executed as of August 30, 2023 (the “**Effective Date**”), by **DHIR – SAN ANTONIO I, LLC**, a Delaware limited liability company (“**Declarant**”).

**RECITALS:**

A. Declarant is the current owner of those certain single-family residential lots situated in Bexar County, Texas, legally described on **Exhibit A** attached hereto and incorporated herein (the “**Restricted Lots**”), and either has or will in the future construct homes thereon (such Restricted Lots, and any homes now or hereafter thereon, are collectively referred to as the “**Restricted Homes**”, and each referred to as a “**Restricted Home**”, whether or not the such Restricted Homes are detached single-family residential or attached single-family residential).

B. The Restricted Homes are in a single-family residential development commonly known as “The Willows at Kendall Brook”. This Declaration does not in any manner encumber title to any lot, home, or other property that is not a Restricted Home.

NOW THEREFORE, for good and valuable consideration, Declarant declares that the Restricted Homes are and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the following terms, covenants and restrictions, as well as any other matters previously filed of record to the extent the same are valid and subsisting and are not abrogated or superseded herein:

1. **Ownership and Use**. For a period of time commencing on the date this Declaration is filed in the Real Estate Records of Bexar County, Texas (the “**Official Records**”), and continuing until the eleventh (11<sup>th</sup>) anniversary of the Effective Date (the “**Restrictive Covenant Term**”), the Restricted Homes shall be subject to the following restrictions (collectively, the “**Restrictions**”):

(a) No Restricted Home shall be occupied by the owner of such Restricted Home. All Restricted Homes shall be used for rental purposes only, pursuant to a bona fide third party lease between the owner of the Restricted Home and the primary occupant or occupants of such Restricted Home.

(b) Regardless of the fact that the Restricted Homes are constructed on individually platted lots, no Restricted Home may be conveyed separately from all other Restricted Homes. The foregoing restriction on conveyances shall not prohibit the leasing of Restricted Homes in accordance with subparagraph (a) above.

Nothing in this **Section 1** is intended to prevent ownership of all of the Restricted Homes by a partnership, corporation, limited liability company, trust, or other business entity that may be established under the laws of the State where the Restricted Homes are situated or other applicable law (an “**Entity**”), as long as a Controlling Interest in the Entity is not vested in, owned by, or held by, directly or indirectly, or beneficially or otherwise, any persons who are occupants of a Restricted Home pursuant to a lease in accordance with **Section 1(a)** above. “**Controlling Interest**” means the possession, directly or indirectly, of more than ten percent (10%) of the ownership interest in the Entity, or if less, the power to direct or cause the direction of the management and policies of the Entity, whether through the ownership of voting securities, by contract or otherwise.

2. **Term**. The terms, covenants, conditions and restrictions set out in this Declaration will run with and bind the Restricted Homes for the Restrictive Covenant Term, and are for the sole benefit of the Benefited Parties (hereinafter defined).

3. **Special Provisions.** Notwithstanding anything to the contrary in this Declaration, Declarant hereby agrees to promptly enter into a termination of this Declaration as to all Affected Homes (as defined below) prior to the expiration of the Restrictive Covenant Term, if and only if, (i) a Triggering Event (as defined below) occurs as to such Affected Homes, and (ii) Declarant fails to exercise the ROFO (as defined below) in accordance with the terms of this Declaration. As used herein, a **“Triggering Event”** shall occur when: (a) a local, state or federal governmental authority with jurisdiction over the Restricted Homes (a **“Governmental Authority”**) enacts legislation that completely prohibits any form of rental of the Restricted Homes or any portion thereof (the Homes as to which Prohibiting Legislation applies, the **“Affected Homes”**) to consumers and the operation of such Affected Homes as rental properties (the **“Prohibiting Legislation”**); and (b) such Prohibiting Legislation is effective and binding on such Affected Homes for a period of thirty (30) days following the effective date (such date, the **“Legislation Effective Date”**) of the Prohibiting Legislation (such thirty (30) day period being the **“Tolling Period”**), and such Prohibiting Legislation has not been repealed or suspended or is otherwise subject to any moratorium that delays the Legislation Effective Date of such Prohibiting Legislation during the Tolling Period. For the avoidance of doubt, a Triggering Event shall not occur if legislation is enacted that places limitations or restrictions on the rental of the Restricted Homes, but shall only be applicable if Prohibiting Legislation is enacted and effective. Owner (as defined below) shall provide written notice to Declarant promptly after obtaining knowledge that a Triggering Event has occurred or is otherwise being contemplated by any Governmental Authority.

If a Triggering Event occurs and remains in full force and effect following the Tolling Period and the then-owner of the Restricted Homes ( **“Owner”**) wishes to terminate this Declaration as to any Affected Homes, then Declarant shall have an ongoing right of first offer (the **“ROFO”**) to purchase, at its election, either (a) all of the Restricted Homes and any common areas conveyed by Declarant in the deed for the Restricted Homes, or (b) all of the Affected Homes (as selected, the **“Property”**), from Owner until the expiration of the Restrictive Covenant Term (the **“ROFO Period”**) pursuant to the following terms: (i) Owner shall provide Declarant with written notice that the Triggering Event has occurred and the Tolling Period has expired (the **“ROFO Trigger Notice”**); (ii) the ROFO Trigger Notice shall include the proposed purchase price for the Property (based upon Owner’s proposed “Fair Market Value” thereof) and other economic and material non-monetary terms of the proposed sale (collectively, the **“ROFO Sale Terms”**); (iii) Declarant shall then have fifteen (15) days after receiving the ROFO Trigger Notice to notify Owner in writing of Declarant’s election to purchase the Property in accordance with the conditions of the ROFO Trigger Notice (a **“Notice of Exercise”**), subject to the Agreed Adjustments (defined below); and (iv) if Declarant does so elect to exercise its right to purchase the Property, upon delivery of a Notice of Exercise, Declarant and Owner shall promptly cooperate, each acting reasonably in good faith, to proceed to negotiate and execute an agreement relating to the sale of the Property in substantially the same form of the purchase agreement pursuant to which Declarant sold the Property to Owner or its predecessor-in-interest following the Notice of Exercise, subject to changes to reflect the ROFO Sale Terms and other necessary changes to address property and deal specific matters (a **“ROFO Sale Contract”**); provided, however, in all circumstances, the ROFO Sale Contract shall provide for the following (the **“Agreed Adjustments”**): (x) Declarant shall have a due diligence/inspection period that is fifteen (15) days from the date the parties execute the ROFO Sale Contract, and (y) the closing shall be no sooner than fifteen (15) days after the end of the due diligence/inspection period. Notwithstanding the foregoing, if Declarant objects to Owner’s proposed Fair Market Value, such value shall be adjusted, and the time periods set forth in this paragraph extended, to allow for the determination of Fair Market Value as follows:

(a) If Declarant objects in writing to the Fair Market Value set forth in Owner’s ROFO Trigger Notice within five (5) days of receipt, within ten (10) days thereafter, the parties shall each engage one certified residential real estate appraiser with a minimum of seven (7) years’ experience in the valuation of single family residences similar to the Property (each, an **“Appraiser”**) for purposes of determining the fair market value of the Property (**“Property FMV”**). All fees and

expenses of each such Appraiser shall be the responsibility of the party that engaged such Appraiser. Each such Appraiser shall determine Property FMV in good faith and deliver its calculation of Property FMV not later than the first Business Day that is at least fifteen (15) days after their engagement date; provided, that both Appraisers shall agree on a date on which to both deliver their calculations and Property FMV shall be determined as of such date (the “**FMV Determination Date**”) except as otherwise provided herein. If the higher of the two calculations of Property FMV submitted by the two Appraisers is not more than One Hundred Ten Percent (110%) of the lower calculation, then Property FMV shall be the average of the Property FMV calculations of the two Appraisers.

(b) If the higher of the two calculations of Property FMV is more than One Hundred Ten Percent (110%) of the lower calculation, then the two Appraisers shall jointly select a third Appraiser who (i) meets the requirements for the Appraisers outlined above, (ii) is independent of, and not affiliated with, the first two Appraisers, and (iii) who is not affiliated with, and who has not provided any significant services within the two (2) years preceding the date of the Property FMV Determination Date to either party or any affiliated entity of either party (an “**Independent Appraiser**”). If the two Appraisers are unable to agree upon a third Appraiser by the fifteenth (15th) day immediately following the date on which they have both delivered a calculation of Property FMV pursuant to subsection (a) above (the “**Initial Calculation Date**”), the third Appraiser shall be selected as follows: Each of the first two Appraisers will suggest two (2) potential third Appraisers, each of whom shall be an Independent Appraiser. Each of the first two Appraisers shall be entitled to veto one (1) of the other Appraiser’s two (2) suggested Appraisers. The third Appraiser will then be chosen from the remaining two (2) suggested names by a fair and random process. The third Appraiser shall be selected no later than fifteen (15) days after the Initial Calculation Date and engaged pursuant to a customary engagement letter no later than twenty (20) days after the Initial Calculation Date. All fees and expenses of the third Appraiser shall be shared equally by the parties. The final Property FMV shall be the average of the two of the three Property FMV calculations delivered pursuant to subsection (a) and subsection (b) that are closest in amount.

(c) Any determination of Property FMV pursuant to subsection (a) and subsection (b) shall be final, conclusive and binding on the parties.

Notwithstanding the foregoing, if (i) (a) Declarant was entitled to exercise its ROFO but failed to timely provide Owner with a Notice of Exercise as provided above, and (b) Owner does not close on the sale of the Property within a period of six (6) months following the date of the ROFO Trigger Notice on the terms set forth in such ROFO Trigger Notice, or (ii) within such six (6) month period, Owner proposes to sell the Property on materially different terms or for less than 85% of the sales price set forth in the ROFO Trigger Notice, such ROFO right shall be reinstated, Declarant shall again have the ROFO with respect to such Property during the ROFO Period, and Owner shall be required to follow the procedure provided herein once again for the sale of the applicable Property to a third party.

For the avoidance of doubt, the ROFO and the mechanism set forth in this Declaration shall apply to each sale of any portion of the Property (including a proposed sale of an individual Restricted Home) during the ROFO Period, and the parties shall be subject to the foregoing with respect to each proposed sale of all or any portion of the Property.

4. **Amendment.** This Declaration may only be amended (including, without limitation, an amendment that terminates this Declaration) by the recording of a written instrument in the Official Records, executed and acknowledged by all of (a) D.R. Horton, Inc., a Delaware corporation (“**DHI**”), or its successors or assigns, and (b) the owner of the Restricted Homes at the time of any such amendment or

termination (all of the foregoing being collectively referred to herein as the “Benefited Parties”, and individually, a “**Benefited Party**”).

5. **Enforcement and Nonwaiver.** Each Benefited Party, without the joinder of the other, shall have the right to enforce all of the provisions of this Declaration. Such right of enforcement includes both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by each Benefited Party, without the joinder of the other. The Benefited Parties’ failure to enforce any provision of this Declaration at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

6. **Attorneys’ Fees.** If a Benefited Party prevails in any action to enforce this Declaration, then such prevailing party will be awarded reasonable attorneys’ fees, court costs, expert witness fees, and other litigation related expenses, and other costs of enforcement from the non-prevailing party or parties.

7. **Construction.** The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any covenant, restriction, or other provision or portion hereof will not affect the validity or enforceability of any other covenant, restriction, or provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs or sections hereof. This Declaration runs with title to the Restricted Lots.

8. **Governing Law.** This Declaration and all rights and obligations created hereby shall be governed by and construed in accordance with the laws of the State where the Restricted Homes are located.

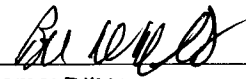
*[Remainder of this page left blank intentionally; signature page follows]*

IN WITNESS WHEREOF, the undersigned has executed this Declaration to be effective as of the Effective Date.

**DECLARANT:**

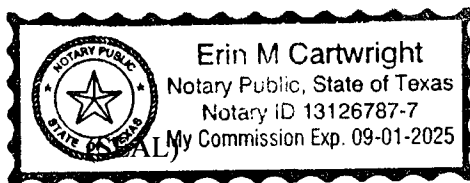
**DHIR – SAN ANTONIO I, LLC,**  
a Delaware limited liability company

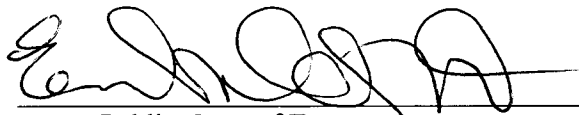
By: CHTEX of Texas, Inc.,  
a Delaware corporation  
its authorized agent

By:   
Printed Name: Bill W. Wheat  
Title: Chief Financial Officer

STATE OF TEXAS                   §  
   §  
COUNTY OF Tarrant           §

This instrument was acknowledged before me on August 24, 2023, by Bill W. Wheat, CEO of CHTEX of Texas, Inc., a Delaware corporation, as authorized agent for DHIR – SAN ANTONIO I, LLC, a Delaware limited liability company, on behalf of said limited liability company.



  
Notary Public, State of Texas

**Exhibit A**

**LEGAL DESCRIPTION**

Lots 1 through 48, inclusive, Block 59; Lots 1 through 15, inclusive, Block 70; Lots 1 through 20, inclusive, Block 71; and Lots 1 through 20, inclusive, Block 72, in KENDALL BROOK UNIT 4, a subdivision in Bexar County, Texas, according to the plat thereof recorded in Volume 20002, Page 974, Plat Records of Bexar County, Texas.

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20230161212  
**Recorded Date:** August 30, 2023  
**Recorded Time:** 2:55 PM  
**Total Pages:** 7  
**Total Fees:** \$46.00

**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

**\*\* Do Not Remove \*\***

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 eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 8/30/2023 2:55 PM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk

**SUPPLEMENTAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR KENDALL BROOK  
ANNEXING UNIT 4**

STATE OF TEXAS	§	
	§	KNOW ALL BY THESE PRESENTS:
COUNTY OF BEXAR	§	

That this SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KENDALL BROOK ANNEXING UNIT 4 (the "**Annexation**") is made on the date of execution by CONTINENTAL HOMES OF TEXAS, L.P., a Texas limited partnership ("**Declarant**").

**W I T N E S S E T H:**

WHEREAS, Declarant caused that certain Declaration of Covenants, Conditions, and Restrictions for Kendall Brook Subdivision to be recorded on April 18, 2019 as Document No. 20190070904 of the Official Public Records of Real Property of Bexar County, Texas (as may be further amended or supplemented, the "**Declaration**") which subjects Kendall Brook subdivision (the "**Properties**") to Kendall Brook Homeowners Association, Inc., a Texas nonprofit corporation (the "**Association**");

WHEREAS, Section 9.6(b) of the Declaration allows Declarant to annex additional real property into the Properties making it a part of the Association and subject to the Declaration; and

WHEREAS, Declarant desires to annex that certain real property located in Bexar County, Texas being more particularly described on Exhibit A attached hereto and incorporated herein for all purposes (the "**Annexed Property**").

NOW, THEREFORE, Declarant hereby: (i) annexes the Annexed Property into the Properties; (ii) makes the Annexed Property subject to the Association; and (iii) declares that the Annexed Property shall further be held, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in the Declaration. Additionally, any definition in the Declaration regarding property is hereby amended to include the Annexed Property. Further, the definition of Common Area in the Declaration is amended to include the Common Area designated on Exhibit A.

[SIGNATURE PAGE(S) TO FOLLOW]



EXECUTED TO BE EFFECTIVE the 8 day of September, 2021.

**DECLARANT:**

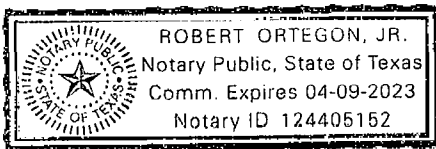
CONTINENTAL HOMES OF TEXAS, L.P.,  
a Texas limited partnership

By: CHTEX of Texas, Inc.,  
a Delaware corporation,  
its General Partner

By: Leslie Ostrander  
Name: Leslie Ostrander  
Title: Assistant Secretary

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

BEFORE ME, the undersigned authority, on this 8 day of September, 2021  
personally appeared Leslie Ostrander, Assistant Secretary of CHTEX of  
Texas, Inc., a Delaware corporation, General Partner of CONTINENTAL HOMES OF TEXAS,  
L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the  
foregoing instrument and acknowledged to me that he or she executed the same for the purposes  
therein contained and in the capacity therein stated.



[Signature]  
Notary Public, in and for the State of Texas

After Recording Return To:  
Barton Benson Jones PLLC  
Attn: Adrian R. Coronado  
745 E. Mulberry Ave., Ste. 550  
San Antonio, Texas 78212

EXHIBIT A

LEGAL DESCRIPTION OF ANNEXED PROPERTY

All of the property known as Kendall Brook Unit 4, a subdivision located in Bexar County, Texas according to that certain Subdivision Plat Establishing Kendall Brook Unit 4 recorded on August 6, 2021, in Plat Volume 20002, Pages 974-975 and as Document Nos. 20210216409-20210216410 of the Map and Plat Records of Bexar County, Texas, including, but not limited to, the following lots:

RESIDENTIAL LOTS

Lots 1-48, Block 59  
Lots 1-15, Block 70  
Lots 1-20, Block 71  
Lots 1-20, Block 72

COMMON AREA

Lots 901-904, Block 59  
Lots 901-902, Block 71

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20210270872  
**Recorded Date:** September 28, 2021  
**Recorded Time:** 4:08 PM  
**Total Pages:** 4  
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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 eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 9/28/2021 4:08 PM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk

www

COUNTY OF BEXAR

additional Common Area.

Section 1.4 "Community Wall" means any wall and/or fence, which is: (a) along a major boulevard, amenity, Association-owned Lot, or entry way in the Subdivision; and/or (b) designated a Community Wall by the Declarant.

Section 1.5 "Declarant" shall mean and refer to Continental Homes of Texas, L.P., a Texas limited partnership, its successors and assigns, if such successors or assigns should acquire more than one Lot from the Declarant for the purpose of constructing residences thereon and selling the same to members of the general public and if Declarant expressly assigns in writing Declarant's rights, in whole or in part, to such successors or assigns.

Section 1.6 "Lot" shall mean and refer to any plot of land shown upon the recorded Subdivision map or plat of the Properties with the exception of the Common Area.

Section 1.7 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, also sometimes called a "Member."

Section 1.8 "Properties" shall mean and refer to that certain real property described in Exhibit A, and such additions thereto as may hereafter be brought by annexation within the jurisdiction of the Association.

Section 1.9 "Service Area" shall mean a group of Lots designated as a separate Service Area pursuant to this Covenant for purpose of receiving benefits and/or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one housing type and may include noncontiguous Lots. A Lot may be assigned to more than one Service Area. Service Area boundaries may be established or modified as provided in Section 2.3.

Section 1.10 "Service Area Assessments" shall mean assessments levied against the Lots in a particular Service Area to fund Service Area Expenses, as described in Section 4.6.

Section 1.11 "Service Area Expenses" shall mean the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Covenant.

Section 1.12 "Subdivision" means all of the Properties as same may be amended and/or supplemented from time to time as additional property is annexed hereunder.

## ARTICLE II. PROPERTY RIGHTS

Section 2.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) The right to the Association to dedicate or transfer all or any part of the facilities to any public agency, authority or utility for such purposes and subject to such conditions;

(c) The right of the Association to limit the number of guests of Owners using the recreational facilities;

(d) The right of the Association to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said Properties shall be subordinate to the rights of the Owners hereunder.

Section 2.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

Section 2.3 Provision of Benefits and Services to Service Areas.

(a) Declarant, in a notice of applicability or in any written notice recorded in the public records of the County, may assign Lots to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots in addition to those which the Association generally provides to the Development. Declarant may unilaterally amend any notice of applicability or any written notice recorded in the public records of the County, to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots within the Service Area as a Service Area Assessment.

(b) In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Lots, or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a majority of the Lots within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the charge

to made therefore, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot among all Service Areas receiving the same service). Upon written approval of the proposal by Owners of at least sixty-seven percent (67%) of the Lots within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal. The cost and administrative charges associated with such benefits or services will be assessed against the Lots within such Service Area as a Service Area Assessment.

### ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Assessments. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership in the Association is mandatory. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3.2 Voting. The Association shall have two (2) classes of voting membership as more particularly provided in the Bylaws.

Section 3.3 Election of Directors. The Declarant shall have the right to appoint the Directors until the Control Transfer Date.

Section 3.4 Votes. Notwithstanding any other provisions contained in this Declaration to the contrary, for voting purposes each and every proposed residential Lot situated within any additional unit or units intended from time to time to be platted and then annexed by Declarant into the scope and purview of this Declaration shall be construed and counted for all purposes as a "Lot" from and after the date that Declarant first files the plat for the unit in which any such Lot forms a part, pursuant to the then applicable regulations governing the County platting process, as applicable.

Section 3.5 Indemnification. **UPON THE TERMINATION OF CLASS B MEMBERSHIP AND ANYTIME THEREAFTER, THE ASSOCIATION SHALL INDEMNIFY AND HOLD THE DECLARANT HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS OR DAMAGES OF EVERY KIND ARISING OUT OF THE DEVELOPMENT OF THE PROPERTY AND THE OPERATION OF THE ASSOCIATION.**

### ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges; and
- (b) Special assessments, such assessments to be established and collected as

hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association need not take any action to create or perfect the lien. However, the Association may execute and record a notice of assessment lien in the public records of the County in order to provide further notice of the lien. The validity, enforceability or priority of the Lien shall not in any way be affected if the Association does not execute and record a notice of assessment lien.

Notwithstanding the foregoing, the Declarant shall have the right not to pay assessments for Lots it owns, and not to bill builders for assessments. If Declarant exercises said right and thus does not bill builders for assessments, the lien shall attach to each Lot upon the first sale of such Lot by builder.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used for any and all legal purposes so long as they are used for the benefit of the members of the Association; said purposes including, but not limited to:

- (a) Promote the health, safety and welfare of the residents in the Properties;
- (b) The improvement and maintenance of the Common Area; and
- (c) Enforcement of any restrictive covenants affecting the Properties.

Section 4.3 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Thousand Five Hundred and no/100 Dollars (\$1,500.00).

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) (such percentage increase may be cumulative from year to year) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by the vote or written assent of sixty-seven percent (67%) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.



(c) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

Section 4.4 Exemptions and Obligations of Declarant. Notwithstanding the foregoing, the Declarant shall be exempt from any assessment charge. Declarant shall provide initial funding of a reasonable amount as necessary to make up any deficit in the operating expenses of the Association, in the event that the annual assessment revenues and special assessment revenues are insufficient to pay the operating expenses of the association. Declarant shall provide the funds necessary to make up the first calendar year deficit, within thirty (30) days of receipt of a request for payment thereof from the Association, provided that if the deficit is the result of the failure or refusal of an Owner or Owners to pay her/his/their annual maintenance assessments or special assessments, the Association shall diligently pursue all available remedies against such defaulting Owner(s), including foreclosure of the lien for assessment charges and/or the immediate institution of litigation to recover the unpaid assessments, and shall reimburse the Declarant the amounts, if any so collected. If the operating expenses of the Association exceed the assessments collected after the first calendar year of operation, and so long as there exists any Class B membership, Declarant will cause such deficit to be funded by one of the following means: (i) capital contribution; (ii) by loan from Declarant represented by a promissory note; or (iii) by causing Association to borrow the funds from a lending institution.

Section 4.5 Special Assessments. In addition to the annual assessments authorized above, the Association may levy special assessments as follows:

- (i) Upon the sale of each Lot by Declarant to a Class A member, regardless of whether the Lot has a completed Unit thereon or not, a special assessment equal to twelve (12) months estimated regular assessments may be assessed. This special assessment, which is nonrefundable, shall be due and payable upon conveyance of each Lot to the first Class A Member to purchase that Lot. Such special assessment shall be available for all necessary expenditures of the Association. Notwithstanding anything contained in this Declaration to the contrary, the liability and obligation of this special assessment shall be the sole obligation of the Class A Member purchasing the Lot, and Declarant shall have no personal liability or obligation for such special assessment.
- (ii) The Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of sixty-seven percent (67%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4.6 Service Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year. The total amount of estimated Service Area Expenses for each Service Area will be allocated equally among all Lots in the benefited Service Area and will be levied as a Service Area Assessment. All amounts that the Association collects as Service Area Assessments will be held in trust for and expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general funds.

Section 4.7 Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.5 shall be sent to all members not less than ten (10) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be fifty percent (50%) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.8 Uniform Rate of Assessment. Both annual and special assessments, subject to Section 4.9, must be fixed at a uniform rate for all Lots and may be collected on a quarterly, semi-annual or annual basis, as determined from time to time by the Board of Directors. Service Area Assessments levied pursuant to Section 4.6 will be levied uniformly against each Lot that has been included in the Service area to which such Service Area Assessment relates.

Section 4.9 Date of Commencement of Annual Assessments – Due Dates. The annual assessments provided for herein shall commence as to each Lot, other than those owned by Declarant, on the date such Lot is conveyed by Declarant. Until otherwise determined by the Board of Directors, the Association will collect twelve (12) months of dues upon the first closing of each to a Class A member. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. An Owner's initial annual assessment shall be made for the balance of the calendar year as determined on a pro-rata basis and shall become due and payable on the commencement date described above. The annual assessment, if billed annually, for any year after the first year shall be due and payable on the first day of January. Annual assessments, if billed semi-annually, quarterly or monthly, shall be due on the first day of the month following the month in which they are billed. Any Owner who purchases a Lot or Lots after the first day of January in any year shall be personally responsible for a pro-rated assessment amount for that year.

Section 4.10 Effect of Nonpayment of Assessments – Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from

the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the property. Each such Owner, by his/her acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including judicial foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property and non-judicial foreclosure, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien.

The Board is authorized to appoint a trustee to exercise the Association's power of sale. Said trustee shall not incur any personal liability except for his/her own willful misconduct. At a foreclosure sale of a Lot (whether judicial or non-judicial), the Association may bid on and purchase the Lot with the Association's funds. If the Association purchases a Lot at a sale, during the time of the Association's ownership: (a) the Association shall not have a right to exercise a vote as the Owner of the Lot; and (b) Assessments shall not be levied on the Lot. Following foreclosure of a Lot, residents of the Lot shall be deemed tenants-at-sufferance, and the Association is authorized to evict the residents and take possession of the Lot in accordance with the law. Costs of foreclosure may be added to the amount owed by the Owner to the Association. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Nothing herein prohibits the Association from: (a) bringing a lawsuit to recover a money judgment for sums secured by the Lien; and/or (b) obtaining a deed in lieu of foreclosure.

Section 4.11 Subordination of the Lien to Mortgagees. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.12 Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 4.13 Intentionally Omitted.

Section 4.14 Declarant Not Liable for Association Deficits. Notwithstanding anything contained in this Declaration to the contrary, Declarant shall not be liable for any

liabilities, obligations, damages, causes, causes of action, claims, debts, suits or other matters incurred by or on behalf of the Association or Owners or for any deficits or shortfalls incurred or realized by or on behalf of the Association or Owners in connection with the Property or this Declaration. Declarant's sole liability and obligation hereunder shall be limited to the assessments assessed against any Lots owned by the Declarant as provided herein, subject to Declarant's right to choose not to pay assessments on Lots it owns. However, Declarant may, but is not obligated to, reduce assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by the Declarant may be treated as a contribution or loan, in Declarant's sole and absolute discretion. Any subsidy and characterization thereof will be disclosed as a line item on the annual budget prepared by the Board and attributable to such assessments. The payment of a subsidy shall not obligate Declarant to continue payment of a subsidy to the Association in future years.

#### Section 4.15 Fees.

(a) Upon any transfer of a Lot, the buyer will pay to the Association a working capital assessment equal to the amount of one year's annual assessments at the time of transfer, which may be used to build the Association's reserve fund, or for any other purpose the Association deems appropriate.

(b) Intentionally omitted.

(c) Intentionally omitted.

(d) Before the Control Transfer Date, the working capital assessment amount may be revised without amendment of this Declaration as determined from time to time by the Declarant, in its sole and absolute discretion, and after the Control Transfer Date may be revised without amendment of this Declaration as determined from time to time by the Board. The working capital assessment need be uniform among all Lots, and the Declarant (before the Control Transfer Date) or Board (after the Control Transfer Date) is expressly authorized to levy working capital assessments of varying amounts depending on the size, use and general character of the Lots then being made subject to such levy. The working capital assessment will be in addition to, not in lieu of, any other assessments levied in accordance with this Declaration and will not be considered an advance payment of such assessments; each fee, if unpaid, shall be collectible as an assessment hereunder. The working capital assessment hereunder will be due and payable to the Association immediately upon each transfer of title to the Lot as described above. The Declarant and Association have the power to waive the payment of any working capital assessment attributable to a Lot.

### **ARTICLE V. ARCHITECTURAL CONTROL COMMITTEE**

Section 5.1 Creation. The aesthetic and ecological quality of the Subdivision requires that all dwellings be compatible with other dwellings and be in harmony with the natural surroundings. To this end, an Architectural Control Committee has been created

as described in this Article. The ACC has the responsibility to carry out the goals and functions that have been adopted below, and which may be amended from time to time.

Section 5.2 Members. The initial ACC members shall be the initial directors appointed to the Board, or a representative or representatives appointed by a majority of such directors. At all times, there shall be three (3) members of the ACC. Members of the ACC are not entitled to any compensation for services rendered pursuant to this Declaration.

As long as Declarant holds title to any Lots in the Subdivision, Declarant shall have the right to remove any and all members of the ACC at any time and for any reason, with or without cause, and the right to appoint any new member to the ACC to replace any such removed member. In the event of the death, removal or resignation of any member, the remaining members shall have full authority to carry out the duties of the ACC and the authority to designate a successor ACC member to fill any vacancies. At such time as the Declarant does not hold title to any Lots in the Subdivision, and any members of the ACC appointed by Declarant have resigned, the Association shall have the right to thereafter appoint and/or replace the members of the ACC from time to time.

Section 5.3 Goal. The goal of the ACC is to encourage the construction of dwellings of good architectural design, quality and property size compatible with Declarant's conceptual plan for the Subdivision. Dwellings should be planned and designed with particular attention to the design and aesthetic appearance of the exterior and the use of such materials, which, in the sole judgment of the ACC, will all create an attractive and harmonious blend with existing and proposed dwellings in the immediate area and the natural surroundings. The ACC may disapprove the construction or design of a home on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or values of the neighborhood and of other homeowners or to preserve the serenity and natural beauty of any surroundings. Prior judgments regarding matters of design or aesthetics shall not be deemed binding upon the ACC if the ACC feels that the repetition of such matters will have an adverse effect on the Subdivision.

Section 5.4 Function. The ACC shall function as the representative of the Owners for the purposes herein set forth. No building, roof, fence, wall, other structure, or landscaping of any nature whatsoever that is readily visible from the street shall be erected, placed or altered on any Lot (nor may any such item be subsequently replaced, treated or repainted in a manner which materially alters the exterior appearance of the item) until plans and specifications, in such form and detail as the ACC may deem necessary, shall have been submitted to and approved in writing by such ACC. The ACC or its representative shall have the power to employ professional consultants to assist it in discharging its duties. The decision of the ACC shall be final, conclusive and binding upon the applicant. All submissions to the ACC shall be at the address specified herein.

In no circumstance does the ACC review the structural safety, engineering soundness or compliance with building code or any other codes of plans and specifications

for a building, structure, improvement, modification or alteration. The ACC's approval of plans and specifications shall not be deemed a representation as to or responsibility for the structural safety, engineering soundness, or compliance with building code or any other codes of a building, structure, improvement, modification or alteration.

Section 5.5 Authority. The ACC is hereby authorized, but not obligated, to do the following:

(a) To adopt procedural and substantive rules and architectural guidelines, which do not conflict with the Declaration, as it may deem necessary or proper for the performance of its duties. Said rules and guidelines shall be available for inspection at the Association's office during normal business hours upon request;

(b) To retain an architect and/or engineer to review plans and specifications and render an opinion to the ACC if it so determines, in its sole discretion, that the complexity of the request so warrants an architect and/or engineer. The costs of an architect and/or engineer shall be paid by the Owner who submits the request, and said costs shall be added to the Owner's Assessment account and secured by the Lien;

(c) To require a reasonable submission fee for each application submitted to the ACC for review;

(d) To enter any Lot to determine whether the Declaration or ACC rules are being violated if the ACC, in its sole discretion, has reasonable cause to believe such a violation exists. The ACC, at its option, may also inspect all work in progress to insure compliance with the approved plans and specifications. In so doing, the ACC, the Association and its agents shall not be subject to any liability for trespass, damage or injury to property, other tort or damages in connection with or arising from such entry;

(e) To require any Owner, including any Owner's agents or contractors, to cease and desist construction, placement, erection or alteration of any building, structure, improvement, modification or addition on any Lot if plans and specifications for said building, structure, improvement, modification or addition have not been reviewed and approved by the ACC. All violations must be cured by bringing the Lot to its original condition and must be done at the Owner's sole expense;

(f) To assess a fine against an Owner who proceeds with construction, placement, erection, or alteration of any building, structure, improvement, modification or addition on any Lot if plans and specifications for said building, structure, improvement, modification or addition have not been reviewed and approved by the ACC and violate the Declaration;

(g) To set reasonable deadlines, in the ACC's discretion, for commencing and completing construction, placement, erection, or alteration of any building, structure, improvement, modification or addition on any Lot. An Owner's plans and specifications shall be deemed disapproved if: (i) construction does not commence prior to or on the

designated commencement date; (ii) construction is not completed prior to or on the designated completion date.

Section 5.6 Procedures. From time to time the ACC may establish and publish reasonable administrative procedures and separate building guidelines to supplement these restrictions. The address of the ACC as of the date hereof shall be as follows: 211 N. Loop 1604 E., Suite 130, San Antonio, TX 78232; and this address may be changed from time to time by the ACC by its filing of an Address Change Certificate in the public records of the County.

Section 5.7 Plans and Specifications. Review and approval of plans and specifications by the ACC shall be mandatory prior to any Owner undertaking any improvements. In order that the ACC may give just consideration to the proposed improvement, such plans and specifications must adequately describe the site plans, floor plans, foundation plans, elevations and exterior materials, color and other characters of the proposed structure; and, if the ACC so requests, a preliminary landscape plan and a cross-section sketch through the Lot from the property line with the highest existing grade to the property line with the lowest existing grade representing any improvements and grade changes and their relationship to existing conditions of the site. Plans and specifications shall be in duplicate and must include all items required by the ACC (i.e., they may not be submitted on a piecemeal basis).

Section 5.8 Basis of Approval. Approval of plans and specifications shall be based upon any one or more of the following:

- (a) The architectural and structural integrity of the design;
- (b) Harmony and conformity of the design with the surroundings both natural and built;
- (c) Adequacy of the design to conditions of the site;
- (d) Relation of finished grades and elevations to neighboring sites;
- (e) Conformity to specific and general intent of these restrictions covering the particular platted unit of which the Lot in question forms a part; and/or
- (f) Aesthetic considerations determined in the ACC's sole discretion.

Section 5.9 Variances. Upon submission of a written request for same, the ACC may, from time to time, in its sole discretion, permit an Owner to construct, erect or install a dwelling or other improvement or enhancement which is in variance from the covenants, restrictions or architectural standards which are provided in this Declaration. In any case, however, the dwelling which such variance effects must, in the ACC's sole discretion, blend effectively with the general architectural style and design of the neighborhood and must not detrimentally affect the integrity of the Subdivision or be unharmonious with the natural

surroundings. Written requests for variances shall be deemed to be disapproved if the ACC has not expressly and in writing approved such request within thirty (30) days of the submission of such request. No member of the ACC shall be liable to any Owner for any claims, causes of action or damages arising out of the grant or denial of any variance to an Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any one Owner shall not constitute a waiver of the ACC's right to strictly enforce the restrictions, covenants or architectural standards created by these restrictions.

**Section 5.10 Failure to Act.** If the ACC fails to approve or to disapprove the plans and specifications or to reject them as being inadequate within sixty (60) days after submittal thereof, it shall be conclusively presumed that such ACC has disapproved such plans and specifications. If plans and specifications are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally, and reject the balance. The approval of the ACC to any submitted plans and specifications shall not be deemed as the approval of the ACC to any other items not expressly and specifically covered by such submitted plans and specifications.

**Section 5.11 Limitation of Liability.** The ACC shall have the express authority to perform fact-finding functions hereunder and shall have the power to construe and interpret any restrictions herein that may be vague, indefinite, uncertain or capable of more than one construction. All decisions of the ACC shall be final and binding, and there shall be no revisions of any action of the ACC except by procedure for injunctive relief when such action is patently arbitrary and capricious. Neither the Declarant, the ACC nor any member of such ACC shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications.

## **ARTICLE VI. USE RESTRICTIONS**

**Section 6.1 Single-family Residences.** All Lots in the Subdivision shall be used for single-family residential purposes only. No Owner shall occupy or use a Lot or any improvements constructed thereon, or permit the same to be occupied or used for any purpose other than as a private residence for the Owner, her/his family, guests and tenants. Each Lot shall be limited to occupancy by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two unrelated persons residing together as a single housekeeping unit, in addition to any household or personal servant staff. No more than one (1) Dwelling shall be constructed on each Lot.

**Section 6.2 Size of Lot and Dwelling.** Every dwelling erected on any Lot shall front or present a good frontage on the street upon which said Lot fronts. Dwellings on corners shall have a presentable frontage on all streets on which the particular corner Lot abuts. No dwelling shall be erected on any Lot having an area of less than One Thousand Five Hundred square feet (1,500 sq. ft.) and the total living area of any dwelling shall not exceed



Four Thousand Eight Hundred square feet (4,800 sq. ft.) unless specifically approved to the contrary by the ACC.

**Section 6.3 Business.** No business or commercial enterprise shall be operated from or on any Lot, unless: (a) the existence and operation of the business or commercial enterprise is in no way evident or detectable from outside the dwelling; (b) the business or commercial enterprise does not involve visitation to the dwelling by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents; and (c) the business or commercial enterprise is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents as may be determined in the sole discretion of the Board. A day care facility, home day care facility, nursing home or facility, church, preschool, nursery, beauty parlor, barber shop and other similar facilities are expressly prohibited on a Lot. Leasing of a Lot and/or dwelling does not constitute a business or commercial enterprise within the meaning of this subsection if such lease has a term for a period of six (6) months or longer; any lease with a term shorter than six (6) months is expressly prohibited.

**Section 6.4 Masonry Requirements.** That portion of the exterior walls of the main residence building constructed on any Lot which are within eight feet (8') from the ground level of such Lot shall be at least twenty-five percent (25%) by area, composed of masonry or masonry veneer, said percentage to apply to the aggregate area of all said walls, inclusive of door, window and similar openings. The minimum masonry requirement specified shall apply to the lower floor only for a two-story dwelling. Masonry or masonry veneer includes stucco, ceramic tile, clay, brick, rock, fiber cement and all other materials commonly referred to in the County as masonry. Notwithstanding the foregoing, the ACC is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood.

**Section 6.5 Exterior.** Paint on dwellings, structures and other improvements on Lots must not be faded, cracked, chipped or otherwise damaged. Exterior lighting on Lots must be kept in working order and dead bulbs must be promptly replaced. Exterior damages to any part of the Lot must be promptly repaired. No exterior burglar bars will be permitted on any doors, windows or other openings on a dwelling or building situated in the Property. Burglar bars, if installed, must be situated within the interior of such dwelling.

Mailboxes shall be constructed of a material and design approved by the ACC and the United States Postal Service. Address markers must be near the door so as to be visible from the street at night. Said markers are not to exceed eight inches (8") in height. The ACC reserves the right to review and reject all such markers.

**Section 6.6 Destruction.** In the event of any fire or other casualty, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike

manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within thirty (30) days after the occurrence of such damage or destruction, and thereafter follow same through to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing or continuing such repair, restoration, replacement, or clean-up, the rights of the Association hereunder will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent ( $1\frac{1}{2}\%$ ) per month will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a portion of the Property will be secured by the liens reserved in this Declaration for assessments and may be collected by any means provided in this Declaration for the collection of assessments, including, but not limited to, foreclosure of such liens against such portion of the Property.

**Section 6.7 Outbuilding Requirements.** No tent, shack or other temporary building, improvement or structure shall be placed upon any Lot without the prior written approval of the ACC; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, such approval to include the nature, size, duration and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an owner shall be permitted, without ACC approval, to erect one (1) outbuilding not to exceed eighty square feet (80 sq. ft.) of total floor area if (i) the side walls shall not exceed six (6) feet in height, (ii) the outbuilding is constructed within an area completely enclosed by a privacy fence of not less than six (6) feet in height, (iii) the exterior of the outbuilding is constructed of the same or substantially similar materials and color as the exterior of any residence located on the Lot, (iv) the roof shall be constructed in a gable-style with the same roof pitch as any residence located on the Lot, and (v) the outbuilding shall be constructed on the rear one-third ( $1/3$ ) of the Lot and no closer than five feet (5') from any rear or side fence. No outbuilding of a permanent nature may be constructed within an easement area. The ACC shall be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements relating to size, height, location, fence enclosure and construction materials.

**Section 6.8 Fences.** In order to ensure a general uniformity of appearance of those fence sections that can be viewed from a street, any and all fences erected on areas readily apparent and visible from streets (e.g., between dwellings (i.e., separating front and rear yards)) and on all corner Lots along that portion of side or rear yards fronting on side streets, shall be six foot (6') vertical privacy fences composed of masonry, cedar, spruce or

other such materials as may be approved from time to time by the ACC. Fences along rear Lot lines of those Lots abutting the greenbelt or floodplain may be constructed of six foot (6') high wrought iron fence. In no event shall any fence extend any closer to the street fronting a dwelling than the front outermost corners of such dwelling. On corner Lots, fences must be set back at least five feet (5') off that side property line abutting the side street.

Notwithstanding the foregoing, the ACC is empowered to waive the aforesaid fence limitations in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material and the resulting decorative wall and/or retaining wall will not detract from the general appearance of the neighborhood. In addition, nothing herein contained shall be deemed as prohibiting or limiting Declarant's right and privilege to erect an entry wall or fence and/or perimeter wall or fence serving the Subdivision, the style and composition of such walls or fences, if applicable, to be determined solely by Declarant.

No chain-link fences may be built or maintained on any Lot where same would be visible from a street (i.e., between dwellings and abutting side streets on corner Lots).

No fence, wall, hedge or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner Lot within the triangular areas formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines or in the case of a rounded property corner, from the intersection of the street line extended; the same sight line limits shall apply on any Lot within ten feet (10') from the intersection of street property lines with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections, unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

**Section 6.9 Temporary Structures.** No structure of a temporary character – trailer, mobile home, recreational vehicle, tent, shack, garage, barn or other outbuildings – shall be used on any Lot at any time as residence, either temporarily or permanently. No mobile home, trailer, camper, recreational vehicle or similar vehicle, whether motorized or not, shall at any time be connected to utilities situated within a Lot. No tent or similar apparatus shall be permitted in an area readily visible from a street. No dwelling previously constructed elsewhere may be moved on any Lot in the Subdivision controlled by these restrictions. This restriction specifically includes the use of a mobile home or recreational vehicle in which the axle and wheels have been removed and placed upon a concrete slab, which said mobile home or recreational vehicle is hereby specifically prohibited as a residence, either temporarily or permanently, and further, specifically includes a mobile home upon which the wheels have been left attached. However, Declarant hereby reserves the exclusive right to approve the erection, placement, and maintenance of such temporary facilities herein described in or upon any Lot(s) as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences, or constructing other improvements within the Subdivision. Such facilities may include, but

not necessarily be limited to, sales and construction offices, storage areas, model units, signs, and portable toilet facilities.

Section 6.10 Driveways. All driveways shall be surfaced with concrete or other similar hard surfaced material.

Section 6.11 Vehicles and Parking. The following shall not be kept, parked, stored, or maintained on any part of any Lot, except within an enclosed structure (e.g., a garage) or in another area that is not visible from any other Lot or any part of the Common Area: (1) commercial vehicles bearing commercial insignia or names; (2) recreational vehicles; (3) wrecked, junked or inoperable vehicles; (4) boats; (5) trailers; (6) tents; (7) equipment; (8) machinery; (9) mobile homes; (10) four wheelers; and (11) mules.

A vehicle is deemed to be "stored" on any part of a Lot if it is parked on the Lot for more than five (5) consecutive days.

Nonetheless, commercial vehicles bearing commercial insignia or names may be parked within view of another Lot or any part of the Common Area so long as said vehicles are smaller than one (1) ton and either: (1) a resident's primary means of transportation; or (2) parked temporarily for the purpose of serving a Lot. Furthermore, passenger vehicles may be parked in the driveway of a Lot so long as said vehicles are operable, have up-to-date vehicle registration and inspection stickers, and are used daily by a resident of the Lot. However, all vehicles are prohibited from being parked on any part of a sidewalk or yard, and no more than three (3) vehicles shall be parked in a driveway at one time. Furthermore, no vehicle shall be routinely parked in the streets.

The Board of Directors is authorized to establish additional rules and regulations relating to the keeping, parking, storage and maintenance of vehicles and other property both on Lots and the Common Area as it may from time to time deem necessary. Said rules and regulations, when promulgated, shall be binding and enforceable against all Owners. However, said rules and regulations shall not in any way revoke or relax any of the restrictions set forth in this section.

Section 6.12 Easements. Declarant reserves for public use the easements and rights-of-way shown on the recorded plat(s) for the Subdivision for the purpose of constructing, maintaining, repairing and/or replacing any system(s) of electric lighting, electric power, telegraph and telephone line(s), gas, sanitary sewer, cable television line(s), or any other utility Declarant sees fit to install in, across and/or under any Lots comprising the Subdivision, including storm sewers, drainage channels, or drainage rights-of-way. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or, in the case of drainage easements, which may change direction of flow of water through drainage channels in such easement. The easement area of each Lot, if any, and all improvements in such area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements herein

referred to shall be liable for any damages done by them or their assigns, their agents, employees, or servants, to fences, shrubbery, trees and flowers or any other property of the Owner on the land covered by said easements. Utility companies shall not be held liable for any damage where utility lines are buried from transformer to meter location.

Section 6.13 Easements to Serve Additional Property. The Declarant and the Association and their duly authorized agents, representatives and employees, designees, successors, assignees, licensees and mortgagees, hereby reserve an easement over the Common Area for the purposes of enjoyment, use, access and development of any annexed property, whether or not such Property is made subject to the Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for tying in and installation of utilities on any annexed property.

The Declarant agrees that if an easement is exercised for permanent access to any annexed property and such property or any portion thereof is not made subject to the Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance to any access roadway serving such property. Such agreement shall provide for sharing of costs based on the ratio that the number of dwellings or buildings on that portion of the property that is served by the easement and is not made subject to this Declaration bears to the total number of dwellings and buildings within the Property.

Section 6.14 Community Wall and Monument Easements. Declarant and the Association shall have the right, but not the obligation, to install, maintain, repair and/or replace any fences, walls, Community Walls, retaining walls and/or Subdivision monumentation situated on any Lot. In furtherance of such purposes, Declarant reserves for itself and the Association an easement over and across all of the Lots for the installation, maintenance, repair and/or replacement of any fences, walls, Community Walls, retaining walls and/or Subdivision monumentation on any Lot. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or improvement constructed thereon. If any fence, wall, Community Wall, retaining wall and/or Subdivision monumentation is erected or installed on any Lot, such fence, wall, Community Wall, retaining wall and/or Subdivision monumentation shall be the property of the Owner of the Lot on which such fence, wall, Community Wall, retaining wall and/or Subdivision monumentation is erected or installed, subject to the rights of Declarant and the Association set forth in this Section. The Declarant or Association may choose either to maintain a Community Wall or to require Owners to maintain their portions of any Community Wall.

Owners of Lots on which a Community Wall, monument or sign is placed shall not do or permit any act that damages, defaces or alters such Community Wall, monument or sign or that obscures the same from view of any adjoining street.

The Declarant and the Association and their duly authorized agents,

representatives, employees, designees, successors, assignees and licensees are authorized to access the Community Wall and monument easements without notice to the Owner(s) of Lots on which a Community Wall, monument or sign is placed or on whose Lots the landscaping is placed. However, except in the event of an emergency or a situation requiring immediate action, the Owner(s) of such Lots shall be notified as to when the Association will access the Community Wall or monument easement to maintain the landscaping and/or construct, reconstruct, repair or maintain part of the Community Wall, monument or sign.

Section 6.15 Sidewalks. Each Lot shall have a sidewalk which will be installed in compliance with all applicable governmental requirements at the same time the dwelling is constructed, such sidewalk to be situated along the street frontage of each such Lot for the use of pedestrians.

Section 6.16 Maintenance of Lots. Grass, weeds and vegetation on each Lot shall be kept mowed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from a Lot and replacements of equal quality or value promptly installed. Lawns must be properly maintained and not allowed to grow to a height of greater than six inches (6"); fences must be repaired and maintained and no objectionable or unsightly usage of Lots will be permitted which is visible to the public view. Building materials shall not be stored on any Lot except when being employed in construction upon such Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from such Lot.

Upon the Owner's failure to maintain the Lot as herein above required after the Association has sent the Owner a ten (10) day written notice requesting the performance of such maintenance, the Association or its agents may exercise any and all rights of enforcement specified in this Declaration. The Association may further, at its sole discretion, elect to have the landscaping maintained on such Lot to bring the Lot to the standards required herein (as often as is necessary) in their respective judgment at the cost to the Owner of two (2) times the cost incurred by the Association to effect such maintenance. The Association will have no liability whatsoever to the Owner of such Lot or to any person claiming by or through such Owner in relation to the landscape maintenance. The Owners of any Lot further release and forever discharge the Association and the Declarant of and from any damages, demands, actions or causes of action arising in connection with the performance of the landscape maintenance by the Association, regardless of whether any such claim or demand involves or alleges the Association or Declarant or their respective agents, employees, representatives, officers, Directors, partners, agents and assigns, of and from any damages, demands, actions or causes of action arising in connection with the performance of the landscape maintenance on the Lot. The Owner of such Lot shall be obligated, when presented with an itemized statement, to pay the Association two (2) times the cost incurred for the landscape maintenance within ten (10) days of delivery of the statement. In addition, the Association may impose fines against such Owner in an amount to be determined by the Association's Board of Directors or exercise any other of the enforcement procedures provided in the Declaration.

Until a home or residence is built on a Lot, the Declarant or the Association, may, at their option, have the grass, weeds and vegetation cut when and as often as it determines the same is needed, and have dead trees, shrubs and plants removed therefrom. The Declarant or the Association may also, at its option, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The Owner of any Lot shall be obligated to reimburse the Declarant or the Association for the cost of such maintenance or removal upon demand.

All front yards, side yards and rear yards on all Lots must be sodded within three (3) months after occupancy of the house, and must thereafter be maintained with grass or landscaping in a neat and well mowed condition, free of unsightly weeds and overgrowth. Decorative ground cover rock in the front and side yard may be used in lieu of grass but may not exceed ten percent (10%) of the total area of the front and side yard. No oak, elm or pecan trees larger than eighteen inches (18") in diameter may be removed without written approval of the ACC. EACH OWNER IS ADVISED THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES AS TO THE LIFE EXPECTANCY, VITALITY OR FITNESS FOR INTENDED PURPOSES OF ANY TREES OR SHRUBS LOCATED ON A LOT.

For the limited purpose of this Section 6.16, any reference to a "Lot" shall be deemed to expressly include that strip of land directly abutting such Lot that is situated between the property line of such Lot and the curbline (save and except for any sidewalk situated within such strip), such strip being a part of the right of way abutting such Lot.

**Section 6.17 Signs and Billboards.** Signs of any kinds shall not be placed, installed or painted on or attached to any part of a Lot or the dwelling and other improvements thereon so that they are within view of another Lot or any part of the Common Area. Notwithstanding, signs advertising the Subdivision may be erected by a builder if approved by Declarant. Nonetheless, Owners are permitted to place the following signs on their Lots provided that each sign is not larger than two feet by three feet (2' x 3') and the ACC has the right to regulate all signs on the Property:

(a) One (1) "For Sale" or "For Lease" or "Sold" sign to advertise that the particular Lot is for sale or lease ("professionally made" does not include pre-made, store bought signs), so long as the sign is fastened only to a stake in the yard of the Lot and does not reference bankruptcy, distressed nature of the sale, lease or foreclosure; and each Lot may have one professionally made "For Sale" sign while the house on the Lot is under construction and until the home is occupied.

(b) A maximum of two (2) political signs to advocate the election of political candidate(s) or the support of a political issue, proposal or party, so long as the sign(s) is/are not placed upon the Lot for more than thirty (30) days prior to the election and is/are removed within five (5) days of the election.

(c) **School Spirit Signs.** Signs containing information about one or more children residing in the dwelling and the school they attend shall be permitted so long as the sign is

not more than thirty-six inches by thirty-six inches (36" x 36") and is fastened only to a stake in the ground. There shall be no more than one sign for each child under the age of eighteen (18) residing in the dwelling, and said signs may not be displayed more than ten (10) days in any calendar month, for more than three (3) months in a calendar year.

(d) Security Signs/Stickers. Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the dwelling shall be permitted so long as the sign is not more than eight inches by eight inches (8" x 8") or the sticker is no more than four inches by four inches (4" x 4"). There shall be no more than one (1) sign and no more than six (6) stickers located on the windows or doors.

Section 6.18 Holiday Decorations. The ACC shall have authority to promulgate reasonable rules, regulations and guidelines regarding the appearance and length of time exterior holiday decorations, including but not limited to wreaths, lights and flags, are displayed on Lots. All exterior holiday decorations shall be maintained and kept in good condition while on display. The ACC shall have the right of self-help to remove any exterior holiday decorations that are in violation of this section and/or any ACC rules regarding exterior holiday decorations.

Section 6.19 Flagpoles. Only one (1) flagpole of any kind may be kept, placed, or mounted upon any Lot. Such pole shall not exceed twenty feet (20') in height. One (1) flag may be mounted on a standard size flagpole inserted into a bracket on a dwelling provided that in no case may the size of the flagpole exceed five feet (5') in length. Such bracket-mounted flags shall be of the size and style intended for residential use on holidays and/or special occasions. All flags and flagpoles mounted on any Lot in public view shall at all times be maintained and kept in good condition, and flown and lit in accordance with any applicable laws. If any flagpole is placed within the Subdivision in violation of this Declaration, the Association or its agents shall be authorized to exercise its self-help remedy to bring the Owner's Lot into compliance with this provision. A builder may not place any advertising flag on a model home without the prior written permission of the ACC. All flagpoles installed on any Lot must first be approved by the ACC.

Section 6.20 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

No Owner shall do any work that will impair the structural soundness or integrity of another residence or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other residences or their Owners.

No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property (except reasonable security, flag or landscape lighting that has approval of the ACC).

No noise or other nuisance will be permitted to exist or operate upon any portion of the Subdivision so as to be offensive or detrimental to any other portion of the Subdivision



or its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any improvement on any Lot, the Association may (but will not be obligated to, enter any such improvement and take such reasonable actions necessary to terminate such noise (including, but not limited to, silencing any burglar or break-in alarm).

No exterior speakers, horns, whistles, bells or other sound devices (except security devices such as entry door and patio intercoms used exclusively to protect the Lot and improvements situated thereon and exterior speakers installed with the initial construction of the home for use with a home entertainment center) shall be placed or used upon any Lot.

Section 6.21 Clotheslines, Woodpiles, etc. Clotheslines may not be placed on any Lot. Woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from public view.

Section 6.22 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. No trash, ashes or other refuse may be thrown or dumped on any vacant Lot or drainage area in the Subdivision. No odors shall be permitted to arise from any litter, trash, refuse, manure or other waste.

Each Lot shall be kept so that it is not unsanitary, unsightly, offensive or detrimental to any Lot or any resident. All litter, trash, refuse, manure and other waste must be kept in covered containers with tightly fitting lids at all times. All such containers must be kept within enclosed structures or appropriately screened so that they are not visible from any Lot or part of the Common Area. Notwithstanding the foregoing, trash may be put out for collection one (1) day a week, on such day that is specified by the waste collector, for a period not to exceed twenty-four (24) hours.

If the Association or a governmental entity does not provide for garbage or other waste collection, each Owner shall contract with an independent collection service for the purpose of disposing of litter, trash, refuse, manure and other waste.

Section 6.23 Hazardous Activities. No hazardous or unsafe activity or structure shall be permitted on the Property. Such prohibited activity includes but is not limited to the following:

- (a) Discharging guns, pistols, rifles or other firearms by Owners or their guests in the Subdivision;
- (b) Target practice or hunting of any nature on any tract situated in the Subdivision, or on any adjoining property situated in close proximity to the Subdivision whether owned by Declarant or otherwise;
- (c) Lighting an open fire (except within interior fireplaces, exterior fire pits, or in contained barbecue pits for cooking purposes);

(d) Burning materials;

(e) Installing or keeping a butane, propane or other combustible fuel tank or container except for portable tanks used solely in connection with fueling a barbeque pit or portable tool or installed in a vehicle or boat.

Section 6.24 Other Hazards. To the extent necessary to prevent rat infestation, diminish fire hazards and/or diminish hazards caused by structural damage, the Association shall have the right, but not the obligation, through its agents, contractors and/or employees, to enter any unoccupied lot, or other improvement thereon, without notice, to take the action necessary to prevent such rat infestation, diminish such fire hazards or diminish hazards caused by structural damage at the Owner's expense.

Section 6.25 Pets. No animals, livestock, poultry or crops of any kind shall be raised, bred or kept on any Lot except for cats, dogs, or other generally recognized household pets of a reasonable number, provided that they are not kept, bred or maintained for any commercial purposes; and provided further, that no more than two (2) adult dogs and two (2) adult cats may be kept on a single Lot. This limitation does not apply to: (a) one (1) domestic household pet (other than a dog or cats) that is in a cage, tank or bowl kept indoors at all times; or (b) a litter born to a domestic household pet until the litter is three (3) months old.

All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the ACC. It shall be the responsibility of each of the owners of such household pets to keep all such pets on a leash and under such owner's direct supervision at all times when such pets are not confined within such owner's fenced Lot, and to prevent the animals from running loose or becoming a nuisance to the other residents.

A Resident will be required to permanently remove her/his domestic household pet from the Property if, in the Board's sole discretion, the domestic household pet:

(a) Endangers the health or safety of any resident;

(b) Disturbs the rest or peaceful enjoyment of another resident, including, but not limited to, by barking, howling, whining, screeching or making other loud noises for extended or repeated periods of time; or

(c) Constitutes a nuisance or inconvenience to any resident.

If the Board deems a domestic household pet to be dangerous and the pet's owner refuses to permanently remove the pet from the Property in violation of this section, the Association is authorized to exercise a self-help remedy to remove the pet. The pet's owner shall be responsible for any kenneling charges or other fees associated with boarding and removal of the pet.

**Section 6.26 Landscaping.** Any unpaved part of the Lot that is visible to any other Lot or from any part of the Common Area must be landscaped. The Owner of each Lot shall install or cause to be installed grass and shrubbery. The ACC must approve landscaping plans before landscaping is installed. No xeriscape landscaping will be allowed unless prior approval is obtained by the ACC or is mandated by city guidelines. The Association may plant, install and maintain shrubbery and other screening devices on utility easements around boxes, transformers and other above-ground utility equipment, and mow and maintain the grass around such areas. The Association shall have the right, but not the obligation, to enter upon the Lots to plant, install, maintain and replace such shrubbery or other screening devices, and mow and maintain grass around such areas following reasonable advance notice to the Owner of such Lot.

**Section 6.27 Tree Removal.** This section only applies once an Owner has occupied a dwelling on a Lot. If a tree on the Property is greater than three inches (3") in caliper, measured at a point six inches (6") above grade, it shall not be removed. Nonetheless, a tree of this size may be removed if: (a) it is diseased; (b) it is dead; (c) it is unsafe; (d) it needs to be removed to promote the growth of other trees; or (e) the ACC has approved removal of the tree.

If this section is violated, whether intentionally or unintentionally, the Board of Directors, in its sole discretion, may require the violator to replace the removed tree with one (1) or more comparable trees of such size and in such location(s) as the Board, in its sole discretion, may determine necessary to mitigate damages for the violation.

**Section 6.28 Grading and Drainage.** All Lots shall have grading and drainage systems thereon, which prevent runoff of precipitation, irrigation or any other water to cause undue erosion of any Lot. An Owner who fails to comply with this section, and thus causes such undue erosion shall be liable for all damages caused by such undue erosion. All grading and drainage systems shall be in compliance with all codes, ordinances, regulations and/or specifications of the local, state and federal government.

The Master Grading Plan for the Subdivision may be obtained by an Owner upon request. The Master Grading Plan shows the general pattern of surface runoff on all Lots in the Subdivision. No Owner or builder shall change the basic grading or drainage as set forth in the Master Grading Plan without the Declarant's written consent. THE MASTER GRADING PLAN MAY SHOW THAT CERTAIN LOTS ARE ANTICIPATED TO RECEIVE SURFACE WATER RUNOFF FROM OTHER LOTS. NO OWNER MAY CHANGE THE GRADES OR CONSTRUCT ANY IMPROVEMENTS IN SUCH A WAY AS TO IMPEDE THE ESTABLISHED FLOW AS SHOWN ON THE MASTER GRADING PLAN. FENCES THAT WOULD BLOCK SURFACE RUNOFF SHALL BE CONSTRUCTED WITH AN ADEQUATE NUMBER AND SIZE OF OPENINGS TO PERMIT SURFACE WATER FLOW. OWNERS HEREBY AGREE TO HOLD DECLARANT AND THE ASSOCIATION HARMLESS FOR THE EXISTENCE OF THE MASTER GRADING PLAN.

**Section 6.29 Oil and Mining Operations.**

(a) Operations Prohibited. Except as provided in Section 6.29(b) below, (i) no oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, (ii) no oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot, (iii) no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot, and (iv) no tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

(b) Notice Concerning Mineral Reservation. Each Owner of any Lot is hereby informed that Declarant has conveyed to an affiliated entity all right, title and interest, if any, of Declarant in all minerals, resources and groundwater, including but not limited to oil, gas and hydrocarbons, in, on or under, and/or that may be produced from, the Subdivision. The conveyance instrument ("Mineral Deed") includes a provision whereby the owner of the minerals, resources and groundwater, if any, conveyed by such Mineral Deed will not be permitted to use the surface of the Lots (to a depth of thirty feet (30') below the finished grade of the Lots) for the purpose of exploring for, developing or producing such minerals, resources and groundwater and becomes effective with respect to a particular Lot on or after the date of recording of the first deed to such Lot (in the public records of the County) following the completion of construction of a residence thereon (the "Surface Waiver"). This Surface Waiver applies only to the interest, if any, in the minerals, resources and groundwater conveyed by the Mineral Deed. The minerals, resources and groundwater, or some portion thereof or some interest therein, may have been conveyed or reserved by third parties prior to Declarant's conveyance to its affiliate, and any such portion or interest would not be affected by the Surface Waiver contained in the Mineral Deed. **NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IS MADE AS TO THE OWNERSHIP OF THE MINERALS, RESOURCES AND GROUNDWATER OR ANY PORTION THEREOF OR ANY INTEREST THEREIN. FURTHER, NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO WHETHER THE OWNER(S), IF ANY, OF ANY INTEREST IN OR PORTION OF THE MINERALS, RESOURCES AND GROUNDWATER NOT CONVEYED BY THE MINERAL DEED HAS/HAVE WAIVED THEIR RIGHTS TO USE THE SURFACE OF THE LOTS OR THE TERMS OF ANY SUCH WAIVER OF SURFACE RIGHTS.** The Surface Waiver in the Mineral Deed does not prevent the owner of the minerals, resources, and groundwater conveyed by the Mineral Deed from exploring, developing, drilling, producing, withdrawing, capturing, pumping, extracting, mining or transporting the minerals, resources, and groundwater by pooling, unitization, directional drilling or any other manner or method that does not require entry upon the surface of the Lots. Each Owner should carefully review the title commitment delivered in connection with its acquisition of a Lot to determine the full extent to which the Mineral Deed and any other mineral conveyances affect the Lots and the Subdivision. In addition, if the Declaration includes a prohibition against mineral, resource, and/or groundwater extraction, drilling or mining, such provision is not binding on the owner(s) of the minerals, resources and groundwater.

Section 6.30 Subdividing. No Lot may be further divided or subdivided, nor may any easements or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ACC; provided, however, that when Declarant is

the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without approval from the ACC.

Section 6.31 Water and Sewage System. No individual water supply system or sewage disposal system shall be permitted on any Lot, including, but not limited to, water wells, cesspools or septic tanks.

Section 6.32 Private Utility Lines. All electrical, telephone, telecommunication, natural gas and other utility lines and facilities which are located on a Lot that are not owned by a government entity or a public utility company shall be installed underground unless otherwise approved in writing by the ACC.

Section 6.33 Radio or Television Antenna; Cable Equipment. No exterior radio or television aerial wires, antennae, or satellite dish receiver shall be maintained on any portion of any Lot forward of the main ridgeline of the midpoint of the main ridgeline in the case of a house whose main roof ridgeline is not parallel to the front Lot line. Furthermore, no radio or television aerial wires, antennae or satellite dish receiver shall be placed or maintained on any Lot which extends more than five feet (5') above the highest part of the roof of the main residence on said Lot. In no event shall any cable equipment, discs, towers or other similar devices or apparatus ancillary to television reception be situated on any portion of a Lot which is visible from the street, from other Lots, or the Common Area unless such a location: (1) precludes reception or transmission of an acceptable quality signal; (2) unreasonably delays or prevents installation, maintenance or use; or (3) unreasonably increases the cost of installation, maintenance or use. In such an event, the ACC must approve the location of such an antenna, receiver or other apparatus. Any request to the ACC for approval of such an antenna, receiver or other apparatus must include a description of all locations determined by the installer to be acceptable for receiving or transmitting telecommunication signals.

This Section shall be interpreted to be as restrictive as possible while not violating the Telecommunications Act of 1996.

Section 6.34 Screening. Before any screen is placed on any Lot, the ACC must approve the plans and specifications for the screen, as well as the location and materials for screens.

Section 6.35 Window Coverings. Owners shall install interior window coverings that are in keeping with the aesthetics of the Subdivision and any ACC rules within three (3) months of occupying a dwelling. Such window coverings must be a neutral color (e.g., tan, beige, white, gray). After occupying a dwelling for three (3) months, Owners shall not have any temporary or disposable coverings on the windows, including but not limited to foil, paper, plastic, cardboard or other window coverings that are not made for the express purpose of covering a window.

Section 6.36 Air Conditioning Units. Air conditioning units shall not be installed, placed or attached on or to the ground in front of any dwelling or on the roof of any

dwelling. Window or wall type air conditioning unit or evaporative cooler shall not be installed, placed or attached on/to any front wall or front window of a dwelling.

Section 6.37 Swimming Pools, Hot Tubs and Spas. A swimming pool (whether above-ground or in-ground), hot tub or spa shall not be installed on any Lot without the prior approval of the ACC.

Section 6.38 Athletic Facilities and Children's Play Equipment. No permanent basketball goals or backboards or any other similar sporting equipment shall be placed on a Lot without the prior written consent of the ACC. Any temporary basketball goals or backboards or children's play equipment or any other similar sporting equipment shall be stored in the rear yard or in the garage when not in use and shall not be placed within fifteen feet (15') from the front property line of any Lot in the Subdivision without the prior written consent of the ACC.

Section 6.39 Garages. A garage able to accommodate a minimum of one (1) automobile and a maximum of four (4) automobiles must be constructed and maintained for each residence. No garage may be enclosed, modified or converted for any use other than for storage and maintenance of automobiles, except when being used as a builder's temporary sales or construction office prior to permanent occupancy of the main structure. No carports shall be permitted without the prior written approval of the ACC.

Section 6.40 Roofs. The surface of all roofs of principal and secondary structures which are exposed to public view shall be asphalt shingle or wood shingle, wood shakes or tile. Notwithstanding the foregoing any wood shingles must be rated by the state insurance board as meeting fire retardant standards. The ACC shall have the authority to approve other roof treatments and materials when in its determination such treatments and materials in the form utilized will not be a detriment to the quality of the neighborhood. No gravel or "built up" roofs shall be permitted without the written approval of the ACC.

Section 6.41 Exterior Lighting. All exterior lighting which include or exceed two (2) foot-candles shall be fitted to render them full cutoff (no light output emitted above ninety (90) degrees at any lateral angle around the fixture).

Section 6.42 Setback Lines. All buildings or other structures, permanent or temporary, habitable or not, must be constructed, placed and maintained in conformity with platted setback line. Additionally, in no event shall any such building or other structure be constructed, placed or maintained within the setback lines noted on the plat for the applicable Lot. Notwithstanding the foregoing, approved outbuildings may be placed on a Lot in accordance with the provisions of Article V hereof provided the ACC approves same. The eaves, steps and/or porches of dwellings shall not be deemed to be a part of a building or structure for the purpose of this covenant. The ACC is empowered to grant variances from the setback requirements hereinabove provided in those instances where in the opinion of said ACC the proposed location of the buildings or other structure will not detract from the appearance and value of other Lots in the Subdivision and will not have a detrimental effect on the aesthetic integrity and harmony of the Subdivision.

## ARTICLE VII. ENFORCEMENT

Section 7.1 Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration either to prevent him/her/them from so doing or to recover damages for such violations. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Declarant, for itself, its successors or assigns, reserves the right to enforce these restrictions, though it may have previously sold and conveyed all subdivided Lots in the Subdivision controlled by these restrictions. The reservation of this right to enforcement shall not create an obligation of any kind upon any party including, but not limited to, Declarant, to enforce the same.

Section 7.2 Remedies. If a resident or a resident's guest, employee, agent or invitee fails to comply with a provision in this Declaration or the Association's Bylaws, the following remedies exist:

(a) Lawsuit. The Declarant, the Association, and/or the ACC has authority (but no obligation) to bring an action against the Owner who is liable, at law or in equity, to recover sums due, for damages, for injunctive relief and/or for any other remedy available.

(b) Fines. The Board may assess fines against an Owner for violations of any restriction set forth in this Declaration, any guidelines set forth by the ACC, or any rules adopted by the Board which have been committed by an Owner, an occupant of the Owner's Lot, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this Section 7.2 shall be considered an Assessment pursuant to this Declaration. Each day the violation continues may be considered a separate violation if written notice is given to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities caused by the Owner or the Owner's family, guests, agents, occupants or tenants. The Manager shall have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in Section 4.10 hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association as provided for herein. Unless otherwise provided in this Declaration, the fine and/or damage charge shall be considered an assessment for the purpose of this Article, and shall be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this Declaration.

(c) Self-Help Remedy. The Declarant, the Association, the ACC and/or their agents/representatives have authority (but no obligation) to enter upon a Lot to remedy the violation, so long as: (a) the Owner was previously provided written notice of the violation; and (b) the violation continues for at least ten (10) days (whether or not consecutive). The Declarant, the Association, the ACC and their agents/representatives shall not be subject to any liability for trespass, other tort or damages in connection with or arising from exercise of this remedy.

(d) Costs and Attorneys' Fees. Owners are liable for, and the Association is entitled to, reasonable costs and attorneys' fees incurred by the Declarant, the Association and/or the ACC in obtaining compliance with this Declaration or the Association's Bylaws, whether or not a lawsuit is filed, a fine is imposed or the self-help remedy is exercised. All costs incurred by the Declarant, the Association and/or the ACC in exercising any of the remedies set forth in this section shall be a personal obligation of the Owner of the Lot at the time when the costs or attorneys' fees were incurred, a charge on the Lot, shall be a continuing lien upon the Lot and may be enforced as provided herein.

Section 7.3 No Warranty of Enforceability. The Declarant has no reason to believe that any of the restrictions set forth in any of the provisions of the Declaration are or may be invalid or unenforceable. Nonetheless, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictions and provisions. All Owners purchasing a Lot in reliance on the restrictions and provisions herein shall assume all risks of the validity and enforceability thereof and, by purchasing the Lot, agree to hold Declarant harmless therefrom.

## **ARTICLE VIII. COMMON AREA**

Section 8.1 Maintenance and Control. Subject to the rights of the Owners that are set forth in the Declaration, the Association shall have the exclusive responsibility and obligation of maintaining, managing and controlling the Common Area, to the Board's sole satisfaction. The Association shall keep the Common Area in good, clean, sanitary and attractive condition. Notwithstanding anything herein to the contrary, on those Common Areas labeled on the plats therefor as open space, greenbelt, or similar terms, and those Common Areas which the Association chooses to use as greenbelt, the Association's sole maintenance responsibility shall be to shred or mow such areas of those Common Areas which are twenty-four inches (24") or less from another Lot.

Section 8.2 Access and Use. The Board is authorized to limit access to and use of the Common Area to Residents of Lots for which assessments, fees and other charges are not current.

### Section 8.3 Restrictions Regarding the Common Area.

(a) Owners are prohibited from in any way altering, modifying, adding to or otherwise performing any work upon the Common Area.



(b) Owners are prohibited from appropriating any portion of the Common Area for their own exclusive use.

(c) No part of the Common Area shall be used, occupied, improved, altered or modified, unless such use, occupancy, improvement, alteration or modification has been approved by at least fifty-one percent (51%) of members of the Association. Nonetheless, until Declarant has sold all Lots within the Subdivision, the Declarant is authorized to construct improvements within, on and/or to the Common Area without the approval of the members, the Association or the ACC.

Section 8.4 Liability of Owners for Damage. Each Owner is liable to the Association for any and all damages to the Common Area caused by the Owner, residents of the Owner's Lot and/or guests, employees, agents or invitees of the Owner or a resident of the Owner's Lot. A liable Owner shall pay the Association the full cost of repairs within thirty (30) days of the repairs. If the liable Owner fails to do so, the cost of repairs shall be assessed against the Owner's Lot and secured by the continuing lien upon the Lot and may be enforced as provided herein.

Section 8.5 Condemnation. If any part or all of the Common Area is taken or threatened to be taken by eminent domain, the Association, through the Board, is authorized to participate in the condemnation proceedings. The expense of such participation shall be a common expense to be paid out of assessments. The Association is authorized to obtain and to pay for the assistance of attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Board, in its sole discretion, deems necessary or advisable to aid it in the condemnation proceedings. Furthermore, the Board, in its sole discretion, is authorized to determine whether to contest or defend any such proceeding, to settle, or to convey such property in lieu of condemnation. Any and all damages or awards for any such taking shall be deposited with the Association.

Section 8.6 Rules and Regulations. The Board may, at its discretion, adopt, and from time to time change, the rules or regulations pertaining to any part of the Common Facilities which all Members shall abide by.

## **ARTICLE IX. MISCELLANEOUS PROVISIONS**

Section 9.1 Effective Date. The Declaration is effective as of the date it is recorded in the public records of the County.

Section 9.2 Duration. These restrictions shall be deemed covenants running with the land and shall be binding on all parties and all persons claiming under them for a term of fifty (50) years from the date this Declaration is recorded, at which time said restrictions shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then Owners of the Lots it is agreed to change said restrictions in whole or in part.

Section 9.3 Reservation By Declarant of Right to Vary Dwellings. Each Owner, by acceptance of a deed to a Lot, acknowledges and agrees that Declarant expressly reserves the right to impose additional specific use restrictions for the various Subdivision units comprising the Properties and each Owner further acknowledges and agrees that there is absolutely no requirement that each such set of additional specific use restrictions be the same or similar. In this connection Declarant expressly reserves the right to annex additional Subdivision units that are comprised of Lots of different sizes than those heretofore comprising the Properties and/or of dwellings that differ in size, style, masonry composition and architecture from dwellings in other Subdivision units comprising the Properties.

Section 9.4 Other Uses; Adjacent Property; Zoning. Owners acknowledge certain property situated adjacent to the Property identified on Exhibit B may be used for any purpose, including but not limited to multifamily, condominium, or commercial/retail uses. Owners also acknowledge that adjoining property is may be rezoned at any time. Consequently, the adjoining property may be developed and used for any lawful purpose. In addition, Owners acknowledge that the Association, its Directors, officers, managers, agents and/or employees, the Declarant and/or any successor declarant have made no representations or warranties, nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to any future change in use of the adjoining property. Declarant or any successor declarant, in its discretion, may choose to annex or not annex into the jurisdiction of the Association all or any portion of the adjoining property. The Declarant may impose additional and/or different restrictions on said property, if, and, and when such property is annexed into the jurisdiction of the Association.

Section 9.5 Amendment. These restrictions may be amended by an instrument signed by not less than fifty-one percent (51%) in interest of the Lot Owners, except that so long as Declarant owns any Lot in the Subdivision, in order for any amendment to become effective, it must be executed by Declarant. Notwithstanding the foregoing, Declarant shall have the right to record an amendment to this Declaration, without the necessity of joinder by any other Owner of a Lot, for any purpose it deems necessary, in its sole discretion, including but not limited to complying with a statutory requirement, correcting a clerical error, clarifying an ambiguity, inserting an omitted portion or removing any contradictions in the terms hereof or any other purpose deemed necessary for the benefit of the overall development as determined by Declarant, in its sole discretion, by filing an amendment to this Declaration and any supplemental declaration in the public records of the County. Declarant is not required to send out notices or conduct a meeting in order to amend this Declaration and any supplemental declaration under this Section.

Section 9.6 Annexation and De-Annexation.

(a) Additional residential property and Common Area may be annexed to the Properties with the consent of sixty-seven percent (67%) of each class of members.

(b) Notwithstanding the foregoing provision, from time to time Declarant may, in its sole determination, annex such additional property into the Subdivision as Declarant may designate from property situated in the County and more particularly depicted or referred to in Exhibit B attached hereto and incorporated herein for all purposes, including, without limitation, any land now or hereafter owned by Declarant that is adjacent to, abutting, or in reasonable proximity in its sole discretion to the land described on Exhibit B, so long as Declarant specifically designates same for such purpose; all without the consent of other members within ten (10) years from date hereof. Nothing herein contained shall require Developer to annex such additional property or any portion thereof.

(c) Until Class B Membership no longer exists, the Declarant has the right to de-annex any property owned by the Declarant from the Subdivision without the joinder of any other Owners or members.

Section 9.7 Mergers. Upon a merger or consolidation of the Association with another association as provided in its Certificate of Formation, the Association's properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation or to a like organization or governmental agency. The surviving or consolidated association shall administer any restrictions together with any Declarations of Covenants, Conditions and Restrictions governing these and any other properties, under one administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 9.8 Rights of Mortgagees. Each lienholder or mortgagee of a Lot shall possess the right, subject to its prior written request to the Association and the providing of its address to the Association, to:

(a) Inspect the books and records of the Association during normal business hours;

(b) Receive an annual unaudited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association; and

(c) Receive written notice of all meetings of the members of the Association and be entitled to designate a representative to attend such meetings.

Section 9.9 Current Address and Occupants. Owners are required to notify the Association in writing of their current address if other than the physical address of the Lot at all times. If an Owner fails to notify the Association of their current address, the Association shall use the address of the Lot as the current address. If Owner leases the property, she/he shall supply the name of the tenant present upon the execution of any lease. Owner is also required to provide the Association with a current email address.

Section 9.10 Emergency and Service Vehicles. An easement is hereby granted to police, fire protection, security, ambulance and other emergency vehicles and other service

vehicles to enter upon the Common Area in the performance of their duties, subject to any reasonable rules and regulations imposed by the Association; and further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel as well as to any ACC with jurisdiction over the Properties to enter the Common Area to render any service or perform any function contemplated herein.

Section 9.11 Leases/Rental Agreements. Any lease or rental agreement between an Owner and a lessee shall provide that the lease shall be subject in all respects to the provisions of this Declaration and to the Certificate of Formation and Bylaws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default in the lease or agreement. All such leases/agreements shall be in writing and in no event shall any such lease or agreement be for a period of less than six (6) months.

Section 9.12 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 9.13 Conflict. If there are conflicts between the provisions of Texas law, the Certificate of Formation, the Declaration, and/or the Bylaws, then the provisions of Texas law, the Certificate of Formation, the Declaration, and the Bylaws (in that order) shall prevail.

Section 9.14 Notices. Any notice that the Declaration permits or requires to given shall be in writing and may be delivered by certified mail/return receipt requested or email, unless otherwise noted in the Certificate of Formation, Bylaws or this Declaration. Notices shall be deemed to have been delivered properly if sent to an Owner's last known address or email address (if any) that is reflected in the Association's records. If the Association's records do not reflect an Owner's email address, notice must be delivered by certified mail/return receipt requested.

If an Owner does not reside on his or her Lot, she/he shall notify the Association in writing of his or her address at which to send notices. An Owner's failure to do so will result in all notices being sent to the address of the Lot.

Section 9.15 Service Mark. Declarant is the prior and exclusive owner and proprietor of, and reserves all rights with respect to the service mark for Kendall Brook ("Service Mark"). Unless and until a written license agreement has been sought and obtained from Declarant (and in this connection Declarant may withhold consent in its sole and absolute discretion), no person or entity may at any time and/or for any reason whatsoever, use, depict, draw, demonstrate, reproduce, infringe, copy or resemble, directly or indirectly, the Service Mark.

Section 9.16 Plural/Singular. Unless the context requires otherwise, the singular shall include the plural and the plural shall include the singular.

Section 9.17 Gender. Unless the context requires otherwise, even if a word in the Declaration is in the male or female gender, it shall be applicable to entities and individuals (male and female).

Section 9.18 Titles and Captions. All titles and captions used in the Declaration are intended solely for convenience of reference. The titles and captions do not enlarge, limit or otherwise affect the meaning of any term or provision contained in the Declaration.

Section 9.19 Governing Law and Venue. All provisions in this Declaration shall be governed by the laws of the State of Texas. Any and all obligations performable under the Declaration shall be performed in the County. Venue for any and all lawsuits arising in connection with any of the provisions of the Declaration shall be in the County.

Section 9.20 Compliance with Laws. Owners shall comply with all federal, state, County and municipal laws, ordinances, rules and regulations regarding the use, occupancy and condition of their Lots, dwellings and any improvements thereon. Should any provision of the Declaration be found to be in violation of any law, ordinance, rule or regulation, the provision shall be construed and interpreted so that it is as restrictive as possible so as to preserve as much of the original provision as allowed by law.

Section 9.21 Recorded Plat. All dedications, limitations, restrictions and reservations shown on any of the plats of the Properties, are and shall be incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed or to be executed by Declarant or any builder or other Owner conveying Property in the Subdivision whether specifically referred to therein or not.

Section 9.22 Security. THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS AND EMPLOYEES, THE DECLARANT AND ANY SUCCESSOR DECLARANT ARE NOT AND SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE SUBDIVISION.

THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS AND EMPLOYEES, THE DECLARANT AND ANY SUCCESSOR DECLARANT SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE DUE TO FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

ALL OWNERS, ALL RESIDENTS, AND ALL GUESTS, EMPLOYEES, AGENTS AND INVITEES OF ALL RESIDENTS, AS APPLICABLE, HEREBY ACKNOWLEDGE AND UNDERSTAND THE FOLLOWING:

(A) THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS AND EMPLOYEES, THE DECLARANT AND ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT: (i) THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE; OR (ii) THAT FIRE

PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

(B) THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS AND EMPLOYEES, THE DECLARANT AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY WITHIN THE SUBDIVISION;

(C) THAT EACH OWNER, EACH RESIDENT AND EACH GUEST, EMPLOYEE, AGENT AND INVITEE OF ANY RESIDENT ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLINGS AND TO THE CONTENTS OF DWELLINGS;

(D) THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS AND EMPLOYEES, THE DECLARANT AND ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED; AND

(E) THAT EACH OWNER, EACH RESIDENT AND EACH GUEST, EMPLOYEE, AGENT OR INVITEE OF ANY RESIDENT HAS NOT 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 SUBDIVISION.

Section 9.23 View Impairment. THE DECLARANT AND THE ASSOCIATION DO NOT REPRESENT, WARRANT OR GUARANTEE THAT ANY VIEW FROM ANY OF THE LOTS OR ANY OTHER PART OF THE SUBDIVISION WILL BE PRESERVED WITHOUT IMPAIRMENT. The Declarant and the Association are not obligated to relocate, trim or otherwise alter any trees or shrubs in the Common Area. Nonetheless, the Association is authorized to plant trees or provide other landscaping in Common Area. There shall not be any easements (express or implied) for view purposes or for the passage of light and air.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 18<sup>th</sup> day of April 2019.

**DECLARANT:**

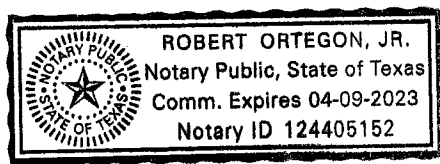
**CONTINENTAL HOMES OF TEXAS, L.P.,**  
a Texas limited partnership

By: CHTEX OF TEXAS, INC.,  
a Delaware corporation  
its General Partner

By: James Kyle  
Name: James Kyle  
Title: Vice President

STATE OF TEXAS                   §  
   §  
COUNTY OF Brewer           §

This instrument was acknowledged before me on the 18 day of April, 2019, by James Kyle, vice President of CHTEX OF TEXAS, INC., a Delaware corporation, General Partner of CONTINENTAL HOMES OF TEXAS, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.



Robert Ortega, Jr.  
Notary Public, State of Texas

**EXHIBITS:**

Exhibit A – Properties  
Exhibit B – Property That May Be Annexed at Declarant's Discretion

**AFTER RECORDING, RETURN TO:**  
Continental Homes of Texas, L.P.  
211 N. Loop 1604 East, Suite 121  
San Antonio, TX 78232

**EXHIBIT A**

**PROPERTIES**

All of the Kendall Brook Unit 1B, a subdivision of Bexar County, Texas being more particularly described on that certain Subdivision Plat Establishing Kendall Brook Unit 1B recorded on April 12, 2019 in Volume 20001, Pages 954-956, and as Document No. 20190066129 of the Official Public Records of Real Property of Bexar County, Texas.



**EXHIBIT B**

**PROPERTY THAT MAY BE ANNEXED BY DECLARANT**

ANY PROPERTY WITHIN A TEN (10) MILE RADIUS FROM ANY PORTION OF THE  
PROPERTIES

B-1

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20190070904  
**Recorded Date:** April 18, 2019  
**Recorded Time:** 3:30 PM  
**Total Pages:** 39  
**Total Fees:** \$174.00

**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

**\*\* Do Not Remove \*\***

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 eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 4/18/2019 3:30 PM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk

**SUPPLEMENTAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR KENDALL BROOK  
ANNEXING UNIT 3**

STATE OF TEXAS           §  
                                      §       KNOW ALL BY THESE PRESENTS:  
COUNTY OF BEXAR       §

That this SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KENDALL BROOK ANNEXING UNIT 3 (the “**Annexation**”) is made on the date of execution by CONTINENTAL HOMES OF TEXAS, L.P., a Texas limited partnership (“**Declarant**”).

**W I T N E S S E T H:**

WHEREAS, Declarant caused that certain Declaration of Covenants, Conditions, and Restrictions for Kendall Brook Subdivision to be recorded on April 18, 2019 as Document No. 20190070904 of the Official Public Records of Real Property of Bexar County, Texas (as may be further amended or supplemented, the “**Declaration**”) which subjects Kendall Brook subdivision (the “**Properties**”) to Kendall Brook Homeowners Association, Inc., a Texas nonprofit corporation (the “**Association**”);

WHEREAS, Section 9.6(b) of the Declaration allows Declarant to annex additional real property into the Properties making it a part of the Association and subject to the Declaration; and

WHEREAS, Declarant desires to annex that certain real property located in Bexar County, Texas being more particularly described on Exhibit A attached hereto and incorporated herein for all purposes (the “**Annexed Property**”).

NOW, THEREFORE, Declarant hereby: (i) annexes the Annexed Property into the Properties; (ii) makes the Annexed Property subject to the Association; and (iii) declares that the Annexed Property shall further be held, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in the Declaration. Additionally, any definition in the Declaration regarding property is hereby amended to include the Annexed Property. Further, the definition of Common Area in the Declaration is amended to include the Common Area designated on Exhibit A.

[SIGNATURE PAGE(S) TO FOLLOW]

17<sup>th</sup>  
EXECUTED TO BE EFFECTIVE the ~~13<sup>th</sup>~~ day of June, 2021.

**DECLARANT:**

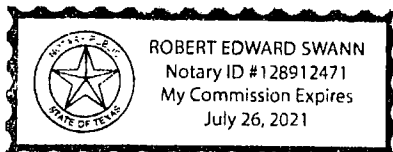
CONTINENTAL HOMES OF TEXAS, L.P.,  
a Texas limited partnership

By: CHTEX of Texas, Inc.,  
a Delaware corporation,  
its General Partner

By: Leslie Ostrander  
Name: Leslie Ostrander  
Title: Assistant Secretary

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

BEFORE ME, the undersigned authority, on this 17 day of JUNE, 2021  
personally appeared LESLIE OSTRANDER, ASST. SECRETARY of CHTEX of  
Texas, Inc., a Delaware corporation, General Partner of CONTINENTAL HOMES OF TEXAS,  
L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the  
foregoing instrument and acknowledged to me that he or she executed the same for the purposes  
therein contained and in the capacity therein stated.



[Signature]  
Notary Public, in and for the State of Texas

After Recording Return To:  
Barton Benson Jones PLLC  
Attn: Adrian R. Coronado  
745 E. Mulberry Ave., Ste. 550  
San Antonio, Texas 78212

EXHIBIT A

LEGAL DESCRIPTION OF ANNEXED PROPERTY

All of the property known as Kendall Brook Unit 3, a subdivision located in Bexar County, Texas according to that certain Subdivision Plat Establishing Kendall Brook Unit 3 recorded on January 15, 2021 in Plat Volume 20002, Pages 275-276 and Document Nos. 20210011740-20210011741 of the Map and Plat Records of Bexar County, Texas including, but not limited to, the following lots:

RESIDENTIAL LOTS

Lots 25-54, Block 86  
Lots 11-45, Block 87

COMMON AREA

Lot 903, Block 87

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20210165922

**Recorded Date:** June 17, 2021

**Recorded Time:** 3:58 PM

**Total Pages:** 4

**Total Fees:** \$34.00

**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

**\*\* Do Not Remove \*\***

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 eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 6/17/2021 3:58 PM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk

DH TITLE  
COUNTY

**SUPPLEMENTAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR KENDALL BROOK  
ANNEXING UNIT 2**

STATE OF TEXAS           §  
                                     §       KNOW ALL BY THESE PRESENTS:  
COUNTY OF BEXAR       §

That this SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KENDALL BROOK ANNEXING UNIT 2 (the “**Annexation**”) is made on the date of execution by CONTINENTAL HOMES OF TEXAS, L.P., a Texas limited partnership (“**Declarant**”).

**W I T N E S S E T H:**

WHEREAS, Declarant caused that certain Declaration of Covenants, Conditions, and Restrictions for Kendall Brook Subdivision to be recorded on April 18, 2019 as Document No. 20190070904 of the Official Public Records of Real Property of Bexar County, Texas (as may be further amended or supplemented, the “**Declaration**”) which subjects Kendall Brook subdivision (the “**Properties**”) to Kendall Brook Homeowners Association, Inc., a Texas nonprofit corporation (the “**Association**”);

WHEREAS, Section 9.6(b) of the Declaration allows Declarant to annex additional real property into the Properties making it a part of the Association and subject to the Declaration; and

WHEREAS, Declarant desires to annex that certain real property located in Bexar County, Texas being more particularly described on Exhibit A attached hereto and incorporated herein for all purposes (the “**Annexed Property**”).

NOW, THEREFORE, Declarant hereby: (i) annexes the Annexed Property into the Properties; (ii) makes the Annexed Property subject to the Association; and (iii) declares that the Annexed Property shall further be held, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in the Declaration. Additionally, any definition in the Declaration regarding property is hereby amended to include the Annexed Property. Further, the definition of Common Area in the Declaration is amended to include the Common Area designated on Exhibit A.

[SIGNATURE PAGE(S) TO FOLLOW]

EXECUTED TO BE EFFECTIVE the 7<sup>th</sup> day of May, 2020.

**DECLARANT:**

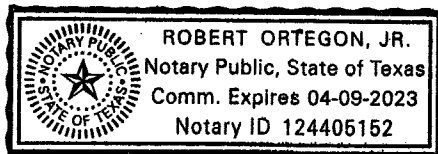
CONTINENTAL HOMES OF TEXAS, L.P.,  
a Texas limited partnership

By: CHTEX of Texas, Inc.,  
a Delaware corporation,  
its General Partner

By: *James Kyle*  
Name: James Kyle  
Title: Vice President

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

BEFORE ME, the undersigned authority, on this 7<sup>th</sup> day of May, 2020  
personally appeared James Kyle, Vice President of CHTEX of  
Texas, Inc., a Delaware corporation, General Partner of CONTINENTAL HOMES OF TEXAS,  
L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the  
foregoing instrument and acknowledged to me that he or she executed the same for the purposes  
therein contained and in the capacity therein stated.



*Robert Ortega, Jr.*  
Notary Public, in and for the State of Texas

After Recording Return To:  
Barton Benson Jones PLLC  
Attn: Shanna Castro  
745 E. Mulberry Ave., Ste. 550  
San Antonio, Texas 78212



EXHIBIT A

LEGAL DESCRIPTION OF ANNEXED PROPERTY

All of the property known as Kendall Brook Unit 2, a subdivision located in Bexar County, Texas according to that certain Subdivision Plat Establishing Kendall Brook Unit 2 recorded on March 20, 2020 in Plat Volume 20001, Pages 1928-1931 and Document Nos. 20200060629-20200060632 of the Map and Plat Records of Bexar County, Texas including, but not limited to, the following lots:

RESIDENTIAL LOTS

Lots 65-81, Block 84

Lots 1-13, Block 88

Lots 1-17, Block 89

Lots 1-45, Block 90

COMMON AREA

Lot 906, Block 84

Lots 901 and 902, Block 90

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20200096495  
**Recorded Date:** May 08, 2020  
**Recorded Time:** 3:11 PM  
**Total Pages:** 4  
**Total Fees:** \$34.00

**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

**\*\* Do Not Remove \*\***

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 eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 5/8/2020 3:11 PM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk