45 pgs
DCC

20200157

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS for OAKS OF WINDCREST V Fredericksburg, Texas

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

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR OAKS OF WINDCREST V is made and executed by 10-8 Properties, LLC, a Texas limited liability company (the "Declarant").

WITNESSETH:

A. The Declarant is the owner of that certain real estate situated in the City of Fredericksburg and County of Gillespie, Texas more particularly described as follows:

> BEING 15.38 acres of land, more or less, situated in Gillespie County, Texas, part of Outlot Nos. 110, 111, 114 and 115 as said Outlots are shown on the map of Fredericksburg, Texas, and Environs by the German Emigration Company; said 15.38 acre tract of land is described by metes and bounds on Exhibit "A", attached hereto and made a part hereof. **Appendix "A."**

B. The Declarant desires to create on the Property a planned residential community sharing certain common easements and other facilities and Improvements, to be instituted in phases with the Declarant adding undeveloped land in the future, for the purpose of developing that land as a part of the common plan.

DURING THE DEVELOPMENT PERIOD, **APPENDIX "B"** HAS PRIORITY OVER THE MAIN BODY OF THIS DECLARATION.

C. The Declarant hereby states that the real estate described above is held and shall be sold and conveyed subject to the following Covenants, Conditions, Restrictions and Easements which shall run with the land in order to protect the value and desirability of such real estate binding upon any and all parties having any right, title or interest in and to such land or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner who may have an interest in said land.

D. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said Development, to create an entity to which would be delegated and assigned the powers of maintaining and administering any common properties and facilities, administering and enforcing the Covenants and Conditions set forth herein and collecting and disbursing the Assessments and charges hereinafter created.

E. Pursuant to the foregoing, Declarant has caused or will cause to be incorporated under the laws of the State of Texas "Oaks of Windcrest Phase V POA, Inc.", a Texas nonprofit corporation.

NOW, THEREFORE, Declarant hereby declares that the Property shall be owned, held, transferred, sold, conveyed, occupied and developed subject to the Covenants, Conditions, Restrictions, Easements, reservations, charges, liens and stipulations hereinafter set forth.

ARTICLE I
DEFINITIONS

1.1 Additional Land. "**Additional Land**" means real property which may be added to the Property and subjected to this Declaration by Declarant.

1.2 Applicable Law. "**Applicable Law**" means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes and ordinances specifically referenced in the Documents are "Applicable Law" on the date of the Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.3 Architectural Control Committee or ACC or Committee. "**Architectural Control Committee**" or "**ACC**" or "**Committee**" means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the ACC is the Declarant, Declarant's designee, or Declarant's delegatee. Thereafter, the board-appointed Architectural Control Committee is the Committee.

1.4 Association. "**Association**" means Oaks of Windcrest Phase V POA, Inc., a Texas non-profit corporation, the Members of which shall be the Owners of Lots within the Subdivision. The term "Association" shall have the same meaning as the term "unit owners' association" in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Certificate, the Bylaws, and the Act.

1.5 Assessment. "**Assessment(s)**" shall mean any one or more of the following Assessments:

1.5.1 Special Assessment(s). "**Special Assessment(s)**" shall mean the Board may levy one or more special assessments against all Lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds.

1.5.2 Annual Assessment(s). "**Annual Assessment(s)**" shall mean the amount, which is to be paid, by each Member and/or Owner to the Association to promote the recreation, health, safety, and welfare of the residents and/or Owners of the Properties and for the Improvement and maintenance of any Common Area.

1.5.3 Specific Assessment(s). "**Specific Assessment(s)**" shall have the meaning provided such term in 4.10 below.

1.6 Board. "**Board**" shall mean the governing body of the Association - Board of Directors of the Association.

1.7 Bylaws. "**Bylaws**" shall mean the Bylaws of the Association.

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

1.9 City. **"City"** shall mean the City of Fredericksburg, Texas, and its applicable agencies, departments, and committees.

1.10 Committee. **"Committee"** shall mean the Architectural Control Committee as referred to in 1.4 above.

1.11 Common Area. **"Common Area"** shall mean all real property (including the Improvements thereto) leased, owned or maintained by the Association for the common use and enjoyment of the Owners, whether in existence at the time of the imposition of this Declaration, or which may be added at any time in the future. By way of illustration, Common Area may include, but not necessarily be limited to, the following: private streets, sewage system, signs, street medians, entry gates, guardhouse, gang mailbox area and drives, tennis courts, recreation area, detention areas, landscaping, lighting, entrance signs, walls, bridges, trails, greenbelts, and other similar or appurtenant Improvements.

1.12 Covenant. **"Covenant"** or **"Covenants"** shall mean the covenants, conditions, restrictions, easements, reservations, charges, liens and stipulations set forth herein that shall be applicable to, and will govern the Development, Improvement, ownership, use, occupancy, conveyance, administration and maintenance of, the Property and any Common Areas thereof.

1.13 Declarant. **"Declarant"** means 10-8 Properties, LLC, a Texas limited liability company, its successors or assigns; provided that any assignment(s) of the rights of 10-8 Properties, LLC as Declarant, must be expressly set forth in writing and recorded in the Official Public Records, Gillespie County, Texas. The Declarant is the party who causes the Property to be developed for actual residential use. The Declarant enjoys special privileges to help protect its investment in the Development as defined in Appendix "B."

1.14 Declarant Control Period. **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association as defined below in B.2.1.

1.15 Declaration. **"Declaration"** shall mean this instrument as it may be amended from time to time.

1.16 Development. **"Development"** shall mean the Property, together with all Improvements now or hereafter situated thereon and all rights and appurtenances thereto, together with the Improvements thereon and rights and appurtenances thereto.

1.17 Development Period. **"Development Period"** means that period of time during which Declarant controls the operation and management of the Association as defined below in B.2.2.

1.18 Development Period Claims. **"Development Period Claims"** means any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct or indirect, at law or in equity, of whatsoever kind or nature, whether theretofore or thereafter accruing, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties during the Development Period, and in any way directly or indirectly arising out of or in any way connected to this Declaration, or the Property, or any transactions associated therewith.

1.19 Documents. **"Documents"** mean, singly or collectively as the case may be, this

Declaration, the Plat and Plans, Bylaws, the Community Manual, Management Certificate and the Rules and Regulations of the Association, as each may be amended from time to time. An appendix, attachment, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.20 Improvement. "**Improvement**" or "**Improvements**" shall mean every structure on the Property and all appurtenances thereto of every type and kind, including, but not limited to, buildings, outbuildings, storage sheds or buildings, guest quarters, gazebos, patios, driveways, walkways and paved areas, tennis courts, fountains, large barbecue units, greenhouses, barns, basements, and large visible decorative items, swimming pools, garages, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and pumps, tanks, pipes, lines, meters, antennas, satellite dishes, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.21 Lot. "**Lot**" or "**Lots**" shall mean and be defined as a separate single-family residential building site within the Property as the same is added to, subdivided and described pursuant to and in accordance with the plat(s) of the Property, as they may be amended from time to time and shall include any Improvements from time to time constructed, erected, placed, installed or located thereon.

1.22 Management Certificate. "**Management Certificate**" shall mean the Association shall record in Gillespie County, Texas the (a) the name of the subdivision; (b) the name of the Association; (c) the recording data for the Subdivision; (d) the recording data for the Declaration; (e) the name and the mailing address of the Association; (f) the name and mailing address of the person managing the Association or the Association's designated representative; and (g) other information the Association considers appropriate.

1.23 Member. "**Member**" means a member of the Association, each Member being an Owner of a Lot unless the context indicates that member means a member of the Board or a member of a committee of the Association.

1.24 Mortgage. "**Mortgage**" shall mean the conveyance of any Lot to secure the payment of a debt which conveyance shall be released or reconveyed upon the due payment of such debt and shall include a Deed of Trust.

1.25 Mortgagee. "**Mortgagee**" shall mean a person or entity to which a Deed of Trust lien upon a Lot is given and shall include the Beneficiary of a Deed of Trust.

1.26 Owner. "**Owner**" or "**Owners**" means a holder of fee simple title to a Lot. Declarant is the initial Owner of all Lots. Mortgagees who acquire title to a Unit through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

1.27 Plans and Specifications. "**Plans and Specifications**" shall mean any and all documents designed to guide the construction, alteration or erection of any Improvement.

1.28 Plat. "**Plat**" means a Subdivision plat of any portion of the Development as recorded in the Official Public Records of Gillespie County, Texas, and any amendments thereto.

1.29 Property. "**Property**" shall mean and refer to that certain real property hereinbefore described as the Subdivision and more particularly described as Oaks of Windcrest V according to the Plat of said Subdivision as recorded in the Plat Records of Gillespie County, Texas, noted above, or any additions thereto.

1.30 Released Parties. "**Released Parties**" means Declarant, together with its employees, agents, representatives, consultants, attorneys, fiduciaries, officers, directors, partners,

predecessors, successors and assigns, subsidiary corporations, parent corporations, and related corporate divisions.

1.31 Restriction. **"Restriction" or "Restrictions"** shall mean the covenants, conditions, restrictions, easements, reservations, charges, liens and stipulations set forth herein that shall be applicable to, and will govern the Development, Improvement, ownership, use, occupancy, conveyance, administration and maintenance of, the Property and any Common Areas thereof.

1.32 Rules and Regulations. **"Rules and Regulations"** shall mean the Declarant may adopt rules and regulations for (a) the administration of the Association and Documents; (b) the maintenance, management, operation, use, conservation, and beautification of the Property; and, (c) the health, comfort, and general welfare of the residents; provided, however, that such rules may not be in conflict with law or the Documents. The Board has the right to amend, from time-to-time, the Rules, and Regulations.

1.33 Single-Family Unit. **"Single-Family Unit"** shall mean and refer to any Improvements on a Lot, which are designed and intended for occupancy and used as a residence.

1.34 Subdivision. **"Subdivision"** shall mean the real estate hereinabove described.

ARTICLE II
REQUIREMENTS FOR LAND USE AND CONSTRUCTION

2.1 Single-Family Residential Lots. All Lots within the Subdivision shall be single-family residential Lots. No structure shall be erected on any single-family Lot to exceed forty feet (40') in height; including private garages and garden structures such as are ordinarily used in connection with a single-family residence, excepting aerials and chimneys.

2.2 Setbacks. Setbacks lines are hereby established as follows:

2.2.1 Front setback line – Twenty-five (25') feet.

2.2.2 Rear setback line - Ten (10') feet.

2.2.3 Side setback line - Five (5') feet.

2.2.4 Side setback lines (the street side of a corner Lot) - Fifteen (15') feet. No building shall be erected or permitted to remain on any residential Lot nearer than the foregoing setback lines.

2.3 Re-subdividing. No Lot shall be re-subdivided. Only one (1) single-family structure shall be permitted on each Lot. A Lot Owner, who owns two or more contiguous Lots, may combine said Lots to form one Lot through re-platting. The original Lot lines which are being removed or fall within this combined Lot shall be released of building setbacks, providing there are not existing utilities along these lines at the time of re-platting. All subdividing and re-platting must be approved by the Architectural Control Committee and platted to the rules, laws and regulations of the City of Fredericksburg, Gillespie County and the State of Texas.

2.4 Temporary Structures. No trailer, RV, mobile home, tent, shack, garage, barn or another outbuilding shall at any time be used on any part of the Subdivision as a residence, temporarily or permanently, nor shall any residence of temporary character be erected or permitted on any part of the Subdivision, except that small portable buildings and trailers may be used to house construction materials or for a construction office, however, all such portable buildings and trailers must be removed immediately upon completion of construction.

2.5 Minimum Size Dwelling. All Single-Family Units shall contain not less than 1,400 square feet of enclosed, air-conditioned and heated living space, exclusive of porches (open or covered), decks and garages. Additionally, all two-story dwellings shall contain not less than 1,700 total square feet, of which a minimum of 1,000 square feet shall be first-floor living area. All Single-Family Units shall have an attached two-car garage. The Architectural Control Committee is hereby permitted to approve deviations in the dwelling size (on a floor-by-floor basis) in instances where, in the judgment of said Committee, such deviation will result in a more beneficial use of the Lot and will not distract from the general appearance and quality of the Property.

2.6 Garages. All garages for residences shall be constructed of a sufficient size and manner as to allow the parking and storage of at least two vehicles (otherwise known as a double garage). No portion of a garage may be converted into a livable space or otherwise constructed or modified to provide for other than the storage of vehicles, the noncommercial storage of personal property, and other uses normal incidental to the residential garage. No carports will be permitted. Boats, trailers, and recreational vehicles shall be parked in a garage or in a fenced rear yard so as to be hidden from any street and adjacent property. However, for a period not to exceed forty-eight (48) hours, boats, trailers and recreational vehicles may be parked in a driveway or in front of a residence for loading and unloading purposes.

2.7 Multi-Family Structures. No multi-family dwelling of any kind shall be permitted on any Lot. No boardinghouse, apartment or another rental unit shall be permitted on any Lot or as part of any residence in the Subdivision.

2.8 Second-Hand Structures. No old or second-hand buildings or house trailers shall be located on any Lot in the Subdivision unless used to temporarily house construction materials or for a construction office. However, all such buildings or trailers must be removed immediately upon the completion of construction.

2.9 Fences.

2.9.1 All fences within the Subdivision shall be of the following composition:

2.9.2 All masonry (if concrete block, it must be plastered and painted); or

2.9.3 all wrought iron; or

2.9.4 any combination of wrought iron and masonry; or

2.9.5 a combination of masonry and cedar; or

2.9.6 all cedar or redwood.

2.9.7 Cedar or redwood fences shall be constructed of galvanized pipe posts, nine (9') feet maximum on center, set in concrete. Three 2x4 galvanized or metal rails are required (top, middle and bottom). The cedar facing must be to the "outside" of the Lot when adjacent to streets.

2.9.8 No fence, wall, or hedge may be higher than six (6') feet. Hedges may not be installed or maintained forward of the front building line of the main structure in excess of four (4') feet in height. No fence or wall shall be built forward of the front wall line of the main structure. Side fences on corner Lots shall not be constructed within the building setback line established from any side street. Fence posts must not be facing outward to the street. Note - the City of Fredericksburg requires a permit to install or modify a fence.

2.9.9 Notwithstanding the foregoing, the Architectural Control Committee is empowered to waive the aforesaid composition requirements for fences and the

aforesaid height or setback limitation 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 or to accommodate unusual slopes or topography of a particular Lot, and the resulting fence, decorative wall and/or retaining wall (whichever is applicable) will not detract from the general appearance of the neighborhood.

2.9.10 No chain-link fences may be built or maintained on any Lot, other than to enclose a dog or pet enclosure (maximum size of the enclosure shall be four feet by eight feet), provided that the chain-link fencing is not visible from the street and not located outside the building setback lines.

2.9.11 No fence, wall, or hedge or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner Lot within the area as designated by the building regulations of the City of Fredericksburg. No tree(s) 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.

2.9.12 Owners installing a fence do not have to obtain Architectural Control Committee's approval if the fence is constructed in accordance with Article II, Section 2.9 as noted above. Any fence not constructed as noted in the Restrictions, the Owner will be instructed to remove the fence. Before the fence can be replaced, the property Owner shall submit Plans and Specifications to the Architectural Control Committee for approval of Plans and Specifications for improvements to a Lot and shall include with the submission of Plans and Specifications a check for **$200.00** made payable to the Association (such amount may be changed from time-to-time by the Committee).

2.10 Ordinance. All Improvements shall be erected in conformity with the ordinances of the City of Fredericksburg.

2.11 Architectural Styles. Designs of traditional Southwestern style, Mediterranean, Tuscan, California Territorial Spanish, Texas Hill Country, Spanish Colonial or Monterrey style architecture and construction shall be favored. The Architectural Control Committee shall in its exclusive discretion approve the proposed architectural character and style of any Improvements to be constructed in the Subdivision. The following standards shall apply to the Subdivision as a general rule; however, the Architectural Control Committee may permit deviations where the Committee deems appropriate.

2.12 Materials. Building surface materials shall be primarily stone, brick (limited for accent) or stucco; materials such as metal siding, vinyl siding, fiberboard siding, metal panels, mirrored glass; unstuccoed masonry cinder block or cement shall be prohibited. Wood siding, LP SmartSide or Hardy Board (cement board) shall not be allowed for an entire elevation unless on the rear elevation of the Single-Family Unit.

2.13 Construction of Single-Family Unit. All Single-Family residences shall be constructed of recognized standard construction quality. New construction materials (except natural stone) shall be used in constructing any dwelling or outbuilding situated on a Lot. Natural stone shall be Limestone, Sandstone or Lueders stone. The exterior walls of all Single-Family Units shall be the following:

2.13.1 Front elevation shall be composed of a minimum of eighty-five (85%) percent natural stone first floor, fifty (50%) percent natural stone second floor.

2.13.2 Side elevations shall be composed of a minimum of thirty (30%) percent stone (see

2.28 below for corner Lots).

2.13.3 The minimum stone percentage shall apply to the aggregate area of all exterior walls but be exclusive of door, window, and similar openings.

2.13.4 Notwithstanding the foregoing, the Architectural Control Committee is empowered to waive or modify this Restriction and that contained in the preceding paragraph if, in its sole discretion, such waiver or modification is advisable in order to accommodate a new or a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the Property.

2.14 Color. The color of residences shall be approved by the Architectural Control Committee and shall generally be in colors ranging from earth tones of light beige to dark chocolate browns and off-whites in limited amounts. Surfaces of stone or brick shall be in natural color (not painted or stained). Entries and portals (excluding garage doors) may be emphasized by the use of white or other primary colors or materials. Painting of residences with bold patterns and colors shall be prohibited. The color of composition shingles shall be generally in colors ranging from medium dark earth tones to dark chocolate browns.

2.15 Roof Form, Slope, and Shape. Residences shall be designed with clay and cement tile roofs, fire-rated composition shingles or standing seam metal roofs (no reflective finishes or white color). Style shall be Gabled and Hipped, Flat roofs are prohibited. Pitch – the **approved pitch range is from 6:12 to 10:12.** Rock-type roofs or roll-type composition roofs shall be prohibited when visible from the street unless otherwise exempted by the Architectural Control Committee.

2.16 Facades, Cantilevers, Arches. Long uninterrupted horizontal facades shall be avoided through the use of portals, offsets in the wall, variations in roof or parapet heights and by other means.

2.17 Roof-Mounted Equipment. Roof-mounted mechanical (including, without limitation, air-conditioning and heating equipment), microwave dishes, aerials, telephone and television equipment and other obtrusive structures shall be architecturally screened and shall be of a low profile to minimize visibility, or placed on the rear part of the roof. Solar devices shall be mounted flush with the roof, behind a parapet or otherwise architecturally screened to minimize visibility – refer to 12.17.

2.18 Porches, Portals, and Patios. The use of porches, portals and patios, wood beams, vigas, corbels, spindles, columns, planters, tile niches, and stone details and other such unique architectural details shall be encouraged in the design of any residence.

2.19 Window Treatment. No aluminum foil, newspaper, reflective film, bed sheets or similar linens, or similar treatment will be placed on windows or glass doors of a residence.

2.20 Landscaping/Exterior Lighting. Landscaping and exterior lighting plans for front and side yards visible from the street shall be submitted to the Architectural Control Committee for approval. All exterior lighting shall be designed and installed in such a fashion that in the judgment of the Architectural Control Committee the privacy of the other Lot Owners shall not be affected. Lighting with a bright glare toward other Lot Owners is prohibited.

2.21 ACC Exceptions. The Architectural Control Committee shall have the right to make exceptions to any of the requirements, conditions, or Covenants of this Declaration, except where such exception may be in conflict with any law, ordinance or other governmental regulation.

2.22 Building Time Requirements. By the acceptance of this Declaration each Owner agrees:

2.22.1 Commencement. To commence the construction of a residence on such Owner's Lot within forty-eight (48) months from the date of the original purchase of such Lot from the Declarant. The Declarant may grant a three (3) year extension of the date upon which construction must commence.

2.22.2 Termination. To complete such construction within one (1) year from the date of the commencement of construction however; the period to complete construction shall be extended by the Architectural Control Committee for: (a) interruption of construction due to acts of God, labor strikes, delay in the transportation of materials, fire or casualty loss and other interruptions which in the opinion of the Architectural Control Committee was reasonably beyond the control of the Owner, and/or (b) if construction of a residence has been carried on continuously, the Architectural Control Committee may grant a reasonable extension for the completion of such construction. In the event an Owner shall fail to commence construction as required by 2.22.1 the Declarant shall have the right without obligation, to repurchase such Owner's Lot at the original purchase price of such Lot from Declarant, excluding original closing costs. The Declarant may exercise this right to repurchase at any time within six (6) months after such right accrues by serving written notice to that effect upon such Owner.

2.23 Driveways and Sidewalks. All driveways and any sidewalk running from the street to the front entry of the residence shall be of concrete or masonry construction, brick pavers or a combination of other decorative masonry materials that has been approved by the Architectural Control Committee. No asphalt driveways or sidewalks are permitted.

2.24 Swimming Pools and Spas. Movable, aboveground swimming pools and spas in excess of eight feet (8') in diameter are strictly prohibited. All swimming pools and spas in excess of eight feet (8') in diameter must be of a permanent nature built into the ground and in a fenced enclosure with self-closing and self-latching gates, in accordance with any applicable ordinances, regulations, or statutes. No swimming pools or spas shall be constructed in front or side yards. When requesting ACC approval, attach a copy of the City's permit.

2.25 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers to the rear of the residence and such containers shall be kept within enclosed structures or appropriately screened from view by the public, and contents thereof disposed of regularly as required by the City.

2.26 Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

2.27 Construction of Improvements and Design Restrictions. In order to protect the overall integrity of the Development as well as the quality and appearance of Improvements of all Property Owners within the Subdivision, the Architectural Control Committee shall have full authority to control all construction, Development and Improvement activities of any kind within the Subdivision, and to ensure that all such activities are properly conducted in accordance with and in good workmanlike manner, and in accordance with standard industry trade practices. Traditional style architectural designs are encouraged. No geodesic, A-frames, log homes or freestyle architectural designs shall be permitted.

2.28 Sidewall Design. The sidewall of each house on a corner Lot that faces a street will be designed and completed to create an attractive appearance that is comparable to its front elevation in terms of building materials, use of architectural trim and decor, windows, doors and other relief areas. Street fronting sidewall elevation shall be composed of a minimum of sixty-five (65%) percent stone first floor.

2.29 Repair of Buildings. All Improvements upon any of the Property shall at all times be kept in good, safe, attractive condition and repaired and adequately painted or otherwise maintained by the Owner thereof.

2.30 Removal of Improvements. In the event that a Single-Family Unit or other Improvement on a Lot shall be damaged or destroyed by casualty, hazard or other cause, including fire or windstorm, then, within a reasonable period, not exceeding three (3) months following the occurrence of the offending incident, the Owner of the affected Improvement shall cause the damaged or destroyed Improvements to be repaired, rebuilt or reconstructed, or in the alternative, to be removed and cleared from such Lot. Any such repair, rebuilding or reconstruction shall be approved and accomplished as otherwise required for new construction pursuant to the provisions of this Declaration.

2.31 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property, which are or might be unsafe or hazardous to any Person or Property.

2.32 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. No tank for the storage of oil, gasoline, or other hazardous products may be maintained on any Lot.

2.33 Unsightly Articles; Vehicles. No unsightly article shall be permitted to remain on any Lot so as to be visible from adjoining Property or public streets. Without limiting the generality of the foregoing; trailers, trucks (other than pickups not to exceed one-ton capacity), boats, tractors, vans, recreational vehicles and other vehicles used or designed for use as commercial vehicles, campers, wagons, buses, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in fully enclosed garages or other structures, screened from public view.

2.34 Mobile Homes, Travel Trailers, and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining Property or public streets for more than forty-eight (48) hours. The time between 48-hour parking periods shall not be less than sixty-eight (68) hours.

2.35 Maintenance of Lot and Lawns and Plantings. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot cultivated, pruned or mowed, free of trash, weeds and other unsightly material. Prior to the construction of a residence on a Lot, the Lot Owner shall regularly mow such unimproved Lot and keep it neatly trimmed and free of trash and other unsightly material.

2.36 Start of Landscaping. Commensurate with the completion of construction, front yards (and side yards on corner Lots) shall be fully sodded, seeded or planted in other ground cover within two (2) months of completion of the residence.

2.37 Type of Landscaping. All front and street side yards on corner Lots must be landscaped with vegetation, thereby prohibiting yards that are essentially covered by cement, gravel,

crushed granite or other hard surface or impervious materials.

ARTICLE III
DEVELOPMENT OF THE PROPERTY

3.1 The Addition of Land. Declarant hereby reserves to itself and shall hereafter have the right, but not the obligation, at any time and from time to time, in its sole and absolute discretion, and without notice to or the approval of any Owner, party or person whomsoever or whatsoever, to impose this Declaration or a substantially similar Declaration upon additional property adjacent, contiguous or nearby to the Property. Declarant may, at any time and from time-to-time, add any other lands to the Property, and upon such addition, this Declaration and the Covenants, Conditions, Restrictions and obligations set forth herein shall apply to the added land, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration, unless such supplemental Declaration shall provide for changes to the Declaration to deal with the unique character of Declarant's overall Development plans for the added property. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Real Property Records of Gillespie County, Texas, a notice of addition of land (in the form of a Supplemental Declaration) containing the following provisions:

3.1.1 A reference to this Declaration, which reference shall state the book and page numbers of the Gillespie County Real Property Records wherein this Declaration is recorded;

3.1.2 a statement that the provisions of this Declaration shall apply to the added land;

3.1.3 a legal description of the added land; and

3.1.4 any Covenants, Conditions or Restrictions, which are different or unique to the added land.

3.2 Withdrawal of Land. Declarant may, at any time and from time-to-time, reduce or withdraw areas owned by Declarant from the Property, and upon such withdrawal, this Declaration and the Covenants, Conditions, Restrictions and obligations set forth herein shall no longer apply to those lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required only to record in the Real Property Records of Gillespie County, Texas, a notice of withdrawal of land containing the following provisions:

3.2.1 A reference to this Declaration, which reference shall state the book and page numbers of the Gillespie County Real Property Records wherein this Declaration is recorded;

3.2.2 a statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and

3.2.3 a legal description of the withdrawn land.

ARTICLE IV
THE ASSOCIATION

4.1 Purpose. The Association shall be responsible for:

4.1.1 Maintenance of landscaping within any Common Areas that may be acquired or

conveyed to the Association;

4.1.2 Maintenance of any Association owned lighting within the Subdivision.

4.1.3 The Association shall act by and through its Board of Directors who shall be elected in accordance with the Bylaws of the Association and whose duties will be governed by the terms of this Declaration, the Articles of Incorporation and Bylaws of the Association.

4.2 Membership. Each Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The membership held by an Owner shall not be transferred, pledged or alienated in any way except upon the sale or encumbrance of such Lot and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected on the books and records of the Association. Evidence of transfer of membership shall be furnished the Association in the form of a certified copy of the recorded conveyance of a Lot by the current Owner thereof as reflected upon the books and records of the Association.

4.3 Voting Class. The Association shall have two classes of voting membership with the voting rights herein indicated:

4.3.1 Class A Member. Class A Members shall be all Owners with the exception of Declarant and shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interest in any Lot, all such persons shall constitute one Member and the one vote for such Lot and shall be exercised as they among themselves shall determine but in no event shall more than one vote be cast with respect to any such Lot.

4.3.2 Class B Member. Declarant, its successors, and assigns shall be a Class B Member and shall be entitled to four (4) votes for each developed Lot owned and twelve (12) votes per acre of undeveloped land owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

4.3.2.1 When the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership;

4.3.2.2 January 1, 2039; or

4.3.2.3 such time, earlier than the occurrence of 4.3.2.1 or 4.3.2.2, above, as may be determined by Declarant in its sole discretion.

4.4 Turnover.

4.4.1 At any time after commencement of operations of the Association, at Declarant's sole discretion, the Property Owners may be required to take over the management of the Association and relieve Declarant of all duties associated therewith. Upon such Turnover by the Declarant, the Property Owners within the Subdivision will be required to choose their own Board of Directors to represent them and to manage the Association in accordance with the terms and conditions of these Restrictions and to establish any and all Bylaws, procedures and other management devices by which the Association shall operate. After Turnover, any Board Members/Directors must be Owners within the Subdivision.

4.4.2 Notwithstanding anything to the contrary, until such Turnover has taken place, the management of the Association shall be by Declarant and its staff, and any expenses incurred in such management shall be reimbursed to Declarant by the Association. Said reimbursable expenses shall include the cost of Declarant's staff

for the time spent in the management thereof of this Association. From and after the time of such Turnover, the Association shall indemnify and hold Declarant harmless from and against any and all claims or damages of every kind arising out of the development and operations of the Association, or any Common Areas.

4.5 Personal Obligation and Lien Rights Associated with Collection of Dues and Assessments.

4.5.1 Each Lot Owner, by acceptance of a deed to a Lot(s), whether or not it shall be so expressed in such deed, is deemed to agree to pay to the Association regular Annual Assessments and all other Association dues, fees, fines, Assessments or charges of any kind, including Special Assessments for capital improvements, which may be established and collected as hereinafter provided.

4.5.2 The Annual, Special Assessments and Specific Assessments, together with interest, costs, fines and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the Assessment became due and payable. The personal obligation for delinquent Assessments shall not pass to any successors or assigns in title unless assumed by them.

4.6 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents and/or Owners of the Properties and for the Improvement and maintenance of any Common Area. These expenses may include, but shall not necessarily be limited to, payment of taxes and insurance, construction, repair or replacement of Improvements to any Common Area, cost of trash and debris cleanup, street and Lot cleaning and mowing, cost of professional or other outside services, and labor, equipment, materials, outside management and supervision necessary to carry out its authorized functions. Additionally, any other expenses which, in Declarant's or Association's sole discretion, are deemed necessary to uphold the Subdivision's Property values and/or are for the overall betterment of the Development and its appearance, shall be the responsibility of the Association and shall be paid out of Assessments including, but not necessarily limited to, cost of security, Covenant enforcement, Lot cleaning, general maintenance and road cleaning.

4.7 Initial Annual Assessment. Until adjusted pursuant to the terms as noted in this document, the maximum Annual Assessments shall be as follows:

4.7.1 Class A: $ 225.00 per individual Lot.

4.7.2 Class B: $ 0.00 per individual Lot and no Assessment for undeveloped acreage (refer to Appendix B - B.4.2. and B.4.4.).

4.8 Increases. Unless an increase in the Annual Assessment is necessitated because of the addition of any Common Areas, the following formulae shall govern the amount of the allowable increase:

4.8.1 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 by not more than fifteen (15%) percent above the maximum Assessment for the previous year without a vote of membership.

4.8.2 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 fifteen (15%) percent by a vote of sixty-seven (67%) percent of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

4.8.3 The Board of Directors may fix the Annual Assessment at an amount, not in excess of the maximum noted above.

4.9 Special Assessments. In addition to the Annual Assessment authorized, the Board of Directors of the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital Improvement on or which is a part of any Common Areas, or for carrying out other purposes of the Association as stated herein or in the Articles of Incorporation of the Association. Any Special Assessments, including the amount thereof, the purpose of such Special Assessments and the time and method of payment thereof, must be approved by the Board.

4.10 Specific Assessments. The Association shall have the power to levy Specific Assessment against a particular Lot or Parcel to (a) cover costs incurred in bringing a Lot or Parcel into compliance with this Declaration, the Bylaws or Rules and Regulations of the Association, (b) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot or Parcel, their agents, contractors, employees, licensees, invitees, or guests, (c) collect any fines or other sums due by the Owner to the Association (other than Special Assessments or interest or late charges related thereto); (d) collect any other costs or expenses specifically authorized by this Declaration to be levied against a particular Lot or Parcel; or (e) collect any cost or expense, including reasonable and necessary attorneys' fees, incurred by the Association in enforcing the terms of this Declaration, any applicable design guidelines or any rules and regulations of the Association. Failure of the Board to exercise its authority under this Section 4.10 shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section 4.10 in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section 4.10.

4.10.1 Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

4.10.2 Self-Help. The Association has the right to enter a Lot to abate or remove, using force as may reasonably be necessary, any Improvement, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Association is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise Self-Help. Notwithstanding the foregoing, the Association may not alter or demolish any Improvement on a Lot without judicial proceedings.

4.11 Notice and Quorum for any Action Authorized under 4.8 and 4.9. Written notice of any meeting called for the purpose of taking any action authorized under 4.8 or 4.9 above and the "Annexation" portion of these Restrictions shall be sent to all Members, not less than thirty (30) days nor more than sixty (60) days in advance of any meeting. Except as provided in these Declarations or in the Bylaws, the presence of the Members representing ten (10%) percent of the total votes in the Association shall constitute a quorum at all Association meetings. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members to leave less than a quorum, provided that Members representing at least five (5%) percent of the total votes in the Association remain in attendance, and provided that any action taken is approved by at least a Majority of the

votes present at such adjourned meeting, unless otherwise provided in the Declaration.

4.12 Uniform Rate of Assessment. Any and all dues of the Association or Special Assessments must be fixed at a uniform rate for all classes of Lots and may be collected on a monthly basis in lieu of annually. This decision may be made by the Declarant until Turnover occurs, and thereafter may be made by a majority of the Board of Directors.

4.13 Date of Commencement of The Annual Assessments. The Annual Assessments for any particular Lot by the Property Owners' Association provided for herein shall not commence until the Plat has been filed of record in the Real Property Records of Gillespie County, Texas (subject to the conditions set forth in Appendix B).

4.13.1 For billing purposes, the Annual Assessment period will be the first day of each January and shall commence as to each Lot on the first day of the month following the time of commencement, as noted above, and shall be prorated accordingly with all dues payable in advance at the closing up to the time of the next future billing. 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.

4.13.2 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. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance. Notwithstanding any other terms or conditions set forth in these Restrictions, any expenses which are incurred by Declarant prior to the establishment of the Association, or prior to sufficient income being received from Assessment billings, and which would normally be the responsibility of the Association, shall be reimbursed to Declarant from proceeds of the Association as funds become available from dues and Assessments.

4.14 Effect of Nonpayment of Assessments: Remedies of the Association. The Property Owners' Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot.

4.15 Subordination of the Lien to Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of the Lot pursuant to a Mortgage foreclosure 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.

4.16 Exempt Property. Any Common Areas and other portions of the Properties, if any, which are dedicated to public authorities, shall be exempt from Assessment.

4.17 Option to Cure. Declarant, or the Association, has the option, but not the obligation to perform any action required of any Owner by these Restrictions. In the event that Declarant or the Association elects to do so, all sums incurred by the Declarant or the Association in performing the required action shall be charged against the Owner and if not paid within thirty (30) days after it is due, said sums shall bear interest at the highest legal rate and shall be secured by a lien (the same as if said sums were dues and/or Assessments) on all Lots owned by said, Owner. The Declarant or the Association may bring an action at law against the Owner of the Lot subject to the Assessment for payment thereof and/or bring an action to foreclose the lien, which secures the Assessment.

4.18 Suspension of Voting Rights. The voting rights of any Member shall be automatically suspended during any period in which he shall be delinquent in the payment of Fees, Fines, and Assessments due the Association. Nothing in this Declaration or the Bylaws shall disqualify a Member from voting if the vote is to elect the Board or if the vote is on any matter concerning the rights or responsibilities of such Member.

4.19 Board of Directors. The Board of Directors of the Association shall begin with two in number. The original Board of Directors shall be composed of the following: Jacob Grant, Laura Grant and Loren Fothergill, who shall commence to serve at the time of recordation of this Declaration and shall serve until their successors are elected pursuant to the provisions of the Bylaws of the Association. The original Directors shall serve at the pleasure of the Declarant and may be removed from office at any time by Declarant and during said period, Declarant shall have authority in its sole discretion, to fill any vacancies, created or existing on said Board. The number of Board members may be increased from time-to-time, at the discretion of the Board, but shall not be greater than six (6) Board members.

4.20 Rules and Regulations. The Association shall have the power to establish and enforce compliance with Rules and Regulations and to amend the same from time-to-time. A copy of such Rules and Regulations shall be delivered or mailed to each Member promptly upon the adoption thereof.

4.21 Architectural Control Committee. The Directors shall appoint or act as the Architectural Control Committee and delegate to said Committee such power and authority to control and supervise the construction and landscaping in the Subdivision. No building, fence, wall, exterior lighting installation or other structure or Improvement shall be commenced, erected or maintained upon the Subdivision, nor shall any exterior addition to or change or alteration therein be made until the Plans and Specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Committee. In the event said Committee fails to approve or disapprove such design and location within thirty (30) days after said Plans and Specifications have been submitted, approval will be presumed.

4.21.1 The goal of the Committee is to encourage the construction of Improvements of good architectural design; quality and proper size compatible with Declarant's conceptual plan for the Property. The Committee may disapprove the construction or design of an Improvement on purely aesthetic grounds where, in its 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 such matters of design or aesthetics shall not be deemed binding upon the Architectural Control Committee if such Committee feels that the repetition of such matters will have an adverse effect on the Properties.

4.21.2 No Improvement, as that term is defined in Article I of this Declaration, shall be erected, constructed, placed, altered (either by addition or deletion), maintained or permitted to remain on any portion of the Property until Plans and Specifications, in such form and detail as the Committee may deem necessary, shall have been submitted to and approved in writing by such Committee. The Architectural Control Committee shall have the power to employ professional consultants to assist it in discharging its duties. The decision of the Architectural Control

Committee shall be final, conclusive, and binding upon the applicant.

4.21.3 The Committee may establish and publish from time-to-time reasonable administrative procedures and separate building guidelines covering residential and non-residential Improvements.

4.21.4 The Owner must submit a design plan, which must adequately reflect to the Committee the true design quality of the proposed work. Final Plans and Specifications shall be submitted in complete form in duplicate and shall include a site plan, floor plan and all elevations of any proposed structure(s) (including walls, signs, pools, pool buildings, etc.), roof height, specification of materials, colors, textures and shapes. All exterior measurements and dimensions must be shown at a scale of one-quarter inch equal one-foot (1/4" = 1'-0") minimum. Description of materials and finishes must be clearly indicated.

4.21.5 Upon submission of a written request for same, the Architectural Control Committee may, from time-to-time, in its sole discretion, permit Owners to construct, erect, or install Improvements which are in variance from the Covenants, Restrictions, or architectural standards which are provided in this Declaration or the applicable Covenants which may be promulgated in the future. In any case, however, such variances must, in the Committee's sole discretion, blend effectively with the general architectural style and design of the community and must not detrimentally affect the integrity of the Property or harmony with the natural surroundings.

4.21.6 No member of the Committee shall be liable to any Owner for claims, causes of action or damages arising out of the grant 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 Owner shall not constitute a waiver of the Committee's right to strictly enforce the Covenants, Restrictions and architectural standards provided hereunder, against any other Owner.

4.21.7 If the Architectural Control Committee fails to approve or to disapprove either the preliminary design plans or the final Plans and Specifications or to reject them as being inadequate within thirty (30) days after submittal thereof, it shall be conclusively presumed that such Committee has approved such preliminary design plan or such final Plans and Specifications. If preliminary design plans or final Plans and Specifications are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

4.21.8 All requests for a variance must receive written approval from the Committee. If no approval is received within thirty (30) days after submittal thereof, it shall be conclusively presumed that such Committer has rejected such request for a variance from the Covenants, Restrictions, or architectural standards which are provided in this Declaration or the applicable Covenants of these which may be promulgated in the future.

4.22 Limitation of Liability. Neither the Declarant, the Association, the Architectural Control Committee, nor any of the members of such Committee shall be liable for damages or otherwise to anyone submitting Plans and Specifications or request for a variance 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 and/or request for a variance.

4.23 Contracts. The Association shall have authority to enter into contracts with persons, firms or organizations for the purpose of installing and maintaining landscaping therein, and for any other purpose approved by all of the Owners of the Subdivision.

4.24 Delinquent Assessments. The payment of an Assessment shall be considered delinquent if not paid upon the due date thereof and shall bear interest from such date until paid at the highest legal rate of interest per annum permitted under applicable laws of the State of Texas. The Association shall also be entitled to collect a late charge, fines and collection costs in such amounts and upon such conditions that the Board of Directors may from time-to-time determine. Each Owner (whether one or more) shall be and remain personally liable for the payment of all Assessments which may be levied against such Owner by the Association in accordance with the terms and provisions of this Declaration until such Assessment shall be paid in full, including principal and interest, late charge, fines and collection costs. In the event of sale of conveyance of a Lot, the purchaser of such Lot shall be entitled to pay delinquent Assessments out of the sales price for such Lot, and failing this, purchaser shall become personally liable for payment of such delinquent Assessments by his acceptance of a Deed to such Lot from an Owner in default.

4.25 Deed of Trust Lien. EACH OWNER, UPON ACCEPTANCE OF OWNER'S DEED TO A LOT GOVERNED BY THIS DECLARATION CONVEYS THE LOT TO JACOB GRANT, AS TRUSTEE (OR SUCH OTHER PARTY AS MAY BE DESIGNATED FROM TIME TO TIME BY THE ASSOCIATION BY FILING AN APPROPRIATE DESIGNATION AMONG THE REAL PROPERTY RECORDS OF GILLESPIE COUNTY, TEXAS), IN TRUST, FOR SO LONG AS THE DECLARATION REMAINS IN EFFECT, SUCH CONVEYANCE OPERATING AS A DEED OF TRUST. IF AN OWNER FAILS TO PAY ANY ASSESSMENTS OR REIMBURSEMENTS WHEN DUE, OR PERFORM ANY OBLIGATIONS REQUIRED OF SAID OWNER UNDER THIS DECLARATION, THE ASSOCIATION MAY PERFORM THOSE OBLIGATIONS, ADVANCING FUNDS AS REQUIRED, AND BE REIMBURSED BY OWNER ON DEMAND FOR ANY SUM SO ADVANCED, INCLUDING ATTORNEY'S FEES, INTEREST AND ALL OTHER AMOUNTS DUE IN ACCORDANCE WITH THIS DECLARATION. THE SUM TO BE REIMBURSED SHALL BE SECURED BY THIS DEED OF TRUST.

4.26 Breach of Lien. If an Owner fails on demand to reimburse the Association for the sums advanced or the Assessments owed, and such failure continues within the time which it must be cured, as may be required by law or by written agreement, then the Association, as the Beneficiary of the Deed of Trust may request that the Trustee foreclose the lien according to the Texas Property Code Section 51.002, as it may be subsequently amended, and Texas Property Code Chapter 209, as it may be amended. To the extent determined necessary by the President of the Association, in its sole discretion, said party may, by amendment to this Declaration, without the joinder of any other party, file an amendment in the office of the County Clerk of Gillespie County, Texas, to amend the provisions hereof so as to comply with any amendments to said Section 51.002 and/or Chapter 209 of the Texas Property Code, or such other statute or laws as may be subsequently implemented which affect and/or control the lien, and foreclosure of the lien, as set forth herein.

4.27 Exemption. No Owner may exempt himself from liability for Assessments duly levied by the Association nor release the Lot owned by him from the liens and charges thereof by waiver of the use and enjoyment of the services furnished by the Association or by abandonment of his Lot.

4.28 Assessment Roll. The Assessments against all Owners shall be set forth upon a roll of the Lots which shall be available in the office of the Association for inspection at all reasonable times by Owners or their duly authorized representatives. Such Assessment roll shall indicate for each Lot, the name and address of the Owner, or Owners, the Assessments for all purposes and the amounts of all Assessments, paid and unpaid. A Certificate made by the Board of Directors or an officer of the Association, as the status of an Owner's Assessment account, shall limit the liability of any person for whom made, other than the Owner. The Association shall issue such Certificates to such persons as an Owner may request in writing and shall be entitled to charge a reasonable fee therefor in such amount as shall be determined by the Board of Directors from time-to-time.

4.29 Enforcement. The Association may enforce collection of delinquent Assessments by suit at law for a money judgment and may seek non-judicial or judicial foreclosure of the lien reserved herein. Failure to seek judicial foreclosure of such Vendor's Lien in any suit at law for a money judgment shall not operate to waive such lien, but same shall remain in full force and effect to secure payment of all Assessments due or become due by such Owner.

4.30 The Event of Default. Failure to comply with any of the terms of this Declaration, the Articles of Incorporation or Bylaws of the Association or the duly adopted Rules and Regulations of the Association, shall constitute an event of default and shall be grounds for relief which may include without limitation, an action to recover sums due for damage and injunctive relief or any combination thereof. In addition to all other remedies herein contained or as may be provided by law, the Association may discontinue the furnishing of services to an Owner who is in default of his obligations to the Association upon ten (10) days written notice to such Owner. In any proceeding arising because of any alleged default by an Owner, the Association, if successful, shall be entitled to recover the costs of the proceedings and reasonable attorney's fees from such Owner.

4.31 No Waiver. The failure of the Association or of any Owner to enforce any right, provision, Covenant or condition which may be granted by this Declaration, the Articles of Incorporation or Bylaws of the Association or the Rules and Regulations shall not constitute a waiver of the right of the Association or of any such Owner to enforce such right, provision, Covenant or condition in the future.

4.32 Dissolution. The Association may be dissolved at any time after the expiration of thirty-five (35) years from the date this Declaration is recorded by the vote of at least seventy-five (75%) percent of all the Members of the Association. In the event the Members vote to dissolve the Association, the Vendor's Liens reserved for the benefit of the Association shall be released.

ARTICLE V
GENERAL CONDITIONS

5.1 Easements. The Subdivision Plats dedicated for use as such, subject to the limitations set forth therein, certain streets and easements are shown thereon, and such Subdivision Plats

further establishes limitations, reservations, and Restrictions applicable to the Properties. Further, Declarant and Declarant's predecessors in title may have heretofore granted, created and dedicated by recorded instruments certain other easement and related rights affecting the Properties. All dedications, limitations, Restrictions and reservations shown on the Subdivision Plats and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Properties are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Properties.

5.2 Covenants. The Covenants of this Declaration shall run with the Land and be binding upon each Owner, his successors in interest, and all persons claiming under them for a period of thirty-five (35) years from the date these Covenants are recorded; thereafter these Covenants shall be automatically extended for successive period of ten (10) years each, unless amended or extinguished by a written instrument executed and acknowledged by seventy- five (75%) percent of the Owners of the Property, then subject to this Declaration and filed of record in the Real Property Records of Gillespie County, Texas.

5.3 Costs. Enforcement of the terms, provisions, and Covenants of this Declaration may be at law or in equity against any person(s) violating, or attempting to violate, any term, provision or Covenant hereof, and may seek to restrain such violation and/or to recover damages as may be appropriate. Any person determined by the trier of fact to have violated, or to have attempted to violate, any provision of this Declaration shall be charged with all costs of suit, including reasonable attorney's fees.

5.4 Severability. Invalidation of any of these Covenants by judgment or Court Order shall in no way affect any of the other provisions, which shall remain in full force and effect.

5.5 Amendments. Declarant shall have the right to amend this Declaration at any time prior to any Lots being conveyed to other Owners beside the Declarant and thereafter, this Declaration may be amended from time-to-time by a written instrument executed and acknowledged by sixty-seven (67%) percent of the Owners of the Property, then subject to this Declaration, and filed of record in the Real Property Records of Gillespie County, Texas.

5.6 Validity. If any of the provisions of these Covenants, Conditions, Restrictions, and Easements or any paragraph, sentence, clause, phrase or word, or the application thereof to any circumstance be invalidated, such invalidity will not affect the validity of the remainder of these Covenants, Conditions, Restrictions and Easements, and the application of any provisions, paragraph sentence, clause, phrase or word in any other circumstances will not be affected thereby.

5.7 Enforcement. Any Owner, holder of a first lien Mortgage on any Lot or the City of Fredericksburg will have the right to enforce by a proceeding at law or in equity against or seek recovery of damages from any person or persons violating or attempting to violate these Covenants, Conditions, Restrictions, and Easements. In the event, any party seeking to enforce these Covenants, Conditions and Restrictions applies for injunctive relief no bond or other security will be required. Any person who prevails in obtaining injunctive relief against or recovers damages from any person or persons violating or attempting to violate these Covenants, Conditions, Restrictions and Easements will be entitled to recover his reasonable attorneys' fees, expert fees, and court costs. Any failure or delay by any Owner to enforce any of these Covenants, Conditions, Restrictions and Easements will in

no event be deemed a waiver of the right to do so.

5.8 Enforcement of Declaration by Declarant. None of the provisions of this Declaration shall obligate or be construed to obligate Declarant, or its agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, any supplement to this Declaration, any tract declaration or any provision hereof and thereof, or to undertake any remedial or corrective action with respect to any actual asserted violation hereof or thereof.

5.9 Savings Provision. Notwithstanding anything to the contrary, Declarant shall have the right at any time, at its sole discretion and without any joined or consent of any other party, to amend this Declaration for the purposes of correcting any error, ambiguity or inconsistency appearing herein or for any reason whatsoever deemed necessary for the benefit of the overall Development as determined by Declarant, it is sole discretion. Said amendment shall be effective upon filing the said amended Restrictions with the County Clerk of Gillespie County, Texas.

5.10 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the Development and operation of the Property and of promoting and effectuating the fundamental concepts of the Development of the Property set forth in this Declaration. This Declaration shall be construed and governed by the laws of the State of Texas.

5.10.1 Assignment of Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may in writing filed of record referring to this Declaration by volume and page number, expressly assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other Person or entity and may permit the participation, in whole or in part, by any other Person or entity in any of its privileges, exemptions, rights and duties hereunder. Upon assignment by Declarant of any or all of Declarant's rights, the Declarant shall no longer be liable for performance of such assigned rights provided that the assignee expressly assumes in the recorded assignment the obligations of Declarant that are assigned.

5.10.2 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

5.10.3 Singular and Plural; Gender. Whenever the context of this Declaration shall require, the singular shall include the plural, and vice-versa and the use of any word of gender shall include any other gender, as the context shall require.

5.11 Consent Discretionary. Except as expressly set forth otherwise herein, any judgment or approval decision to be made and any opinion to be given by Declarant and/or the Association hereunder shall be made or given, as the case may be, in such party's sole discretion.

5.12 WAIVER OF TRIAL BY JURY. EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION ARE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY. EACH OWNER AGREES THAT ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR

NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

5.13 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by **electronic mail,** personally or by mail. Such notice shall be deemed delivered at the time of personal or **electronic delivery,** and if delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices. Such address may be changed from time-to-time by notice in writing given by such Person to the Association.

5.14 Homestead. By acceptance of a deed thereto, the Owner and spouse thereof, if married, of each Lot shall be deemed to have waived any exemption from liens created by this Declaration or the enforcement thereof by foreclosure or otherwise, which may otherwise have been available for reason of the homestead exemption provisions of Texas law, if for any reason such are applicable. This Section 5.14 is not intended to limit or restrict in any way the lien or rights granted to the Association by this Declaration, but to be construed in its favor.

5.15 Nonliability of Officials. To the fullest extent permitted by law, neither the Declarant, the Association or any committee or person to which powers have been delegated pursuant to the provisions of this Declaration, nor any officer, director or employee of any of the above, shall be liable to any Owner, Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of any matter, course of action, act, omission or the like made in good faith, whether or not erroneous or negligent, and which such Declarant, Association, committees or persons reasonably believed to be within the scope of their powers and duties. The Association shall, to the fullest extent permitted by law, indemnify and hold harmless such Declarant, and/or committees or persons with respect to any of such decisions, approvals, disapprovals, courses of action, acts, omissions or the like, and to defray the costs of this indemnification obligation, the Association shall be entitled to assess each Owner for such Owner's share of such costs.

5.16 Availability of Association Documents. The Association shall, within ten (10) days of the request of any Owner or Owner's agent, make available to such requesting person or party copies of this Declaration, the Articles of Incorporation, the Bylaws, the architectural standards, any then-current and effective Rules and Regulations promulgated pursuant to the provisions of this Declaration, and other Association constituent documents, including a promulgated resale certificate; provided, however, the Association shall be entitled to charge a reasonable fee to cover any assembly, copy or delivery costs incurred in connection with the furnishing of documentation.

ARTICLE VII
ANNEXATION

Other properties or units owned or developed by Declarant may (at Declarant's sole discretion) be

annexed into or added on to the Association by Declarant at any time prior to December 31, 2039. Additional residential property and any Common Area may thereafter be annexed to the Proper ties with the consent of two-thirds (2/3) of the Owners. As long as there remains any Class B Membership and any first lien Mortgage is in effect with respect to any Lot which is insured by FHA or VA, the following actions shall require prior approval of FHA or VA, but only if such approval is required under the then applicable FHA or VA regulations: Amendment of the Articles of Incorporation, Declaration or Bylaws; annexation of additional property; mortgaging or dedication of any Common Areas, and dissolution of the Association.

ARTICLE VIII
WAIVER AND LACHES

The obligation to abide by the provisions contained in this Declaration shall be deemed to be a continuing and continual basis. Each and every day an Owner allows a condition to exist on his or her Lot, which is not in compliance with the requirements contained herein, shall constitute a separate and individual violation hereof, and shall give rise to a new cause of action for such breach. The intended effect and express purpose of this provision shall be that every Owner, by accepting title to a Lot, hereby waives the affirmative defenses of the statute of limitations, waiver and laches with respect to Covenant violations. Noncompliant Conditions shall be allowed to exist on a Lot only upon the Owner obtaining a written variance in accordance with the applicable provisions herein. Failure of Declarant, the Association, the Committee, or of any Owner to enforce the terms of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE IX
ASSESSMENTS BY AWARD OR JUDICIAL DECREE

In the event arbitration or litigation is necessary to enforce any provision contained within this Declaration, any and all awards granted by the arbitrator, or damages, penalties, fees, costs, and/or any other charges awarded in the decree shall also constitute an Assessment, which shall likewise run with the land, and which shall have the same priority as the lien created in Article IV herein.

ARTICLE X
EASEMENTS

10.1 Reserved Easements. All dedications, limitations, restrictions and reservations shown on any plat covering all or any portion of the Property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as is fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Further, Declarant hereby creates, declares, grants and reserves for the benefit of Declarant, Gillespie County, the City, and all Owners and any public or private providers of utility services to the subject Property and their respective successors and assigns, a non-

exclusive easement for utility purposes over, under, within and upon other easement areas shown on the plats of the Property, as hereafter amended, for the purposes of constructing, installing, inspecting, maintaining, repairing and replacing from time-to-time any and all utility lines, systems and facilities from time to time deemed necessary or appropriate by Declarant for development of the Property. Further, Declarant reserves the right, and all Owners agree to cooperate to grant, dedicate, reserve or otherwise create, at any time or from time-to-time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone, sanitary, sewer and drainage), in favor of any Person or entity across any Lot or on any portion of the Property as is necessary or efficient to supply all utilities to all Lots.

102 Drainage Easements. Easements for drainage throughout the Subdivision are reserved as shown on the aforementioned recorded plats, such easements being depicted thereon as "drainage easement." No Owner of any Lot in the Subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such easements. More specifically, and without limitation, no Owner may:

10.2.1 Alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements; alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements or remove trees or other vegetation therefrom without the prior written approval of the City of Fredericksburg;

10.2.2 construct, erect or install a fence or other structure of any type or nature within or upon drainage easements. However, upon approval by the City of Fredericksburg, fencing shall be allowed across drainage easements only such that the bottom of the fence shall be a minimum of the flow depth plus free board above the design flow line of any channel or drain, it being understood that in no case shall the flow of drainage be hampered;

10.2.3 permit storage, either temporary or permanent, of any type upon or within such drainage easements; or

10.2.4 place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

10.2.5 The failure of any Owner to comply with the provisions of this Article shall in no event be deemed or construed to impose liability of any nature on the Declarant. Declarant shall not be charged with any affirmative duty to police, control or enforce such provisions. The drainage easements provided for in this provision shall in no way affect any other recorded easement in the Subdivision.

103 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers and for paving of driveways, unless otherwise specifically prohibited by the Plat or any other recorded easement. However, neither Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation or driveways as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

ARTICLE XI

SECURITY

NOTICE

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

11.1 SECURITY. THE ASSOCIATION MAY, BUT IS NOT OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY DESIGNED, EITHER DIRECTLY OR INDIRECTLY, TO IMPROVE SAFETY IN OR ON THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES AND AGREES, FOR HIMSELFOF HERSELF AND HIS OR HER GUESTS, THAT THE DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES AND ACCEPTS HIS OR HER SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR HIS OR HER OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND OCCUPANT FURTHER ACKNOWLEDGES THAT THE DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER OR OCCUPANT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE, BURGLARY, AND/OR INTRUSION SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES AND AGREES THAT THE DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

11.2 INJURY TO PERSON OR PROPERTY. NEITHER THE DECLARANT, THE ASSOCIATION, OR THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE A DUTY OR OBLIGATION TO ANY OWNER, OCCUPANT OR THEIR GUESTS: (A) TO SUPERVISE MINOR CHILDREN OR ANY OTHER PERSON; (B) TO FENCE OR OTHERWISE ENCLOSE ANY LOT, LIMITED COMMON ELEMENT, GENERAL COMMON ELEMENT, OR OTHER IMPROVEMENT; OR (C) TO PROVIDE SECURITY OR PROTECTION TO ANY OWNER, OCCUPANT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, AND INVITEES FROM HARM OR LOSS. BY ACCEPTING TITLE TO A LOT, EACH OWNER AGREES THAT THE LIMITATIONS SET FORTH IN THIS *SECTION* ARE REASONABLE AND CONSTITUTE THE EXERCISE OF ORDINARY CARE BY

THE DECLARANT AND THE ASSOCIATION. EACH OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DECLARANT, THE ASSOCIATION AND THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE REGIME TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, OCCUPANT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.

ARTICLE XII
PROMULGATE RULES

12.1 Association's Right to Promulgate Rules and Regulations. The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules and Regulations, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property.

12.2 Rules and Regulations. In addition to the restrictions contained in this Article 12, each Lot is owned and occupied subject to the right of the Board to establish Rules and Regulations, and penalties for infractions thereof, governing:

- 12.2.1 Use of any Common Area.
- 12.2.2 Hazardous, illegal, or annoying materials or activities on the Property.
- 12.2.3 The use of Property-wide services provided through the Association.
- 12.2.4 The consumption of utilities billed to the Association.
- 12.2.5 The use, maintenance, and appearance of anything visible from the street. Common Area, or other Lots.
- 12.2.6 The occupancy and leasing of houses.
- 12.2.7 Animals.
- 12.2.8 Vehicles.
- 12.2.9 Disposition of trash and control of vermin, termites, and pests.
- 12.2.10 Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Occupants.

12.3 Ages of Occupants. No person under the age of eighteen **(18)** years may occupy a Unit unless such person lives with an Occupant who is his spouse, parent, legal guardian, or a designee of his parent or legal guardian. Upon request by the Association, an Owner must provide satisfactory proof of the ages and relationships of the Occupants of his Unit.

12.4 Abandoned Personal Property. Personal property shall not be kept, or allowed to remain for more than two **(2)** hours upon any portion of any Common Area, without the prior written consent of the Board. If the Board determines that a violation exists, then, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the Owner of the property; provided, however, in such case, the Board shall give the property

Owner, if known, notice of the removal of the property and the disposition of the property within twenty-four **(24)** hours after the property is removed. Neither the Association nor any Board member, officer or agent thereof shall be liable to any Person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

12.5 Animals - Household Pets. No animals, including pigs (except as permitted by City ordinances), hogs, swine, poultry or fowl (although birds which are commonly kept as household pets, including but not limited to Parrots, Cockatiels, Canaries, etc., shall be permitted), wild animals, reptiles (except, turtles, lizards and non-venomous snakes kept and contained solely within the residence), horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on the Property. No domestic household pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. The Board may adopt, amend, and repeal Rules and Regulations regulating the types, sizes, numbers, locations, and behavior of animals on the Property. If the Rules and Regulations fail to establish animal occupancy quotas, an Owner or Occupant shall be allowed no more than three (3) household pets plus no more than three (3) birds in any house. No animal may be stabled, maintained, kept, caged for or boarded for hire or remuneration on the Property and no kennels or breeding operations of animals will be allowed on any Lot. Dog runs shall not be visible from any portion of the Property at street level. No vicious or dangerous animals shall be allowed on the Property.

12.6 Firearms and Fireworks. The discharge of firearms or fireworks is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size, and shall also include, without limitation, slingshots, and other projectile emitting devices.

12.7 Annoyance. No Unit may be used in any way that: (a) may reasonably be considered annoying to Occupants; (b) may be calculated to reduce the desirability of the Property as a residential neighborhood; (c) may endanger the health or safety of Occupants of other Lots; (d) may result in the cancellation of insurance on any portion of the Property; (e) violates any Applicable Law; or (f) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

12.8 Appearance. Both the exterior and the interior of the Improvements constructed on a Lot must be maintained in a manner so as not be unsightly when viewed from the street. Common Area, or other Lots. The Board will be the arbitrator of acceptable appearance standards.

12.9 Declarant Privileges. In connection with the development and marketing of the Property, as provided in this Declaration, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Occupants. Declarant's exercise of a right that appears to violate a Rule and Regulation or a provision of this Declaration does not constitute waiver or abandonment of the Rule and Regulation or provision of the Declaration. Refer to Appendix "B."

12.10 Drainage. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Board. Also, refer to 10.2.

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

12.12 Occupancy. The Board may adopt Rules and Regulations regarding the occupancy of houses. If the Rules and Regulations fail to establish occupancy standards, no more than two (2) persons per bedroom may occupy a single-family house, subject to the exception for familial status. The Association's occupancy standard for Occupants who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (*i.e., the fewest people per Unit)* permitted by the U.S. Department of Housing and Urban Development. A Person may not occupy a house if the Person constitutes a direct threat to the health or safety of Occupants, or if the Person's occupancy would result in substantial physical damage to the property of others.

12.13 Offensive Conduct, Nuisances. Except as expressly provided in this Declaration, no Owner shall permit or suffer anything to be done or kept about or within his or her Lot, or on or about the Property, which may obstruct or interfere with the rights of any other Owner, or persons authorized to use and enjoy any Common Areas, or annoy them by unreasonable noises, odors or otherwise, nor will the Owner commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner shall comply with the Rules and Regulations, and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

12.14 Commercial Activities. No trade or profession shall be carried on or practiced for commercial purposes on any residential Lot. No signs of any kind shall be displayed to the public view on any residential Lot except one sign advertising a Lot(s), or house, for sale, or signs used by the Declarant or builders to advertise on Lot(s) during the construction period. Size and placement of signs shall be in accordance with the City's ordinances.

12.14.1 No Commercial Use. Except for Declarant's use of the Property as provided in 12.15 below, no business no business activity, whether for profit or not, shall be permitted in or on any Lot, except that an Owner or occupant may conduct business activities that are merely incidental to the Owner's residential use within a Single-Family Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Single- Family Unit; (b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property; (c) the business activity does not involve visitation of the Single-Family Unit by clients, customers, suppliers or other business invitees in numbers or frequency that would exceed normal household traffic; (d) the business activity does not involve door-to-door solicitation of residents of the Subdivision; and (e) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of Oaks of Windcrest, as may be determined in the sole discretion

of the Board. A bed & breakfast, Airbnb, day-care facility, church, nursery, pre-school, beauty parlor, barbershop or another similar facility is expressly prohibited.

12.14.2 The terms "business" and "trade" as used in this Section shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the manufacture or provision of goods or services for or to other persons other than the provider's family, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does not generate a profit; or (c) a license is required therefore. This Section does not apply to any activity conducted by the Declarant, or by a builder with an approval of the Declarant, with respect to its Development and sale of the Real Property.

12.14.3 No vehicles with more than two axles shall be permitted to be parked or stored for a period in excess of twenty-four (24) hours in Oaks of Windcrest, without prior written permission of the Association, whose approval may be withheld in its sole and absolute discretion.

12.15 Declarant Model Home Rights. The Declarant and its agents and representatives have the right to the non-exclusive use, without charge, for display and exhibit purposes, for the maintenance of sales facilities and model homes and for purposes of selling Lots and/or construction of Improvements.

12.16 Signs. No sign of any kind, including signs (including signs advertising Units for sale, for rent or for lease), may be erected, placed, or permitted to remain on the Property unless it is in compliance with City of Fredericksburg's Sign Ordinance. Notwithstanding the foregoing, a religious item on the entry door or door frame of a Single-Family Unit (which may not extend beyond the outer edge of the door frame) is permitted, provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches.

12.17 Solar Energy Device. During the Development Period, this Section 12.17 does not apply and the Declarant must approve in advance and in writing the installation of any solar energy device or apparatus (a "Solar Energy Device"). Until expiration or termination of the Development Period, the Declarant may prohibit the installation of any Solar Energy Device. After expiration or termination of the Development Period, Solar Energy Devices may be installed with the advance written approval of the Architectural Control Committee.

12.17.1 Application. To obtain Architectural Control Committee approval of a Solar Energy Device, the Owner shall provide the Architectural Control Committee with the following information: (a) the proposed installation location of the Solar Energy Device; and (b) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "Solar Application"). A Solar Application may only be submitted by an Owner.

12.17.2 Approval Process. The Architectural Control Committee will approve a Solar Energy Device if the Solar Application complies with 12.17.3 below UNLESS the Architectural Control Committee makes a written determination that placement of the Solar Energy Device, despite compliance with 12.17.3, will

create a condition that substantially interferes with the use and enjoyment of property within the Property by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The Architectural Control Committee's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Single-Family Units immediately adjacent to the Owner/applicant provide written approval of the proposed placement.

12.17.3 Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Control Committee, each Solar Application, and each Solar Energy Device to be installed in accordance therewith must comply with the following:

12.17.3.1 The Solar Energy Device must be located on the roof of the residence located within the Owner's residence, entirely within a fenced area within the Owner's residence, or entirely within a fenced patio located within the Owner's residence. If the Solar Energy Device will be located in the fenced area of the or patio located within the Owner's residence, no portion of the Solar Energy Device may extend above the fence line.

12.17.3.2 If the Solar Energy Device is mounted on the roof of the principal residence located within the Owner's residence, then: (a) the Solar Energy Device may not extend higher than or beyond the roofline; (b) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (c) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

12.18 Rainwater Harvesting Systems. Rain barrels or rainwater harvesting systems ("Rainwater Harvesting System") may be installed with the advance written approval of the Architectural Control Committee.

12.18.1 Guidelines. If the Rainwater Harvesting System will be installed on or within the side yard located within the Owner's residence, or would otherwise be visible from a street, the common area, or another Owner's residence, the Architectural Control Committee may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, any common area, or another Owner's residence. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard located within the Owner's residence, or would otherwise be visible from a street, common area or another Owner's Unit, any additional requirements imposed by the Architectural Control Committee to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the Architectural Control Committee.

12.19 Flags - Approval Requirements. An Owner is permitted to display the flag of the United

States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States Military, ("Permitted Flags") and permitted to install a flagpole no more than five (5') feet in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence located within the Owner's residence ("Permitted Flagpole"). Only two (2) permitted Flagpoles are allowed per residence located within the Owner's residence. The Architectural Control Committee need not approve a Permitted Flag or Permitted Flagpole in advance. Approval by the Architectural Control Committee is required prior to installing vertical free-standing flagpoles installed in the front or back yard area located within the Owner's Unit ("Freestanding Flagpole").

12.19.1 Flags - Installation and Display. Unless otherwise approved in advance and in writing by the Architectural Control Committee, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

12.19.1.1 No more than one (1) Freestanding Flagpole or no more than two (2) Permitted Flagpoles are permitted per Unit, on which only Permitted Flags may be displayed; Any Permitted Flagpole must be no longer than five (5') feet in length and any Freestanding Flagpole must be no more than twenty (20') feet in height. Any Permitted Flagpole displayed on any flagpole may not be more than three feet in height by five feet in width (3'x 5').

12.19.1.2 Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and

12.19.1.3 Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

[SIGNATURES TO FOLLOW ON NEXT PAGES]

DECLARANT

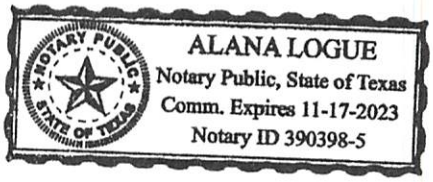
10-8 Properties, LLC
a Texas limited liability company

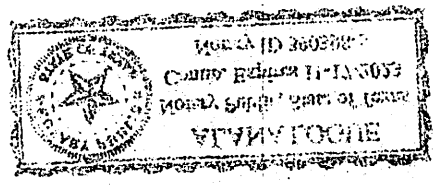
By: _____
Jacob Grant, President

STATE OF TEXAS §

COUNTY OF Gillespie §

This instrument was acknowledged before me on January 9, 2020, by Jacob Grant, President of 10-8 Properties, LLC, a Texas limited liability company.





MORTGAGEE'S CONSENT

STATE OF TEXAS §
§
COUNTY OF GILLESPIE §

The undersigned, FirstCapital Bank of Texas, herein "Lien Holder; being the sole owner and holder of an existing mortgage and lien recorded among the Official Public Records of Gillespie County, Texas, against the Property described above, being known as Oaks of Windcrest V, as Mortgagee and Lien Holder, hereby consents to and joins in the Declaration set forth above.

This instrument is executed for the purpose of subordinating the liens held by the undersigned to all of the provisions of said Declaration, except for the subordination of the Assessment liens as set forth in 4.15, above.

Each and every party who accepts title to any property subject to the above and forgoing Declaration acknowledges that the undersigned is not a party to the Declaration, except for the sole purpose of subordinating the liens of the undersigned as styled above. Each parry who accepts title to Property governed by the Declaration releases the undersigned from all claims and liabilities arising out of the Declaration, except to the extent any action may be taken against the undersigned as a successor in interest to Declarant.

Dated this the 9th day of January, 2020

FirstCapital Bank of Texas

By: _____
Name: Marcus Vidrine
Title: SVP

STATE OF TEXAS §

COUNTY OF Gillespie §

This instrument was acknowledged before me on 9th of January, 2020, by Marcus Vidrine, Senior VP of FirstCapital Bank of Texas.

_____
Notary Public, State of Texas

REBECCA L. TREIBER
Notary Public, State of Texas
Comm. Expires 06-29-2021
Notary ID 131191725

APPENDIX "A"
LEGAL DESCRIPTION

EXHIBIT "A"

15.38 acre tract

STATE OF TEXAS, *
COUNTY OF GILLESPIE. *

Field notes and accompanying map of a 15.38 acre tract of land prepared at the request of the Oaks of Windcrest, L.P. Said land is situated in the City of Fredericksburg, Gillespie County, Texas, being parts Outlots No. 110, 111, 114, & 115 as said Outlots are shown on the map of Fredericksburg, Texas, and Environs, by the German Emigration Company, and being part of that 68.37 acre tract of land described in a Warranty Deed to the Oaks of Windcrest, L.P., by Mary S. Williams, et al, dated April 12, 2006, found of record in Instrument No. 20062495 of the Official Public Records of Gillespie County, Texas.

Said 15.38 acre tract of land is described by metes and bounds as follows, to wit:

BEGINNING at a ½ inch rebar found set (capped: HCLSC 5357) in the North line of said Outlot No. 114 and South line of an Outlot Street (proposed W. Windcrest Street), for the N.W. corner of said 68.37 acre tract, for the N.W. corner of this tract of land;

THENCE with the South line of said Outlot Street and the North lines of said Outlots No. 114 & 115 and said 68.37 acre tract, S. 88 deg. 42 min. 20 sec. E. 675.26 feet to a ½ inch rebar set (capped: BONN 4447) for the N.E. corner of this tract of land, from which a ½ inch rebar found set (capped: HCLSC 5357) bears S. 88 deg. 42 min. 20 sec. E. 178.98 feet;

THENCE over and across said 68.37 acre tract, with the arc of a curve to the right having a radius of 2400.0 feet, in a southerly direction, at 310.3 feet passing a ½ inch rebar found set (capped: MDS) for the N.W. corner of Lot 157, Oaks of Windcrest, Phase IV, plat found of record in Volume 5, page 141 of the Plat Records of Gillespie County, Texas, and continuing with a westerly line of said Phase IV, 668.39 feet in all (LC bears S. 6 deg. 38 min. 40 sec. W. 666.23 feet) to a ½ inch rebar found set (capped: 5646), for a westerly corner of Lot 157, Oaks of Windcrest, Phase IV, for an easterly corner of this tract of land;

THENCE with a West line of said of Lot 157, Oaks of Windcrest, Phase IV, being the arc of a curve to the left having a radius of 950.0 feet, in a southerly direction, at 17.03 feet passing the S.W. corner of said Lot 157, being the most westerly S.W. corner of said Phase IV, and being the N.W. corner of Lot 62, Oaks of Windcrest, Phase II, plat found of record in Volume 4, page 67 of said Plat Records, and continuing with the westerly line of said Phase II, 242.22 feet in all (LC bears S. 7 deg. 18 min. 15 sec. W. 241.56 feet) to a ½ inch rebar found set, for a westerly corner of Lot 60, Oaks of Windcrest, Phase II, for an easterly corner of this tract of land;

THENCE with westerly lines of said Phase II, as follows:
South 111.46 feet to a ½ inch rebar found set, for a westerly corner of Lot 58, Phase II;
with the arc of a curve to the left having a radius of 215.0 feet, in a southerly direction, a distance of 58.81 feet (LC bears S. 7 deg. 50 min. 10 sec. E. 58.63 feet) to a ½ inch rebar found set, for the North corner of Lot 33, Oaks of Windcrest, Phase I, plat found of record in Volume 4, pages 46-48 of said Plat Records, for the S.E. corner of this tract of land;

THENCE with northerly lines of said Phase I, as follows:
S. 67 deg. 36 min. 30 sec. W. 100.44 feet to a ½ inch rebar found set in the easterly line of Northern Red Oak Lane, for the West corner of said Lot 33, Phase I, for a southerly corner of this tract of land;

Continued on page 2 of 2

with an easterly line of Northern Red Oak Lane, being the arc of a curve to the right having a radius of 315.0 feet, in a northerly direction, a distance of 67.55 feet (LC bears N. 11 deg. 41 min. 05 sec. W. 67.42 feet) to a ½ inch rebar found monumented in concrete (capped: BONN 4447), for a N.E. corner said Phase I, for a reentrant corner of this tract of land;

THENCE with a northerly lines of said Phase I, as follows:

S. 84 deg. 27 min. 30 sec. W. 50.0 feet to a ½ inch rebar found monumented in concrete (capped: BONN 4447), for the N.E. corner of Lot 34, Phase I;

S. 83 deg. 15 min. 20 sec. W. 75.79 feet to a ½ inch rebar found monumented in concrete (capped: BONN 4447), for a northerly corner of said Lot 34, Phase I;

N. 88 deg. 42 min. 25 sec. W. 354.06 feet to a ½ inch rebar found monumented in concrete (capped: BONN 4447) in the West line of said 68.37 acre tract, for the N.W. corner of Lot 38, Phase I, for for the most westerly S.W. corner of this tract of land;

THENCE with the West line of said 68.37 acre tract, N. 0 deg. 33 min. 05 sec. E. (Bearing Basis), generally along and easterly of a fence, 1064.19 feet to the PLACE OF BEGINNING.

DURING THE DEVELOPMENT PERIOD, **APPENDIX "B"** HAS PRIORITY OVER THE MAIN BODY OF THIS DECLARATION.

APPENDIX "B"
DECLARANT RIGHTS AND RESERVATIONS

B.1. GENERAL PROVISIONS.

B.1.1. Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration who may be frustrated by then obsolete terms, Declarant is compiling the Declarant-related provisions in this Appendix.

B.1.2. General Reservation & Construction. Notwithstanding other provisions of the Documents to the contrary, nothing contained herein may be construed to, nor may any mortgagee, another owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Appendix and any other Document, this Appendix controls. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

B.1.3 Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly build-out and sellout of the Property, which is ultimately for the benefit and protection of Owners and Mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements, which the Association may not terminate without cause with ninety (90) days' notice.

B.1.4. Amendment. Because this Appendix benefits Declarant's interest in the Property, it may not be amended without Declarant's written approval as evidenced by Declarant's acknowledged signature on the instrument of an amendment.

B.2. **DEFINITIONS.** As used in this Appendix and elsewhere in the Documents, the following words and phrases have the following specified meanings:

B.2.1. Declarant Control Period "Declarant Control Period" means that period of time during which Declarant controls the operation and management of the Association. The duration of the Declarant Control Period will be from the date the Declaration is recorded for a maximum period not to exceed the earlier of (a) twenty (20) years from date this Declaration is recorded, or (b) is the date which is 120 days after the date that seventy-five (75%) percent of the Lots that may be created and made subject to this Declaration (which Declarant acknowledges up to 350 lots may be created, whether on the Property (as defined in this Declaration) or annexed property pursuant to the terms and conditions of the

Declaration, and made subject to the Declaration) are conveyed to Owners other than the Declarant. Declarant may terminate the Declarant Control Period at any time by recording a notice of termination.

B.2.2. Development Period "Development Period" means the period stated below during which a declarant reserves:

B.2.2.1 a right to facilitate the development, construction, expansion, architectural control and marketing of the Property; and,

B.2.2.2 a right to direct the size, shape, and composition of the Property.

B.2.2.3 The Development Period commences on the date of this Declaration and expires on the earlier of (a) when Declarant does not own any Lots or Parcels within the Property, or (b) when Declarant executes a document stating the Development Period has terminated, which termination document may be executed during the period when Declarant still owns real property within the Property.

B.2.2.4 The Development Period does not require that Declarant own land described in Appendix "A," "B" or "C." The Development Period is different from and longer than the Declarant Control Period. Declarant may terminate the Development Period at any time by recording a notice of termination.

B.2.3. Unilaterally "Unilaterally" means that Declarant may take the authorized action without the consent, approval, vote, or joinder of any other person, such as Owners, Mortgagees, builders, and the Association. Certain provisions in this Appendix and elsewhere in the Documents authorize Declarant to act unilaterally. Unilateral action by Declarant is favored for purposes of efficiency and to protect the interests of Declarant.

B.3. **DECLARANT CONTROL PERIOD RESERVATIONS - GOVERNANCE**. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

B.3.1. Incorporation of Association. Declarant will incorporate the Association as a Texas nonprofit corporation before the end of the Declarant Control Period. Before the Association is incorporated, Declarant may delay the initiation of annual meetings, the keeping of minutes of meetings, and other corporation-type requirements of the Bylaws until such time as Declarant, in its sole discretion, deems appropriate.

B.3.2. Officers & Directors. During the Declarant Control Period, the Board may consist of two (2) persons. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of who need be Members or Owners, and each of whom is indemnified by the Association as a "Leader." Declarant's unilateral right to remove and replace officers and directors applies to officers and directors who were elected or designated by Lot Owners other than Declarant, as well as to Declarant's appointees.

B.3.3. Weighted Votes. During the Declarant Control Period, the vote appurtenant to each Lot owned by Declarant is weighted four (4) times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Declarant Control Period, Declarant

may cast the equivalent of four (4) votes for each Lot owned by Declarant on any issue before the Association. On termination of the Declarant Control Period and thereafter, the vote appurtenant to Declarant's lots is weighted uniformly with all other votes.

B.3.4. Association Meetings. During the Declarant Control Period, meetings of the Association may be held at a location, date, and time that is convenient to Declarant, whether or not it is mutually convenient for the Owners.

B.3.5. Transition Meeting. Within sixty (60) days after the end of the Declarant Control Period, or sooner at Declarant's option, Declarant will call a transition meeting of the Members of the Association for the purpose of electing, by a vote of the Owners, directors to the Board. Written notice of the transition meeting must be given to an Owner of each Lot at least ten (10) days before the meeting. For the transition meeting, Owners of ten (10%) percent of the Lots constitute a quorum. The directors elected at the transition meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

B.4. DECLARANT CONTROL PERIOD RESERVATIONS - FINANCIAL. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

B.4.1. Association Budget. During the Declarant Control Period, the Declarant- appointed Board will establish a projected budget for the Property as a fully developed, fully phased, fully constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of new homes in the Property.

B.4.2. Budget Funding. During the Declarant Control Period only, Declarant is responsible for the difference between the Association's actual operating expenses and the regular Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease being responsible for the difference between the Association's operating expenses and the assessments received from Owners other than Declarant.

B.4.3. Enhancements. During the Declarant Control and Development Periods, Declarant - solely at Declarant's discretion - may voluntarily provide enhancements for the Property, such as higher levels of maintenance, management, insurance, seasonal color in landscaping, and recreational personnel. Such enhancements are not included in the Association's annual operating budget or, alternatively, if included are identified as Declarant enhancements.

B.4.4. Declarant Assessments & Reserves. During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association. During the Declarant Control Period, Declarant is not required to make contributions to the Association's reserve funds for the Lots owned by Declarant. Declarant's obligation to fund the difference in the Association's operating expenses may not be construed to require

Declarant to fund reserve accounts.

B.4.5. Commencement of Assessments. During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of regular annual Assessments until a certain number of Lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies regular annual Assessments against the Lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.

B.4.6. Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

B.4.7. Budget Control. During the Declarant Control Period, the right of Owners to veto Assessment increases or Special Assessments is not effective and may not be exercised.

B.5. **DECLARANTS RIGHT TO INSPECT & CORRECT ACCOUNTS**. For a period of five (5) years after termination of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct and adjust the Association financial records and accounts from the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Documents or applicable State law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each owner, by accepting an interest in or title to a lot, hereby grants to Declarant a right of access to the Association's books and records that are independent of Declarant's rights during the Declarant Control and Development Periods.

B.6. **CHANGES TO OAKS OF WINDCREST V**. Declarant reserves the following rights, exercisable at Declarant's sole discretion, from time to time and at all times during the Development Period, which continues after Declarant ceases to control the Association.

B.6.1. Platting. If the Property includes unplatted parcels, they may be platted in whole or in part, and in phases. The right to plat belongs to the owner of the unplatted parcel, provided, however, that a plat that creates common areas or obligations for the Association must also be approved by Declarant.

B.6.2. Expansion. The Property is subject to expansion by the land. Declarant annexes real property by subjecting it to the Declaration and the jurisdiction of the Association by recording a supplement or an amendment of this Declaration, executed by Declarant, in the Real Property Records of Gillespie County, Texas. The supplement or amendment of annexation must include a description of the additional real property or a reference to the recorded plat that describes the additional real property. Community Declarant's right to annex land is for a term of years and does not require that Community Declarant own land.

B.6.3. Withdrawal. During the Development Period, Declarant may withdraw real property from the Property and the effect of this Declaration (a) if the owner of the withdrawn property consents to the withdrawal, and (b) if the withdrawal does not significantly and

detrimentally change the appearance, character, operation, or use of the Property.

B.6.4. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by a governmental entity, if applicable, and the owner of the land or lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of lots and streets; (b) change the minimum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

B.7. **DIFFERENT STANDARDS.** During the Development Period, Declarant has the right (a) to establish specifications for the construction of all initial improvements on the Property, (b) to establish different specifications for each neighborhood within the Property, and (c) to grant variances or waivers from community-wide standards to certain neighborhoods of the Property.

B.8. **UNILATERAL AMENDMENT.** During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of Owners or any Mortgagee, for any purpose, including without limitation the following purposes:

(a) To add real property to the Property.
(b) To withdraw real property from the Property.
(c) To create lots, neighborhoods, easements, and common areas within the Property.
(d) To subdivide, combine, or reconfigure lots.
(e) To convert lots into common areas.
(f) To allocate the use of certain common areas to specified lots as limited common areas.
(g) To modify the construction, fence and use restrictions of the Covenant.
(h) To modify the requirements for reserve contributions, transfer fees, and POA sale fees described by this Declaration.
(i) To merge the Association with another property owners' association.
(j) To comply with requirements of an underwriting lender.
(k) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
(l) To enable any reputable title insurance company to issue title insurance coverage on the Lots.
(m) To enable an institutional or governmental lender to make or purchase mortgage loans on the Lots.
(n) To change the name or entity of Declarant.
(o) To change the name of the addition in which the Property is located.
(p) To change the name of the Association.
(q) For any other purpose.

B.9. ADDITIONAL DEVELOPMENT RIGHTS. Declarant reserves the following additional rights, reservations, and easements, exercisable at Declarant's sole discretion, at any time during the Development Period.

B.9.1. Completion. During the Development Period, Declarant has (a) the right to

complete or make improvements indicated on the Plat; (b) the right to sell or lease any Lot owned by Declarant; and (c) right to define an easement and right to erect, construct, and maintain on and in any common area and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

B.9.2. Easement to Inspect & Right to Correct. During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Lots, and a perpetual non-exclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant, as applicable, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a Lot may be warrant- ed by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

B.9.3. Promotion. During the Development Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other owners and residents, for purposes of promoting, identifying, and marketing the Property and/or Declarant's houses, Lots, developments, or other products located outside the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers parties - at the Property to promote the sale of Lots. During the Development Period, Declarant also reserves (a) the right to permit builders to place signs and promotional materials on the Property and (b) the right to exempt builders from the sign restriction in this Declaration.

B.9.4. Offices. During the Development Period, Declarant reserves for itself the right to use dwellings owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to lots and dwellings used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

B.9.5. Access. During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property and the Additional Land, and for discharging Declarant's obligations under this Declaration.

B.9.6. Utility Easements. During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any lot,

as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to water, sewer, trash removal, electricity, gas, telephone, television, cable, Internet service, and security. To exercise this right as to land that is not a common area of the Property or not owned by Declarant, Declarant must have the prior written consent of the landowner.

B.9.7. Assessments. For the duration of the Development Period, any lot owned by Declarant is not subject to mandatory assessment by the Association until the date Declarant transfers title to an owner other than Declarant. If Declarant owns a lot on the expiration or termination of the Development Period, from that day forward Declarant is liable for assessments on each lot owned by Declarant in the same manner as any Owner.

B.9.8 Land Transfers. During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Documents, including without limitation an obligation for transfer or resale certificate fees, and the transfer-related provisions of Article VII of this Declaration. The application of this provision includes without limitation Declarant's Lot takedowns, Declarant's sale of Lots to builders, and Declarant's sale of lots to a homebuyer.

APPENDIX "C"
RECORDS INSPECTION, COPYING AND RETENTION POLICY

The Association will maintain its books and records, including financial records, in writing or in another format capable of conversion into written form.

C.1 An Owner, an Owner's attorney or an Owner's certified public accountant may submit a written request to access the Association's records via certified mail to the Association's mailing address or to the address of the authorized agent listed in the Association's current management certificate. The written request must contain sufficient detail in describing the records requested. The request must also identify if the Owner wants to inspect the records requested or if Owner wants a copy of the requested records. Upon the receipt of a written request for records, the Association will estimate the cost to respond to each request. The schedule of costs reflected at the time of the written request in the Texas Administrative Code Section 70.3 (as amended from time to time) will serve as the maximum amount charged by the Association for the production of books and records. Prior to providing any requested books and records, the Association will require the requesting Owner to pay the Association for such estimated costs associated with the request, not to exceed the schedule of costs reflected in the Texas Administrative Code Section 70.3 (as amended from time to time). If actual costs exceed the estimated costs, the Owner will receive a final invoice and such Owner must remit the difference within thirty (30) business days from receiving the final invoice. If the additional amount due from a request is not paid by a requesting Owner within thirty (30) business days from receiving such final invoice, then the amount due will be added to the Owner's account with the Association as an assessment. If the estimated costs exceed the actual costs for a request, the Association will refund the excess amount paid by the Owner within thirty (30) business days after the final invoice has been received by the Owner.

C.2 Within ten (10) business days from the receipt of the written request to access the Association's records, the Association will provide copies of the requested records to the Owner; provide available inspection dates with the ten (10) business day period; or provide written notice that the Association cannot produce the requested records within ten (10) business days, informing the requesting Owner of the reason the Association is unable to produce the requested information and provide a date not more than thirty (30) business days from the date of such notice at which time the books and records can be produced for inspection or copies can be sent to the requesting Owner.

C.3 If an inspection of books or records is requested or required, the inspection will take place at a mutually agreed upon time during normal business hours.

C.4 The Association shall keep the following records for a minimum of the time periods indicated. Permanently retained refers to records and documents that are never to be purposely destroyed. Except for contracts with a term of more than one (1) year, the retention period starts on the last day of the calendar year in which the record was created and ends on the last calendar day of the year of the specified retention period. Reasonable care to ensure the protection of private information will be utilized when records are destroyed.

C.4.1 The Articles, the Bylaws and this Declaration, any and all other governing

documents, guidelines, rules, regulations and policies and all amendments thereto recorded in the property records to be effective against any Owner or Member. [RETAINED PERMANENTLY]

C.4.2 Contacts with a term of more than one (1) year between the Association and a third party. The four (4) year retention term is to start upon the expiration of the contract. [RETAINED FOR A MINIMUM OF FOUR (4) YEARS]

C.4.3 Account records of each Owner. Account records include all accounting records of the Owner's account and any other records associated with an Owner's account that was produced by the Association in the ordinary course of business. [RETAINED FOR A MINIMUM OF FIVE (5) YEARS]

C.4.4 Minutes of all Association meetings. Financial books and records produced in the ordinary course of business, tax returns and financial audits of the Association. [RETAINED FOR A MINIMUM OF SEVEN (7) YEARS]

C.5 An attorney's files and records, excluding invoices, are not records of the Association, subject to inspection, or subject to production in a legal proceeding.

C.6 Except in the instance of an express written approval of the Owner whose records are the subject of the request for inspection is provided to the Association; or a court order for the release of the books and records or orders that the books and records be made available for inspection, the Association will not be required, other than in meeting minutes, to release or allow inspection of any books or records that identify the violation history of an Owner of the Association; an Owner's personal financial information, including records of payment or nonpayment of amounts due the Association; an Owner's contact information, other than the Owner's address; or information related to an employee of the Association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an Owner

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
Mary Lynn Rusche
Mary Lynn Rusche, County Clerk
Gillespie County Texas
January 10, 2020 11:25:05 AM
FEE: $202.00 LMOOSE
DCC
20200157