



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
D&J ALEXANDER SUBDIVISION, UNIT XXVII**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made by KRK LIMITED, a Texas limited partnership (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Webb County, Texas, which property is more particularly described in EXHIBIT A attached hereto and made a part of this Declaration; and

WHEREAS, Declarant intends to develop and/or construct certain improvements upon the real property described in EXHIBIT A attached hereto, a development to be known as D&J Alexander Subdivision, Unit XXVII (hereinafter referred to as the "Development"); and

WHEREAS, Declarant has caused HOA @ Boardwalk Inc (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners of this Development,

NOW, THEREFORE, Declarant hereby declares that all of the property described in EXHIBIT A shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with title to the real property subject to this Declaration. This Declaration shall be binding on all parties having any right, title or interest in the real property now or hereafter subjected hereto, or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and the Association (as herein defined).

ARTICLE I - DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

1.1 Additional Property. "Additional Property" shall mean and refer to any real property added to the Property by the Declarant.

1.2 Architectural Control Committee. "Architectural Control Committee" ("ACC") shall mean and refer to the Architectural Control Committee established in, by and under this Declaration.

1.3 Articles of Incorporation. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation for the Association, as filed with the Secretary of State of the State of Texas, as the same may be amended from time to time.

1.4 Association. "Association" shall mean and refer to HOA @ Boardwalk Inc, (a Texas non-profit corporation), its successors and assigns.

1.5 Board of Directors. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

1.6 Builder. "Builder" shall mean and refer to any Person who purchases one or more Lots for

the purpose of constructing improvements thereon for later sale to consumers, or parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business.

1.7 By-Laws. "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

1.8 Certificate of Compliance. Certificate of Compliance shall mean the certificate the builder/owner must obtain from the Association prior to Closing that the home/Lot the builder/owner is about to sell is in compliance with the ACC's requirements and this Declaration (Section 5.16).

1.9 Common Expenses. "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

1.10 Common Property. "Common Property" shall mean and refer to all real property, including any portion of a Lot (together with any and all improvements now or hereafter located thereon), and all personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners, including easements held by the Association for such purpose and all green belt and landscaping areas in the Development.

1.11 Community-Wide Standard. "Community-Wide Standard" shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard may be more specifically defined by the Board of Directors.

1.12 Declarant. "Declarant" shall mean and refer to KRK LIMITED, a Texas limited partnership, its successors and assigns. The term shall also be applied to any Person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which lawfully acquires the rights, privileges and options of Declarant in accordance with this Section. Should any of the Property become subject to a first Mortgage given by Declarant as security for the repayment of a loan to improve the Property for development as part of this residential community, then all rights, privileges and options herein reserved to the Declarant, if held by the Mortgagor under said Development Loan, shall inure to the benefit of the holder of such first Mortgage upon its becoming the actual owner of the Property then subject to such first Mortgage through non-judicial or judicial foreclosure or sale made pursuant to any power of sale contained in such first Mortgage or by conveyance of a deed in lieu of foreclosure. The Declarant, as hereinabove defined, may transfer all of its rights, privileges and options as Declarant to a successor-in-title to all or some portion of the Property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property, and provided further, that in a written instrument, such successor-in-title is expressly assigned Declarant's rights, privileges and options herein reserved to Declarant. Such an assignment may be included as a recital in any deed executed by Declarant which conveys any portion of the Property.

1.13 Declaration. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for the Development, as the same may be amended from time to time.

1.14 Development. "Development" shall be further defined to mean and refer to the Property, the Common Property, and all improvements located or constructed thereon.

1.15 Entities. "Entities" shall mean and refer to any of the following: (i) the City of Laredo or (ii)

the Association.

1.16 Lot. "Lot" shall mean and refer to any numbered parcel of land described in Exhibit A, attached hereto, or any additional or revised surveys or plats of the Property, or as similarly shown on any revised or supplemental surveys of such tracts or such additional tracts as may be added to the Property from time to time, as provided herein; provided, however, that no portion of the Common Property shall be a Lot except as may be provided for in Article II and in Section 1.08.

1.17 Member. "Member" shall mean and refer to a Person entitled to membership in the Association.

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

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

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

1.21 Owner. "Owner" shall mean and refer to that record owner (including Declarant), whether one or more Persons, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for repayment of a loan, the Person who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.22 Person. "Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.23 Property. "Property" shall mean and refer to that certain real property described in EXHIBIT A attached hereto, including, but not limited to, Common Property conveyed to the Association, roads, streets, utility systems, green areas, parks, drainage systems, and other improvements serving the Lots, if any, except that any Commercial Lots of the Development shall not be considered in this definition. Commercial Lots are not subject to this Declaration.

1.24 Restrictions. "Restrictions" shall mean and refer to all covenants, conditions, restrictions, easements, liens and other obligations created or imposed by this Declaration.

1.25 Structure. "Structure" shall mean and refer to:

(a) any thing or object, including but not limited, to paint, stains and other such coverings, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, pet house, covered or uncovered patio, swimming pool, antennas, towers and satellite dishes, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage

channel from, upon or across any Lot; and

- (c) any change in the grade at any point on a Lot of more than twelve (12) inches, whether or not subsection (b) of this Section 1.25 applies to such change.

ARTICLE II - PLAN OF DEVELOPMENT AND COMMON PROPERTY

2.1 Rights of the Declarant. Declarant has submitted all of the Property to the terms and provisions of the Declaration. Declarant shall have the right, but not the obligation, to make improvements and changes to all Common Property and to all Lots owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Property, (ii) changes in the location of the boundaries of any Lot owned by the Declarant or of the Common Property, (iii) installation and maintenance of any storm drainage system and water, sewer and other utility systems and facility; and (iv) installation of security and/or refuse facilities. In accordance with the preceding, Declarant reserves the right to record, modify, amend, revise and add to, at any time and from time to time, plats of survey for the Development, setting forth such information as Declarant may deem necessary with regard to the Development, including without limitation, the locations and dimensions of the Lots, Common Property, roads, streets, utility easements and systems, green belt areas, landscape areas, drainage easements and systems, right-of-way easements, and setback line restrictions.

2.2 Conveyance of Common Property.

- (a) The Declarant may from time to time cause the conveyance of certain real property or grants of easements to the general public as may be required by governing authorities in accordance with this Declaration.
- (b) The Declarant may convey, to the Association or Entities, Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed in accordance with this subsection (b) of this Section 2.2 and in accordance with Section 2.1 of this Declaration at any time prior to conveyance of such Common Property to the Association or to any of the other Entities.
- (c) In addition to the property described in subsection (b) of this Section 2.2, the Declarant may convey, or cause to be conveyed, to the Association in accordance with this Section 2.2 such other real and personal property as the Declarant, in Declarant's sole discretion, may determine to be necessary, proper or convenient to the Development.
- (d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or Recreational Area (or which is designated by any words which similarly signify such property is for the common use of the Owners in the Development) whether by recorded plat of survey or otherwise, or designated for public use, shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any of the other Entities. Declarant shall likewise be under no obligation to improve or convey any property for the use and benefit of the Owners.
- (e) The Association hereby covenants and agrees to accept all such conveyances of Common Property tendered to it. With respect to any improved Common Property, issuance of a

certificate of occupancy (if required) by the local governing authority having jurisdiction over such matters shall be conclusive evidence that said property complies with all building and construction standards. The Declarant, or any predecessor Declarant, shall not be responsible for compliance with any requirements called for by said local governing authority after the issuance of a certificate of occupancy.

2.3 **Right of Enjoyment.** Every Owner shall have a nonexclusive right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit Persons who are not Owners to use and enjoy any part or all of the Common Property, subject to such limitations and upon such terms and conditions as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.3 is subject to those items set forth in Section 2.4, which include suspension by the Association as provided in Sections 2.4(c) and 3.3.

2.4 **Rights of The Association.** The rights and privileges conferred in Section 2.3 hereof shall be subject to the right of the Association acting through the Board to:

- (a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property (which shall specifically include the right of the Association, acting through its Board of Directors, to allow residents of other developments outside of Association, including the general public, to use the Common Property);
- (b) suspend the voting rights of any Member, pursuant to Section 3.5, and the right of enjoyment granted or permitted by Section 2.3;
- (c) grant easements or rights-of-way over Common Property to any Entity, municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;
- (d) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;
- (e) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, Mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;
- (f) dedicate or transfer all or any part of the Common Property or interest therein to any Entity, municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority; and
- (g) to sell, lease or otherwise convey all or any part of its properties and interest therein; provided, however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of

two-thirds (2/3) of both Class A and Class B Members.

2.5 **Types of Common Property.** At the time of the conveyance of any real property or grant of easement by the Declarant to the Association or to any of the other Entities to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of both Class A and Class B Members of the Association, be used for any different purpose or purposes. For so long as Declarant owns at least one (1) Lot held primarily for sale, or has an unexpired option to add additional property to these Restrictions, the Common Property may not be used for any different purpose without the written consent of the Declarant.

2.6 **Entrance Easements, Fences and Entrance Monuments.** Certain easements for landscaping or for the erection and maintenance of entrance monuments, subdivision signs, mailbox enclosures, walls, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Development may or will be reserved by the Declarant (or its predecessor in title) and may be set forth on plats of survey of the Development recorded in the County records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development and will be maintained by the Association at its sole expense. All Owners taking title to any Lot upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the instrument conveying such easements to the Association or to any of the other Entities. Such easements shall be Common Property whether reserved in the name of the Declarant or conveyed to the Association. In addition, or alternatively, such entrance monuments, fences, walls and other similar improvements, may be constructed within or upon rights-of-way within the Development, in which case such improvements shall be maintained by the Association or any of the other applicable Entities as any other Common Property.

2.7 **Encroachment Easements.** If any buildings or other improvements initially constructed by Declarant, or by any Builder on any of the Lots (including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls or roofs of such buildings) encroach onto or over or extend into the air space or any portion of the Common Property, or, conversely, if any such improvements initially constructed on the Common Property encroach onto or over or extend into the air space or any portion of a Lot, an easement for the encroachment and or the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

2.8 **Development Easements.** For so long as the Declarant owns at least one (1) Lot primarily for the purpose of sale or has the unexpired option to add additional property to the Development, Declarant shall have alienable and transferable rights of way and easements in, on, over, through, under and across the Common Property for the following purposes:

- (a) installing, maintaining, repairing and replacing such other improvements to the Property (including any portions of the Common Property) as are contemplated by this Declaration or as Declarant desires, in its sole discretion;

- (b) access, ingress and egress to the Common Property and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development to the use of the Common Property;
- (c) for use as sales offices, model homes, and parking spaces in connection with Declarant's efforts to market Lots and/or Improvements constructed on Lots;
- (d) for the maintenance of such other facilities, equipment and signs as in the sole discretion of Declarant may be reasonably required, convenient or incidental to the improvement and sale of Lots and/or Improvements constructed on Lots; and
- (e) for doing all things reasonably necessary and proper in connection with the foregoing, provided that in no event shall Declarant have the obligation to do any of the foregoing.

2.9 Delegation of Use. Any Owner may delegate his right to use and enjoy the Common Property to the members of his family, his social invitees or his tenants who reside on a Lot. Tenants who reside on a Lot shall have the same rights of delegation as an Owner. If an Owner is not occupying his Lot as a primary residence and has leased his Lot to tenants, the Owner shall not have the right to use and enjoy the Common Property, which right may only be exercised by the tenants. Any delegation of rights must be made in accordance with the Bylaws and will be subject to reasonable regulation by the Board and in accordance with the procedures it may adopt.

ARTICLE III- THE HOMEOWNERS ASSOCIATION

3.1 Purposes, Powers and Duties of the Association. The Association was formed as a non-profit civic organization for the primary purpose of performing certain functions for the common good and general welfare of the people of the Development. To the extent necessary to carry out such purpose, the Association shall (a) have all of the powers of a corporation organized under the laws of Texas and (b) have the power to exercise all of the rights, powers and privileges of the Association as set forth in this Declaration.

3.2 Membership in the Association. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration.

3.3 Voting Rights. Subject to the following provisions of this Section 3.3, the Association shall have two classes of voting membership: Class A and Class B.

- (a) Class A. Every Person who is an Owner, with the exception of the Declarant, except as otherwise set forth herein, shall be a Class A Member and shall be entitled to one vote for each Lot owned. When more than one Person is a Class A Member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such Persons and an attempt by two or more of them to cast the vote of such Lot, such Persons shall not be recognized and the vote of such Lot shall not be counted. The membership of a Class A Member shall automatically terminate upon the Member's sale of his Lot. However, no termination of Class A membership shall affect such Member's obligation to pay assessments, fines or penalties as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such

termination.

- (b) **Class B.** The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and during its existence the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to two thousand (2,000) votes, less three (3) votes for each Lot owned by a Person other than the Class B Member. Thereafter, for any Phases, units or additional property thereafter annexed into the Property, if any, and this Declaration, the number of Class B votes acquired By Declarant for such annexed Property shall be equivalent to three times the number of lots within the Phase being annexed into the Property and this Declaration. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (i) the expiration of five (5) years from the date of recording of this Declaration; (ii) the date as of which three-fourths (3/4) of the Lots which may be developed on the Property shall have been conveyed, by either the Declarant or by a Builder who purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; or (iii) the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of Webb County; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property as security for a development loan to Declarant, the Class B membership shall not be terminated without the prior written consent of such Mortgagee. If at the time of termination of the Class B membership, Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A Member.

3.4 Board of Director and Officers.

- (a) **Board.** The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the Bylaws of the Association. Except to the extent otherwise expressly required or authorized by the laws of Texas or this Declaration, the Association's Bylaws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.
- (b) **Officers.** The number of officers and the method of election of officers shall be as set forth in this Declaration and the Bylaws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, officers of the Association shall be appointed by the Declarant until such time as Declarant no longer has the right to appoint members to the Board of Directors.
- (c) **Casting of Votes.** The votes of the Members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by law.

3.5 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any Person who:

- (a) shall be subject to the Right of Abatement, as defined in Section 8.2 by reason of having failed to take steps to remedy a violation or breach of the Restrictions, or of the Design Standards as may be adopted by the ACC, within thirty (30) days after having received notice of the same pursuant to the provisions of Sections 5.11, 6.2 or 8.2 hereof.

Suspension of the Member's voting rights is automatic under (b) and (c) below if the Member(s):

- (b) shall be delinquent in the payment of any assessment, fine or penalty levied by the Association pursuant to the provisions of this Declaration; or
- (c) shall be in violation of any provision, obligation, covenant, or restriction set forth in the Declaration, or of the rules and regulations of the Association relating to the use, operation and maintenance of the Common Property. Any suspension shall be for the balance of the period in which said Member or Person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.5, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.6 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the laws of Texas, the Articles of Incorporation of the Association, and the Bylaws of the Association, as each shall from time to time be in force and effect.

3.7 Control by Declarant and Appointment of the Board. Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, the Declarant hereby retains the right to appoint all members to the Board. The right of Declarant to appoint members of the Board also includes the right to remove and replace appointees until such time as Declarant's right to appoint members to the Board ceases. Subject to extension as new subdivisions, if any, are added, Declarant shall retain the right to appoint and remove members of the Board until sixty (60) days after the first of the following events shall occur: (i) the expiration of five (5) years from the date of the recording of this Declaration; or (ii) the surrender by Declarant of the authority to appoint and replace directors by an express amendment to this Declaration executed by the Declarant and recorded in the Official Records of Webb County, Texas. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association a special meeting of the Association shall be called. At such special meeting the Owners shall elect a new Board of Directors consisting of five directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period, which Declarant has in its possession. Notwithstanding any other language to the contrary, the Board of Directors appointed by the Declarant shall retain the power and authority to act on behalf of the Association, and to exercise all rights available to Board members until such time as a new Board of Directors has been elected. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section.

3.8 **Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property and dwellings within the Property, and the Common Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees, and licensees, if any, until and unless revised or canceled by the Board of Directors or overruled, canceled, or modified in a regular or special meeting of the Association by the vote of Members representing a majority of the total Class A votes in the Association, and by the Class B Member, so long as such membership shall exist. For so long as Declarant owns at least one (1) Lot held primarily for sale, no rule or regulation which modifies or affects the rights, privileges, options or exemptions of the Declarant shall be effective unless consented thereto in writing by the Declarant.

3.9 **Enforcement.** The Association shall be authorized to impose sanctions for violations of this Declaration, the Bylaws, or rules and regulations adopted by the Association. Sanctions may include reasonable monetary fines and suspension of the right to vote and the suspension of the right to use any recreational facilities within the Common Property. In addition, the Association, through the Board, in accordance with Article VIII of the Declaration, shall have the right to exercise the Right of Abatement and to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall also have the power to seek relief in any court for violations or nuisances. The Association, through the Board, by contract or other agreement, shall have the right to enforce county and city ordinances, if applicable, and to permit the County to enforce ordinances on the Property for the benefit of the Association and its Members.

3.10 **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.11 **Governmental Interests.** For so long as the Declarant owns any property described in EXHIBIT A, the Association shall permit the Declarant to designate sites within the Property for fire, police, water, and sewer facilities, public schools and parks, hike and bike trails, green areas, landscaped areas, and other public facilities. The sites may include Common Property owned by the Association.

3.12 **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND THE ACC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ACC MAY NOT BE

COMPROMISED OR CIRCUMVENTED NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND STRUCTURES LOCATED THEREON, AND TO THE CONTENTS OF DWELLINGS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

3.13 The Board of Directors may employ for the Association a professional management agent(s) or executive manager (each and all of whom will be sometimes referred to herein as the "Managing Agent") at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Managing Agent shall provide the Board and the officers with reports, prepared not less than quarterly, concerning the affairs of the Association. The Managing Agent shall provide the Board with quarterly reports regarding the financial data set forth in Section 4.4. The Board may delegate to the Managing Agent some of the powers granted to the Board for the routine operation of the Association while the Managing Agent may formulate data and make recommendations to the Board. The final powers shall be exclusively exercised by the Board. No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without any materially adverse termination fee upon at least ninety (90) day advance written notice of such termination.

ARTICLE IV - ASSESSMENTS AND MAINTENANCE CHARGES

4.1 Covenant for Assessments and Creation of Lien and Personal Obligations. The Declarant, to the extent that Declarant is required herein, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, legal representatives successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

- (a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;
- (b) to pay to the Association any special assessments for capital improvements, and any fines, penalties or other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;
- (c) that there is hereby created a continuing charge and lien upon all Lots owned by him

against which all assessments, fines, penalties and other charges are made to secure payment of such items and any penalties and interest thereon as provided in Section 4.07 hereof and costs of collection, including reasonable attorneys' fees;

- (d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then record Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, Mortgage, deed to secure debt, or other instrument, except that such charge and lien is expressly inferior and subordinate to (i) liens for taxes or other public charges as are by applicable law made superior and (ii) the lien of any bona-fide Mortgage made and given in good faith and for value, to the extent such Mortgage was recorded in the Official Records of Webb County, Texas prior to the delinquency of the applicable assessments secured by the foregoing charge and lien;
- (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from personal liability for any assessment assessed against such Lot or Lots after such foreclosure or transfer in lieu of foreclosure;
- (f) that all annual and special assessments (together with interest thereon and late charges as provided in Section 4.7 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 4.1(c) of this Declaration) a personal obligation which will survive any sale or transfer (including any foreclosure sale or transfer in lieu of foreclosure) of the Lot or Lots owned by him;
- (g) that, except as provided in subsections (i) and (ii) below, the grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, (i) that if the grantor or grantee shall request a statement from the Association as provided in Section 4.08 of this Declaration, such grantee and said grantee's successors, successors-in-title and assigns shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement, or (ii) in the event that the holder of a first or second priority Mortgage (provided that neither the grantee nor any successor grantee under the Mortgage is the seller of the Lot) or any other Person acquires title to a Lot as a result of foreclosure or transfer in lieu of foreclosure of any such Mortgage, such grantee/holder under the Mortgage or such other Person, and their respective successors, successors-in-title and assigns, shall not be personally liable for, nor shall the Lot be subject to, any lien for assessments under the Declaration accruing and chargeable to the Lot on account of or attributable to any period prior to the acquisition of title pursuant to such foreclosure or transfer in lieu of foreclosure; provided, however, that the unpaid share of an assessment or assessments shall be deemed to a common expense collectable from all of the Owners, including any such holder or other Person, and their respective successors, successors-in-title, and assigns.

4.2 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the community of the Development, including, but not limited to, and in addition to other purposes set forth in this Declaration, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

4.3 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.4 Annual Assessment or Maintenance Charge.

- (a) Subject to the terms of this Article IV, each Lot in the Property is hereby subjected to an annual assessment or maintenance charge, which maintenance charge and assessment will be paid by the Owner or Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association).
- (b) The annual maintenance charge and assessment will commence with respect to each Lot on the date of sale of a Lot by the Declarant.
- (c) Each Owner shall pay to The Association an annual assessment determined by the Board of Directors. The rate of the annual assessment may be increased or decreased by the vote of the Board of Directors from time to time in the judgment of the Board of Directors. The annual assessment for each year shall be determined by the Board of Directors as the needs of the Development may in the judgment of the Directors require. In addition, if for any reason the Board of Directors fails to determine the annual assessment for any successive year, the annual assessment for the previous year shall continue for such successive year until a new annual assessment is determined by the Board of Directors.
- (d) Assessments may be used by the Association to provide for, by way of clarification, and not limitation, any and all of the following: normal, recurring maintenance of the Common Property (including, but not limited to, utilities, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for the existing landscaping and maintaining and repairing recreational facilities) and the acquisition and installation of capital improvements to such areas; provided that the Association shall have no obligation (except as expressly provided in this Declaration) to make capital improvements to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the Property to which said assessments apply; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employment of security guards or watchmen, if determined necessary; caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the Board or membership of the Association to keep the Property neat and in good order, or which is

considered of general benefit to the Owners or occupants of the Property, it being understood that when and if presented to the Members, the judgment of the majority of the Members of the Association in the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith, the Association may also establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Property.

4.5 Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements. In addition to the annual assessments authorized by this Article IV, the Association may levy:

- (a) upon the first sale of each and every Lot to an Owner who will individually or through tenant or assigns occupy a Lot, such to be made by Declarant, a predecessor Declarant, or a Builder, a special assessment payable by said Owner, equal to twelve (12) months estimated regular assessment of the Association. The aggregate fund established by such special assessments shall be maintained in a segregated account, and shall be for the purpose of ensuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board, and to reimburse Declarant for certain contributions in accordance with Section 4.9 of this Article; and
- (b) in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part any Association expenses not covered by the annual budget, including, but not limited to, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of both Class A and Class B Members of the Association who are present in person or by proxy at a meeting duly called for such purpose.

4.6 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action requiring vote under Sections 4.4 or 4.5 shall be sent to all members, or delivered to their residence, not less than twenty-one (21) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.7 Effect of Nonpayment of Assessment.

- (a) Late Fees and Interest on Unpaid Charges. If any assessment or installment is not paid within ten (10) days after that due date there shall be imposed a late or delinquency charge in the amount of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due. Any assessment or installment, and any late charge connected therewith, which is not paid within thirty (30) days after the due date of the assessment shall bear interest (from the due date with respect to the assessment or installment, and the date such charge was imposed with respect to the late charge), at the rate of ten percent (10%) per annum or at such rate as the Board may

from time to time establish; provided, however, that in no event shall the Board have the power to establish a rate of interest which exceeds the maximum rate allowed by the laws of Texas.

- (b) **Acceleration of Assessments.** If any one or more installments of any assessment are not paid within thirty (30) days after the due date the Board may declare any remaining balance of the assessment at once due and payable.
- (c) **Charges Included as Part of Lien and as Personal Obligation of Owner.** In the event that an Owner shall fail to pay fully any portion of any assessment or installment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with any delinquency charges, interest, costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees, and the fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure or until the judgment rendered in the action is otherwise satisfied, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.
- (d) **Foreclosure.** In the event that an Owner shall fail to pay fully any portion of such Owner's obligations due and payable within thirty (30) days after notice thereof is sent to the Owner by certified mail, return receipt requested, the lien described herein, as well as the lien of any assessments, charges, fines, costs of collection and attorney's fees established elsewhere in this Declaration may be foreclosed by the Association by an action, judgment, and foreclosure in the same manner as other liens for the improvement of real property. The notice shall specify the amount of the assessments or other charges then due, together with authorized late charges and interest accrued thereon.
- (e) **Notification of Mortgagee.** In addition to other rights of the Association, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within thirty (30) days after the due date of the assessment or installment, the Association shall have the right to notify any or all Mortgagees having a lien against such Owner's Lot or Lots that such Owner is in default in the performance of his obligations under these Restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.

4.8 Certificate of Payment. Upon written request, an Owner, a Mortgagee of a Lot, a Person having executed a contract for the purchase of a Lot, or a lender considering a loan of funds to be secured by a Lot, shall be entitled upon request to a statement from the Association (or its management agent) setting forth the amount of assessments, fines and penalties past due and unpaid, together with late charges and interest applicable thereto, against the Lot. All such requests shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association, within fifteen (15) business days from the receipt of such request, to mail or otherwise furnish such a statement to the party requesting the same to the address directed in the request shall cause the lien for assessments established by the Declaration to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any,

as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The Association may charge a reasonable fee not to exceed Ten Dollars (\$10.00) as a prerequisite to the issuance of such a statement. Any such statement, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and every Owner and any bona fide purchaser of, or lender on, the Lot in question.

4.9 Contributions by Declarant. While Declarant is under no obligation to do so, it is the Declarant's intention to support the Association by funding deficits during such time as the Declarant has the right to appoint members to the Board of the Association. It is not, however, the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by an Owner or Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, the following covenants shall apply:

- (a) Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by an Owner or Owners;
- (b) Declarant shall be promptly reimbursed by the Association for all refundable deposits made by Declarant on behalf of the Association upon the Association's receipt of any and all such deposits;
- (c) For the calendar year in which the Declarant's right to appoint members to the Board of the Association expires or is terminated, Declarant shall be reimbursed for all advance payments made by Declarant on behalf of the Association for which the actual expense is covered in the annual budget.
- (d) Declarant shall be entitled to reimbursement from the Association for any expense voluntarily incurred by the Declarant under this Section 4.9 upon thirty (30) days prior written notice to the Board of the Association. With regard to uncollected assessments, Declarant shall not be entitled to reimbursement until the assessment is actually collected. With regard to refunds of deposits, Declarant shall not be entitled to reimbursement until any such refund is received by the Association. The Declarant, however, shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. With regard to amounts owed to Declarant as provided for in subsection 4.9(c) above, said amount owed to Declarant shall be fully due and payable by January 31st of the year next following the end of the calendar year in which Declarant's right to appoint members to the Board of the Association expires or terminates. The Board of Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to further evidence the obligations of the Association created hereunder. The failure to execute such a note shall in no way diminish the obligations created hereby. In addition, at the time Declarant's right to appoint members to the Board of the Association expires or terminates, Declarant shall have the right to withdraw from Association reserves (including, but not limited to, any unused portion of those amounts set aside pursuant to subsection 4.5(a) of this Article) an amount equal to one-half (1/2) of such reserves to cover Declarant's good faith

estimate of amounts which shall be owed to Declarant in accordance with subsection 4.9(c) above. If for any reason the amount withdrawn exceeds the actual amount owed to Declarant as determined at the end of the calendar year then Declarant shall promptly refund such excess to the Association.

- (e) This Section 4.9 may only be amended with the prior written consent of the Declarant, and each Owner, by acceptance of a deed to a Lot in the Property, and the Association shall be deemed to have approved of the reimbursements to Declarant required by this Section 4.9.

ARTICLE V - ARCHITECTURAL CONTROL

5.1 Architectural Control Committee--Creation and Composition. An Architectural Control Committee (the "ACC") shall be established consisting of at least three (3) individuals to be appointed by the Board of Directors.

5.2 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Structure on any Lot. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing Community-Wide Standard, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.3 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC may, with the approval of the Board, be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the ACC.

5.4 Operations of the ACC.

- (a) Meetings. The ACC may hold regular meetings as may be established by the ACC; provided, however, that during such time as Declarant has the right to appoint and replace members of the Board of Directors the frequency of regular meetings will be established by the Board. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such

objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. The ACC may maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b) Activities.

(i) The ACC may adopt and promulgate Design Standards, and where appropriate shall make findings, determinations, rulings, and orders with respect to the conformity and harmony with the external design and the Community-Wide Standard and any Design Standards adopted by the ACC, of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration;

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization; subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, denial, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

5.5 Design Standards.

(a) The ACC may from time to time (but shall not be required to) adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of:

(i) governing the form and content of plans and specifications to be submitted to the

ACC for approval pursuant to the provisions of this Declaration;

- (ii) governing the procedure for such submission of plans and specifications;
- (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration;
- (iv) assuring the conformity and harmony of external design and the general quality of the Development; and
- (v) Governing the location of all structures in a Lot.

- (b) The ACC may publish copies of any current Design Standards adopted by it, in which case they shall be made readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.6 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC, including where applicable, and without being limited to:

- (a) a site plan showing the location of all proposed and existing Structures on the Lot, including building setbacks, open space, driveways, walkways and parking spaces (including the number thereof) and all siltation and erosion control measures;
- (b) a foundation plan;
- (c) a floor plan;
- (d) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures shall appear after all back-filling and landscaping are completed;
- (e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and
- (f) plans for landscaping and grading.

5.7 Approval of Plans and Specifications. Approval for use, in connection with any Lot or Structure, of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

5.8 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

- (a) the failure to include information in such plans and specifications as may have been reasonably requested;
- (b) the failure of such plans or specifications to comply with this Declaration or the Design Standards; or
- (c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the Community-Wide Standard, or (ii) as to location, to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.9 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with all conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure of the ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

5.10 Inspection Rights. Any employee or agent of the Association or the ACC may, at any reasonable time or times, enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.11 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action with thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

5.12 Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.13 **Nondiscrimination by ACC.** The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons or a particular race, color, sex, religion, age or national origin.

5.14 **Disclaimer as to ACC Approval.** Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these Restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance, and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

5.15 **Variances.** The ACC (or any committee or subcommittee of the ACC appointed by the ACC for such purpose) shall have the authority to grant variances from the provisions relating to setbacks, the location of improvements, the direction which improvements must face, and any other architectural restrictions based upon circumstances such as topography, natural obstructions, aesthetics, or other relevant considerations; provided that, the ACC shall have no authority to grant a variance from the provisions of the Restrictions relating to the use of a Lot or the use of any improvement on a Lot. Each variance must be evidenced by an instrument in writing. No variance shall operate to waive any provisions of the Restrictions for any purpose except as to the particular property and the particular provision made the subject of the variance. Provided further that the ACC shall have no authority to grant a variance from any ordinances, set back requirements, or other requirements imposed by the City of Laredo or other governmental authority.

5.16 **Certificate of Compliance.** So long as the Declarant owns a Lot, prior to the closing of a sale of a Lot by an Owner or a Builder who owns a Lot in these Subdivisions, the Owner or Builder must obtain a Certificate of Compliance from the Association that the Lot the builder is about to sell is in compliance with the ACC's requirements and this Declaration. Without this Certificate, an owner or builder may not close the sale of the house/Lot.

ARTICLE VI - GENERAL COVENANTS AND RESTRICTIONS

6.1 **Application.** The covenants and restrictions contained in this Article VI shall pertain and apply to all single family Lots and to all Structures erected or placed thereon.

6.2 **Restriction of Use.** Lots described in Exhibit A may only be used for single-family residential purposes, or if conveyed or dedicated to the Association or any of the other Entities as Common Property, for such purposes as the Association or any of the other Entities sees fit (subject

to such restrictions as may be contained in the grant or conveyance of said Lot) and for no other purposes; provided, however, that (a) Declarant may use any Lot or the Common Property for any purposes necessary or convenient to the improvement and/or marketing and sale of the Property, including, but not limited to, the operation of sales offices and/or model homes, and (b) any Builder may use any one or more Lots purchased by such Builder for the operation of sales offices and/or model homes.

- (i) **Minimum Area.** The living area of each residence constructed on a Lot shall contain a minimum of one thousand six hundred (1,600) contiguous square feet of living space, such square feet being exclusive of open or screened porches, terraces, patios, driveways, carports, garages and living quarters for domestic servants separated or detached from the primary living area.
- (ii) **Garages.** A garage able to accommodate at least two (2) full-sized automobiles must be constructed and maintained for each Living Unit. Garages on corner Lots must be set back at least ten feet (10') from the side Lot line and all garages must be set back at least twenty feet (20') from the front Lot line. Each driveway must accommodate two vehicles in front of the garage for off-street parking requirements. Rear detached garages shall be permitted provided they are constructed in compliance with the requirements of these covenants and the specifications of the City of Laredo. No garage shall be permanently enclosed for conversion to any other use. Open carports are not permitted, unless special design circumstances warrant their use, in which case permission must be obtained in writing from the ACC.
- (iii) **Outbuilding Requirements.** Every outbuilding, inclusive of such structures as a storage building, gazebo, spa, greenhouse or children's playhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. All such out buildings shall be subject to approval of the ACC. In no instance shall an outbuilding exceed one (1) story in height, nor shall the total floor area of the outbuildings other than a detached garage exceed fifteen percent (15%), individually or in the aggregate, of the floor area of the main dwelling.

6.3 Outside Construction and Maintenance Activities. Outside construction, lawn maintenance work (which includes, without limitation, the use of lawn mowers and/or blowers), and landscaping work (except landscaping work that does not create noise) is not permitted to commence on Saturdays, Sundays and holidays before 9:00 a.m. or to continue after 6:00 p.m. On all other days, outside construction, lawn maintenance work, and landscaping work is not permitted to commence before 7:30 a.m. or to continue after sunset. Construction work within the interior of a home or other improvement is permitted at any time as long as noise caused by the work does not unreasonably disturb any surrounding residents. Contractors and/or workmen are not permitted to play radios or CD or tape players and the like at a volume that unreasonably disturbs any surrounding residents. For purposes hereof, the determination of whether noise created by construction work or radios, CD or tape players or the like played by any workman is unreasonable shall be based upon persons of ordinary sensibilities. Owners are responsible for assuring that their contractors and all subcontractors comply with the provisions of this paragraph. Building materials shall not be stored on any Lot except when being employed in construction upon such Lot. Any excess materials not needed for construction and any building refuse shall promptly be removed from such Lot.

6.4 Yard and Home Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in a good and attractive condition, and in

good repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. No objectionable or unsightly usage of Lots or condition on any Lot will be permitted which is visible to the public view. If in the opinion of the ACC any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such conditions. If the Owner shall fail to take reasonable steps to remedy the condition within fourteen (14) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.2 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

- (a) Excessive Watering. Watering which causes runoff of irrigation water from a Lot onto a Street, Common Area, or another Lot will be deemed excessive and may be subject to penalties imposed by the Association.

6.5 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision. This provision shall not apply to the Declarant. Any Owner owning two or more adjoining Lots or portions of two or more such Lots may, with the prior approval of the Architectural Control Committee, consolidate such Lots or portions thereof into a single building site for the purpose of constructing one residence and such other improvements as are permitted herein, provided, however, that no such building site shall contain less than Six Thousand (6,000) square feet of land. Any consolidated Lot shall comply with all lawful requirements of any applicable statutes, ordinance or regulation.

6.6 Landscaping. No construction or alteration of any Structure or landscaping shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. All front yards, back yards and side yards on all Lots, must be sodded, and all initial landscape requirements completed prior to occupancy of the house. Minimum initial landscaping requirements for the front yard are two (2) 2" caliper trees, five 5 gallon shrubs and ten 1 gallon shrubs. Side yards on corner lots must be sodded the full length of the property line adjacent to the street. After sodding, all yards must be maintained with grass and/or landscaping in a neat and well-mown, trimmed condition, free of unsightly weeds and overgrowth (grass shall never be allowed to grow six inches (6") or more in height/length) and all trees, shrubs, vines and plants which die shall be promptly removed and replaced and all yard areas shall be kept in a sanitary, healthful and attractive manner. Lawns, front and back, must be mowed at regular intervals, and never permitted to exceed six inches (6") in height. The front yard area of each improved Lot forward of the front wall line of the residence thereon, and the side yard area adjoining a street of each corner Lot, shall be watered as needed to maintain the landscape. Decorative ground cover rock in the front and side yard may be used in lieu of grass but may not exceed Fifty percent (50%) of the total area of the front and side yard. Hydromulching and/or seeding may be utilized in place of sodding if approved by the ACC. No oak, elm or pecan trees larger than eighteen inches (18") in diameter may be removed without written ACC approval. All "dead" trees, shrubs, sod and other landscaping shall be

immediately replaced by Owner. EACH OWNER IS ADVISED THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES AS TO THE LIFE EXPECTANCY, VITALITY OR FITNESS FOR INTENDED PURPOSE OF ANY TREES OR SHRUBS LOCATED ON THE PROPERTIES.

6.7 Trees. No living tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 5.6 hereof. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.

6.8 Temporary Buildings. No structure of a temporary character (sales structure, trailer, travel trailer, tent, shack, garage, barn or other outbuildings) shall be used or placed upon any Lot at any time as a residence, either temporarily or permanently. No trailer, camper, recreational vehicles, or similar vehicles shall at any time be parked in view from other properties or connected to utilities situated within a Lot. No dwelling previously constructed elsewhere may be moved onto any Lot in the subdivision controlled by these covenants. This covenant specifically includes mobile homes or the use of a mobile home in which the axle and wheels have been removed and placed upon a concrete slab, which said mobile home is hereby specifically prohibited as a resident, either temporarily or permanently, and further, specifically includes a mobile home upon which wheels have been left attached. Sales offices and construction offices used by the Declarant or Builder Members are permitted but are subject to ACC approval as to number, type, location and ultimate use.

6.9 Signs.

(a) No signs whatsoever (including but not limited to commercial, political, and similar signs) shall, without the ACC's prior written approval of plans and specifications therefore, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except: (i) such signs as may be required by legal proceedings; (ii) not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of four square feet (4 sq. ft.); provided, however, that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used; (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC; (iv) such signs as are used to identify and advertise the Property; and (v) a sign indicating the Builder of the residence on the Lot. No signage, written statement(s), symbols, logos or advertizing of any kind may placed or painted on any wall or fence.

(b) Notwithstanding any other provision in this Declaration, the Declarant may erect and place such signs on any portions of the Property owned by Declarant or on any Common Property, which Declarant in its sole discretion deems appropriate. This exemption shall also apply to any predecessors to Declarant for so long as such predecessor owns at least one (1) Lot for sale. This Section may only be amended with the prior written approval of the Declarant and any predecessor Declarant adversely affected by the proposed amendment.

6.10 Setbacks.

(a) Each dwelling which is erected on a Lot shall be situated on such Lot in accordance with the building and setback line shown on the recorded plat and as determined by the ACC in accordance with Section 5.5 and 5.6 and 5.7 herein, unless otherwise approved by the ACC. For purposes of this requirement all porches, patios, decks, shutters, awnings, eaves, gutters

and other such overhangs will not be considered in violation thereof, even though such structure shall extend beyond said building and setback lines, unless the ACC has established such a requirement as part of its approval of a structure or has otherwise established setback requirements. Unless otherwise approved by the ACC, the minimum front setback shall be twenty feet (20') for all structures, the rear setback shall comply with applicable City of Laredo ordinances, and side yards shall be a minimum of five feet (5') on each side.

- (b) In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure.
- (c) No Structure erected, altered or placed on, within or in the Property shall exceed Thirty-Five feet (35') in height (measured from the top of the foundation to the topmost part of the roof; nor be more than two (2) stories in height, provided however, that all applicable ordinances, regulations, and statutes with respect to the maximum height of buildings and structures shall, at all times, be complied with.
- (d) No walls, fences or hedges shall be erected or maintained nearer to the front Lot line than the walls of the dwelling situated on such Lot which are nearest to such front Lot line. All walls or fences facing the front Lot line shall be constructed of the same masonry construction used on the front elevation of the residence.

6.11 Fences and Walls.

- (a) All Lots shall be fenced or walled. All homes will have masonry walls extending from the side of the home to the fence on the side Lot lines (wing walls). No wood or metal wing walls are permitted. All walls or fences (including side or rear fences) shall be Six (6) feet in height. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Any wall or fence erected by Declarant or its assigns in accordance with Section 2.6 herein, shall not be altered in any manner. The term fence and wall will be considered synonymous with regard to the requirements of this Declaration. Interior lot fencing (fencing on side & rear lot lines that are not visible to the public) shall be of masonry construction.

All fencing that is visible from streets, common areas and drainage easements shall be of masonry construction.

All required fences and walls for a lot must be completed within one year from the date of sale of the lot to the first Class A Member to acquire said lot.

- (b) Prior to erecting a new fence or wall on a lot or replacing an existing fence or wall on a Lot, the Owner of the Lot shall submit to the ACC a request for approval of the proposed fence or wall with information regarding the location of the fence or wall, the height of the fence or wall, the type, color and grade of the materials to be used in the construction of the fence or wall, and the design of the fence or wall. The ACC shall have the authority to disapprove the proposed fence or wall if it does not comply with applicable setbacks, height restrictions or any other provisions in this paragraph and applicable restrictions relating to fences or walls, or if the ACC reasonably determines that the proposed fence or wall is not compatible with the overall design of homes and related improvements in the subdivision. No fence or wall shall be constructed with materials not traditionally used for fences on lots in the subdivision. Fence and wall materials shall be generally limited to iron, brick or a similar masonry

material, or stucco covered cinder block or concrete. A non-traditional fence or wall material includes, by way of example and not by way of limitation, any type of plastic or vinyl material. Any request for approval of a proposed new fence or wall or a fence or wall to replace an existing fence or wall which otherwise complies with restrictions applicable to fences or walls but is not of the same materials as the fence or wall being replaced shall be deemed approved by ACC unless disapproval or a request for additional information is transmitted to the applicant within thirty (30) days from the date of actual receipt of the application by ACC at its business office. Any request for approval of a proposed fence or wall to be constructed out of iron or brick or a similar masonry material to replace a fence or wall out of substantially the same type and color of material and in the same location as the fence or wall to be replaced shall be deemed approved by ACC unless disapproval or a request for additional information is transmitted to the applicant within ten (10) business days from the date of actual receipt of the application by ACC at its business office. However, no deemed approval shall operate to permit an owner to erect a fence or wall on a lot that violates any of the express provisions of this paragraph or a setback line applicable to a Lot. Each fence or wall that is adjacent to a major thoroughfare is required to have a finished side facing the major thoroughfare. A fence or wall constructed with cinder block or concrete must be covered with painted or color impregnated stucco and the color to be used must be approved by the ACC prior to the application of the paint or color. In addition, the cinder block fence or wall must be stucco on all of the exterior side of the walls. No fence may be constructed on a lot with barbed wire, chain link, razor wire or any type of electrical wire and no barbed wire, chain link, razor wire or electrical wire may be attached to any permitted fence, wall or hedge. This paragraph does not prohibit the installation of an "invisible" fence that controls pets through underground electrical wiring. For all Lots on street corners, all gates and entryways through or into walls shall be constructed of wrought iron with design and materials to be approved by the ACC prior to construction/installation. Any fence or wall proposed to be constructed on a lot on which there is no residential dwelling or other permanent improvement must likewise be approved by the ACC as to type, location, design, and color and grade of materials. The ACC may impose more stringent requirements for fences or walls on vacant or unimproved Lots on which construction is to take place. Owner shall be responsible for maintaining the aesthetic appearance of his or her fence or wall. * See 6.9 (a).

- (c) No signage, written statement(s), symbols, logos or advertizing of any kind may placed or painted on any wall or fence.

6.12 Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways. The Declarant, however, shall have the right to construct, or to authorize the construction of, such roads and driveways as may be convenient for the development of the Property or property adjacent thereto through any Lot owned by Declarant.

6.13 Antennae. After the effective date of this instrument, no antenna or tower (radio wave or otherwise) of any type, including, without limitation, broad band, television, or radio antennas or satellite dishes that are visible from any street adjacent to a lot or extend above the roof line of the residential dwelling are permitted on a Lot except to the extent that this paragraph is pre-empted by applicable rules and regulations of the Federal Communications Commission; provided that, the color of any permitted antenna must be a color that is traditionally used on the exteriors of homes and improvements in the subdivision and compatible with the exterior color(s) permitted for any residential dwelling on the Lot. No radio or television aerial wires, towers, antennae, discs,

satellites, dishes, or other special television or cable apparatus or equipment shall be erected, installed, or placed on a Lot without the written approval of the ACC, except for any antennae which may, at Declarant's option, be erected by Declarant or Declarant's designated representative.

6.14 Clotheslines, Garbage Cans, Etc. No clotheslines or the drying of any clothes in public view shall be permitted. All equipment and woodpiles shall be kept in garage or screened by adequate planting or approved fencing so as to conceal them from view by neighboring residences, streets or from Common Property. All trash receptacles shall be stored in the garage or within a solid masonry walled enclosure which screens them from view of the public. Trash containers may not be visible above the walled enclosure. Additionally, the Owners or occupants of any Lots shall construct and maintain an inner fence or other improvements to adequately screen from view of streets and Common Property any of the following: The drying of clothes, yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family. Areas for the storage of trash, garbage or other waste materials shall be kept in a clean and sanitary condition.

6.15 Vehicles, Parking and Related Restrictions.

- (a) No vehicles of any type whatsoever shall be permitted to park on the streets of the Development on a permanent basis, but shall be allowed on a temporary basis. In addition, it shall be expressly prohibited for any automobiles, trucks, or any other motor vehicles (including motorcycles, ATV's, etc.) to park on any sidewalk, grass, lawn, or other landscaped areas.
- (b) No school bus, truck or commercial vehicle over one (1) ton capacity, house trailer, mobile home, motor home, recreational vehicle, camper, habitable motor vehicle of any kind, boat or boat trailer, trailers of any kind, or equipment of any kind, exceeding twenty (20) feet in length shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis. "Temporary as used in this Section 6.15" shall mean twenty (20) days, or less.
- (c) Vehicles and equipment described in Section 6.15(b) above, but which are less than twenty (20) feet in length, shall be permitted on a temporary basis only, unless stored within the garage with garage door closed.
- (d) Any trash, firewood, wood scraps, building materials, or other such materials contained in any vehicle or trailer shall be covered from view.
- (e) The provisions of this Section shall not apply to Declarant or to any Builder in the process of constructing an approved Structure on any Lot.
- (f) No dismantling or assembling of an auto, trailer, motor home, tent, boat, recreational vehicle, travel trailer, any truck or other machinery or equipment shall be permitted in any driveway, street or yard adjacent to a street.
- (g) The purpose of this Section is to help maintain the neat and attractive appearance of the Development by requiring the streets of the Development to remain cleared, and for larger vehicles and equipment to be either hidden from view or eliminated altogether if intended to be stored on more than a temporary basis. In effectuating the purpose of this Section, the ACC may adopt guidelines, rules and regulations which shall give greater substance to its provisions, as for example, by defining what shall be considered temporary or permanent in the case of each subsection above.

(h) On-street parking, except by visitors, is prohibited.

6.16 Recreational Equipment. Recreational and playground equipment shall be placed or installed only within the backyard of a Lot unless otherwise approved by the ACC, except that basketball goals may be placed adjacent to the driveway serving a Lot. No above-ground pools shall be allowed.

6.17 Animals. Only generally recognized house or yard pets are permitted on a Lot and then only if they are kept solely as domestic pets and not for commercial purposes. Exotic animals are not permitted on a Lot. For purposes hereof, an animal is an "exotic" animal if it is not a generally recognized house or yard pet, it is a breed of animal that is commonly considered to be wild, as opposed to domesticated, or if it is a breed of animal that is inherently aggressive or vicious toward other animals and/or humans. A reasonable number of recognized house or yard pets are permitted on a Lot. No permitted pet is allowed to roam throughout the subdivision, make an unusual amount of noise, or otherwise become an annoyance or nuisance to surrounding residents. The Board of Directors of HOA @ Boardwalk Inc shall have the sole discretion to determine whether an animal is a generally recognized house or yard pet or an annoyance or nuisance to surrounding residents, and whether the number of recognized house or yard pets on a lot is reasonable.

6.18 Solid Waste.

(a) No Person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(b) No Person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in manner approved by the ACC.

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed where visible only on the day of actual pick-up. At all other times such containers shall be screened or enclosed.

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

6.20 Mechanical Equipment. No exterior heating, ventilating and air-conditioning compressor units, swimming pool equipment, or other mechanical equipment installed or replaced after the effective date of this instrument shall be situated outside the wall or fence of a Lot unless an express variance is granted or has previously been granted in writing for the placement of such equipment or replacement equipment by the ACC. Any request for approval of replacement equipment of the same type (i.e., serving the same function) and at the same location as equipment to be removed shall be deemed approved by the ACC unless disapproved within five

(5) business days from actual receipt of the application or request for approval by the ACC in its business office. Any exterior heating, ventilating and air-conditioning compressor units, swimming pool equipment, or other mechanical equipment that is installed or replaced after the effective date of this instrument and situated within ten (10) feet of any side or rear property line must provide sound attenuation that reduces the noise generated by the equipment to not more than fifty-eight (58) decibels, measured from the nearest point at which a structure may be constructed (without variance) on the lot adjacent to the side or rear property line on which such heating, ventilating and air conditioning compressor units, swimming pool equipment or other mechanical equipment is to be installed or replaced. All exterior heating, ventilating and air-conditioning compressor units, swimming pool equipment or other mechanical equipment installed or replaced after the effective date of this instrument must be located at ground level and be screened from view from any street adjacent to the lot by landscaping or approved fencing. No window or wall air-conditioning units are permitted in any residential dwelling or other structure on a lot if visible from any adjoining street or any adjoining lot, at ground level.

6.21 Continuity of Design and Materials. After the effective date of this instrument, the type(s) and color(s) of exterior building materials and roofing materials and the color(s) of paint or color impregnation proposed to be used on the exterior of a home or any other improvement on a Lot must be approved by the ACC prior to commencement of construction, or application of paint, or installation of building and/or roofing materials. The Owner of the Lot is required to submit to the ACC a request for approval of the proposed building materials, roofing materials and paint colors, together with material and/or paint samples. The ACC shall have the authority to disapprove a proposed building material or roofing material if the type of material is not compatible with the predominant types of building materials used on homes and improvements in the Development. Further, the ACC shall have the authority to disapprove the color of a proposed building material or a proposed paint color if the color is not a color traditionally used on the exteriors of homes and improvements in the Development, or if two (2) or more colors proposed to be used on improvements on a Lot are not compatible with each other. Exterior colors shall be generally limited to earth tones and forest tones; non-traditional paint colors include, by way of example and not by way of limitation, purple, fuchsia, canary yellow, magenta, orange, goldenrod, fire engine red, chartreuse and hot pink. The Board of Directors of HOA @ Boardwalk Inc has the authority to resolve all disputes between an Owner and the ACC over a proposed building material, roofing material or paint color (as to both type and color) and the Board's decision shall be final. The ACC will strive to review and act upon an application or request for approval as quickly as possible with the objective being to provide a response to the Owner within ten (10) business days in the case of a change of color and five (5) business days in the case of an applicant desiring to repaint a Structure on a Lot the same color as then exists (and is not a non-traditional color); however, the ACC shall have a period of thirty (30) days from the date of actual receipt of an application or request for approval to respond to an applicant with respect to any color or materials for new Structures. To facilitate review and approval of colors, the ACC shall use reasonable efforts to maintain reference books of paint samples or "chips" for nationally-recognized major paint companies. Any request for approval of proposed building materials, roofing materials and/or paint colors shall be deemed approved by the ACC unless disapproval or a request for additional information is transmitted to the applicant within thirty (30) days (or, in the case of an applicant desiring to repaint improvements on a Lot the same color as then exists, and provided such color is not a non-traditional color, within five (5) business days) after the date of actual receipt of the application or request for approval by ACC at its business office. Notwithstanding the foregoing provisions, the Owner of a Lot at the time this instrument becomes effective may, for as long as that Owner owns the Lot, repaint the Structures on the Lot existing at the time this instrument becomes effective the same color(s) as that existing on the Structures on the effective date of this instrument; provided that, if title to the Lot changes, the subsequent Owner of

the Lot may not paint the Structures on the Lot, or any part thereof, without the prior approval of the ACC, regardless of whether the same or different colors are to be used. This paragraph shall not be construed to require the Owner of any Lot to change the exterior paint color that exists on the Structures existing on a Lot as of the effective date of this instrument.

6.22 Non-Discrimination. No Owner or Person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any Persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

ARTICLE VII - EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.1 Easements.

- (a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual rights of way and easements, as well as the power to grant and accept the same to and from the county in which the Property or any portion thereof is located, or any other public authority or agency, public service district, public or private utility, or other Person, in, on, over, under and across any part of the Property (including the Common Property) for any purpose which the Declarant deems appropriate, including, by way of example, and not limitation, the following:
- (i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;
 - (ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;
 - (iii) slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
 - (iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and
 - (v) the erection, installation, construction and maintenance of fences, walls, mailbox enclosures, monuments, signs, etc. along streets in, around and along, the perimeter and at entrances to, the Development, and the right to landscape such areas, plant, replant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature.
- (b) No Owner shall have any right to use any easement created by the Declarant in, on, over, under or across any portion of the Property unless such easement has been assigned by the Declarant to the Association.
- (c) The Declarant hereby expressly reserves to the Declarant, its successors and assigns, across the Property, perpetual, alienable and transferable easements appurtenant to the Property for the following uses and purposes:

- (i) an easement for ingress and egress by vehicular and pedestrian traffic over (1) such drives, roadways, walkways and paths as are shown on the plat or plats recorded in connection with the Property, and (2) any such drives, roadways, walkways and paths as may be constructed in the future;
- (ii) an easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewage, storm drainage, electricity, street lights, telephone, and other utilities and services, including the right to connect with and to use in common with the Owners, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners; and
- (iii) an easement for the purpose of creating and maintaining satisfactory drainage across Lots in the development, being five (5) feet wide along each side line and ten (10) feet wide along the rear line of each Lot; however, said easement shall not include any portion of a Lot upon which the foundation of any dwelling is located.
- (d) In addition to the above, the Declarant hereby grants a general easement in favor of utility, cable television, security and other such service companies across the Property, to install, maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners.
- (e) There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, perpetual right and easement in, on, over, under and across, those strips of land ten (10) feet in width located along and adjacent to those exterior boundaries located adjacent to streets and roads and by lines in the interior of such Lots which are ten (10) feet from and parallel to such exterior boundaries, for the installation, maintenance and use of sidewalks, traffic directional signs, and related improvements, provided that Declarant shall have no obligation to construct any such improvements. There is further reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable and perpetual right and easement in, on, over, under and across those strips of land fifteen (15) feet in width located along those boundaries of all Lots that constitute a part of the perimeter boundary of the Development, such easement to be for the purpose of constructing, installing, maintaining, repairing and replacing a perimeter wall or fence around the perimeter boundary of the Development, provided that Declarant shall have no obligation to construct any such perimeter wall or fence, nor to maintain or repair the same if installed.
- (f) There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, employees, agents and representatives, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot (including any Structure) in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon reasonable notice to an Owner or Occupant of the Lot or Structure.
- (g) Notwithstanding any provisions contained in this Declaration to the contrary, for so long as Declarant owns at least one (1) Lot primarily for the purpose of sale, there is hereby reserved for the benefit of Declarant and its successors and assigns, the alienable and transferable right

and easement in and to the Property, including the Common Property, for the maintenance of signs, sales offices, construction offices, business offices, storage and model homes, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the improvement and/or marketing and sale of the Property.

- (h) There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any Lot (including any Structure) for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps or other unsightly growth, and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.
- (i) The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration, easements shown on the plat of the Property or in other easements of record. The provisions of this Article VII may not be amended without the written consent of the Declarant or its successors or assigns.

7.2 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or grant of easement, or on any filed or recorded map or plat relating thereto, or as otherwise set forth in Section 7.1.

7.3 Entry. The Declarant and the Association, their successors and assigns, directors, officers, employees, agents and representatives, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes. The Declarant and the Association shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken by the same in an Easement Area pursuant to the provisions of Section.

7.4 Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control. Notwithstanding the foregoing, if these Restrictions are included as part of any zoning ordinance or resolution, the adoption of the same shall not prevent the later modification or amendment of these Restrictions in accordance with the provisions for amendment contained in this Declaration.

ARTICLE VIII – ENFORCEMENT

8.1 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner or so long as any Builder owns a Lot primarily for sale which was purchased from Declarant, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns.

8.2 Right of Abatement.

- (a) Except where different notice provisions are provided in Sections 5.11 and 6.02, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall

give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within fifteen (15) days after the mailing of such written notice, then the Association shall have the Right of Abatement. If any assessment, interest, cost or charge required by this Declaration is not paid within thirty (30) days after such assessment is due or such charge is imposed, the Association shall have the right to notify any or all Mortgagees having a security interest in the Owner's Lot or Lots that such Owner is in default in the performance of his obligations under these Restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.

- (b) The Right of Abatement, as used in this Section and Sections 5.11 and 6.2 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions of this Declaration or the rules and regulations adopted by the Association, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or twelve percent (12%) to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 4.7 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, Mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the lien of any Mortgage recorded prior to the recording of the Declaration, and (iii) the lien or charge of all first and second Mortgages of record (meaning any recorded Mortgages covering the Lot with first or second priority over other Mortgages) made in good faith and for value.

8.3 Fines and Penalties and Creation of Lien.

- (a) Except for nonpayment of any annual or special assessments, which violation of the Restrictions is controlled by Section 4.7, in addition to all other remedies set forth in this Declaration, the Association, acting through its Board of Directors, may establish fines and penalties for any or all violations of the Restrictions.
- (b) The Association, acting through its Board of Directors, shall have the authority to establish different degrees or categories of violations and to further establish fines or penalties which vary in amount, or method of application, from category to category. All fines within any one category shall be set at a standard amount and shall be applied by a standard method.
- (c) Except for violations of rules governing the use, operation and maintenance of the Common Property, no fine or penalty provided for herein shall begin to accrue unless the Owner has been given notice in accordance with Section 8.2(a). This provision shall not supersede any other provision of this Declaration requiring different notice.
- (d) Due to the recognition that fines and penalties are often not established until after a violation

has occurred, the Association, acting through its Board of Directors, shall have the authority to assess any fines or penalties established in accordance with these provisions against any and all violations of the Restrictions referred to herein, regardless of when the violation occurred; however, no fines or penalties can begin accruing until after they are adopted and notice of the penalty has been given to the Owner.

- (e) Any fines or penalties assessed pursuant to this Section 8.3 for violations of the Restrictions, including any fines or penalties assessed for violation of rules and regulations relating to the use, operation and maintenance of the Common Property, together with the cost of collection and attorneys fees, shall be a binding personal obligation of the Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.05 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after their assessment whether arising from or imposed by judgment or decree or by any agreement, contract, Mortgage, deed to secure debt, or other instrument, excepting only (i) liens for taxes or other public charges as are by applicable law made superior, (ii) the lien of any bona-fide Mortgage made and given in good faith and for value, to the extent such Mortgage was recorded in the Official Records of Webb County, Texas prior to the delinquency of the applicable assessments secured by the foregoing charge and lien, and (iii) the liens created by Section 4.1 hereof.

8.4 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or to limit the rights of the Declarant, the Association or any Owner to enforce these Restrictions. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.5 Collection of Assessments and Enforcement of Lien. If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

8.6 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX - DURATION AND AMENDMENT

9.1 Duration and Perpetuities.

- (a) This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record in the Official Records of Webb County Clerk, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years. Notwithstanding the foregoing, and in accordance with the laws of Texas, within two (2) years of the end of the initial twenty (20) year period, or within two (2) years of any renewal period,

these Restrictions may be terminated as follows:

- (i) At least fifty-one percent (51%) of the Owners shall execute a document containing a legal description of the Property, a list of the names of all Owners affected by the Restrictions, and a description of those covenants to be terminated (a reference to the recorded Declaration being acceptable);
- (ii) the document shall verify that each Person signing the same is a record Owner of property which is subject to the Restrictions; and
- (iii) the document shall be recorded in the Official Records of Webb County, Texas no sooner than but within two (2) years prior to the expiration of the initial twenty (20) year period or any subsequent ten (10) year period and the document shall be indexed under the name of each Owner appearing in the document.

9.2 Amendment.

- (a) So long as Declarant owns at least one (1) Lot held primarily for sale, these Restrictions may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Restrictions, (iii) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to these Restrictions, (iv) if such amendment would enable any governmental agency, such as the Department of Veterans Affairs, or reputable private mortgage insurance company to insure Mortgage loans on the Lots subject to these Restrictions, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration; provided any such amendment shall not adversely affect the title to any Owner's Lot, unless any such Owner so affected thereby shall consent thereto in writing.
- (b) These Restrictions may be amended at any time and from time to time by an agreement signed by at least fifty-one percent (51%) of each Class of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any real property subject to these Restrictions. No amendment to the provisions of these Restrictions shall materially and adversely alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any Mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Notwithstanding the foregoing, nor any other provisions contained in this Declaration, no amendment to this Declaration or to the Articles of Incorporation or the Bylaws of the Association, which modifies or affects the rights, privileges, options or exemptions of the Declarant, shall be effective unless consented thereto in writing by the Declarant.
- (c) These restrictions may be amended at any time to submit the Development to the terms and provisions of the Texas Residential Property Owners Protection Act, including the amendment of any provisions of the Restrictions to conform to mandatory provisions of said Act, by an

agreement signed by a majority of all Owners of Lots within the Development, and for so long as the Declarant has the right to approve amendments as set forth above, the Declarant.

- (d) Notwithstanding anything to the contrary herein, all amendments to this Declaration require the signature of the Declarant, for so long as Declarant owns at least one (1) Lot in the Development held primarily for sale.
- (e) Any amendment made pursuant to this Section shall only become effective at such time as the instrument evidencing such change has been filed for record in the Official Records of Webb County Clerk or at such later date as may be specified in the amendment itself. Agreement of the required majority of Owners to any amendment of the instrument shall be evidenced by their execution of the amendment. The written consent thereto of any Mortgagee affected thereby shall also be filed with such amendment. In the alternative, provided that the Declarant does not then have the right to control the Association pursuant to the Declaration, the sworn statement of the President, of any Vice President, or of the Secretary of the Association attached or incorporated in an amendment executed by the Association, which sworn statement states unequivocally that the agreement of the required majority was otherwise lawfully obtained and that all notices required were properly given shall be sufficient to evidence the required agreement. The allowance of the foregoing alternative shall not preclude the written consent of Builder as otherwise required in these Restrictions.
- (f) Every purchaser or grantee of any interest in any real property now or hereafter subject to these Restrictions, by acceptance of a deed or other conveyance therefor, thereby agrees that these Restrictions may be amended as provided in this Section. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Official Records of Webb County Clerk. The written consent thereto of any Mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Restrictions, by acceptance of a deed or other conveyance therefor, thereby agrees that these Restrictions may be amended as provided in this Section.

ARTICLE X-ANNEXATION

10.1 Submission of Additional Property. Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Section 10.2 of this Article, to submit Additional Property to this Declaration and thereby to cause the Additional Property to become part of the Property. This option may be exercised by the Declarant in accordance with the conditions and limitations set out in Section 10.2 of this Article, which are the only conditions and limitations on such right.

10.2 Conditions of Annexation. Any annexation of Additional Property as permitted in Section 10.1 of this Article shall be in accordance with the following terms and conditions:

- (a) The option to submit Additional Property may be exercised at any time and from time to time until ten (10) years from the date this Declaration is recorded; provided, however, that the Owners of Lots to which a majority of the Class A votes in the Association appertain, exclusive of any vote or votes appurtenant to Lots then owned by Declarant, may consent to the extension of such option by vote taken not more than one (1) year prior to the date upon which such option will expire.

- (b) Additional Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become part of the Property.
- (c) All lots created on the Additional Property which are added to the Property will be restricted exclusively to residential purposes, in accordance with Article VI of this Declaration, unless otherwise used as Common Property.
- (d) If the additional Property or any portion thereof is subjected to this Declaration, Declarant reserves the rights to designate the boundaries of the Lots and Common Property, if any, in accordance with Article II, section 2.1 of this Declaration.
- (e) The option reserved by section 10.1 of this Article may be exercised by the Declarant alone (without the consent of The Association or any Owner) by the execution by the Declarant of an amendment to this declaration which shall be filed for record in the Official Records of Webb County Clerk. Any such amendment shall expressly submit the Additional Property which is to become part of the Property, and upon the exercise, if any, of such option. The provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such Additional Property as have become part of the Property by annexation.
- (f) In addition to the procedure outlined in subparagraph (c) above, the option reserved by section 10.1 of this article may be exercised with respect to any Additional Property, notwithstanding that such Additional Property may be owned by Persons, including any individual, individuals, corporations, partnerships or any other type of entity, other than Declarant. Declarant shall exercise this option by an amendment expressly submitting such property to this Declaration, which amendment shall be filed for record in the Official Records of Webb County, Texas. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to the Declaration (citing the specific Volume and Page in which such Declaration is recorded), executed by the owner or owners thereof submitting such Additional Property to this Declaration. Upon exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as embracing all of the property, including the initial phase and such Additional Property as has become part of the Property by annexation in this manner.

10.3 Effect of Annexation.

- (a) From and after the date of annexation of Additional Property, each Lot so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges afforded every other Lot previously comprising part of the Property. Upon annexation of Additional Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owners, the covenant to maintain the Common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of the Additional Property which is then the subject of annexation.
- (b) Each Owner, by acceptance of a deed to a Lot in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article X.

10.4 **Withdrawal of Property.** Declarant reserves the right to amend this Declaration unilaterally at any time, so long as Declarant holds an unexpired option to expand the Development pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Development then owned by the Declarant from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Development desired to be effected by the Declarant.

ARTICLE XI—LEASES

11.1 **Application.** In order to assure a community of congenial Owners and thus protect the value of Lots within the Development, the leasing of a Lot, or any portion thereof, by any Owner (other than as provided herein for certain Mortgagees and Declarant) shall be subject to the provisions contained in this Article so long as the Property is subject to the Restrictions.

11.2 **Notice and Regulation.** Any Owner intending to lease his Lot, or any portion thereof, shall give written notice of such intention to the Board of Directors, stating the name and address of the intended lessee, the terms of the proposed lease and such other information as the Board may reasonably require. The Board of Directors shall have the authority to make and enforce reasonable rules and regulations in order to enforce this provision, including the right to impose fines constituting a lien upon the Lot being leased.

11.3 **Required Lease Provisions.** The Board of Directors may set the minimum lease term; however, said minimum term shall not be set for less than six months. All leases and lessees are subject to the provisions of the Declaration and Bylaws. The Owner must make available to the tenant a copy of this Declaration. Any leases of a Lot, or a portion thereof, shall be deemed to contain the provisions of Sections 11.3(a), (b), (c) and (d), whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his Lot shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and its incorporation as part of the lease along with the following provisions:

- (a) Lessee acknowledges that promises made to Lessor, as contained in Article XI, Sections 11.3(a), (b), (c) and (d) of the Declaration which governs the leased Premises, and which provisions are incorporated within this lease agreement, are made for the benefit of the Association for the purpose of discharging Lessor's duties to the Association through Lessee's performance. In order to enforce those provisions made for the benefit of the Association, the Association may bring an action against Lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.
- (b) Lessee shall comply strictly with all provisions of the Declaration, Bylaws, and with the administrative rules and regulations adopted by the Association pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such Person's failure to comply. Lessee acknowledges the violation by Lessee or any occupant or Person living with Lessee

of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of Lessor, as Lessor's attorney-in-fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement by Lessee.

- (c) Upon request by the Association, Lessee shall pay to the Association all unpaid annual assessments and special assessments, as lawfully determined and made payable during and prior to the terms of this lease agreement and any other period of occupancy by Lessee; provided, however, that Lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request. All payments made to the Association shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the Lease. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the Owner of the Premises during the term of this lease agreement and any other period of occupancy by Lessee.
- (d) Lessee's right shall be subject to all rights of the Association and any bona fide Mortgage or deed to secure debt which is now or may hereinafter be placed upon the Premises by Lessor.

11.4 Enforcement. For the purpose of enforcing the provisions of Section 11.3, which shall be incorporated in the provisions of any leases of a Lot, each Owner, by acceptance of a deed or other conveyance of a Lot, hereby irrevocably appoints the Association, which may act by any one of its authorized officers, as his attorney-in-fact, to enforce said provisions and to take action, at law or equity, which could be taken by said Owner against the Lessee should Lessee default in performance under the lease agreement. Each Owner hereby further acknowledges that this power of attorney shall only apply in the event of noncompliance by a Lessee with the provisions of Section 11.3, and that the Association, its Board of Directors, employees and agents shall be held harmless by each Owner in exercising the power of attorney herein granted to the Association.

11.5 Expenses of Eviction. In the event the Association proceeds to evict the Lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specifically assessed against the Lot, becoming a lien thereon subject to enforcement in accordance with Sections 8.3 and 8.5 of this Declaration, and shall become the personal obligation of the Owner thereof, such being deemed hereby as an expense which benefits the Lot and the Owner thereof.

11.6 Rights of Lessee. Any Lessee charged with a violation of the Declaration, Bylaws, or rules and regulations is entitled to the same rights to which the Owner is entitled as provided in the Association's Bylaws.

11.7 Rights of Mortgagees. Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not impair the right of any first or second priority Mortgagee to:

- (a) foreclose or take title to the Lot pursuant to remedies contained in any Mortgages;
- (b) take a deed or assignment in lieu of foreclosure; or

(c) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

ARTICLE XII – MISCELLANEOUS

12.1 **No Reverter.** No restriction herein is intended to be, or shall be construed as, a condition subsequent to or as creating a possibility of reverter.

12.2 **Severability.** A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provisions hereof.

12.3 **Headings.** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

12.4 **Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

12.5 **Notices.** All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent or any kind made pursuant to this Declaration, whether by the Declarant, the Association, the ACC, the Owner, or any other Person, shall be in writing. All such writings shall be delivered, as may be appropriate, to the following addresses, and to any such other address requested by any party, notice of which has been provided in accordance herewith:

(a) Declarant:

KRK LIMITED
PO BOX 451130
LAREDO, TX 78045-0027

(b) Owners: Each Owner's address as registered with the Association in accordance with the Bylaws.

Any written communication transmitted by the United States Mail, with sufficient postage affixed, shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

12.6 **No Liability.** Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other Person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

12.7 **Service Provided by Declarant.** The Declarant can provide services and goods for the benefit of the Association and bill or charge the Association any reasonable fees and expenses for the same. Any agreement for professional management of the Association, or any other contract providing services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee upon ninety (90) days' written notice.

12.8 **Professional Management.** The Declarant or the Board of Directors may employ for the management and operation of the Association a professional management agent(s) or executive manager (each and all of whom shall be sometimes referred to herein as a "Managing Agent"), at compensation rates established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. The Managing Agent shall provide the Board of Directors with reasonable reports, prepared and delivered not less than quarterly, concerning the financial status and other affairs of the Association to the extent managed and operated by the Managing Agent. The Board of Directors may delegate to the Managing Agent some of the powers granted to the Board of Directors for the routine operation of the Association. While the Managing Agent may formulate data and reports and make recommendations to the Board of Directors, the final powers of the Association shall be exclusively exercised by the Board of Directors. No management contract with any Managing Agent may have a term in excess of three (3) years and must permit termination of such management contract by either party thereto without cause and without any materially adverse termination fee upon ninety (90) days advance written notice of such termination.

ARTICLE XIII - MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Lots in the Development. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

13.1 **Notice of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provided written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Lot number, therefore becoming an "eligible holder") will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such eligible holder;
- (b) any delinquency in the payment of assessments or charges owned by an Owner of a Lot subject to the Mortgage of such eligible holder which such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which would required the consent of a specified percentage of eligible Mortgagees.

13.2 **Right to Records.** Upon written request in accordance with Section 13.1, all eligible holders shall:

- (a) be entitled to attend and observe all meetings of Owners, but not meetings of the Board;

- (b) be furnished with copies of annual financial reports made to the Owners; and
- (c) be entitled to inspect the financial books and records of the Association during reasonable business hours.

13.3 **No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

13.4 **Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Residence.

13.5 **Amendment by Board.** Should the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which may have necessitated the provisions of this Article or make such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.


13.6 **Applicability of Article XIII.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Texas law for any of the acts set out in this Article.

13.7 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action, including but not limited to the amendment of this Declaration, shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of receipt of any such request sent by or at the direction of the Association by certified mail, return receipt requested.

Executed the 17 day of APRIL, 2018.

DECLARANT:

KRK LIMITED

By: 
Shahram Khaledi
Vice President

THE STATE OF TEXAS §
 §
COUNTY OF WEBB §

This instrument was acknowledged before me this 17 day of APRIL, 2018
by Shahram Khaledi, Vice President of KRK Limited.



Cristina Martinez

Notary Public, State of Texas

EXHIBIT A

**D&J Alexander Subdivision, Unit XXVII, recorded in Volume 35, Pages 87-90,
Plat records of Webb County, Texas.**

STATE OF TEXAS
COUNTY OF WEBB
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS
FILED ON THE DATE AND AT THE TIME STAMPED
HEREON BY ME AND WAS DULY RECORDED IN THE
VOLUME AND PAGE OF THE OFFICIAL PUBLIC
RECORDS OF WEBB COUNTY TEXAS AS STAMPED
HEREON BY ME



Margie Ramirez

COUNTY CLERK
WEBB COUNTY, TEXAS