

**THIRD AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DIAMOND RIDGE**

STATE OF TEXAS       §  
                                  §  
COUNTY OF KENDALL §

**KNOW ALL MEN BY THESE PRESENTS:**

This Third Amended and Restated Declaration of Covenants, Conditions and Restrictions ("Declaration") for Diamond Ridge is made on the date subscribed below for the purpose of replacing the Second Restated Declaration in its entirety.

WHEREAS, Blanch Double Diamond Development Corp., a Texas Corporation ("Declarant") caused to be recorded that certain *Declaration of Covenants, Conditions and Restrictions - Diamond Ridge* ("Original Declaration") dated May 18, 2004, and recorded at Volume 863, Page 642 of the Official Public Records of Kendall County, Texas; and

WHEREAS, Declarant caused to be recorded that certain *Amended and Restated Declaration of Covenants, Conditions and Restrictions - Diamond Ridge* ("Restated Declaration") dated December 22, 2005, and recorded at Volume 966, Page 666 of the Official Public Records of Kendall County, Texas which replaced the Original Declaration in its entirety; and

WHEREAS, the Diamond Ridge Board of Directors caused to be recorded that certain *Second Amended and Restated Declaration of Covenants, Conditions and Restrictions - Diamond Ridge* ("Second Restated Declaration") dated December 20, 2011, and recorded at Volume 1289, Page 669 of the Official Public Records of Kendall County, Texas which replaced the First Amended Declaration in its entirety; and

WHEREAS, that certain tract of land known as DIAMOND RIDGE, containing 852.70 acres of land situated in Kendall County, Texas, which has been platted as Lots 1-132 according to the *Plat of Diamond Ridge* recorded in Volume 4, Pages 264-271 in the Plat Records in the office of the County Clerk of Kendall County, Texas, on the 10th day of May, 2004, after having been approved as provided by law, and the Amending Plat filed for record at Volume 5, Pages 14-15, Plat Records of Kendall County, Texas; and,

WHEREAS, 668.39 acres ("Property") out of said 852.70 acres has been subdivided into Lots 3-132 and streets according to said Plat;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the land in the *Plat of Diamond Ridge*, save and specifically excepting Lot 1, containing 3.2 acres, and Lot 2, containing 181.0 acres (which Lots 1 and 2 are shown on said *Plat of Diamond Ridge*), shall be held, sold, conveyed and occupied 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 and benefit the Property and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof, and (ii) that each contract or deed which may hereafter be executed with regard to the Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the following covenants,

conditions and restrictions regardless of whether or not the same are set out or referred to in said contract for deed.

## ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

**1.1 - Architectural Control Committee.** The terms "Architectural Control Committee" or "ACC" shall mean the committee of the Association that has the power, authority and duties more fully described in Article V of this Declaration.

**1.2 - Articles.** The term "Articles" shall mean the *Articles of Incorporation of the Diamond Ridge Property Owners Association* filed in the office of the Secretary of State of Texas and any amendment thereof.

**1.3 - Assessments.** The term "Assessments" shall mean those charges established by this Declaration upon the Lots, including annual assessments, special assessments and specific assessments.

**1.4 - Association.** The term "Association" shall mean Diamond Ridge Property Owners Association, a Texas nonprofit corporation (charter number 0800343520) and its successors and assigns. Except as the context otherwise requires, "Association" shall mean the Board of Directors acting on behalf of the Association.

**1.5 - Board.** The term "Board" shall mean the Board of Directors of the Association.

**1.6 - Bylaws.** The term "Bylaws" shall mean the Bylaws of the Association and any amendment thereof.

**1.7 - Common Area.** The term "Common Area" shall mean that portion of the Property owned, operated or maintained by the Association for the common use and enjoyment of the Members of the Association, including but not limited to, all land and improvements thereon, parks, recreational facilities, community facilities, pumps, landscaping, sprinkler systems, pavement, streets (to the extent not owned by appropriate governmental authorities), walkways, parking lots, pipes, wires, conduits and other public utility lines situated thereon (to the extent not owned by appropriate governmental authorities or by local utility companies).

**1.8 - Declarant.** The term "Declarant" shall mean Blanch Double Diamond Development Corp., a Texas corporation (charter number 0134340600), its duly authorized representative or their respective successors or assigns.

**1.9 - Declaration.** The term "Declaration" shall mean this instrument and any amendment thereof.

**1.10 - Design Guidelines.** The term "Design Guidelines" shall mean the criteria and guidelines, whether written or not, established by the Architectural Control Committee for construction, improvements, modifications, landscaping and other changes on Lots within the Property.

**1.11 - Governing Documents.** The term "Governing Documents" shall mean all documents adopted and filed of record in the Official Public Records of Kendall County, Texas, or filed in the Office of the Secretary of State of the State of Texas, as applicable, that govern the establishment, maintenance or operation of the Association, including, without limitation, the Articles, Bylaws, Declaration, Design Guidelines, rules, regulations, policies and procedures of the Association, as each may be amended, restated or supplemented from time to time.

**1.12 - Governmental Authority.** The term "Governmental Authority" shall mean any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.

**1.13 - Improvement.** The term "Improvement" shall mean every structure, fixture, addition, and all appurtenances thereto, of every type and kind located above, below, on or to, the Property, including but not limited to, residences, buildings, outbuildings, storage sheds, patios, tennis courts, basketball goals, above or below ground swimming pools, garages, storage buildings, fences, trash enclosures, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

**1.14 - Lot.** The term "Lot" shall mean the physical portion of real property designated for separate ownership within the Property as shown on the Plat of the Property. A Lot includes the real estate and any Improvements located thereon and any easements or other rights or privileges appurtenant to such Lot.

**1.15 - Member.** The term "Member" shall mean any person, persons, entity or entities holding membership rights in the Association.

**1.16 - Mortgage.** The term "Mortgage" shall mean any purchase money mortgage or deed of trust covering all or any portion of the Property given to secure the payment of a debt.

**1.17 - Mortgagee.** The term "Mortgagee" shall mean the holder or holders of any Mortgage.

**1.18 - Original Declaration.** The term "Original Declaration" shall mean the *Declaration of Covenants, Conditions and Restrictions - Diamond Ridge* dated May 18, 2004 and recorded at Volume 863, Page 642 of the Official Public Records of Kendall County, Texas.

**1.19 - Owner.** The term "Owner" shall mean any Person who is a fee simple owner of a Lot and its respective successors and assigns of such Person's Lot during the respective period of fee ownership, but does not include a Person having an interest in a Lot solely as security for an obligation. If more than one Person owns a Lot, then each Person shall be deemed an Owner of the fractional interest in such Lot, but such fractional Owner shall be jointly and severally liable for all of the obligations attributable to the Lot or to the Owner of a Lot in the same manner as if such Lot were owned by one Person.

**1.20 - Person.** The term "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, limited liability partnership, trust, or any other form of business or Governmental Authority.

**1.21 - Plans and Specifications.** The term "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or creation of any Improvement, including but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, signage, lighting, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, all other documentation or information relevant to such Improvement.

**1.22 - Plat.** The term "Plat" shall mean the Plat of Diamond Ridge recorded in Volume 4, Pages 264-271 of the Plat Records of Kendall County, Texas and the Amending Plat of Diamond Ridge recorded in Volume 5, Pages 14-15 of the Plat Records of Kendall County, Texas and any amendments thereof.

**1.23 - Private Street.** The term "Private Street" shall mean the private street drive areas as described in the Plat of the Property, and any related aprons, gutters, and fixtures and/or other facilities, including without limitation, any Property Access Facilities constructed by Declarant or the Association within the Private Street Easement.

**1.24 - Private Street Easement.** The term "Private Street Easement" shall mean and refer to the area shown within the boundaries of the Property which is designated on the Property Plat as Reserve E.

**1.25 - Private Street Facilities.** The term "Private Street Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Private Street Easement, except those as may be expressly excluded herein.

**1.26 - Property.** The term "Property" shall mean the 668.39 acres portion of land containing Lots 3-132 and streets as shown on the Plat. Property may also be described as all 852.70 acres of land shown on the Plat, save and except Lot 1, containing 3.2 acres, and Lot 2, containing 181.0 acres.

**1.27 - Property Access Facilities.** The term "Property Access Facilities" shall mean (i) any controlled access gate, and any other access limiting structure or device, and (ii) any fences, freestanding fence type walls, hedges, gates, gateposts, subdivision identification signs and related improvements which are constructed or maintained by Declarant or the Association within the Private Street Easement or any Property Service Easement.

**1.28 - Property Fence Easement.** The term "Property Fence Easement" shall mean the area designated in the Plat of the Property, and/or by the Declaration, as an easement conveyed by the Declarant to the Association for construction, maintenance and repair of a perimeter subdivision fence or wall around all or a portion of such Property, and all other areas designated and recorded of record in the Real Property Records of Kendall County, Texas by Declarant for use as Property Fence Easement. The Property Fence Easement shall also specifically include the area of each Lot contiguous to the outside boundaries of the Property that is within said Lot's utility and drainage easements and minimum set back lines contiguous to said outside Property boundaries.

**1.29 - Restated Declaration.** The term "Restated Declaration" shall mean the *Amended and Restated Declaration of Covenants, Conditions and Restrictions - Diamond Ridge* dated December 22, 2005 and recorded at Volume 966, Page 666 of the Official Public Records of Kendall County, Texas.

## **ARTICLE II DIAMOND RIDGE PROPERTY OWNERS ASSOCIATION**

**2.1 - Organization.** The Association has been organized and formed as a nonprofit corporation under the laws of the State of Texas. The principal purposes of the Association are collection, expenditure, and management of the maintenance funds, enforcement of the restrictions contained herein, providing for the maintenance and preservation of the Common Areas and the facilities of the Association, and architectural control of the Lots.

**2.2 - Membership.** Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership in the Association may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the Bylaws. The membership rights of a Lot owned by a corporation or partnership shall be exercised by the individual designated from time to



time by the Owner in a written instrument provided to the Association, subject to the provisions of this Declaration and the Bylaws.

**2.3 - Voting Rights.** The Association shall have one class of voting memberships. Each Lot shall have only one vote regardless of the number of owners.

### ARTICLE III POWERS AND AUTHORITIES OF ASSOCIATION

**3.1 - Powers and Authorities.** The Association shall have all powers granted by the Texas Business Organizations Code to non-profit corporations subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas. The Association shall have the power and authority at all time as follows:

- (a) Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and reenact, such Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.
- (b) Rules, Regulations, Policies and Procedures. To make, establish and promulgate, and in its discretion to amend or repeal and reenact, such Rules, Regulations, Policies and Procedures, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.
- (c) Guidelines. To make, establish and promulgate, and in its discretion to amend or repeal and reenact, such Guidelines, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.
- (d) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion the Board, are reasonably necessary or appropriate to carry out the Association functions.
- (e) Contracts. To enter into contracts on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service or perform any other function necessary for the Association.
- (f) Manager. To retain and pay for the services of a person or firm ("Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager.
- (g) Professional Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (h) Records. To keep books and records of the Association's affairs.
- (i) Transfer Fee. To collect an administrative transfer fee to cover the administrative expenses associated with updating the Association's records. Such fee shall be in such amount as the Board may reasonably determine necessary to cover its costs, including, but not limited to, any fees charged by a Manager for updating its records.
- (j) Assessments. To levy Assessments as provided in Article IV.

- (k) Construction on Association Property. To construct new Improvements or additions to Common Areas, subject to the approval of the Architectural Control Committee as provided in this Declaration.
- (l) Association Property Services. To pay for water, sewer, landscaping, gardening and all other utilities, services and maintenance for all Common Areas, to maintain and repair easements, roads, roadways, right-of-ways, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Property, as appropriate and the maintenance of which has not been accepted by the appropriate governmental entity; and to own and operate any and all types of facilities for both active and passive recreation.
- (m) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.
- (n) Right of Entry and Enforcement. To enter at any time in an emergency (or in the case of non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon, excluding a completed dwelling used as a single family residence, for the purpose of enforcing this Declaration or other Governing Documents or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Declaration or other Governing Documents, and the expenses incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and upon the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article IV hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of this Declaration or other Governing Documents. The Association is also authorized to settle claims, enforce liens and take all such action, as it may deem necessary or expedient to enforce the this Declaration or other Governing Documents.
- (o) Property Ownership. To acquire and own and, subject to the provisions of Section 3.1(p), to dispose of all manner of real and personal property whether by grant, lease, gift or otherwise.
- (p) Conveyances. To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, right-of-ways, or mortgages out of, in, on, over or under any Common Areas for the purpose of constructing, erecting, operating or maintaining the following:
  - (1) Parks, parkways or other recreational facilities or structures;
  - (2) Roads, streets, walks, driveways, trails and paths;
  - (3) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
  - (4) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; or
  - (5) Any similar public, quasi-public or private Improvements or facilities; provided, however, that the Association shall not convey fee simple title in and to, or mortgage all or any portion

of any Common Areas without the consent of Owners entitled to cast at least sixty-seven percent (67%) of the total votes in the Association.

Nothing above contained, however, shall be construed to permit use or occupancy of any Improvement or other facility in a way which would violate applicable use and occupancy restrictions imposed thereon by other provisions of this Declaration.

**3.2 - Maintenance and Landscape Authority.** The Association shall maintain all streets and roadways within the Property, which have been completed but not accepted by the appropriate governmental entity for maintenance. In addition, the Association shall be authorized to landscape, maintain and repair all easements, access easements, right-of-ways, median strips, sidewalks, paths, trails, detention ponds and other areas of the Property as appropriate. The Association shall maintain all Common Areas dedicated to the Association for maintenance. The Association shall also maintain any landscaped medians and boulevard areas, not fronting lots, located in the public right-of-way.

**3.3 - Lighting.** The Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain the lighting within and on street right-of-ways and Common Areas.

**3.4 - Common Areas.** Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

- (a) To accept, own, operate and maintain all Amenity Areas which may be conveyed or leased to it by Declarant, together with all Improvements of whatever kind and for whatever purpose which may be located in said area; and to accept, own, operate and maintain all other Common Areas, real and personal, conveyed or leased to the Association by the Declarant and to maintain in good repair and condition all land Improvements and other Association property owned by or leased to the Association. Such maintenance shall include, but not be limited to, mowing and removal of rubbish or debris of any kind.
- (b) To construct, maintain, repair and replace landscape improvements and irrigation systems within public right-of-ways pursuant to agreement(s) with the County of Kendall or other appropriate governmental authority.
- (c) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (d) With the consent of Owners entitled to cast at least sixty-seven percent (67%) of the total votes in the Association, to execute mortgages, both construction and permanent, for construction of facilities, including improvements on property owned by or leased to the Association.
- (e) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment of the Common Areas, as well as casualty coverage on all real and personal property owned by the Association, if and in such amounts as the Board shall deem appropriate.

## ARTICLE IV ASSESSMENTS

**4.1 - Establishment of Assessments.** There are hereby established for the benefit of the Association, as a charge on each Lot, Assessments for expenses of the Association. The Assessments shall be determined by the Board of Directors, and the Association is vested with the power and authority to levy such Assessments. Each Owner, by acceptance of a deed for its Lot, covenants and agrees to pay such Owner's Assessments.

**4.2 - Purpose of Assessments.** The Assessments are provided for the benefit and use of the Association and shall be used by the Association to maintain and keep in good repair the Common Areas and for the general purposes of promoting the common benefit of the Owners and occupants in the Property. The judgment of the Board of Directors as to the expenditure of Assessments shall be final and conclusive so long as its judgment is exercised in good faith.

**4.3 - Types of Assessments.** Three types of Assessments are provided by this Declaration:

- (a) **Annual Assessments.** Prior to the beginning of each fiscal year, the Board shall prepare an annual budget based on the anticipated expenses and contribution to reserve funds. The Board shall levy an Annual Assessment sufficient to meet the annual budget provided, however, that the Annual Assessment shall not be increased by more than ten percent (10%) above the Annual Assessment for the prior year. The Board of Directors may levy an Annual Assessment which is more than ten percent (10%) above the Annual Assessment for the prior year with the consent of Owners entitled to cast at least sixty-seven percent (67%) of the total votes in the Association. Annual Assessments shall be levied on a uniform basis against each Billable Lot within the Property. All such Annual Assessments shall be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.
- (b) **Special Assessments.** The Association may levy one or more Special Assessments in any fiscal year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located upon the Common Area, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the consent of Owners entitled to cast at least sixty-seven percent (67%) of the total votes in the Association. Special Assessments shall be levied on a uniform basis against each Billable Lot within the Property. All such Special Assessments shall be due and payable to the Association in such manner as the Board may designate in its sole and absolute discretion.
- (c) **Specific Assessments.** The Association may levy a Specific Assessment against an individual Lot in accordance with Section 3.1(n), Section 4.6, Section 5.9, Section 10.8 and Section 10.9 of this Declaration. Any such Specific Assessment shall be due and payable to the Association fourteen (14) days after the date of the invoice delivered to the Owner containing the Specific Assessment.

**4.4 - Exempt Property.** All Lots dedicated to and accepted by a public authority and all Lots owned by the Association shall be exempt from Assessments created herein. All Private Street Easements, Private Street Facilities, Property Service Easements and Property Access Facilities and Property Fence Easements shall be exempt from the Assessments created herein.

**4.5 - Billable Lots.** Every platted Lot within the Property shall be considered a Billable Lot and subject to assessments with the exception of the following:

- (a) any Lot designated as exempt under Section 4.4 effective from the date of conveyance;

- (b) any Lot which has been consolidated with an adjacent Lot owned by the same Owner for building purposes under the procedure described in Section 6.12 effective from the date the approval is filed in the Official Public Records of Kendall County, Texas; and
- (c) any contiguous Lots owned by one Owner in excess of two (2) which have been granted an assessment waiver by a majority vote of the Board of Directors effective from the date of such decision which must be in effect as of the date of adoption of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions Diamond Ridge.

**4.6 - Effect of Non-Payment of Assessments.** To the extent allowed by law, all Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such Assessments, secured by the lien provided for in Section 4.7. No Owner may exempt himself from liability for such Assessments.

- (a) Assessments not paid when due shall bear interest from the date due until paid at the rate of ten percent (10%) per annum or the highest lawful rate, whichever is lower.
- (b) Any Owner in default of paying such Owner's Assessments and other obligations when due shall also be subject to any costs of collection, including, but not limited to, administrative late fees and legal fees. If suit is brought to collect an Owner's Assessment, the costs of such suit and related collection efforts (including, without limitation, all reasonably necessary costs and expenses attendant upon bringing such action, including reasonable attorneys', expert fees and deposition costs, recording fees, filing fees, certified mail costs and all other litigation related costs) shall be paid by the Owner who has defaulted.
- (c) The Association may file a notice in the Official Public Records of Kendall County, Texas against the Lot of the delinquent Owner setting forth (a) the amount of the claim of delinquency including interest and costs of collection, (b) the legal description and street address of the Lot against which the lien is claimed and (c) the name of the Owner thereof. Such notice shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The notice shall continue until the amount listed and all subsequently accruing amounts are fully paid or otherwise satisfied, at which time Association shall execute and record a notice releasing the prior notice.

**4.7 - Creation of Lien and Personal Obligation.** In order to secure the payment of the Assessments, and other charges hereby levied, each Owner of a Lot in the Property, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by judicial foreclosure, pursuant to the provisions of Chapters 51.002 and 209 of the Texas Property Code (and any successor statute). Subject to Chapter 209 of the Texas Property Code, following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any Improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in action of forcible detainer and the issuance of a writ of restitution there under. In the event of nonpayment by any Owner of any Assessments or other charges levied hereunder, the Association may, in addition to foreclosing the lien and exercising the remedies provided, upon ten (10) days prior written notice to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

**4.8 - Subordination of Lien to Mortgages.** The lien described in this Article IV shall be deemed subordinate to the lien of any mortgage or other liens of any lender which may have heretofore or may hereafter lend money in good faith for the purchase or Improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof, including any home equity loans if required by law. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided



in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Assessments or other charges against such Lot which accrued prior to the time such holder acquired title to such Lot. No such sale or transfer shall relieve such holder from liability for any Assessments or other charges thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot shall not affect the Association's lien for Assessments or other charges. The Association shall make a good faith effort to give each such mortgagee listed in the Official Public Records of Kendall County, Texas for the Lot sixty-one (61) days advance written notice of the Association's proposed foreclosure of lien described in Section 4.7 hereof, which notice shall be sent to such mortgagee by United States registered or certified mail, return receipt requested, and shall contain a statement of delinquent Assessments and other charges upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article IV.

## **ARTICLE V**

### **ARCHITECTURAL CONTROL COMMITTEE**

**5.1 - Purpose.** In order to establish and preserve a harmonious and aesthetically pleasing design for the Property and to protect and promote the value of the Lots, the lots shall be subject to the restrictions set forth in this Article V. Every grantee of any interest in a Lot by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article V.

**5.2 - Architectural Control Committee.** The ACC shall consist to not less than two (2) nor more than seven (7) members appointed by the Board. The Board may provide for staggered terms for such members for terms not exceeding four (4) years.

**5.3 - Actions of Architectural Control Committee.** The ACC may, by resolution, unanimously adopted in writing, designate one or more of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of a majority of all the members of the ACC taken with or without a meeting shall constitute an act of the ACC. The ACC shall keep written records of all votes taken on acts of the Committee.

**5.4 - Design Guidelines.** The ACC may adopt procedures and guidelines, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties and to provide guidance to Owners in planning Improvements. Any such Design Guidelines shall become effective against all Lots and Owners upon filing in the Official Public Records of Kendall County.

**5.5 - Required Approval by Architectural Control Committee.** No construction of Improvements, or modifications, additions, or alterations to existing Improvements, shall be commenced or maintained by or on behalf of any Owner with respect to any Lot in the Properties unless and until Plans and Specifications and related data showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the ACC as to the compliance of such Plans and Specifications with this Declaration and the Design Guidelines, including the harmony of external design, location, and appearance in relation to surrounding structures and topography. This required advance, written approval includes, but is not limited to, the construction, installation or alteration of dwellings, garages, guest or servants' quarters or other outbuildings, greenhouses, playhouses, sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, awnings, walls, fences and exterior lights.

Any construction, other than normal maintenance, which alters the exterior appearance of any Improvement, or the removal of any Improvement, shall be performed only with prior written approval of the Architectural Control Committee.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Improvements, to paint the interior of the Improvements on his Lot any color desired, or to repaint or restore the exterior of the Improvements on his Lot with the same color which had been previously approved in writing by the ACC for such Improvements.

Upon approval of Plans and Specifications, no further approval under this Article V shall be required with respect thereto, unless construction has not substantially commenced within six (6) months of the approval of such Plans and Specifications (e.g., clearing and grading, pouring of footsteps, etc.) or unless such plans and specifications are materially altered or changed.

The ACC has the authority to establish a fine policy under Section 5.9 which may include a fine for failure to obtain approval from the ACC in accordance with this Section 5.5.

**5.6 - Submission of Plans and Specifications.** Whenever in this Declaration the approval of the ACC is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in question and all other relevant facts and information and may require an Owner to provide such other information as is relevant. The ACC shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. The ACC may disapprove Plans and Specifications for any reason which is consistent with the objects and purposes of this Declaration as determined by the ACC from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

The ACC shall make a decision on any Plans and Specifications submitted within thirty (30) days from the date of the submission of all required documents and review fees provided in Section 5.8, if any, and deposits provided in Section 5.9, if any. If insufficient information is submitted, the ACC may postpone review of the Plans and Specifications until such time as the ACC has received all requested and necessary information and review fees so long as the ACC requests such information and fees within ten (10) days from the date of submission of the Plans and Specifications. Each decision of the ACC must be in writing and returned to the Owner with a designation of "approved", "approved with conditions" or "disapproved". An Owner is bound by any conditions associated with an approval. If the ACC has not issued a written response within thirty (30) days from the date all requested and necessary information and fees are received, the Plans and Specifications shall be deemed approved. No such approval for lack of response shall authorize a violation or grant a variance from this Declaration or the Design Guidelines.

**5.7 - Right to Inspect.** Any member of the Board of Directors, the ACC or their representatives shall have the right, but not the obligation, during reasonable hours to enter upon and inspect any Lot with respect to which construction is underway to determine whether or not the Plans and Specifications therefor have been approved and are being complied with. Such Person or Persons shall not be guilty of trespass by reason of such entry. In the event the Association shall determine that such Plans and Specifications have not been approved or are not being complied with, the Association shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved Plans and Specifications.

**5.8 - Review Fees.** The ACC may charge an Owner a reasonable fee sufficient to cover the expense of reviewing Plans and Specifications and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms thereof. If required, the fee must be paid in advance of ACC review of such Plans and Specifications and related data.

**5.9 - Deposits and Fines.** The ACC may establish a policy for assessing fines to Owners associated with violations of terms of the Design Guidelines or this Declaration. The ACC may require that a deposit, such deposit to be held in trust by the Association, be paid to the Association prior to the construction of certain types of Improvements to pay for any fines incurred during construction of Improvements or damage to the

Common Areas related to construction of Improvements. The deposit does not limit Owners liability for fines or damage. The Owner is responsible for all activities and actions occurring within the Property by Owner, contractors, agents and others associated with the Improvement. Within thirty (30) days of written notice from Owner of completion of construction, Association shall provide a summary of fines or damages, if any, to the Owner and refund the unused deposit, if any. If the Association desires to institute a fine or seek recovery of damages from the Owner, the Association shall follow the procedures for same as stated in section 209 of the Texas Property Code. Any fine and/or damage shall be considered a Specific Assessment on the Lot. Each Owner has a non-delegable duty to ensure that all Persons within the Property on the Owners behalf comply with this Declaration.

**5.10 - Variances.** The ACC may, on a case by case basis, authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines relative to Improvements. Such variances must be in writing and signed by at least a majority of the members of the ACC. For an approved variance regarding building setback line encroachment, the variance becomes effective when filed in the Official Public Records of Kendall County, Texas. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

**5.11 - No Waiver of Future Approvals.** The approval or consent of the ACC to any plans or specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar plans and specifications, or whatever other matter, subsequently or additionally submitted for approval or consent by the same or a different Person.

**5.12 - Certificate of Compliance.** Upon completion of any Improvement approved by the ACC and upon written request by the Owner of the Lot, the ACC shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the ACC pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval of the Improvements by the ACC, either structurally or in conformance with any code, standard or otherwise, or that the ACC actually reviewed or considered the Improvements or the workmanship or material used therein. The Owner is specifically hereby notified that the Certificate in no way warrants the sufficiency, acceptability or approval by the ACC of the construction, workmanship, material and/or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the improved Lot.

**5.13 - NON-LIABILITY FOR ARCHITECTURAL CONTROL COMMITTEE ACTION.** NONE OF THE MEMBERS OF THE ARCHITECTURAL CONTROL COMMITTEE, ANY COMMITTEE REPRESENTATIVE, THE ASSOCIATION, ANY MEMBER OF THE BOARD OF DIRECTORS, AND DECLARANT SHALL BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THE DUTIES OF THE ARCHITECTURAL CONTROL COMMITTEE, EXCEPT TO THE EXTENT CAUSED BY THE WILLFUL MISCONDUCT OR BAD FAITH OF THE PARTY SOUGHT TO BE HELD LIABLE. IN REVIEWING ANY MATTER, THE ARCHITECTURAL CONTROL COMMITTEE SHALL NOT BE RESPONSIBLE FOR REVIEWING, NOR SHALL ITS APPROVAL OF AN IMPROVEMENT AND/OR IMPROVEMENT TO PROPERTY BE DEEMED APPROVAL OF, THE IMPROVEMENT AND/OR IMPROVEMENT TO PROPERTY FROM THE STANDPOINT OF SAFETY, WHETHER STRUCTURAL OR OTHERWISE, OR IN CONFORMANCE WITH BUILDING CODES, OR OTHER GOVERNMENTAL LAWS OR

REGULATIONS. FURTHERMORE, NONE OF THE MEMBERS OF THE ARCHITECTURAL CONTROL COMMITTEE, THE COMMITTEE REPRESENTATIVE, ANY MEMBER OF THE BOARD OF DIRECTORS, OR DECLARANT SHALL BE PERSONALLY LIABLE FOR DEBTS CONTRACTED FOR OR OTHERWISE INCURRED BY THE ASSOCIATION AND/OR FOR ANY TORTS COMMITTED BY OR ATTRIBUTABLE TO THE ASSOCIATION, AND/OR FOR THE TORT OF ANOTHER OF SUCH PERSONS, WHETHER SUCH OTHER PERSONS WERE ACTING ON BEHALF OF THE ASSOCIATION, THE ARCHITECTURAL CONTROL COMMITTEE, THE BOARD OF DIRECTORS, THE DECLARANT, OR OTHERWISE. FINALLY, NEITHER DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL CONTROL COMMITTEE, COMMITTEE REPRESENTATIVE OR THEIR MANAGERS, DIRECTORS, OFFICERS, AGENTS, MEMBERS, OR EMPLOYEES SHALL BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR APPROVAL OR DISAPPROVAL OF ANY PLAN FOR IMPROVEMENTS, IMPROVEMENTS TO PROPERTY, FAILURE TO INSPECT ANY PREMISES, IMPROVEMENTS, IMPROVEMENTS TO PROPERTY OR PORTION THEREOF, AND/OR FOR FAILURE TO REPAIR OR MAINTAIN THE SAME. NOTWITHSTANDING THE FOREGOING, THE ARCHITECTURAL CONTROL COMMITTEE SHALL HAVE THE RIGHT TO OBTAIN REASONABLE LIABILITY INSURANCE COVERAGE AND REQUIRE THE ASSOCIATION TO PAY THE COST OF SAME.

## ARTICLE VI ARCHITECTURAL RESTRICTIONS

All site work, landscaping, structures, improvements, and other items placed on a Lot and all modifications to a Lot are subject to standards for design, landscaping, and aesthetics and approval by the ACC. In addition to the provisions of this Article VI, the Architectural Control Committee adopted Design Guidelines and review procedures.

**6.1 - Single Family Residential Construction.** Except as provided below, no building shall be erected, altered, placed or permitted to remain on any Lot other than one residential dwelling unit per each Lot to be used for single family residential purposes. All residences must have a garage for at least two (2) but not more than five (5) cars. Garage door openings must face side or rear lot lines. Detached garages and/or any outbuildings must be constructed during or after the main dwelling is constructed. Carports are not allowed, however, porte-cocheres incorporated into the design of the home may be acceptable with advance, written ACC approval. Manufactured, mobile or prefabricated homes are not allowed or permitted within the Property. All dwellings must have at least two thousand seven hundred (2,700) square feet of living area for one story homes, and three thousand (3,000) square feet of living area for two story homes, with at least one thousand six hundred (1,600) square feet on the ground floor and must be built of new construction material. Living area does not include porches, breezeways or garages. The foundation of the main dwelling can be concrete slab, or a combination of concrete slab and piers. All piers must be constructed of concrete and rebar. No more than three (3) feet of any concrete slab may be left exposed without covering with materials to match the adjacent exterior walls. The dwelling must not exceed forty (40) feet in height, measured from the highest elevation of virgin soil. There is no restriction determining when a dwelling must be started, but once said dwelling, outbuilding, structures or Improvements are commenced on any Lot, they shall be completed as to the exterior finish and appearance within nine (9) months of the commencement date. Barring exceptions listed below, all garages, including detached garages, and outbuildings will be of the same general construction and exterior finish as the main dwelling, and located on the Lot according to the Architectural Control Committee approved building site plan. No detached garages and outbuildings will exceed twenty five (25) feet in height from the highest elevation of virgin soil. Each Lot will be limited to no more than one (1) outbuilding per two and one half (2.5) acres unless the owner shall have first secured a variance pursuant to Section 5.10. Outbuildings are structures that are not attached to the main residential dwelling and include, by way of example, barns, storage buildings, green houses, workshops, well houses, gazebos, cabanas and pavilions. Lots 37 through 40 may have a metal barn provided said barn is of new



quality construction. The size, color, and location of any such barn must be approved by the ACC. Lots 126 through 130 may have a metal barn provided that the construction and location of said barn is approved by the ACC.

**6.2 - Location of Improvements upon the Lot.** No building of any kind shall be located on any Lot nearer than twenty five (25) feet to any side property line, no nearer than fifty (50) feet to the front property line and no nearer than seventy five (75) feet to the rear property line, provided however, as to any Lot, the Architectural Control Committee may waive or alter any such setback line, if the Architectural Control Committee in the exercise of the Architectural Control Committee's sole discretion, such waiver, or alteration is necessary to permit effective utilization of a Lot. Any such waiver or alteration must be in writing and recorded in the Official Public Records of Kendall County, Texas.

**6.3 - Use of Temporary Structures.** No structure of a temporary character, whether trailer, motor home, basement, shack, garage or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently, except as provided below. No Lot shall be used as a camping ground. After the dwelling is complete, an RV camper or motor home may be stored on the Lot provided it is stored in compliance with Exhibit A. A home builder may place a jobsite trailer on a Lot during construction of the dwelling only after the location, size, and design of such trailer is approved in writing by the ACC. Once the dwelling is complete, the jobsite trailer shall be removed.

**6.4 - Exterior Masonry.** The exterior walls of the main residence constructed on any Lot shall be at least eighty five percent (85%) masonry, or masonry veneer, excluding window and door openings. Masonry or masonry veneer includes stucco, ceramic tile, clay and stone. Brick exterior walls shall not be allowed, however brick may be used for accent purposes. Concrete siding material, like Hardy Plank, is not allowed. The exterior of all chimneys shall be one hundred percent (100%) masonry of a type and color matching the exterior walls of the dwelling.

**6.5 - Roofing Materials.** The roof surface of all principal and secondary structures including residences, garages and outbuildings shall be of slate, stone, concrete tile, clay tile, or other tile of a ceramic nature, dimensional composition shingles with a thirty five (35) year or more guarantee, or they may be metal, left natural or painted a color approved by the Architectural Control Committee, using standing or battened seams. The Architectural Control Committee shall have the authority and sole discretion to approve other roof treatments and materials if the form utilized will be harmonious with the surrounding homes and Subdivision as a whole.

**6.6 - Colors.** All exterior colors of any structures must be natural or earth tones and must compliment the surrounding landscape. The Architectural Control Committee may, in its sole discretion, approve other color schemes so long as such colors compliment the subdivision.

**6.7 - Driveways.** All driveways must be surfaced with concrete, concrete pavers, asphalt or any combination thereof. Driveways must be surfaced upon completion of the main dwelling unit.

**6.8 - Walls, Fences and Gates.** Walls, fences and gates, if any, must be approved prior to construction by the Architectural Control Committee. The maximum height of any fence shall be six (6) feet. Unless otherwise approved by the Architectural Control Committee, all fences must be constructed of metal, masonry, masonry veneer, wrought iron, steel or a combination thereof. Barbed wire and chain link fencing is not permitted. All metal, steel and wrought iron fences shall be painted with a finish harmonious with the surrounding homes and Property as a whole. The Architectural Control Committee shall have the authority and sole discretion to approve other materials.

Pipe fencing is allowed with the following construction. The fence posts shall consist of two and three eighths inch (2-3/8") drill stem pipe with ten foot (10') spacing. A single top rail consisting of the same size



pipe will be placed on top of the line posts. The area between the posts shall be a solid lock high tensile wire or ranch panel welded to the vertical pipe and top rail. All piping must be painted black with panels and/or solid lock high tensile wire left in its natural galvanized color. All walls, fences, and gates and paint thereon must be maintained in good condition.

**6.9 - Landscaping.** As soon as reasonably practicable after the completion of the main dwelling, all property from the rear line of the house to the street shall be maintained in an aesthetically attractive fashion. Due to the continuing need to conserve ground water, xeriscaping is encouraged.

- (a) Lawn. If grass is desired, it shall be buffalo, blue gramma, zoysia or bermuda grass to encourage water conservation practices. Other low water turf products and artificial lawn applications will be considered and may be approved by the Architectural Control Committee. St. Augustine and grasses that are not drought resistant are discouraged. Grass, whether native or planted, shall be mowed on a regular basis when necessary and maintained at a height no greater than six (6) inches above the ground for native grasses, and no greater than three (3) inches above the ground for all other grasses.
- (b) Xeriscape. This technique is encouraged and will afford the homeowner more latitude with their landscaping efforts, especially when large areas are to be designed. As with all other landscaped areas, xeriscaped areas should be kept weed free.
- (c) Natural Areas. In some cases, it is not practical to landscape the area between the house and the street. When this is the case, application for an exception to a. and b. of this section 6.9 can be made to the ACC. If approved, the homeowner should landscape the appropriate areas to enhance the look of the home from the most likely viewing areas. The areas along the driveway should also be kept in a trimmed and tidy fashion.
- (d) Ash Juniper. Any existing ash juniper, commonly called cedar, should be cleared if the trunk is less than six (6) inches in diameter. Exceptions to this may be granted by the ACC and include, but are not limited to, lot side boundaries for privacy, screening of water tanks and well heads, or diffusion of light from intersections.
- (e) Trees. Mature trees are a valuable asset on any residential property and, in the absence of established trees, the planting of hardwood trees on the front and sides of any home is strongly encouraged. The Red Oak family of trees are prohibited due to their role on propagating Oak Wilt. The following trees are encouraged: Post Oak, Bur Oak, Mexican White Oak, White Shin Oak, Durand Oak, Lacey Oak, Chinkapin Oak, Cedar Elm, Live Oak, Chinese Pistache, Montezuma and Bald Cypress.

**6.10 - Propane Storage.** All propane tanks shall be buried below the ground level and shielded from view of third parties insofar as may be possible giving due consideration to servicing the same in accordance with standard safety requirements.

**6.11 - Drainage.** No person or persons shall impair the natural established drainage patterns of streets, Lots, or roadway ditches, except as may be required to remediate flows which damage or threaten to damage improvements, subject to approval of ACC. No creeks or natural drainage areas may be dammed, or water impounded, diverted or used for any purpose without the prior written consent of the Architectural Control Committee. Driveway culverts must be installed and will be of sufficient size to afford proper drainage of ditches without backing water up or diverting flow. Drainage culvert installation must meet Kendall County, Texas requirements.

**6.12 - Resubdivision.** No Lot shall be resubdivided or split unless approved by Kendall County, so long as the density of the Property does not drop below the minimum requirements set forth by Kendall County and the Cow Creek Water District. Lots or portions of Lots may be combined into one Lot for building purposes and the interior common boundary line shall be extinguished by filing a recordable document of record signed by the Architectural Control Committee, declaring the same to be extinguished so long as all resulting Lots are larger than the original Lots. Thereafter, all setback lines shall refer to the exterior property lines. After approval, each of such combined Lots shall be considered as a single Lot for assessment purposes. Public utility and drainage easements are exempt from this provision.

With the approval of the ACC, a Lot may be split in half and conveyed to the Owners of each adjoining on either side of the Lot. Each half then becomes a part of the full Lot it adjoins and may not then be resold separately from the full Lot it becomes part of, or the two halves may be rejoined and sold as one lot. If a lot is divided as referenced above, all set back lines shall be measured from the resulting exterior property lines rather than the Lot lines indicated on the Plat. The foregoing does not alter or amend any easement rights that exist or may exist concerning each Lot affected by the foregoing. All Assessments on the divided Lot shall continue to accrue and shall be assessed against the owners of the divided Lot on a pro-rated basis.

**6.12 - Model Homes.** Notwithstanding anything herein contained, Builders shall be allowed to construct model or speculative homes so long as such model or speculative home conforms to these restrictions.

## ARTICLE VII GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

**7.1 - Initial Rules.** This Declaration provides a framework of covenants and conditions that govern the Property. The Initial Rules attached as Exhibit A are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Property. Therefore, the Board is authorized to change the Initial Rules in accordance with the procedure set forth in Section 7.2.

**7.2 - Procedure for Amending Rules.** The Board of Directors may adopt new Rules and modify or rescind existing Rules with the consent of the Owners as described in this Section. In order to amend the Rules, the Association must call a special meeting of the Members, provide notice in accordance with the Bylaws and the Texas Property Code, provide a copy of the proposed Rules with the meeting notice, accept input from Owners and conduct a vote. An amendment to the Rules will pass with the consent of Owners entitled to cast at least sixty-seven percent (67%) of the total votes represented at the meeting at which a quorum is achieved. The amendment to the Rules becomes effective at the time an amended Exhibit A is filed in the Official Public Records of Kendall County, Texas.

## ARTICLE VIII EASEMENTS

**8.1 - Reserved Easements.** All dedications, limitations, restrictions and reservations shown on a Plat and all grants and dedications of easements, right-of-ways, restrictions and related rights, made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property.

**8.2 - Installation and Maintenance.** There is hereby created an easement upon, across, over and under all of the easement area affecting the Property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, cable television, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this Section, no sewer, electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by the Architectural Control Committee. Additionally, it shall be expressly permissible for the utility companies and other entities supplying service to trim overhanging trees and shrubs which are located on portions of the Property abutting such easements, in the event it shall be determined that such overhanging limbs and shrubs shall interfere with the maintenance of the underground utilities.

**8.3 - Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Control Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as approved in writing by the Architectural Control Committee and the Kendall County, Texas Engineering Department or other authority overseeing regional drainage.

**8.4 - Surface Areas.** Each Owner shall maintain the surface area of all easements located within his Lot and all Improvements located therein except for such Improvements for which a public authority or utility company is responsible. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers.

**8.5 - Title to Easement and Appurtenances Not Covered.** Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or Common Areas or any drainage, water, gas, sewer, storm sewer, electrical light, electrical power, telegraph or telephone way, or any pipes, lines, poles, or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant's direction, or by its agents through, along, under or upon any Lot or any part thereof to serve said Lot or any other portion of the Property.

**8.6 - Common Areas.** Each Owner shall have an easement of use and enjoyment in and to all Common Areas which shall be appurtenant to and shall run with title to such Owner's Lot, subject to the following restrictions:

- (a) The right of the Association to suspend the Owner's right to use the Common Areas for any period during which any Assessment against such Owner's Lot remains unpaid and for any period during which the Owner is in violation of the rules and regulations of the Association;
- (b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by Owners entitled to cast at least sixty-seven percent (67%) of the total votes in the Association;
- (c) The right of the Association to borrow money for the purpose of improving the Common Areas and, in furtherance thereof, to mortgage the Common Areas, all in accordance with the Articles and Bylaws;

- (d) The right of the Association to make reasonable rules and regulations regarding the use of the Common Areas and any facilities thereon; and
- (e) The right of the Association to contract for services with third parties on such terms and conditions as the Association may determine.

**8.7 - Street, Entry Gates and Fencing Easements and Related Rights.** The Property is platted to contain private streets (and the Property Lots are dependent on such private streets for access to a public right-of-way). The provisions of this Section shall control the use, maintenance, repair and replacement of such streets and related gate access, fencing and similar facilities in the Property.

Subject to the other provisions and restrictions herein, every Owner of a Lot in the Property, and such Owner's family, shall have and is hereby granted a perpetual non-exclusive common right and easement of non-exclusive enjoyment in the Private Street Easements and Private Street Facilities located in the Property for the purposes of which such facilities are designed, and a right to obtain access thereto through any controlled access Property Access Facilities, and such rights and easements shall be appurtenant to and shall pass with the title to every Lot in the Property. The guests, tenants, invitees, lessees and visitors of each Owner of a Lot in the Property shall have access to the Private Street Easements and Private Street Facilities in the Property subject to such system of regulation of access by telephone call-through facilities, key-pad access facilities or other access regulation facilities as may be established from time to time as herein provided or otherwise determined by the Association and Owners. The rights and easements of enjoyment created hereby in favor of the Owners in the Property shall be subject to the rights and easements now existing or hereafter created in favor of Declarant or others as referred to or provided for in the Declaration, and shall also be subject to the rights of the Association as set forth in the paragraphs below. Unless specifically stated otherwise herein, nothing in the Declaration shall be construed to grant any easement in or to the Private Street Easements, Private Street Facilities, or Property Access Facilities to any Person who does not own a Lot in the Property.

In addition to the duties and powers enumerated in the Articles, Bylaws or elsewhere provided for in this Declaration, and without limiting the generality hereof, the Association shall also discharge those functions necessary to the general upkeep, maintenance, repair and replacement of the Private Street Facilities and the Property Access Facilities. The Board of Directors of the Association shall be empowered to oversee the activities of the Association and may take whatever lawful action that the Board of Directors, in its sole discretion, deems necessary to provide for the upkeep, maintenance, repair and replacement of the Private Street Facilities and the Property Access Facilities and to enforce the Declaration for the common benefit of the Members of the Association. All rights of the Association herein and hereunder are vested in its Board of Directors unless specifically reserved to Declarant or a vote of the Members herein. The responsibilities of the Association with regard to the Private Street Facilities and Property Access Facilities shall include, without limitation:

- (a) The Association shall be responsible for the exclusive management and control of the Private Street Facilities and the Property Access Facilities and all improvements thereon (including furnishing and equipment related thereto), and shall keep it in good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof. The Association shall have the right to establish and regulate limited access gates, regulation of speed limits, parking areas, signage related to trespassing or other unlawful conduct and such other security and safety oriented systems and procedures as it may determine, to issue, charge for, and require as a condition of entry to the Private Street Facilities, such identification cards, passes, keys, or similar devices as the Board of Directors may from time to time determine, and to limit the number of guests, tenants, lessees of Owners and occupants who may use the Private Street Facilities and the Property Access Facilities;



- (b) The Association through its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property deemed necessary in connection with the operation, maintenance and repair of the Private Street Facilities and Property Access Facilities in the Property as contemplated herein. The Board of Directors, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property, conveyed to it by the Declarant for use as Private Street Easements, Private Street Facilities, Property Access Facilities, and Property Fence Easement. All land conveyed to the Association by Declarant shall be free of all liens;
- (c) Notwithstanding anything contained in this Declaration to the contrary, Declarant, and the Association upon its succeeding to Declarant's rights, shall have the right, power and authority to dedicate to any public or quasi-public authority, streets and esplanades situated in the Private Street Easements and thereupon to terminate the effect of this Section in the Property; provided, however, that no such dedication shall occur unless (1) under bona fide threat of condemnation or (2) with the consent of Owners entitled to cast at least sixty-seven percent (67%) of the total votes in the Association. Such dedication and acceptance thereof shall not prohibit the Association from maintaining certain lands and facilities located within dedicated areas (such as street esplanades), but upon such dedication all costs relating thereto shall be deemed general costs of the Association; and
- (d) All costs of any services and expenses to be paid by the Association as herein above provided shall be paid out of the Association's maintenance fund.

An easement is hereby granted by Declarant to all Kendall County and Texas law enforcement, fire protection, ambulance and other emergency persons and vehicles, and to garbage and trash collection persons and vehicles, and other service persons and vehicles to enter upon the Private Street Facilities and Property Access Facilities in the performance of their duties. An easement is also specifically granted to federal, state and county officials, their agents and employees to enter upon any portion of the Property in performance of their services and/or duties. Further, an easement is hereby granted to the Declarant, the Association, their officers, agents, employees, and management personnel to enter the Private Street Facilities and Property Access Facilities to render any service or perform any function contemplated herein.

The Association shall have the following responsibilities regarding maintenance, upkeep, utility bills, taxes and insurance for the Private Street Facilities and Property Access Facilities:

- (a) The Association shall pay as a common expense of all Owners in the Property, for all maintenance, upkeep, water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Private Street Facilities and the Property Access Facilities or any part thereof;
- (b) The Association shall render for taxation and, as part of the common expenses of all Owners in the Property, shall pay all taxes levied or assessed against or upon the Private Street Facilities and the Property Access Facilities, the improvements and the property appertaining thereto;
- (c) The Association shall have authority to obtain and continue in effect as a common expense of all Owners in the Property, a blanket property insurance policy or policies to insure the structures and facilities, if any, comprising the Private Street Facilities, Property Access Facilities, Property Fence Easement and the contents thereof, against the risks of loss or damage by fire and other hazards as are covered under standard extended or all-risk coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable; and



- (d) All costs, charges and premiums for all maintenance, upkeep, utility bills, taxes and any insurance to be paid by the Association as herein above provided with respect to the Property shall be paid out of the maintenance fund.

The Association may adopt rules and regulations governing the use of the Private Street Facilities, Private Street Easements and Property Access Facilities, and is empowered to enforce the same. Such rules and regulations must be consistent with the rights and duties established by the Declaration. Sanctions for violations of such rules and regulations may include reasonable monetary fines which constitute a lien upon the Owner's Lot as a Specific Assessment and, except as to ingress and egress upon the Private Street Easements and Private Street Facilities, suspension of the right to use other Common Areas. In addition, the Board of Directors shall have the power (but not the obligation) to seek relief in any court for violations or to abate unreasonable disturbance.

## **ARTICLE IX INDEMNITY**

**9.1 - INDEMNITY.** THE ASSOCIATION, DECLARANT AND THEIR DIRECTORS, OFFICERS, MEMBERS, MANAGERS, AGENTS, AND EMPLOYEES SHALL NOT HAVE ANY LIABILITY WHATSOEVER TO ANY OWNER AND ANY PERSON THAT OWNER SHALL HAVE PROVIDED ACCESS TO THE SUBDIVISION OR ANY PORTION THEREOF BY REASON OF THE EXISTENCE OR PROVISION FROM TIME TO TIME OF SUBDIVISION ACCESS FACILITIES, INCLUDING DEVICES OR SERVICES INTENDED TO OR WHICH MAY HAVE THE AFFECT OF LIMITING OR CONTROLLING ACCESS TO THE PRIVATE STREET FACILITIES, PRIVATE STREET EASEMENTS AND THE LOTS IN THE SUBDIVISION, OR PROVIDING PATROL SERVICES, VIDEO CAMERA OR OTHERWISE MONITORING ACTIVITIES WITHIN THE SUBDIVISION, NOR THE PROVISION FROM TIME TO TIME OF INFORMATION THROUGH NEWSLETTERS OR OTHERWISE REGARDING CRIME AND/OR SECURITY ISSUES (ALL SUCH SUBDIVISION ACCESS FACILITIES AND SECURITY RELATED SERVICES BEING HEREIN REFERRED TO AS "SECURITY SERVICES AND FACILITIES"). WITHOUT LIMITATION OF ANY OTHER PROVISION OF THIS DECLARATION, EACH OWNER, MEMBER AND THEIR OCCUPANTS, SINGLE FAMILY MEMBER, GUESTS, LESSEES AND INVITEES, COVENANT AND AGREE WITH RESPECT TO ANY AND ALL SECURITY SERVICES AND FACILITIES PROVIDED DIRECTLY OR INDIRECTLY BY THE ASSOCIATION AS FOLLOWS:

- (A) SECURITY IS THE SOLE RESPONSIBLE OF LOCAL LAW ENFORCEMENT AGENCIES, INDIVIDUAL OWNERS, MEMBERS, THEIR OCCUPANTS, AND THEIR RESPECTIVE GUESTS, LESSEES, AND INVITEES. SECURITY SERVICES AND FACILITIES, IF ANY, OF THE SUBDIVISION SHALL BE PROVIDED AT THE SOLE DISCRETION OF THE BOARD OF DIRECTORS AND THE OWNERS AS HEREIN CONTEMPLATED. THE PROVISION OF ANY SECURITY SERVICES AND FACILITIES AT ANY TIME SHALL IN NO WAY PREVENT THE BOARD OF DIRECTORS, WITH THE CONSENT OF THE OWNERS AS HEREINAFTER PROVIDED, FROM THEREAFTER ELECTING TO DISCONTINUE OR TEMPORARILY OR PERMANENTLY REMOVE SUCH SECURITY SERVICE AND FACILITIES OR ANY PART THEREOF;
- (B) ANY THIRD PARTY PROVIDERS OF SECURITY SERVICES (INCLUDING THOSE PROVIDING MAINTENANCE AND REPAIR OF SECURITY FACILITIES) SHALL BE INDEPENDENT CONTRACTORS, AND THE ACTS OR OMISSIONS OF WHICH SHALL NOT BE IMPUTED TO THE DECLARANT, ASSOCIATION OR THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS OR EMPLOYEES;

- (C) PROVIDING OF ANY SECURITY SERVICES AND FACILITIES SHALL NEVER BE CONSTRUED AS AN UNDERTAKING BY THE DECLARANT OR THE ASSOCIATION TO PROVIDE PERSONAL SECURITY OR AS A GUARANTEE, REPRESENTATION, OR WARRANTY THAT THE PRESENCE OF ANY SECURITY SERVICE OR FACILITIES WILL IN ANY WAY INCREASE PERSONAL SAFETY OR PREVENT PERSONAL INJURY OR PROPERTY DAMAGE DUE TO NEGLIGENCE, CRIMINAL CONDUCT OR ANY OTHER CAUSE;
- (D) EACH OWNER, BY HIS/HER/ITS ACCEPTANCE OF A DEED TO A LOT IN THE SUBDIVISION, SHALL BE DEEMED TO HAVE WAIVED AND/OR SHALL WAIVE, ON BEHALF OF SUCH OWNER AND SUCH OWNER'S OCCUPANTS, AND THEIR RESPECTIVE SINGLE FAMILY MEMBER'S, GUESTS, LESSEES AND INVITEES, ANY AND ALL CLAIMS, NOW OR HEREAFTER ARISING AGAINST THE DECLARANT, THE ASSOCIATION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, MANAGERS, MEMBERS, AGENTS AND EMPLOYEES ARISING OUT OF OR RELATING TO ANY INJURIES, DEATH, LOSS OR DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION ANY INJURY, DEATH, LOSS OR DAMAGES CAUSED BY THEFT, BURGLARY, TRESPASS, ASSAULT, VANDALISM OR ANY OTHER CRIME, TO ANY PERSON OR PROPERTY ARISING, DIRECTLY OR INDIRECTLY, FROM THE PROVIDING OR FAILURE TO PROVIDE ANY SECURITY SERVICES AND FACILITIES, OR THE DISCONTINUATION, DISRUPTION, DEFECT, MALFUNCTION, OPERATION, REPAIR, REPLACEMENT OR USE OF ANY SECURITY SERVICES AND FACILITIES, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE CONCURRENT OR SOLE NEGLIGENCE OF THE DECLARANT, THE ASSOCIATION OR THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, COMMITTEE MEMBERS, AGENTS, AND/OR EMPLOYEES;
- (E) TO THE EXTENT THE RELEASE ABOVE IS NOT DEEMED EFFECTIVE AS TO ANY OWNER, OCCUPANT, OR ANY SINGLE FAMILY MEMBER, GUESTS, LESSEES, OR INVITEES OF AN OWNER OR OCCUPANT OF A LOT IN THE SUBDIVISION, THE OWNER OF EACH LOT IN THE SUBDIVISION HEREBY INDEMNIFIES AND AGREES TO DEFEND AND HOLD HARMLESS THE DECLARANT AND THE ASSOCIATION, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, COMMITTEE MEMBERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, SUITS, JUDGMENTS, DAMAGES, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT COSTS) ARISING FROM BODILY INJURY AND/OR DEATH AND/OR LOSS OR DAMAGE TO PROPERTY SUFFERED OR INCURRED BY ANY SUCH OWNER, OR OCCUPANT OF SUCH LOT OR ANY SINGLE FAMILY MEMBER, GUEST, LESSEE, OR INVITEE OF THE OWNER OR OCCUPANT OF SUCH LOT, AS A RESULT OF CRIMINAL ACTIVITY AND/OR TORTUOUS ACT OR OMISSION WITHIN OR IN THE VICINITY OF THE SUBDIVISION, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE CONCURRENT OR SOLE NEGLIGENCE OF THE DECLARANT, THE ASSOCIATION OR THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, COMMITTEE MEMBERS, MEMBERS, AGENTS, CONTRACTORS OR EMPLOYEES. ANY OBLIGATION OR LIABILITY OF THE ASSOCIATION WHICH IS BORNE BY THE ASSOCIATION BECAUSE OF AN OWNER NOT ABIDING BY SUCH RELEASE AND INDEMNITY DEFENSE AND/OR HOLD HARMLESS OBLIGATIONS UNDER THIS SECTION SHALL BE ASSESSED BY THE ASSOCIATION AGAINST THE LOT OF THE OWNER WHO FAILED TO PERFORM SUCH OBLIGATION GIVING RISE TO SUCH LIABILITY, AS A REIMBURSEMENT ASSESSMENT AGAINST SUCH LOT AND ITS OWNER AND

- (F) EACH OWNER SHALL BE LIABLE TO THE ASSOCIATION FOR ANY DAMAGE TO THE PRIVATE STREET FACILITIES AND/OR THE SUBDIVISION ACCESS FACILITIES OF ANY TYPE OR TO ANY EQUIPMENT THEREON WHICH MAY BE SUSTAINED BY REASON OF THE SOLE OR CONCURRENT NEGLIGENCE OF SAID OWNER, SINGLE FAMILY MEMBER, HIS/HER/ITS OCCUPANT, CONTRACTORS, EMPLOYEES, AGENTS, GUESTS, LESSEES, OR INVITEES.

FURTHER, IT IS SPECIFICALLY UNDERSTOOD THAT NEITHER THE DECLARANT, THE ASSOCIATION, THEIR DIRECTORS, OFFICERS, MANAGERS, COMMITTEE MEMBERS, MEMBERS, AGENTS OR EMPLOYEES OR ANY OTHER OWNER SHALL BE LIABLE TO ANY PERSON FOR BODILY INJURY AND/OR DEATH OR DAMAGE SUSTAINED BY SUCH PERSON OCCASIONED BY THE USE OF ANY PORTION OF SUCH OWNER'S LOT OR ANY PORTION OF THE PRIVATE STREET FACILITIES OR THE SUBDIVISION ACCESS FACILITIES. EVERY OWNER DOES HEREBY AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE DECLARANT, THE ASSOCIATION, THEIR BOARD OF DIRECTORS, OTHER OWNERS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, MEMBERS, MANAGERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY SUCH CLAIM OR DAMAGE AS REFERENCED IN THE IMMEDIATELY PRECEDING SENTENCE HEREOF, INCLUDING, WITHOUT LIMITATION, LEGAL FEES, LITIGATION COSTS, AND COURT COSTS WHETHER CAUSED OR ALLEGED CAUSE IN WHOLE OR IN PART BY THE CONCURRENT OR SOLE NEGLIGENCE OF THE DECLARANT, ASSOCIATION OR ITS OFFICERS, DIRECTORS, MANAGERS, COMMITTEE MEMBERS, MEMBERS, AGENTS, OR EMPLOYEES.

**9.2 - NO REPRESENTATIONS OR WARRANTIES.** NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN AND/OR SHALL BE DEEMED TO HAVE BEEN GIVEN OR MADE BY THE DECLARANT OR THEIR AGENTS OR EMPLOYEES TO PROSPECTIVE OWNERS IN CONNECTION WITH THE SUBDIVISION, THE LOTS, OR ANY IMPROVEMENTS AND IMPROVEMENTS TO PROPERTY THEREON, OR THEIR PHYSICAL CONDITION, SAFETY, COMPLIANCE WITH THE LAW, FITNESS FOR INTENDED USE, WARRANTIES OF HABITABILITY AND WORKMANSHIP, AND IN CONNECTION WITH THE SUBDIVISION, ASSOCIATION, LOTS, THE SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES, REGULATION THEREOF, AND ANY OTHER MATTER WHATSOEVER, UNLESS AND EXCEPT AS SPECIFICALLY SHALL BE SET FORTH IN WRITING AND EXECUTED BY THE DECLARANT. ANY PROSPECTIVE OWNER UPON PURCHASING A LOT FROM DECLARANT SHALL BE DEEMED NOT TO HAVE RELIED UPON ANY STATEMENT, REPRESENTATION AND/OR WARRANTY OF DECLARANT NOT EXPRESSLY STATED IN AN EARNEST MONEY CONTRACT OR OTHER WRITING EXPRESSLY EXECUTED BY THE DECLARANT AND SHALL HAVE CONDUCTED HIS/HER/ITS OWN INVESTIGATION OF ALL RELEVANT MATTERS PRIOR TO PURCHASING A LOT IN THE SUBDIVISION. DECLARANT MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SUBDIVISION OR ANY IMPROVEMENT TO OR IMPROVEMENTS IN SAID SUBDIVISION, THE CONDITION OF SAID SUBDIVISION, ANY SAFETY OR SECURITY MATTERS, THE SUFFICIENCY OF UTILITIES, SECURITY DEVICES, THE WORKMANSHIP, DESIGN OR MATERIALS USED IN ANY IMPROVEMENTS THEREIN, INCLUDING WITHOUT LIMITATION ANY RESERVE AREA, AND INCLUDING WITHOUT LIMITATION ANY RELATED EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, LIABILITY, FITNESS, OR SUITABILITY FOR ANY PARTICULAR PURPOSE OR USE OR ANY WARRANTY OF QUALITY.

## **ARTICLE X MISCELLANEOUS**

**10.1 - Term.** This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until January 1, 2019, unless amended as herein provided. After January 1, 2019, this Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least seventy-five percent (75%) of the Lots within the Property then subject to this Declaration.

**10.2 - Dissolution.** In the event of dissolution under Section 10.1, the assets of the Association may be distributed in any manner permitted under the Texas Business Code for Nonprofit Corporations.

**10.3 - Mergers, Consolidations and Annexations.** The Association may participate in mergers or consolidations with other nonprofit corporations organized for the same purposes or annex additional land into the Properties, provided that any such merger, consolidation or annexation shall have the consent of Owners entitled to cast at least sixty-seven percent (67%) of the total votes in the Association.

Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration pertaining to the Property except as hereinafter provided.

**10.4 - Amendment.** This Declaration may be amended by the recording in the Official Public Records of Kendall County, Texas an instrument approved and executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty-seven percent (67%) of the total votes in the Association.

Notwithstanding the foregoing, the Association through its Board of Directors may unilaterally amend this Declaration at any time (i) to correct typographical and grammatical errors, oversights, ambiguities and/or inconsistencies, (ii) in order to comply with VA, FHA or other federal agency requirements for approval of the Property for mortgage loans or (iii) to bring this Declaration into compliance with any local, state or federal law; provided, however, that no such unilateral Amendment shall impair or adversely affect the vested property, or other rights, of any Owner or his mortgagee except as required by law.

**10.5 - Member Voting.** For any proposal that requires approval or consent of Owners under this Declaration, proper notice must be provided to each Owner in advance in accordance with chapter 209 of the Texas Property Code and the Bylaws. Owner votes must be in writing using any method permitted under chapter 209 of the Texas Property Code and the Bylaws. The results of any vote must be affirmed by the Board of Directors and evidenced by an instrument signed by the President and Secretary of the Association.

**10.6 - Notices.** Unless legally required otherwise, any notice permitted or required to be given this Declaration shall be in writing and may be delivered either personally or by U.S. mail or email (electronic mail). If delivery is made by U.S. mail, it shall be deemed to have been delivered on the third day (including only days of U.S. Postal Service delivery) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of U.S. mail delivery. If delivery is made by email, it shall be deemed to have been delivered instantly simultaneous to the message having been emailed to the person at the email address given by such person to the Association for the purpose of electronic communication. An electronic copy, or printout of said copy showing the date sent and the email address to which it was sent, must be maintained by the Association in accordance with document retention policy of the Association. Such addresses may be



changed from time to time by notice in writing given by such person to the Association. If a Owner gives such notice by email, owner must maintain a copy of sent email in order to establish proof of delivery to the Association.

**10.7 - INDEMNIFICATION.** THE ASSOCIATION SHALL INDEMNIFY EVERY DIRECTOR, OFFICER AND ACC MEMBER AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, REASONABLY INCURRED BY OR IMPOSED UPON ANY DIRECTOR, OFFICER OR ACC MEMBER IN CONNECTION WITH ANY ACTION, SUIT OR OTHER PROCEEDING (INCLUDING SETTLEMENT OF ANY SUIT OR PROCEEDING IF APPROVED BY THE BOARD OF DIRECTORS) TO WHICH HE MAY BE MADE A PARTY BY REASON OF BEING OR HAVING BEEN A DIRECTOR, OFFICER OR ACC MEMBER AT THE TIME SUCH EXPENSES ARE INCURRED. THE DIRECTORS, OFFICERS AND ACC MEMBERS SHALL NOT BE LIABLE FOR ANY MISTAKE OF JUDGMENT, NEGLIGENCE, OR OTHERWISE TAKEN ON BEHALF OF THE ASSOCIATION, EXCEPT FOR THEIR OWN INDIVIDUAL WILLFUL CONDUCT OR NONFEASANCE. THE DIRECTORS, OFFICERS AND ACC MEMBERS SHALL HAVE NO PERSONAL LIABILITY WITH RESPECT TO ANY CONTRACT OR OTHER COMMITMENT MADE BY THEM, IN GOOD FAITH, ON BEHALF OF THE ASSOCIATION (EXCEPT TO THE EXTENT OF ANY OBLIGATIONS AS MEMBERS OF THE ASSOCIATION) AND THE ASSOCIATION SHALL INDEMNIFY AND FOREVER HOLD EACH SUCH DIRECTOR, OFFICER AND ACC MEMBER FREE AND HARMLESS AGAINST ANY AND ALL LIABILITY TO OTHERS ON ACCOUNT OF ANY SUCH CONTRACT OR COMMITMENT. ANY RIGHT TO INDEMNIFICATION PROVIDED FOR HEREIN SHALL NOT BE EXCLUSIVE OF ANY OTHER RIGHTS AS TO WHICH ANY DIRECTOR, OFFICER OR ACC MEMBER, OR FORMER DIRECTOR, OFFICER OR ACC MEMBER, MAY BE ENTITLED. THE ASSOCIATION MAY, AT A COMMON EXPENSE, MAINTAIN ADEQUATE GENERAL LIABILITY AND DIRECTORS' AND OFFICERS' LIABILITY INSURANCE TO FUND THIS OBLIGATION.

**10.8 - Negligence.** Each Owner shall be liable to the Association, other Owners, and/or third parties for the expense of any damages caused by his act, neglect, carelessness or by that of any member of his family, or by his guests, tenants, employees, agents, contractors, or subcontractors.

**10.9 - Enforcement.** In addition to the other remedies permitted herein, if any Person shall violate or attempt to violate any of the terms of this Declaration or other Governing Documents, it shall be lawful for the Association or any Owner to institute and maintain civil proceeding in any court of competent jurisdiction against those violating or attempting to violate this Declaration or other Governing Documents for the recovery of damages, civil fines or to enjoin all or any such violations or attempted violations. The failure of the Association to enforce provisions of this Declaration or other Governing Documents or any other obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior to or subsequent thereto.

**10.10 - Interpretation.** The provisions of this Declaration shall be liberally construed to give effect to its purposes and intent of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

**10.11 - Conflicts.** Where not in conflict with the laws of the United States, Texas law shall apply. In the case of any conflict between federal, state or local laws and this Declaration, the federal, state or local laws shall control. In the case of any conflict between the Articles and this Declaration, the Articles shall control, and in the case of any conflict between the Bylaws and this Declaration, this Declaration shall control.

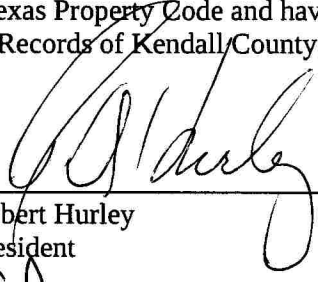
**10.12 - Declaration Construction.**



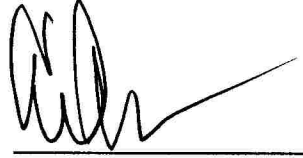
- (a) Restrictions Severable. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.
  - (b) Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
  - (c) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.
- 10.13 – Board Actions.** All actions and decisions of the Board taken in good faith from January 1, 2007 until the date of this amendment are hereby approved.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE TO FOLLOW

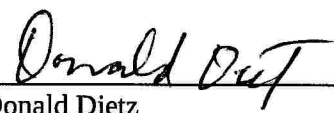
IN WITNESS WHEREOF, the undersigned affirm that the membership of the Association approved this Declaration by a vote of at least sixty-seven percent (67%) of the total votes in the Association as required under chapter 209.0041(h) of the Texas Property Code and have executed this Declaration to be effective on the date filed in the Official Public Records of Kendall County, Texas.

  
Robert Hurley  
President

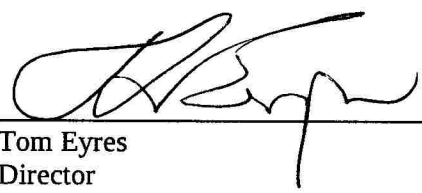
5-4-12  
Date

  
Doug Hodo  
Secretary and Director

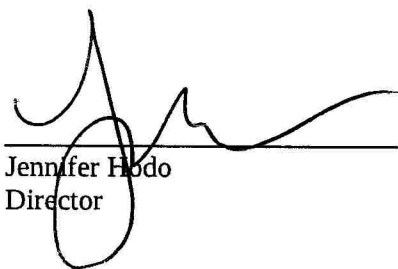
4-24-12  
Date

  
Donald Dietz  
Director

4/25/12  
Date

  
Tom Eyres  
Director

5/3/2012  
Date

  
Jennifer Hodo  
Director

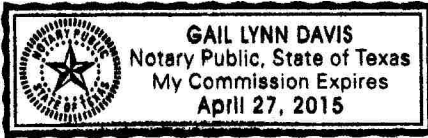
4/24/12  
Date

  
Joe Meyer  
Director

5/3/12  
Date

STATE OF TEXAS       §  
                                  §  
COUNTY OF KENDALL   §

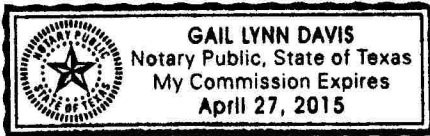
This instrument was acknowledged before me on this 4th day of May, 2012 by Robert Hurley, President and Director, Diamond Ridge Property Owners Association, a Texas nonprofit corporation, on behalf of said corporation.



Gail Davis  
Notary Public, State of Texas  
My commission expires: 4-27-15

STATE OF TEXAS       §  
                                  §  
COUNTY OF KENDALL   §

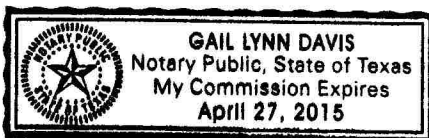
This instrument was acknowledged before me on this 24 day of April, 2012, by Doug Hodo, Secretary and Director, Diamond Ridge Property Owners Association, a Texas nonprofit corporation, on behalf of said corporation.



Gail Davis  
Notary Public, State of Texas  
My commission expires: 4-27-15

STATE OF TEXAS       §  
                                  §  
COUNTY OF KENDALL   §

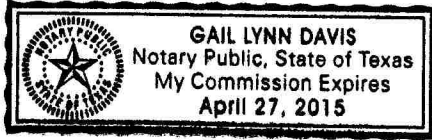
This instrument was acknowledged before me on this 25 day of April, 2012 by Donald Dietz, Director, Diamond Ridge Property Owners Association, a Texas nonprofit corporation, on behalf of said corporation.



Gail Davis  
Notary Public, State of Texas  
My commission expires: 4-27-15

STATE OF TEXAS §  
COUNTY OF KENDALL §

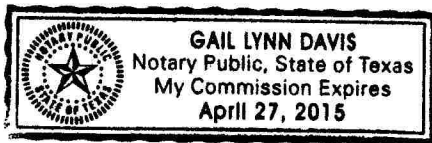
This instrument was acknowledged before me on this 3 day of May, 2012, by, Tom Eyres, Director, Diamond Ridge Property Owners Association, a Texas nonprofit corporation, on behalf of said corporation.



Gail Davis  
Notary Public, State of Texas  
My commission expires: 4-27-2015

STATE OF TEXAS §  
COUNTY OF KENDALL §

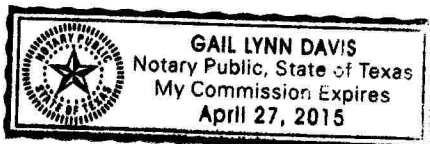
This instrument was acknowledged before me on this 24 day of April, 2012, by Jennifer Hodo, Director, Diamond Ridge Property Owners Association, a Texas nonprofit corporation, on behalf of said corporation.



Gail Davis  
Notary Public, State of Texas  
My commission expires: 4-27-15

STATE OF TEXAS §  
COUNTY OF KENDALL §

This instrument was acknowledged before me on this 3 day of May, 2012, by, Joe Meyer, Director, Diamond Ridge Property Owners Association, a Texas nonprofit corporation, on behalf of said corporation.



Gail Davis  
Notary Public, State of Texas  
My commission expires: 4-27-15

**EXHIBIT "A"**  
**INITIAL RULES**

Doc # 00265778  
Vol 1310 Pg 138

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm". It is expressly intended that the Board of Directors and the ACC have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Lot under one set of circumstances, the same thing may be disapproved for another Lot under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any appropriate circumstances. The following shall apply to all of the Property until such time as they are modified pursuant to this Declaration.

1. **General.** The Lots within the Property shall be used only for residential, recreational and related purposes consistent with this Declaration.
2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by the Board, the following activities are prohibited within the Property.
  - (a) **Animals.** Except as provided below, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that no more than a combined total of four dogs, cats, or other usual and common household pets (excluding pigs of any kind) may be kept for domestic purposes. However, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law. Animal breeding operations are not allowed.

Only Lots 37 through 40 and Lots 125 through 132 as designated on the Plat, shall be allowed to keep up to one (1) horse per one and a half (1.5) acres of land.

- (b) **Residential Use.** All Lots are for single family residential use only and no Lot is to be used for business, professional, commercial or manufacturing use of any kind, whether or not for profit. A use shall be considered incompatible with this residential neighborhood if any one of the conditions listed below materially exists.
  - (1) Signs are placed on or around the Lot indicating a business (whether or not for profit) is being conducted from the Lot.
  - (2) Promotional material is being used or distributed which indicates a business (whether or not for profit) is being conducted from the Lot. The use of a residential phone number would not constitute a violation of this guideline but the use of the property address would. Normal business stationary and cards are not considered promotional material for these purposes.
  - (3) The Lot is being used in such a manner to routinely cause an excessive flow of traffic to the Lot or an increased amount of parking on or around the Lot.



**EXHIBIT "A"**  
**INITIAL RULES**  
(continued)

Doc # 00265778  
Vol 1310 Pg 139

- (4) Chemicals or materials are being used, produced or stored at the Lot which are not generally for residential use.
  - (5) Quantities of chemicals or materials are being used, produced or stored at the Lot in excess of normal residential requirements.
  - (6) Excessive amounts of waste materials are being stored or generated from the Lot.
  - (7) An activity or condition exists at the Lot that is offensive or noxious to the community by reason of odor, fumes, dust, smoke, noise or pollution.
  - (8) An activity or condition exists at the Lot that is hazardous by reason of excessive danger of fire or explosion.
  - (9) An activity or condition exists at the Lot which creates an increased liability to other Owners or to the Association.
  - (10) Employees, contractors or other agents associated with the Owner or Occupant of the Lot travel to the Lot and conduct business or carry out their business activities at the Lot.
  - (11) The Lot is being used for an activity that is illegal, immoral or involves an act of moral turpitude.
  - (12) An activity or condition exists at the Lot which attracts an undesirable element to the community.
- (c) Firearms. The discharge or use of firearms by owners is expressly prohibited, provided, the Board shall have no obligation to take action to prevent or stop such discharge. A family may participate in recreational archery on their lot within the following parameters: The homeowner must add archery specifically to their homeowner's policy and include Diamond Ridge POA as an additional insured. The draw weight of the recurve (traditional) or compound bow must not exceed thirty (30) pounds. NO CROSSBOWS ARE ALLOWED. The arrows must have a blunt metal tip. No broadheads, field points or slick arrow tips are allowed. The shooting must be at a stationary target within the lot with a minimum twenty (20) yard (60 feet) perimeter from any neighboring lot.
- (d) Hunting. Hunting, and the use of devices aiding hunting, is expressly prohibited unless the same shall be conducted for the purposes of animal control by or through the Association under the direction of a duly authorized governmental agency or utilizing professional game/varmint control managers to deal with wild animal nuisance, or when time is of the essence, for control of deadly poisonous snakes, and animals either apparently infected by rabies or other diseases dangerous to humans or known to carry such diseases asymptotically. Each person discharging a firearm as provided herein assumes all risks.
- (e) Annoyances and nuisances. Any activity that emits foul or obnoxious odors outside the Lot or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Lots. Any noxious or offensive activity which in the reasonable determination

**EXHIBIT "A"**  
**INITIAL RULES**  
(continued)

Doc # 00265778  
Vol 1310 Pg 140

of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Lots.

- (f) Environment. Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;
- (g) Personal Property Sales. Any yard sale, garage sale, moving sale, rummage sale, estate sale or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community wide basis.
- (h) Signs. No permanent or temporary signs shall be constructed or placed upon any Lot covered by this Declaration without prior written approval by the Architectural Control Committee. In the event a permitted sign is not properly maintained, the Architectural Control Committee may give the sign owner written notice thereof. Required repairs must be made within five (5) business days of notification by the Architectural Control Committee. The Architectural Control Committee shall have the right, but not the obligation, to have repairs made and charged to the property owner. Builders may erect a professionally made "Model Home" or "Custom Build on Your Lot" sign upon the purchase of a Lot. Each Lot a builder purchases may have one professionally made "For Sale" sign while the dwelling on said Lot is under construction. Professionally made does not include premade, store bought signs. All builder signs will be placed no closer than twenty five (25) feet to any front, side or rear property line. Notwithstanding the foregoing, the appearance, size and location of all builder signs must be acceptable to the Architectural Control Committee. No other real estate signs shall be allowed in the Property including, but not limited to, for sale signs, sold signs, for lease signs, or for rent signs. Notwithstanding, however, nothing herein shall prevent the Association from establishing rules for permitting the display of celebration or recognition of religious or national holidays.

Political signs may be placed on an Owner's Lot in compliance with chapter 202.009 of the Texas Property Code. This includes any sign advertising a specific candidate or ballot issue in an election for which a vote may be cast in the precinct in which the applicable property is located may be displayed no earlier than 90 days before the election and must be removed before the 10th day after the election. Signs may be no larger than four (4) feet by six (6) feet, must be professionally made. The Association may remove any sign displayed in violation of these guidelines.

- (i) Antennas, Towers and Satellite Dishes. Antennas, towers or satellite dishes are permitted, provided it shall not exceed five (5) feet above the roof of the dwelling if attached to the dwelling, or five (5) feet above any outbuilding if attached to an outbuilding. Any antennae, tower or satellite dish must be located to the side or rear of the dwelling or outbuilding and not within twenty five (25) feet of any side property line, fifty (50) feet of any front property line, or seventy five (75) feet of any rear property line. The following are specifically allowed in compliance with federal law.
  - (1) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

**EXHIBIT "A"**  
**INITIAL RULES**  
(continued)

Doc # 00265778  
Vol 1310 Pg 141

- (2) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel, multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
  - (3) an antenna that is designed to receive television broadcast signals shall be permitted on Lots subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property.
- (j) **Mineral Development.** No commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.
- (k) **Vehicles.** No non-motorized vehicle, boat, trailer, marine craft, recreational vehicle, camper rig off of truck, hovercraft, aircraft, golf cart, off-road vehicle, machinery, or equipment of any kind may be parked or stored on any part of the Lot, easement, right-of-way, unless such vehicle or object is completely concealed from public view inside a garage or enclosure approved by the Architectural Control Committee. However, such vehicles or objects may be parked on the driveway or Lot for transitional purposes not to exceed five (5) days. Passenger automobiles, passenger vans, motorcycles, pick-up trucks and/or SUV's that: (a) are in operating condition; (b) have current license plates and inspection stickers; (c) are in use as motor vehicles on the streets and highways of the State of Texas; and (d) which do not exceed six feet six inches (6'6") in height, or eight feet (8') in width, or twenty-four feet (24') in length; may be parked on the driveway of a Lot. No vehicle may be repaired on a Lot unless the vehicle being repaired is concealed from view inside a garage or other approved enclosure. The above restrictions shall not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a dwelling or Improvement and/or Improvement to Property on the same Lot. Parking of any vehicles in the street and/or on a Lot other than on a driveway or in a garage is prohibited. No unlicensed motor vehicles shall be allowed on the streets or Common Areas within the Property except for golf carts and all-terrain vehicles (ATVs). Golf carts and ATVs may be operated in the Property if the vehicle(s) have, at a minimum, working headlights, taillights, seatbelts, slow moving reflective safety triangle permanently affixed to the back and operated by a driver holding a valid license to drive on the public roads of Texas. All golf cart and ATV drivers shall operate said vehicles in compliance with the driving laws of the State of Texas. All occupants must be seated and wearing safety belts. The Board of Directors may adopt additional rules and regulations regulating the operation of vehicles within the Property. Any vehicle parked in violation of this Section or parking rules promulgated by the Board of Directors may be towed with the expense borne by the Owner.
3. **Prohibited Conditions.** The following shall be prohibited in the Property:
- (a) **Unmaintained Improvements.** Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, mildewed, dilapidated, discolored, or otherwise fallen into disrepair. All Improvements on the Property shall at all times be kept in good condition and repair, and adequately painted or otherwise maintained by the owner thereof.

**EXHIBIT "A"**  
**INITIAL RULES**  
(continued)

Doc # 00265778  
Vol 1310 Pg 142

- (b) Unmaintained Landscaping. Grass must be mowed on a regular basis to maintain an attractive appearance and maintained at a height no greater than six (6) inches above the ground for native grasses and no greater than three (3) inches above the ground for all other grasses. Shrubbery and trees must be pruned as needed if not maintained in their natural shape. Weeds and grasses must be removed from beds and rock landscaped areas.
- (c) Light pollution. Exterior lights such as those for security, safety, and decorative reasons are allowed provided all exterior lighting is hooded or the main beam of light is at no greater than a thirty (30) degree angle from the ground and not pointed toward or directed at any street or common element.
- (d) Noise Pollution. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security or public safety purposes) shall be located, used or placed on any Lot such that it becomes or will become clearly audible at the property line of adjoining property owners.
- (e) Garbage. Garbage, trash and other refuse shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any Owner of this Property is or may be created. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage and disposal of such material shall be kept in a clean and sanitary condition and out of sight from public roadways, except on pickup days. No junk of any kind or character shall be kept on any Lot.
- (f) Vehicles and Equipment. Commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, inoperable vehicles, tractors, campers, wagons, buses, motorcycles, motor scooters, and lawn and garden maintenance equipment must be parked and stored in an enclosed garages or approved outbuilding except when in actual use. Construction, service and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area.
- (g) Annoyances and nuisances. Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property.



Filed & Recorded in:

**KENDALL COUNTY  
DARLENE HERRIN  
COUNTY CLERK**

05/21/2012 10:30AM

Document Number: 00265778  
Total Fees : \$139.00 *pd*

Receipt Number - 27801  
By Deputy: Harriet P Seidensticker

This Document has been received by this Office  
for Recording into the Official Public Records.  
We do hereby swear that we do not discriminate  
due to Race, Creed, Color, Sex or National  
Origin.

STATE OF TEXAS, COUNTY OF KENDALL  
I hereby certify that this instrument was filed  
in File Number Sequence on the date and  
at the time stamped hereon and was duly  
recorded in the OFFICIAL RECORDS Records of  
Kendall County, Texas on

05/21/2012  
DARLENE HERRIN, COUNTY CLERK  
Kendall County, Texas

By: *HPS* Deputy