

**24-04325**

**AFTER RECORDING RETURN TO:**

**Kelly Hart & Hallman LLP  
201 Main Street, Suite 2500  
Fort Worth, Texas 76102  
Attn: Andy Rogers**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
DARK SKY ESTATES,  
a subdivision of KERR COUNTY, TEXAS**

Declarant: **DARK SKY ESTATES, LLC**, a Texas limited liability company

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
DARK SKY ESTATES,  
a subdivision of KERR COUNTY, TEXAS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR **DARK SKY ESTATES** (“**Covenants**” or “**Declaration**”), is made effective as of July 19, 2024, by **DARK SKY ESTATES, LLC**, a Texas limited liability company (“**Declarant**”).

**WHEREAS, Declarant** is the Owner of the Property defined in Section 1 of this Declaration, and desires to create thereon a development for residential purposes.

**WHEREAS,** Declarant further desires to provide for the preservation of the values and amenities of said Property and for the maintenance thereof. Declarant desires to subject the Property described as all that certain tract or parcel of land, lying and being situated in the County of Kerr, State of Texas, comprising 325.49 acres, more or less, all as more particularly described on Exhibit “A” attached hereto; being all of the subdivision herein called **DARK SKY ESTATES**, together with such additions as hereafter be made thereto (as provided in Section One), to the covenants, conditions, restrictions, easements, charges and liens hereafter set forth, each and all of which is and are for the benefit of the Property and each owner thereafter.

**WHEREAS,** Declarant has caused DSE Homeowners Association, Inc. to be incorporated as a non-profit corporation under the laws of the State of Texas, to which will be delegated and assigned the powers of maintaining and administering the properties and facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges as hereafter provided.

**NOW, THEREFORE,** Declarant declares that the Property referred to herein, and such additions thereto as may hereafter be made pursuant to Section 20 hereof, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (herein collectively called the “covenants” or “the restrictions and covenants”), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property for the benefit of present and future Owners, which restrictions and covenants shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in any of the Estates in or any portion of the Property and shall inure to the benefit of and be binding upon each Owner and future Owner thereof.

**1. DEFINITIONS.**

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (A) “**Architectural Review Committee**” (ARC) shall mean and refer to that Committee as defined in Section 9 hereof.
- (B) “**Association**” and “**HOA**” shall mean and refer to *DSE Homeowners Association, Inc.* The Association shall be formed for the purpose of maintaining uniform standards and quality of the land and SECTION as well as the beauty and value of the property in the Subdivision.
- (C) “**Board**” shall mean the Board of Directors of the Association.
- (D) “**Common Area**” shall mean all real property, including the improvements thereto, conveyed to the Association by dedication or otherwise. The only Common Area will be the entryway into the Subdivision, which includes the mailbox kiosk.
- (F) “**Declarant**” and “**Developer**” shall mean **DARK SKY ESTATES, LLC**, a Texas limited liability company, and the successors and assigns of Declarant.
- (G) “**Declaration**” shall mean this Declaration as amended from time to time.
- (H) “**Deed**” shall mean a deed or contract for deed to an “Estate.”
- (I) “**Documents**” mean, individually or collectively as the case may be, these Covenants, the Certificate of Formation of the Association, Bylaws of the Association, the Community Manual, and the Rules of the Association, as each may be amended from time to time. An appendix, attachment, exhibit, schedule, or certification accompanying a Document is a part of that Document.
- (J) “**Estate**” shall mean and refer to any tract or parcel of the Property on which a single-family residence may be constructed.
- (K) “**Improvements**” shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to, residence building, outbuildings, storage sheds, patios, exterior lighting, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, dams, signs, exterior air conditioning, water softener fixtures or equipment, poles, pumps, wells, tanks, reservoirs, pipes, water collection systems, lines, meters, antennas, flag poles, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or

cable television, or other utilities. The term "Improvements" shall also mean all exterior sculptures and other artwork to the extent that the ARC determines, in its sole discretion that such items are visible and notable features of an Estate.

- (L) **"Member"** shall mean Declarant and each Owner of a fee simple interest or purchaser by Contract for Deed for any Estate or part or portion of the Property.
- (M) **"Owner"** shall mean the record Owner, whether one or more persons or entities, of a fee simple interest or under any Contract for Deed to any portion of Property.
- (N) **"Porte Cochere"** is a covered drive-thru structure that is attached to the area at the door of a building for sheltering persons entering and leaving vehicles.
- (O) **"Properties" and "Property" and "Subdivision"** shall mean the real property legally described in Exhibit "A" attached hereto; being all of the subdivision herein called DARK SKY ESTATES, and all additions thereto, as are subject to this Declaration or any Supplemental Declaration filed of record pursuant to the following provisions.
- (P) **"Residence"** shall mean any free standing building with connections to water and electricity that is usable for residential purposes.

## 2. **Covenants Binding on Property and Owners.**

(A) **Property Bound.** From and after the date of recordation of these Covenants, the Property shall be subject to the Covenants and said Covenants shall run with the land, for the benefit of the Property.

(B) **Owners Bound.** From and after the date of recordation of these Covenants, the Covenants, shall be binding upon and for the benefit of each Owner and his heirs, executors, administrators, trustees, personal representatives, successors and assigns, whether or not so provided or otherwise mentioned in the Deed.

3. **VARIANCE.** The Board, with the recommendation of the ARC, may authorize variances from compliance with any of the provisions of these Covenants, with minimum acceptable construction standards, or with regulations and requirements as promulgated from time to time by the Board or the ARC, when circumstances such as topography, Estate configuration, Estate size, hardship, aesthetic or environmental considerations may require a variance. Such variances must be evidenced in writing and shall become effective when signed by an officer of the Association upon a majority vote of the Board duly recorded in the Association's formal minutes. If any such variances are granted, no violation of the provisions of these Covenants 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 these Covenants for any purpose except as to the particular property and particular provisions covered by the variance, nor shall the granting of any variance effect the Owner's obligation to comply with all laws and regulations affecting the property.

## 4. **PROTECTIVE COVENANTS.** The Property shall be used and occupied subject to the following restrictions:

(A) **Prohibition of Offensive Activities.** Except as provided herein, properties shall be used only for residential, recreational, and agricultural purposes. No activity, whether for profit or not, shall be conducted which is not related to noncommercial residential, recreational, and agricultural purposes. This restriction is waived in regard to the customary sales activities required to sell a home in the Subdivision. The Board shall have the sole and absolute discretion to determine what constitutes a nuisance, annoyance, or an unreasonable use of a Property under this subparagraph. All activities related to development, sale and construction of tracts and homes in the subdivision are permitted.

(B) **Camper or Recreation Vehicle.** No travel trailer, camper, recreational vehicle, or motor home may be used as a permanent residence on an Estate. Owners may temporarily install a travel trailer, camper, recreational vehicle, or motor home on their Estate out of view from the roads and neighboring properties while the Residence is under construction, for a period not to exceed eighteen (18) months from the start of construction. While in use as a temporary residence, a travel trailer, camper, recreational vehicle, or motor home must be connected to an operational septic system that complies with all state laws and Kerr County local rules and regulations. After the construction of the Residence is completed, all such vehicles shall be parked on an Estate out of view from the roads and neighboring properties or in a completely enclosed structure to eliminate visibility from the roads or neighboring properties, such structure to be built of good construction of quality materials on a permanent foundation, with like roofing material as the main residence, in a way that creates an attractive appearance and blends in harmoniously with the main residence in terms of the materials used, architectural appearance and color scheme, and which shall be approved by the ARC before construction of such structure commences.

(C) **Open Fires.** No open fires shall be lighted or permitted, except for brush burning in accordance with Kerr County rules, or within interior or exterior fire pits, fireplaces designed and built according to industry standards and all applicable laws, codes and statutes, or in contained barbecue units for cooking purposes while attended by a responsible adult. Prior to any brush burning, an Owner shall notify both the Kerr County Sheriff's Office and the Board.

(D) **No Offensive or Unlawful Use.** No offensive or unlawful use shall be made of the Properties. The Association may from time to time adopt rules concerning same, and it shall be entitled to enforce such rules.

(E) **Single Family Dwelling.** "Single Family Dwelling" shall mean and refer to any Improvement on an Estate which is

designed and intended for use and occupancy as a residence by one individual, by a single family, or by individuals related by blood, marriage or adoption, who are maintaining a common household.

- i. No building or structure shall be erected, altered, placed or permitted to remain on any Estate other than one Single Family Dwelling with attached or detached garage with a capacity of not less than two standard size automobiles, and additionally one guest/servants' house, one workshop, one barn, one well pumphouse, and such appurtenant structures as may be approved by ARC. Only main residential dwelling or guest home shall be used as a residence unless other structure approved by ARC.
- ii. No phase of construction for a residence or any additional structure located on the property shall begin before the ARC completes site and structure plan approval as provided below. Any change, deletion, or addition to the plans and specifications approved by the ARC, including plans deemed approved by the ARC's failure to act, must be submitted and approved in writing by the ARC. Failure to submit changes, deletions, or additions to previously approved plans shall void the original approval.
- iii. All residential/dwelling structures, except one (1) guest/servants' house, must have at least 2200 square feet of enclosed, air conditioned and heated living space, excluding porches, decks and garages, and must be built with new construction materials (except rock).
- iv. A guest/servants' house must have a minimum of 700 square feet of air-conditioned and heated living space, excluding porches, and must be built with the same construction materials and, in terms of quality of materials and architectural appearance as the main residence. It may be built during or after, but not prior to, the construction of the main residence. Guest/servants' house may not be used as a residence prior to the completion of the main residence unless approved in writing by the ARC.
- v. Detached garages, workshops and barns may be constructed on the property so long as they are built of good construction of quality materials on a permanent foundation, with the same roofing material as the main residence, in a way that creates an attractive appearance and blends in harmoniously with the main residence in terms of the materials used, architectural appearance and color scheme, and which shall be approved by the ARC before construction of such structure commences. They must be kept in good repair and are not to be used for residential purposes.
- vi. "Residential purposes" shall be construed to prohibit duplex houses, triplexes, condominiums, townhouses, or apartment houses or similar type of multi-family structures.
- vii. The term "structure" does not include manufactured homes, mobile homes, modular homes, tent or any other types of portable structures and said structures are not permitted within the Subdivision. All buildings and other structures must be of new construction. No prefabricated buildings, no manufactured homes, mobile homes, modular homes, tent or any other types of portable structures. Shops, barns and storage buildings must be built on a permanent foundation.
- viii. Any building, structure or improvement commenced on any Estate shall be completed as to exterior finish and appearance within one (1) year from the construction commencement date except for Single Family Dwellings, which must be completed within eighteen (18) months from the construction commencement.
- ix. During construction of a Residence or other building or structure, the Owner or his contractor must provide or install a temporary portable toilet and maintain and keep the Estate clean and free of debris.
- x. The exterior walls of a Residence shall be constructed with 75% exterior masonry. The minimum masonry percentage shall apply to the aggregate area of all exterior walls including chimneys but excluding doors, windows and similar openings. Masonry includes stone, stone veneer, stucco, rock and brick or cementitious boards or siding. Notwithstanding the preceding, all sides of a Residence facing the main roadway through the Subdivision must be 100% stone or brick unless a variance is granted by the ARC.
- xi. All fireplace flues and smoke stacks shall be enclosed and concealed from public view in finished chimneys or materials architecturally compatible with the finish material of the exterior walls of the dwelling or otherwise approved by the ARC. All exterior building materials, finishes and colors shall be approved in writing by the ARC and shall be of such texture and color to provide a pleasant appearance throughout the Subdivision. Bright colors, such as red, orange, bright or mustard yellow, aqua, bright pink, purple, fuchsia, lime green and royal blue are prohibited. Uncovered or exposed (whether painted or not) concrete or concrete block shall not be permitted as the exterior finish of any building or other Improvement.

(F) **Garages.** All dwellings shall have a garage with a capacity of not less than two standard size automobiles. Porte-cochères and carports are permitted. All garages, carports, and porte-cochères must be built with the same construction materials and, in terms of quality of materials and architectural appearance as the main residence. All garages shall comply with all other restrictions on usage. All garages shall consist of structures completely enclosed on all sides with walls and/or garage doors. A garage shall not be situated on an Estate so as to cause the garage door opening to be substantially visible from the roadway. Garages on corner tracts should be situated, as far as possible, to face the doors away from each street. If that is not possible, the garage doors should be faced in a way that minimizes their appearance from the streets, whether that is accomplished by landscape screening or angling to face the least busy street or the "least used side of their neighbor's home.

(G) **Driveways.** Driveways shall be hard surfaced of concrete, "hot mix" asphalt, chip seal, or two course asphalt treatment and shall be constructed with a minimum width of ten feet (10') along the entire length. Beginning six feet back from the main roadway, the width of each driveway shall flair to a minimum of sixteen (16) feet at the street making a level, not elevated, transition to the main roadway. The need for a drainage culvert or grading to accommodate drainage patterns should be discussed with the ARC to reach agreement on the final configuration of the drive. The ARC shall approve all drainage configurations prior to

construction.

(H) **Water and Sewer Systems.** Individual water systems and sewage disposal systems shall be located, constructed and equipped in compliance with the rules and regulations of the Texas Department of Health, Texas Commission on Environmental Quality, Upper Guadalupe River Authority, Kerr County, Headwaters Ground Water Conservation District, and any other applicable rules or regulations[CC1].

(I) **Fences.** All fences or walls located on a Estate are to be maintained at Owner's expense. The Owner of an Estate shall have the right to fence the perimeter of the Estate as well as a smaller area around the residence not to exceed 2 acres. The location of any additional fences must be approved by the ARC. All fences must be approved by the ARC and shall be of the following composition: net wire; all masonry; concrete tile or block, plastered and painted on both sides; all cedar or wood; wrought iron; any combination of masonry, concrete tile or block, and wrought iron; or other material approved by the ARC. Fencing for animal enclosures shall be constructed pursuant to paragraph (W) below. Chain-link fencing is prohibited at all perimeter fence locations. Barbed wire fences are prohibited along the frontage. Any wood fencing shall be constructed so that the finished side must face the outside of the Estate when adjacent to streets. Swimming pools must be fenced in accordance with any applicable laws. The ARC is empowered to grant variances. The color or stain selection of all fences shall be subject to ARC approval prior to installation of such fence.

(J) **Antennas.** Except as expressly provided below, no exterior radio, television or communications antenna or aerial or satellite dish or disc, nor any solar energy system (collectively, an "Antenna/Dish"), shall be erected, maintained, or placed on an Estate without the prior written approval of the ARC.

- i. **Dishes Over One Meter Prohibited.** Unless otherwise approved by the ARC, an Antenna/Dish which is over one meter in diameter is prohibited within the Subdivision.
- ii. **Notification.** An Owner who wishes to install an Antenna/Dish one meter or less in diameter (a "Permitted Antenna") must submit a written notice to the ARC, which notice must include the Owner's installation plans for the satellite dish.
- iii. **One Dish Limitation.** Unless otherwise approved by the ARC, only one Permitted Antenna per Estate is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner must provide written notification to the ARC. Upon notification, the Owner will be permitted to install an additional Permitted Antenna if a single Permitted Antenna is not sufficient for the reception of an acceptable quality signal and the use of an additional Permitted Antenna results in the reception of an acceptable quality signal.
- iv. A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Estates. A Permitted Antenna exists at the sole risk of the Owner of the Estate. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the ARC and the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The ARC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.
- v. **Preferred Installation Locations.** A Permitted Antenna may be installed in a location on an Estate from which an acceptable quality signal can be obtained and where least visible from the street. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ARC are as follows:
  - a. Attached to the back of the Single Family Residence constructed on an Estate, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Estates and the street; then
  - b. Attached to the side of the Single Family Residence constructed on an Estate, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Estates and the street.

(K) **On Street Parking.** No on street parking is allowed without the approval of the ARC.

(L) **Motor vehicles.** "Vehicles" are defined as any automobile, recreational vehicle, boat, trailer, motorcycle, motorized bicycle, go cart, golf cart, dirt bike or all-terrain vehicle. Vehicles owned or in the custody of any Member shall be parked concealed from view from neighboring property and roads. Automobiles may be parked on a driveway located on or pertaining to such person's Estate. No trailers, vans or trucks in excess of one ton or designated for commercial purposes shall be placed, allowed or maintained upon any residential Estate except with prior written approval of the ARC. Any such permission shall include all applicable sections of these Covenants and/or require that said vehicle be in areas attractively screened or concealed from neighboring properties and roads.

- i. All the following vehicles must have operational spark arresters and be properly muffled: Motorcycles, motorized bicycles, go-carts, dirt bikes and all-terrain vehicles. In addition, vehicles which sit low to the ground such as go-carts must have attached to the rear of the vehicle an 8' long pole with an orange triangle flag at the top. What constitutes properly muffled shall be solely within the discretion of the ARC.

- ii. All Vehicles operated within the Subdivision must be operated in a safe manner, in accordance with manufacture requirements. Posted speed limits are to be observed on any road during ingress/egress.

(M) **Storage.** Exterior storage of items shall be attractively screened or concealed from view from neighboring property and roads. This provision shall apply without limitation to trailers, camp trailers, boat trailers, travel trailers, boats, trashcans, water well tanks, water storage, rainwater catchment systems, propane tanks, and un-mounted pickup camper units. All materials must be kept in an enclosed building or garage and not in general view from the road. Without limitation, no automobile, truck or other vehicle, regardless of ownership, age, condition or appearance, shall remain on any Estate in any manner which could be construed as being stored, neglected, abandoned or otherwise not in frequent use, except in a closed garage or pursuant to approval of the ARC. No article deemed to be unsightly by the ARC shall be permitted to remain on any Estate so as to be visible from adjoining property or road. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabric shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.

(N) **Repairs to Detached Machinery.** No repairs which take more than one day of any detached machinery, equipment, or fixtures, including without limitation motor vehicles, shall be made upon any portion of any Estate within view of neighboring property and roads without prior approval of the ARC.

(O) **Garbage.** No garbage or trash shall be placed on the exterior of any building, except in containers meeting the specifications of the ARC, and the placement, maintenance and appearance of all such containers shall be subject to reasonable rules of the ARC. All rubbish and garbage shall be regularly removed from each Estate. Burning of trash or incineration of trash or garbage is prohibited. Garbage collection will be coordinated and paid for by the HOA and be included as part of the Maintenance Fund Charge.

(P) **Outside Lighting.** Outdoor lighting shall be erected and used in such a way so as to minimize light pollution in the Subdivision and to refrain from disturbing neighbors and distracting motorists with bright lights. Indirect lighting is required, and all exterior lighting must be shielded downward. All exterior lighting must be approved by the ARC with regard to location, type of light fixture used, whether it has an on-off switch, and whether it will create a nuisance to neighbors. Mercury vapor securing lights are prohibited. Exterior holiday lighting conforming to this subsection shall be permitted commencing November 14<sup>th</sup> of each year, and shall be removed no later than the 15<sup>th</sup> of January of the following year.

(Q) **Signs.** No sign of any kind, may be erected, placed, or permitted to remain on the Property unless written approval has been obtained in advance from the ARC. The ARC may adopt sign guidelines associated with the erection and display of certain signs which guidelines may govern the location, nature, dimensions, number, and time period a sign may remain on the Property or an Estate. As used in this paragraph, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The ARC may effect the immediate removal of any sign or object which has not been approved in advance by the ARC. Notwithstanding the foregoing, signs advertising Estates for sale, lease or rent, may be erected provided the sign: (a) is ground-mounted; and (b) the dimensions shall not exceed than six (6) square feet; and political signs that comply with the provisions of the Texas Property Code, Title 11, Section 202.009, Regulation of Display of Political Signs.

(R) **Oil and Mineral Activity.** No oil exploration, drilling, development or commercial refining operations and no commercial quarrying or mining operations of any kind of minerals, rocks, stones, sand, gravel, aggregate or earth, including oil wells, surface tanks, tunnels, or mineral excavation or shafts shall be permitted upon or under any Estate, provided, however, that Owners may excavate rock and gravel for the purpose of building roads or driveways on their own property. This Section is intended to prohibit the commercial excavation and development of any minerals or other natural resources on the Property and does not prohibit the right of any Owner to excavate top soil, gravel, or clay from areas where needed to build small tanks or lake sites to improve the water availability for the Owner or wildlife.

(S) **Composite Building Site.** Any Owner of one or more adjoining Estates may consolidate such Estates into a building site with the privilege of placing or constructing improvements on such resulting site, in which case the side set-back lines shall be measured from the resulting side property lines rather than from the Estate lines, and so long as there is only one residence on the tract. If Estates are combined, the Estate will be assessed maintenance fund charges as though it had not been combined.

(T) **Location of the Improvements upon the Estate.** No building of any kind shall be located nearer than i) 80 feet from the center line of the private easement road, and ii) 75 feet from any perimeter property line of an Estate, provided that to the extent the rear perimeter line of any Estate is along the perimeter boundary line of the Subdivision, no rear setback line is required. Upon recommendation of the ARC, the Board may waive any such setback line in accordance with Section 3 above, if in the exercise of the Board's sole discretion, such waiver is necessary to permit effective utilization of an Estate. Any such waiver or alteration must be in writing.

(U) **Use of Temporary Structures.** No structure of a temporary character, whether trailer, tent, shack, garage, barn or other structure may be used on any tract at any time as a permanent residence; provided, however, Owners may temporarily use a travel trailer, camper, recreational vehicle, or motor home on their Estate while the Residence is under construction, for a period not to exceed eighteen months; and that the ARC reserves the exclusive right to erect, place and maintain such temporary structures in or

upon any portion of the Property as in its sole discretion may be necessary or convenient while selling Estates, constructing residences, constructing other improvements within the Subdivision, and operating the Subdivision or the Association. The ARC may also give consent to Owner, contractors, and builders for the temporary use of structures. Use of any temporary structure for any other function must be approved by the ARC.

(V) **Hunting / Firearms.** Hunting and target practice shall be allowed in a safe and ethical manner. Owners and guests are required to have a valid hunting license and abide all hunting laws. No firearms shall be discharged across property lines. Commercial shooting ranges or persistent discharge of firearms is prohibited. No rifles or pistols shall be discharged within the Subdivision, and all hunting shall be restricted to either a shotgun, bow and arrow or crossbow.

(W) **Animal Husbandry.** No animals, livestock or exotic species of any kind shall be raised, bred or kept on any Estate, except: i) each child residing on an Estate may raise not more than 2 animals annually for 4-H school sponsored programs; ii) not more than 15 yard chickens may be kept in a contained area; iii) 2 horses, llamas, alpacas or donkeys per tract; iv) 5 goats per tract; and v) dogs, cats, or other common household pets may be kept in reasonable numbers to be determined solely by the Board. No animal may be stabled, maintained, kept, caged or boarded for hire or remuneration on the Property and no kennels or breeding operations of animals will be allowed. Dogs must be kept in a kennel, dog run, or fenced area. Dogs will not be permitted to run loose in the Property and must be vaccinated for rabies on the basis of current vet practices in Kerr County, which comply with Kerr County legal requirements. Waivers may be granted by the Board for other animals not mentioned above, with prior approval from the Board. The decision of the Board as to whether or not an animal is a nuisance shall be binding and conclusive. The Board shall give notice in writing by certified mail to any Member whose pet has been determined to be a nuisance and such Member shall remove such pet from his Estate within ten (10) days from receipt of such notice. Failure to remove the pet will allow the Board to use any remedy at law (including, without limitation, referring the matter to Kerr County Animal Control) or that which is provided for herein. In no event shall vicious or dangerous animals be allowed within the Property. Notwithstanding the above, (i) no swine may be kept on any Estate unless for a child's 4-H project, and (ii) the Board may amend or suspend these rules if necessary for an Owner to obtain a lower appraised value for use of the Estate as an allowed agricultural use.

(X) **Drainage.** Storm water from any Estate shall not be permitted or allowed to drain or flow unnaturally onto, over, under or across any contiguous or adjacent Estate unless a drainage easement shall exist for same and same is done in accordance with any and all applicable governmental permits and approvals. All work done on any Estate affecting or pertaining to the grade, the flow of surface water drainage, the alteration or removal of any drainage or environmental berm or swale or any storm berm or swale, must be in accordance with a site grading and drainage plans prepared by an engineer and approved by the ARC and also in accordance with all applicable laws, codes and regulations.

(Y) **Site Clearing, Excavation and Landscaping.**

- i. Any landscaping that is visible from the road must be approved by the Board. The excavation of dirt or the removal of any from any Estate is expressly prohibited except as necessary in conjunction with the landscaping of or construction on such Estate, except as provided in Paragraph 4(R) above.
- ii. The ARC shall have the absolute discretion and authority to determine the necessity for required maintenance of Estates within the Subdivision. No unsightly Estates shall be permitted.
- iii. Owners are permitted to conduct site clearing in accordance with industry standards. Debris must be disposed of properly and in a reasonable amount of time after clearing is complete.

(Z) **Roofing Material.** All roofing material for a Residence, other building, or structure shall be of slate, metal, clay tile, cement tile, top grade dimensional composition shingle, standing seam metal or other material approved by the ARC. Like roofing materials shall be used on all structures on the same Estate. The roofs of the main body of all Improvements on the Property shall be pitched. Flat roofs are prohibited. All roofing color must be approved by the ARC. No windmills, appliances, rooftop attic ventilators, fans, solar collector panels or other rooftop installations or structure of any type shall be placed, located, erected, constructed, installed or maintained upon the exterior roof of any Improvement unless it is erected, constructed, installed and maintained on the rear yard side of the roof or otherwise in such manner and at such location that the same shall not be visible from any street. Any variances must be approved by the ARC.

(AA) **Access to Adjoining Property.** No Estate may be used for access to or from an adjoining property outside of the Subdivision without the prior written consent of the Board.

(BB) **Common Area.** Only Owners and their guests may use the Common Areas. Owners may not charge non-owners for the use of the Common Areas. Owner and/or guests may not take away rights or pleasure from other Owners or guests by misusing or abusing the Common Areas. Any cost to repair damage caused the Common Area by an Owner or his guest must be reimbursed to the Association by the Owner who caused (or whose guest caused) the damage, within seven (7) days of notice from Association. All Common Areas are to be maintained and governed by the Association.

(CC) **Timber.** No plants, trees, shrubs, or rocks shall be removed from Common Areas or easements without the approval of the ARC.

(DD) **Filling, Cutting and Slope Control.** Proposed filling, cutting and slope control activities shall be reviewed and approved by

the Board prior to the beginning of any clearing or construction activity on Estates with slopes exceeding twenty percent (20%). All filling and cutting of the terrain on such Estates shall be kept at a minimum and the effects of drainage run-off shall be carefully considered and planned for.

(EE) **Pesticide and Herbicide Broadcast Application.** There will be no pesticide or herbicide applied in such a manner that causes an entire area or Estate to be impacted by such application without approval of the Board.

(FF) **Propane Tanks.** Propane tanks shall be buried, attractively screened or substantially concealed from view of neighboring properties and roads.

(GG) **Environmental Maintenance.** All improved yards shall be kept neat and well maintained and all grass, weeds, and vegetation on each Estate shall be kept mowed at regular intervals. Fences must be repaired and maintained and no objectionable or unsightly usage of Estates will be permitted which is visible to public view. Until a Residence is built on a Estate, Declarant or the Association may, at its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed therefrom. Declarant or the Association may also, at its option, remove any excess building materials or building refuse situated on a Estate in violation of this covenant. The Owner of any Estate shall be obligated to reimburse Declarant or the Association for the cost of such maintenance or removal upon demand.

(HH) **Swimming Pools.** Moveable, above-ground swimming pools are strictly prohibited except with the prior written consent of the ARC. All swimming pools must be of a permanent nature built into or on the ground and in a fenced enclosure with self-closing and self-latching gates, and in accordance with any applicable ordinances, regulations or statutes.

(II) **Intentionally Deleted.**

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

(KK) **Rentals.** Nothing in this Declaration shall prevent the rental of any Estate and the Improvements thereon by the Owner thereof for single family residential purposes, provided however, all lessees shall be and are hereby bound to comply fully with the Protective Covenants of this Declaration. During any period when an Estate or Improvements are rented or leased, the Owner of the Tract shall remain liable for complying with all terms of the Declaration. No Single Family Dwelling may be rented or leased for any single period of less than 30 days. No "time-share plan" or any similar plan of fragmented or interval ownership of said Single Family Dwelling shall be permitted on the property.

(LL) **Subdivision.** Except as set forth in paragraph 19 below, no re-subdivision of any Estate into smaller tracts shall be permitted.

(MM) **Tree Care.** Preservation and maintenance of the trees within the Subdivision is strongly encouraged. Prudence, care, and discretion should be used in the positioning of all Improvements in order to preserve as many trees as possible within the Subdivision. Replacement of trees that are removed or die is encouraged. All precautions shall be taken in connection with the pruning and trimming of trees in order to prevent the spread of oak wilt and oak decline within the Subdivision. Such precautions shall include, but not be limited to, minimal trimming of oak trees, trimming and pruning during the dormant months of January and February, and painting all fresh cuts with appropriate dressing or paint.

(NN) **Protected Trees.** Applies to Pecans, Bald Cypress, Eastern Black Walnut, American Cedar Elm, and All varieties of Oak Trees. Every Protected Tree that is 8" in diameter or larger may not be removed without written approval from the ARC. The critical root zone of Protected Trees must be protected by temporary fencing if the tree is near any anticipated construction activity. Generally, the critical root zone projects one foot out from the trunk of the tree for every inch in tree diameter.

(OO) **Intentionally Deleted.**

(PP) **Flags.** An Owner is permitted to display a flag ("**Permitted Flag**") and permitted to install a flagpole no more than a) five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence; or b) twenty feet (20') in height, and installed within 25 feet of the residence ("**Permitted Flagpole**") within an Estate. Only three (3) Permitted Flags and two (2) permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Architectural Reviewer. Unless otherwise approved in advance and in writing by the ARC, Permitted Flags and Permitted Flagpoles must comply with the following:

- i. Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');
- ii. The flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;
- iii. The display of a flag, or the location and construction of the flagpole must comply with all applicable easements and setbacks of record;
- iv. Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;



- v. A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;
- vi. Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and
- vii. Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

(QQ) **Berms, dams, and other impoundment structures.** Berms, dams, and other impoundment structures, low water crossings and the like may be constructed in compliance with applicable laws and regulations, provided that the flow of water in creeks and streams located on the Property is not impeded.

(RR) **Commercial Business.** No professional, business or commercial activity to which the general public is invited shall be conducted on any Tract.

(SS) **Rules and Regulations.** In addition to the restrictions contained in this Article 4, each Estate is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- i. Use of Common Area.
- ii. Hazardous, illegal, or annoying materials or activities on the Property.
- iii. The use of Property-wide services provided through the Association.
- iv. The use, maintenance, and appearance of anything visible from the street, or other Estates.
- v. The occupancy and leasing of improvements on an Estate.
- vi. Animals.
- vii. Vehicles.
- viii. Disposition of trash and control of vermin, termites, and pests.
- ix. Restrictions on use of water by any Owner if the Board reasonably believes such use is excessive and is having or could have an adverse effect on the amount of groundwater available to all Owners.
- x. Anything that interferes with maintenance of the Property, operation of the Association, or the quality of life for Owners.

#### **5. EASEMENTS RESERVED BY THE ASSOCIATION.**

(A) **Easements.** A ten (10) foot easement for the installation, maintenance, repair and removal of public and/or quasi-public utilities, water lines, sewer and drainage facilities, perimeter fencing and floodway easements, are reserved by the Association over, under and across each Estate's boundary lines. Full ingress and egress shall be had by the Association at all times over the Properties in and along the above described easements, for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Declarant shall have the right to assign and transfer the easements and rights herein reserved to or for the benefit of any public or quasi-public utility. Declarant reserves for public use the utility easements that have been or hereafter may be created by separate instrument recorded in the Official Public Records of Kerr County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, and telephone line or lines, storm surface drainage, cable systems, or any other utility the Developer sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Common Area and/or Estates. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document; without the joinder of any other Owner, the Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility company, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the Estate covered by said easements.

(B) **Title Subject to Easements.** The Owners of the respective Estates shall not be deemed to own pipes, wires, conduits or other service lines running through their Estates which are utilized for or service other Estates, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Estate. No building shall be located over, under, upon or across any portion of any utility easement. The Owner of each Estate shall have the right to construct, keep and maintain concrete drives, fences, and similar improvements across any utility easement, and shall be entitled to cross such easement at all times for purposes of gaining access to and from such Estates, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Estate subject to said Utility Easement shall be responsible for:

- (i) Any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such Utility Easements and;
- (ii) Repairing any damage to said improvements caused by any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

(C) **Intentionally Deleted.**

(D) **Power to Grant Easements.** In addition to any blanket easements described in this Declaration, the Association shall

have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area.

(E) **No Liability for Damage to Improvements.** Neither Developer nor any provider of utility services shall be liable to any Owner for any damage to any vegetation including, without limitation, shrubbery, trees, lawns and flowers, or other Improvements situated within such easement area, as a result of any activity relating to the construction, maintenance, operation, or repair of any utility lines or facilities in any utility easement, except to the extent liability or obligation to repair any such damage arises out of this Declaration, or any State, County, or Municipal statutes, ordinances, rules or regulations, or the custom and practice of such utility provider. Prior to the construction of any utilities on an Estate, Developer and the Association reserve the right to require that the utility provider pay the cost of restoring the utility easement to the same condition as it was prior to construction.

**6. IMPROPER MAINTENANCE BY OWNER.** In the event any portion of an Estate or structure thereon is in the ARC's judgment so maintained by the Owner as to not comply with these Covenants or present a public or private nuisance or substantially detract from the appearance or quality of the neighboring Estates or Residences or other areas of the Property which are substantially affected thereby or related thereto, the ARC, unless corrective action is taken within ten (10) days after receipt of written notice to the Owner of an Estate specifying the required maintenance action to be made by Owner, shall be authorized and empowered to cause such action to be taken and the cost (the "Maintenance Cost") thereof shall be assessed against the Estate of the offending Owner and shall be secured by the Maintenance Lien hereinafter provided. Written notice of such assessment shall be delivered to the offending Owner which notice shall specify the amount of such Maintenance Cost and shall demand payment thereof within thirty (30) days after the date of said notice. If any provision of this Section 6 applies and the ARC and the Owner cannot agree on the required maintenance, the parties will submit the dispute to the Board for a decision.

**7. IMPOSITION OF LIEN; OWNER'S AGREEMENT.**

(A) **Imposition of Maintenance Lien.** The Association shall have the right at any time there is unpaid Maintenance Cost outstanding with respect to an Estate, to file of record with the County Clerk of Kerr County, Texas, a written statement describing such Estate and the unpaid Maintenance Cost relating thereto in which event, upon such filing there shall automatically be imposed upon such Estate a lien (the "Maintenance Lien") in favor of the Association for the amount of such unpaid Maintenance Cost. Upon payment of all Maintenance Cost relating to any such Estate, the Association shall file of record with the County Clerk of Kerr County, Texas, an appropriate release of any Maintenance Lien previously filed against the Estate.

(B) **Owner's Promises Regarding Maintenance Costs and Maintenance Lien.** Each Owner, for himself/herself, his/her heirs, executors, administrators, trustees, personal representatives, successors and assigns, covenants and agrees:

(i) That he/she will pay to the Association within thirty (30) days after the date of written notice thereof any Maintenance Cost assessed by the Association against his Estate.

(ii) That by accepting a Deed to his Estate, he shall be, and remain, personally liable for any and all Maintenance Cost assessed against his Estate while he/she is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether he/she signed the Deed.

(iii) That he/she will pay a late fee of 5% of the Maintenance Cost if not paid when due, and that such Maintenance Cost shall bear interest from the due date at the lesser of the rate of eighteen percent (18%) per annum or the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Estate. Each owner is liable to the Association for all costs and reasonable attorney's fees incurred by the Association in collecting delinquent assessments, foreclosing Association's lien, and enforcing these Covenants.

(C) **Environmental Hazards.** No noxious substances or undesirable products whatsoever shall be permitted on any Estate. The Board shall determine the degree of noxiousness or undesirability and its decision shall be conclusive on all parties.

**8. MAINTENANCE FUND DEFINED AND USES.**

(A) **Maintenance Fund.** Each Owner (by acceptance of a Deed for any portion of the Properties whether or not it shall be so expressed in any such Deed or other conveyance), hereby covenants and agrees and shall be deemed to covenant and agree to pay the Association assessments and maintenance fund charges ("Maintenance Fund Charges"). All assessments and Maintenance Fund Charges, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each portion of the Properties against which each such assessment and Maintenance Fund Charge is made. Each such assessment and Maintenance Fund Charge, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment or Maintenance Fund Charge becomes due.

(B) **Initial Maintenance Fund; Road Fee.** The amount of an annual Maintenance Fund Charge shall be an amount fixed by the Association. It is intended that the Association will for each year fix the annual amount of the Maintenance Fund Charge at an amount estimated in good faith by the Association to be required in order that the funds produced thereby will approximate the costs and expenditures of such funds for the purposes hereinafter specified. The annual Maintenance Fund Charge shall be adjusted as necessary at the end of each calendar year, and such adjustment shall apply to the succeeding calendar year. In addition to the Maintenance Fund Charge, Special Assessments and the Reserve Fund, at Closing of the first sale of each Estate from Declarant to an Owner, the Owner shall pay to Association a road fee in the amount of \$500.00, which shall be added to the Reserve Fund to cover the costs of damage to the main roadway through the Subdivision.

(C) **Special Assessments.** In addition to the annual Maintenance Fund Charges authorized above, the Board of Directors of

the Association may levy special assessments (the "Special Assessments") from time to time for the purpose of defraying the cost of any construction, reconstruction, repair or replacement of any capital improvements upon or which are a part of the Common Areas, the cost of acquisition, repair or replacement of any fixtures and personal property used by or benefiting the Association or the Subdivision, and/or for carrying out any other purposes of the Association as stated herein or in the Association's organizational documents, as they may be amended from time to time. In order for the Board of Directors of the Association to levy a special assessment in accordance herewith, such special assessment must be approved by a vote of more than two-thirds (2/3) of the votes that may be cast by the members represented in person or by proxy at a meeting duly called for such purpose. Any approved special assessment shall be included within the definition of "Maintenance Fund Charges."

(D) **Reserve Fund.** The Association shall create a reserve fund for the maintenance of streets and other improvements within the Subdivision. The amount of the annual reserve fund assessment shall be included as part of the annual Maintenance Fund Charge and shall be in an amount which will insure the maintenance, repair and upkeep of the streets and other improvements during their anticipated useful life and prior to obsolescence, and replacement.

(E) **Basis of the Maintenance Fund Charge.** The Maintenance Fund Charge referred to shall be used to create a fund to be known as the "Maintenance Fund", which shall be used as herein provided; and each such Maintenance Fund Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Estate to the Association. The Maintenance Fund Charge for the year of purchase shall be pro-rated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year.

(F) **Delinquent Maintenance Charges.** Any Maintenance Fund Charge not paid within 30 days after the due date shall be subject to a late fee of 5% of the amount due and shall bear interest from the due date at the lesser of the rate of eighteen percent (18%) per annum or the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Estate.

(G) **Creation of Lien and Personal Obligation.** In order to secure the payment of the Maintenance Fund Charge, and other charges and assessments hereby levied, a vendor's (purchase money) lien for the benefit of the Association, shall be and is hereby reserved in the deed from the Association to the purchaser of each Estate or portion thereof, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Association. As additional security for the payment of the Maintenance Fund Charge and other charges and assessments hereby levied, each Owner of an Estate in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Estate which may be foreclosed on by non-judicial foreclosure pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. Gregory A. Richards, Attorney at Law, is appointed Trustee for the purpose of this Section 8. The Association, as beneficiary, may appoint a substitute or successor Trustee, succeeding to all rights and responsibilities of the Trustee appointed herein, by filing an appropriate Designation of Substitute Trustee among the Official Public Records of Kerr County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale using the same notice provisions as those set out in Section 51.002(d) of the Texas Property Code, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Kerr County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; third, any amounts required by law to be paid before payment to the Owner; and fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Estate foreclosed on and each occupant of any improvements thereon shall be deemed to be tenant at sufferance. The purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Estate by forcible detainer without further notice.

- i. In the event of non-payment by any Owner of any Maintenance Fund Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the provided herein, upon ten (10) days prior written notice thereof to such non-paying Owner, exercise all other rights and remedies available at law or in equity.
- ii. It is the intent of the provisions of this Section 8 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice - President of the Association, acting without joinder of other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Official Public Records of Kerr County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.
- iii. In addition to the rights provided above, to enforce the Maintenance Fund Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Estate of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description and street address of the Estate against which the lien is claimed and (d) the name of the Owner thereof. Such notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner or a reasonable fee as fixed by the Board to cover the preparation and recordation of such release of lien instrument.

(H) **Liens Subordinate to Mortgages.** The Liens described in this Section and the superior title herein reserved shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, pension and profit sharing trusts or plans, or the bona fide third party lender, including Declarant, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Estate and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Estate who obtains title to such tract pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the tract free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Estate which accrued prior to the time such holder acquired title to such Estate. No such sale or transfer shall relieve such holder acquiring title to an Estate from liability for any Maintenance Fund Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of an Estate shall not affect the Association's lien for Maintenance Fund Charges or other charges or assessments. The Association shall make a good faith effort to give each mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of the lien which notice shall be sent to the nearest office of such mortgagee by prepaid United States Registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Fund Charges or other charges or assessments 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 Section.

(I) **Purpose of the Maintenance Fund.** The Maintenance Fund Charge levied by the Association shall be used for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision and other areas, which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Fund Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties. The Maintenance Fund may be expended by the Association for any purposes which will tend to maintain the property values. Except for the Association's use of the Maintenance Fund Charge to perform its duties described in these Covenants and in the Bylaws, the use of the Maintenance Fund Charge for any of these purposes is permissive and not mandatory. The judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith. The Maintenance Fund shall be used for the following:

- (i) Accounting and office expenses;
- (ii) Entryway maintenance
- (iii) Legal expenses;
- (iv) Association income tax preparation which includes costs of annual corporate Federal income tax return and State of Texas Franchise Tax return, if applicable;
- (v) Maintenance expense of Common Areas;
- (vi) Expense of insurance;
- (vii) Expense of garbage collection;
- (viii) Enforcement of these Covenants.

(J) **Exempt Property.** The following property subject to this Declaration shall be exempt from the Maintenance Fund Charge and all other charges and assessments created herein:

- (i) All properties dedicated to and accepted by a public authority;
- (ii) The Common Area;
- (iii) Estates owned by the Declarant.

(K) **No Assessment for Initial Construction.** Assessments shall not be levied for the initial construction of the roadways, the initial construction and installation of the main electric and telephone lines and facilities serving the Subdivision along the roadways, the initial construction of the initial entryway Improvements to the Subdivision, or the initial construction of any drainage channels or culverts to be constructed with respect to the initial development of the Subdivision.

(L) **Transfer-Related Fees.** The Association may charge a transfer fee to an Owner in relation to the transfer of title to an Estate, to offset expenses related to preparation of resale certificates, estoppel certificates, and copies of documents, ownership record changes, and priority processing. The initial transfer fee shall be \$300.00, and may be changed from time to time at the discretion of the Board. Transfer fees are not refundable and may not be regarded as a prepayment of or credit against Regular or Special Assessments.

#### **9. ARCHITECTURAL REVIEW COMMITTEE (ARC).**

(A) **Membership of Architectural Review Committee.** The ARC shall consist of not less than three (3) and not more than five (5) voting Members, and such additional nonvoting Members serving in an advisory capacity as the ARC deems appropriate. The chairperson of the ARC shall be a member of the Board.

(B) **Action of Architectural Review Committee.** Items presented to the ARC shall be decided by majority vote of the Voting Members. The ARC's approval shall not be unreasonably withheld or delayed. The vote of a majority of the voting Members of the ARC taken with or without a meeting shall constitute an act of the ARC.

(C) **Advisory Members.** The Voting Members may from time to time designate Advisory Members.

(D) **Term.** Each member of the ARC shall hold office until such time as he or she has resigned, has been removed, or his successor has been appointed as provided herein.

(E) **Declarant's Right of Appointment.** Declarant, its successors or assigns shall have the right to appoint and remove all members of the ARC until the Turnover. Declarant may delegate this right to the Board by written instrument until the Turnover.

(F) **ARC Approval.** No residence, building, fence, wall, sign, walkway, roadway or any other Improvements either temporary or permanent shall be created, placed, erected, commenced or changes made in the design or exterior appearance thereof, or any addition or exterior alteration made thereto after original construction, nor demolition or destruction by voluntary action made thereto after originally constructed, or sitework be commenced on any Estate in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the ARC of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements, or sitework by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument provided, however, that such approval shall not be unreasonably withheld. Each application made to the ARC shall be accompanied by two sets of plans and specifications (including elevations) for all proposed construction (initial or alteration) to be done on such Estate, including plot (site) plans and a survey showing location on the Estate of proposed improvements, property lines, building setbacks, utility easements, including electric connection location, meters, water system connections, driveway(s), septic system, gas connection/tank location, recreational facilities, and fencing; samples of exterior finish materials and color samples; and any other plans, specifications or information deemed pertinent by the ARC. All exterior measurements and dimensions must be shown, at a scale of ¼ inch = 1 foot minimum.

(G) **ARC Review.** The Architectural Review Committee shall review all plans, specifications and other information which is submitted for compliance with all the requirements of this covenant and for the compatibility of any improvements (including landscaping) therein with the architectural, aesthetic and ecological goals of the Subdivision and Declarant, it being the intent that such goals require that all improvements be compatible with all other improvements in the Subdivision and that they be in harmony with their natural surroundings. The ARC shall have full right and authority to utilize its sole discretion in approving or disapproving any plans and specifications which are submitted. In the event the ARC fails to approve submitted plans or to request additional information reasonably required within thirty (30) days after submission, the applicant shall give the ARC written notice of its failure to respond. Unless the ARC responds within ten (10) days of receipt of such notice, approval will be deemed granted. The Architectural Review Committee may disapprove the construction or design of any improvement on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or value of the Subdivision. Prior approvals and/or disapprovals of the ARC pertaining to any improvement activities or regarding matters of design or aesthetics shall not be deemed binding upon the ARC for later requests for approval if the ARC feels that the repetition of such matters will have an adverse effect on the Subdivision. The Architectural Review Committee shall have the express power to construe and interpret any covenant herein that may be capable of more than one construction. During reasonable hours, members of the Architectural Review Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any Estate, and the Residence thereon, for the purpose of ascertaining whether or not the provisions of the Declaration have been or are being complied with, and said persons shall not be deemed guilty of trespass by reason of such entry. The ARC shall have the authority to employ professional consultants at the expense of the Association to assist it in performance of its duties. The decision of the Architectural Review Committee shall be final, conclusive and binding upon the applicant. The ARC members shall not be entitled to any compensation for any services rendered pursuant to this covenant.

(H) **Issuance of Building Permit.** All building permits must be prominently displayed at the job site. Construction of an Improvement shall be completed in accordance with the approved final submittals ("Final Plans") as approved by the ARC. Any changes to the Final Plans must be approved in writing by the ARC prior to the implementation of such changes. The ARC or a representative of the ARC may conduct regular inspections of the construction.

(I) **Effect of Approval.** The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the ARC that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan. Such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are constructed in accordance with such plans and plot plan, but, nevertheless, fail to comply with the provisions hereof.

(J) **Non-liability of ARC Members.** Neither the Declarant, Association, the Board, nor the ARC or any member thereof shall be liable to any Owner(s) or any third party for any loss, damage or injury arising out of their being in any way connected with the performance of the ARC's respective duties under this declaration unless due to willful misconduct or bad faith by the ARC or its members. Neither the ARC nor the members thereof shall be liable to any Owner due to the construction of improvements within the Property or the creation thereby of an obstruction to the view from such owner's Estate or Estates. Every Owner who submits plans and specifications to the ARC for approval agrees, by submission of such plans and specifications, and every Owner or lessee of any portion of the Property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against the Association, the Board, or members of the ARC, or their representatives, to recover any damages whatever from them, save and except for damages directly attributable to willful misconduct or bad faith on their part.

10. **FAA REQUIREMENTS.** Federal Aviation Administration regulations require that the Owners of Tracts 8, 9, 10, 11, 12, 13, 14, 15 18 and 19 within the Subdivision must maintain continuous red lights on the highest point of each residence for airplane safety.

11. **DARK SKY ESTATES OWNERS ASSOCIATION, INC.**

(A) **General Duties and Powers of the Association.** The Association was incorporated to further the common interest of the Members. Subject to provisions and limitations herein expressly stated, the Association, acting through the Board of Directors or

through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the Members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration. The Association may adopt whatever by-laws it may choose to govern the organization or operation of the Subdivision provided that the same are not in conflict with the terms and provisions hereof.

(B) **Membership and Voting.** Declarant has created the Association, to which Association the Declarant may assign or delegate on a permanent or temporary basis one or more of the rights, powers, obligations and duties of the Declarant under this Declaration. Every Owner of an Estate within the Property shall be a member of the Association. The Association shall have two classes of voting membership.

**Class A:** Class A Members shall be all Owners of Estates, with the exception of Declarant, and shall be entitled to one (1) vote for each Estate owned. When more than one person owns an interest in any Estate, all such persons shall be members. The vote for such Estate shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any one Estate hereunder.

**Class B:** Class B Members shall be the Declarant. Declarant shall be entitled to ten (10) votes for each Estate owned. Once an Estate is sold to a person or persons who would be classified as Class A Members, the ten (10) votes attached to that Estate shall be extinguished.

When more than one person owns an interest in any Estate, in order for the vote attributable to such Estate to be valid, the Owners of such Estate, or their representatives, shall deliver to the Board of Directors such instruments and documents, including, without limitation, resolutions, authorizations, approvals, and certifications, as the Board of Directors may reasonably request to confirm that such vote was authorized; such instruments and documents to be delivered prior to the taking of the vote of the members. If such instruments and documents are not delivered, or if the Board of Directors determines, in its sole discretion, that such vote was not properly authorized, the vote submitted for such Estate shall be deemed to be an abstention.

(C) **Voting Rights In The Association, Powers And Duties**

(i) Quorum and Notice Requirements.

(a) Any action by the Members shall require the assent of the Members entitled to cast a majority of the votes of the Members of the Association who are voting in person, by mailed ballot or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members at least ten (10) days in advance and shall set forth the purpose of such meeting.

(b) The quorum required for any action shall be the presence at the meeting of Members, or of proxies, entitled to cast thirty percent (30%) of all of the votes of all Members.

(c) Any action may be taken with the assent given in writing and signed by the Members entitled to cast a majority of the votes of the Association

(ii) Turnover

(a) At any time after commencement of operations of the Association, at Declarant's sole discretion, the Owners may be required to take over the management of the Association and relieve Declarant of all duties associated therewith (the "Turnover"). Upon such Turnover by Declarant, the Owners will be required to choose their own Board of Directors to represent them and to manage the Association in accordance with the terms and conditions of this Declaration and to establish any and all bylaws, procedures and other management devices by which the Association shall operate. Prior to the date such Turnover occurs, a Director need not be a member of the Association. From and after the date such Turnover occurs, a Director shall be a member of the Association.

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

(c) Declarant shall give the Owners written notice of the Turnover (the "Turnover Notice") at least thirty (30) days prior to the effective date of such Turnover. The Turnover Notice shall state the effective date of the Turnover (the "Turnover Date"). In addition, the Turnover Notice shall state the place, date, and hour of a special meeting of the Owners called for the purpose of the election of a new Board of Directors as of the Turnover Date, and shall constitute a call and notice of such special meeting. In the event the Owners fail to elect a new Board of Directors by the Turnover date, Declarant may, but shall not be obliged to, appoint three (3) or more Owners to serve as an interim Board of Directors until such time as the Owners elect a new Board of Directors. Turnover of the Association shall occur on the Turnover Date specified in the Turnover Notice, whether or not a new Board of Directors is elected by the Owners by the Turnover date, and whether or not an interim Board of Directors is appointed by Declarant.

(d) The Association shall at all times from and after Turnover indemnify and hold Declarant, its officers and members, harmless from and against any and all liability, claims or damages of every kind, arising either out of the operation of the

Association or the development and operation of the Subdivision, whether before or after such Turnover, including, without limitation, the Common Areas. Additionally, Declarant, its officers and members, shall not be held liable in any way in its role in enforcing or failing to enforce any of the protective covenants, in protecting its rights or in carrying out any of its duties or obligations. This indemnification by the Association of Declarant shall include the Association's payment of any and all expenses incurred by Declarant, its officers and members, including the payment of any and all legal expenses, court costs, and all other costs associated with the protection and / or defense of Declarant, its officers and members, in any legal actions or proceedings or any other action of any kind.

(c) Upon written request made by Declarant to the Association, which request may be made at any time after the date hereof, the Association shall obtain and maintain in effect at all times, at the Association's expense, Commercial General Liability Insurance with limits of liability, reasonably acceptable to Declarant, but not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate single limit. Such insurance:

- (1) to include coverage insuring against liability arising out of or related to the operation of the Association, and the development, operation and maintenance of the Subdivision, including, without limitation, the Common Areas,
- (2) to name Declarant as an additional insured, and
- (3) to be issued by an insurance company reasonably acceptable to Declarant

The Association shall, not later than ten (10) days after the date of Declarant's request for such liability coverage, provide Declarant with a certificate of insurance providing for the insurance coverage required hereby. The Association shall not cancel any insurance policy obtained in accordance herewith without giving Declarant at least thirty (30) days prior written notice. The Association shall maintain such liability insurance until the later of (a) the date all of the Common Areas are turned over to the Association, (b) the date management of the Association has been turned over to the Owners, or (c) the date Declarant no longer owns any interest in any part of the Subdivision.

(D) **Duty to Manage and Care for the Common Area.** The Association shall manage, operate, care for, maintain and repair all Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members.

(E) **Duty to Prepare Budgets.** The Association shall prepare budgets for the Association, which budgets shall include a reserve fund for the maintenance of all Common Areas.

(F) **Duty to Levy and Collect the Maintenance Fund Charge.** The Association shall levy, collect and enforce the Maintenance Fund Charge and other charges and assessments as elsewhere provided in these Covenants.

(G) **Annual Financial Statements; Books and Records.** The Association shall, not later than 120 days after the end of each fiscal year of the Association, furnish to each requesting Member financial statements, which shall include a balance sheet as to the end of such year and a statement of operations for the year then ended. Such financial statements may, but shall not be required to be audited. All Members shall have the right during regular business hours and at the office of the Association to inspect the books and records of the Association.

(H) **Duties with Respect to Committees.** The Association shall perform functions to assist the ARC, as elsewhere provided in this Declaration.

(I) **Power to Acquire Property and Construct Improvements.** The Association may acquire property or an interest in property (including leases) for the Common benefit of Owners including improvements and personal property. The Association may construct improvements on the Common Area and in any easement area and may demolish existing improvements in the same areas.

(J) **Power to Adopt Rules and Regulations and Amend Community Manual.** The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The Association, acting through a Majority of the Board, is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines. Prior to the Turnover Date, any modification, amendment, or repeal to the Community Manual or the Rules, and each new policy or Rule, must be approved in advance and in writing by the Declarant.

(K) **Enforcement.**

i. **Right of Enforcement.** Declarant, its successors or assigns, the HOA, its successors or assigns, or any Owner, shall have the right to enforce, by proceedings at law or in equity, the terms, provisions, covenants, conditions, and restrictions of this Declaration. Failure of Declarant or the HOA to take any action upon any breach or default shall not be deemed a waiver of their right to take action upon any subsequent breach or default. Declarant, for itself, its successors or assigns, reserves the right to enforce this Declaration, though it may have previously sold and conveyed all Estates controlled hereby. The reservation by Declarant or the HOA of this right of enforcement shall not create a duty or obligation of any kind to enforce same, and neither Declarant nor the HOA shall be subjected to any claim, demand, or cause of action from any Owner by virtue of not enforcing any term, provision, covenant, condition or restriction herein contained, provided, the Property Owners Association shall enforce the provisions relating to setting and collecting assessments.

ii. **Declarant and HOA Right to Self Help.**

a. The Declarant and HOA shall have the authority to employ self-help to enforce compliance with any provision of this Declaration. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. The notice shall describe the matter of noncompliance, the action necessary to cure the noncompliance, and the date by which the noncompliance shall be cured. Such notice shall be sent in accordance with Section 21 below. In the event the Owner fails to cure the matter of noncompliance within the required time, the HOA may take action to cure the matter of noncompliance. The Association has the right to enter an Estate to abate or remove, using force as may reasonably be necessary, any Improvement, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Association is not trespassing and is not liable for damages related to the abatement. Notwithstanding the foregoing, the Association may not alter or demolish any Improvement within an Estate without judicial proceedings.

b. In the event that the Declarant or the HOA acts to remedy a non-complying condition in accordance herewith, all sums incurred by the Declarant or the HOA in connection therewith, including attorneys' fees, shall be charged against the Owner, and shall be payable by the Owner upon demand. If such sums are not paid within ten (10) days after demand for payment is made, such sums shall bear interest at a rate equal to the lesser of:

- i. eighteen percent (18%) per annum
- ii. the highest legal rate permitted by law

to be charged the Owner and, unless otherwise provided herein, shall be secured by the assessment lien provided for herein against all Estates owned by such Owner. In addition, the Declarant or the HOA may exercise any and all other rights and remedies that may be available hereunder, or under Texas law, to enforce an Owner's obligations hereunder.

(L) **Notice and Hearing.** Before the Association files a suit against an Owner, other than a suit to collect a regular or special assessment or foreclose under the Association's lien, charge an owner for property damage, or levy a fine for a violation of the Documents, the Association or its agent must comply with the notice and hearing provisions set forth in Chapter 209 of the Texas Property Code, as amended.

(M) **Finality of Determination by Association.** It is understood that the judgment of the Declarant/Association, their respective successors and assigns, in the allocation and expenditure of said maintenance fund shall be final so long as such judgment is exercised in good faith. The enumeration of the services for which the maintenance fund may be expended carries no obligation for the Association to furnish any of such services except to the extent of the funds actually received by the Association.

(N) **Venue.** Enforcement of these covenants and restrictions shall be in Kerr County, Texas, and shall be by any proceeding at law or equity against any person or persons violating or attempting to violate them, or to recover damages, or to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any Covenant or Restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

**NOTICE**

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

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

(P) **Injury to Person or Property.** NEITHER THE DECLARANT, NOR THE ASSOCIATION, OR THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE A DUTY OR OBLIGATION TO ANY OWNER, OCCUPANT OR THEIR GUESTS: (A) TO SUPERVISE MINOR CHILDREN OR ANY OTHER PERSON; (B) TO PROVIDE SECURITY OR PROTECTION TO ANY OWNER, OCCUPANT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, AND INVITEES FROM HARM OR LOSS. BY ACCEPTING TITLE TO AN ESTATE, EACH OWNER AGREES THAT THE LIMITATIONS SET FORTH IN THIS SECTION 11 (O) ARE



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

**12. DECLARANT'S RIGHTS AND RESERVATIONS**

- (A) **Period of Declarant's Rights and Reservations.** Declarant shall have, retain and reserve certain rights as herein set forth with respect to the Association and the Common Area from the date hereof, until the earlier to occur of the Turnover or Declarant's written notice to the Association of Declarant's termination of the rights described herein. The rights, reservations and easements herein set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.
- (B) **Interpretation of the Covenants.** Except for judicial construction, the Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Owners and Property benefited or bound by the Covenants and provisions hereof until the Turnover date and then such power will pass to the Association.

**13. INSURANCE AND CONDEMNATION.**

(A) **Fire Insurance on Dwelling Unit and Improvements on Estates.** Each Owner shall purchase at his expense and maintain fire hazard insurance coverage with respect to his Estate. Any such insurance shall be for the highest insurable value of the Residence and shall contain a replacement cost endorsement. Upon the request of the Board, each Owner shall furnish to the Board, immediately, evidence of such insurability.

(B) **Property and Public Liability Insurance With Respect to Common Area, Errors and Omissions and Indemnification.**

1. The Board of Directors of the Association may obtain and continue in effect property insurance, to insure the buildings and structures in the Common Area, naming the Association as beneficiary with an endorsement to the mortgagee, if any, against risks of loss or damage by fire and other hazards as are covered under standard fire and extended coverage provisions, and said insurance to include coverage against vandalism.
2. The Board of Directors of the Association shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its agents and employees, and each Owner, from and against liability in connection with the Common Area.
3. The Board of Directors of the Association may obtain liability insurance covering errors and omissions of directors, officers, managers, employees and representatives of the Association, and fidelity bonds for all officers and employees which have control over the receipt or disbursement of funds.
4. The Association may indemnify directors, officers, employees and agents and may purchase indemnity insurance in accordance with the provisions of Chapter 8 of the Texas Business Organizations Code.

(C) **Insurance Premiums with Respect to Common Area.** All costs, charges and premiums for all insurance with respect to the Common Area that the Board of Directors authorizes as provided herein shall be a common expense of all Owners and shall be part of the annual assessment.

(D) **Other Insurance.** None of the above prevents the Board of Directors from obtaining other insurance as may be required by law (e.g. workers compensation) or other insurances which may become the norm for properties of this nature.

(E) **Condemnation.** If part or all of the Common Area shall be taken or condemned by any authority having the power of eminent domain, any compensation and damages shall be paid to the Association. The Board of Directors shall have the exclusive right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation issues affecting such Common Area. The Owners may, by vote of seventy-five per cent (75%) or more of the total voting power hereunder, agree to distribute the proceeds of any condemnation or taking by eminent domain, to each Owner and his mortgagee, if any, as their interest may appear. In event that the Owners shall not so agree, such proceeds shall be added to the funds of the Association, and the Association shall decide on whether or not to replace or restore, as far as possible, the Common Area so taken or damaged. The Association shall give timely notice of the existence of such proceedings to all Owners and their mortgagees, if any. The expense of participation in such proceedings shall be common expenses chargeable to the Owners.

(F) **Insufficient Proceeds.** If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may repair or replace any loss or damage as an expense of the association and, if necessary, levy a special assessment as provided for in Section 8 (C) of this Declaration.

**14. COMMON AREAS.** Developer transfers, assigns and conveys to the Association for the use and benefit of the Association the Common Areas consisting of improvements to the entryway into the Subdivision, which includes the mailbox kiosk. The Association shall be responsible for the maintenance and operation of all Common Areas and the costs therefor shall be part of the Maintenance Fund Charge.

**15. AMENDMENTS.** This Declaration may be amended by the Declarant acting alone until the Turnover date. An Amendment made by Declarant pursuant to this Section shall not adversely and materially affect the value of the Estates and shall maintain the quality of the Subdivision. No amendment may place additional restrictions on an Estate already sold or remove variances previously granted without the express written consent of the Owner of the affected Estate. After the Turnover Date, these Covenants may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners entitled to cast no less than two-thirds (2/3rds) of the votes of all of the Owners. If the Covenants are amended by a written agreement, the written agreement must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facia evidence of the date of execution of said amendment by such Owner. Subject to provisions and limitations herein expressly stated, those Members (Owners, including the Declarant) entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Members of the Association may also vote to amend these Covenants, in person, by mail-in ballot or by proxy, at a meeting of the Members (Owners, including the Declarant) duly for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Any such amendment shall become effective when an instrument is filed for record in the Official Public Records of Kerr County, Texas, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of Members (Owners, including the Declarant) executed the instrument amending these Covenants or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination.

**16. TERM.** The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of twenty (20) years from date these Covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the Owners (including the Declarant) of the Estates has been recorded agreeing to amend or change, in whole or part, these Covenants, provided that, if Declarant owns any interest in the Property at the time, the Covenants may only be terminated if the Declarant joins in executing such instrument.

**17. SEVERABILITY.** While the Association has no reason to believe that any of the restrictive covenants or other terms and provisions contained in these Covenants are or may be invalid or unenforceable for any reason to any extent, the Association makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring an Estate in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof, and, by acquiring the Estate, agrees to hold the Association, the Board and the ARC harmless therefrom. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect other provisions which shall remain in full force and effect.

**18. HEADINGS.** The headings contained in these Covenants are for reference purposes only and shall not in any way affect the meaning or interpretation of these Covenants.

**19. PARTIAL CONVEYANCES OF AN ESTATE.** Developer hereby reserves the right at any time while it is the Owner of any Estate to convey a portion of such Estate without the consent of any of the other Owners. Except as set forth in the prior sentence, the conveyance of a portion (but less than all) of any Estate shall not be allowed without permission of the Board, nor may any easements or other interests therein less than the whole of an Estate be conveyed by the Owner thereof without the prior written approval of the Board; provided, however, that if Developer is the Owner thereof, Developer may convey any easement or other interest less than the whole, all without the approval of the Board.

**20. SUBJECTING ADDITIONAL LANDS TO THESE COVENANTS.** From time to time the size of the Property may be increased by Declarant's recording with the County Clerk of Kerr County, Texas, a supplement to these Covenants (hereinafter called "Supplemental Covenants"). The Supplemental Covenants shall be signed and acknowledged by or on behalf of Declarant who shall be the owner of record of the additional land to be included within the Property and subjected to the Covenants set forth herein. Each such Supplemental Covenants shall:

- (A) Describe the additional land to be included as a part of the Property;
- (B) State the number of new tracts in such additional land which will be deemed "Estates" hereunder;
- (C) State that such land is expressly subjected to all of the Covenants set forth in these Covenants except that Declarant shall have the right to grant a variance to existing improvements located on said land provided that any subsequent improvements or additions to existing improvements shall be subjected to all the Covenants set forth in these Covenants; and
- (D) State that each Owner of an Estate therein, for and on behalf of his heirs, executors, administrators, trustees, personal representatives, successors and assigns, agrees to be personally liable for all Maintenance Fund Charge imposed hereunder and shall be personally bound by all Covenants set forth in these Covenants.

**21. NOTICE BY HOA.** Whenever written notice or demand to an Owner is permitted or required hereunder, such notice shall be given by mailing of such notice to such Owner at the address of such Owner appearing on the records of the HOA, unless such Owner has given written notice to the HOA of a different address, in which event such notice shall be sent to the Owner at the address so designated. Notice shall conclusively be deemed to have been given by the HOA on the date such notice is deposited in the United States Mail, properly addressed, whether received by the addressee or not.

**22. SUCCESSORS OF DECLARANT.** Any reference in these Covenants to Declarant shall include any successors of Declarant's

rights and powers hereunder including the Association.

**23. DISCLOSURES.**

- (A) Adjacent Thoroughfares. The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.
- (B) Use of Adjacent Property. No representations are made regarding the current or future use or zoning (if applicable) of adjacent property.
- (C) Outside Conditions. In every neighborhood there are conditions that different people may find objectionable. Accordingly, it is acknowledged that there may be conditions outside of the Property that an Owner or Occupant may find objectionable, and it shall be the sole responsibility of an Owner or Occupant to become acquainted with neighborhood conditions that could affect the Subdivision.
- (D) Construction Activities. Homebuilders engaged by one or more Owners will be engaging in construction activities related to the construction of homes and other improvements on an Estate. Such construction activities may, from time to time, produce certain conditions within the Subdivision, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of persons and the Subdivision. Notwithstanding the foregoing, all Owners agree that such conditions within the Subdivision resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant or their agents to be deemed in violation of any provision of this Declaration.
- (E) Water Runoff. The Property may be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. Water may pond on various portions of the Property having impervious surfaces.
- (F) Budgets. Budgets prepared in conjunction with operation and administration of the Association are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.
- (G) Light and Views. The natural light available to and views from an Estate can change over time due to among other things, additional development and the removal or addition of landscaping. NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.
- (H) Schools. No representations are being made regarding which schools may now or in the future serve the Subdivision.
- (I) Changes to Street Names and Addresses. Declarant retains the right to change, in its sole discretion, the Subdivision's name and the street names and addresses in or within the Subdivision, including the street address of the Estates before or after conveyance to any third-party.
- (J) Location of Utilities. Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.
- (K) Streets, Driveways and Parking Areas. Streets within the Property are maintained and administered by the Association, with the costs incurred by the Association discharged through Regular Assessments levied against Owners. No street within the Property will be maintained or repaired by Kerr County.

**24. VETERAN PURCHASER PARTIAL RELEASE.** Notwithstanding anything contained in the Restrictions to the contrary, a Veteran Purchaser shall be entitled to have a one (1) acre Estate released from Veterans Land Board for a homesite and same shall not be construed as a violation of the above Covenants.

**25. ASSIGNMENT.** The rights and powers of the Declarant reserved herein may be assigned to any person or entity. Any such assignment must be expressed in writing and be recorded in the Official Public Records of Kerr County, Texas. No such assignment shall be deemed to arise by implication.

**26. GOVERNMENTAL REQUIREMENTS.** By acceptance of a deed to an Estate, or initiating construction of a residence or improvements to an Estate, each Owner assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable governmental rules, regulations, and permits, including, but not limited to those promulgated or issued by the Environmental Protection Agency and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 et seq.), and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Water Development Board and Texas Water Commission, related to each Estate, including, without limitation, the provisions of chapters 325 and 331, Texas Administrative Code, and any specific rulings made pursuant to the terms thereof. The foregoing references are made for the benefit of builders and contractors and do not in any way limit the terms and requirements of this covenant and the requirement that all Owners and contractors comply with all governmental regulations, and any plan required by such regulations such as Storm Water Pollution Plan, affecting each Estate and construction site with which they are associated, including delivery to Declarant of a certification of understanding relating to any applicable NPDES permit prior to the start of construction. Each Owner and contractor, by acceptance of a deed to an Estate or undertaking the making of improvements to an Estate, holds harmless and indemnifies Declarant for all cost, loss, or damage occasioned by the failure to abide by any applicable governmental statute, rule, regulation or permit related to the Properties. By acceptance of a deed to an Estate, each

Owner agrees that Declarant and the Association shall have the right to enter upon any Estate on which one or more conditions or activities prohibited by appropriate governmental authority is maintained, or on which there has been a failure to perform any act required by appropriate governmental authority, for the purpose of curing any such violation, provided that the Owner has been given five days prior written notice and has failed to remedy the complained of violation within such time, and each such Owner indemnifies and holds harmless Declarant and the Association from all cost and expense of such curative action and any cost or expense of penalty or fine levied by any governmental authority as a result of the act or failure to act of the Owner with respect to his Estate or the Properties. The foregoing remedy shall be cumulative of all other remedies for violations of provisions of these covenants.

**27. ASSESSMENTS BY AWARD OR JUDICIAL DECREE.** In the event arbitration or litigation is necessary to enforce any provision contained within this Declaration, any and all awards granted by the arbitrator, or damages, penalties, fees, costs, and / or any other charges awarded in the decree shall also constitute an assessment, which shall likewise run with the land, and which shall be secured by the lien created in Article 8 herein.

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

**29. DISPUTE RESOLUTION.**

A. **Introduction And Definitions.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this paragraph 29 (collectively, the "**Parties**") agree To encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this *paragraph 29* applies to all Claims as hereafter defined. As used in this *paragraph 29* only, the following words, when capitalized, have the following specified meanings:

"**Claim**" means:

- i. Claims relating to the rights and/or duties of Declarant or its permitted assigns, under the Documents or the Act.
- ii. Claims relating to the acts or omissions of the Declarant during its control and administration of the Association, any claim asserted against the Architectural Reviewer if the claim relates to any act or omission of the Architectural Reviewer while controlled by the Declarant, and any claims asserted against a Person appointed by the Declarant to serve as a Board member or officer of the Association.
- iii. Claims relating to the design or construction of the Property, Estates, or any Improvement made by or on behalf of the Declarant, or its permitted assigns.

"**Claimant**" means any Party having a Claim against any other Party.

"**Respondent**" means any Party against which a Claim has been asserted by a Claimant.

B. **Mandatory Procedures.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this *paragraph 29*. As provided in *paragraph G* below, a Claim will be resolved by binding arbitration.

C. **Notice.** Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *paragraph 29*. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *paragraph D* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *paragraph D*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Paragraph D* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in *paragraph E* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *paragraph E* is required without regard to the monetary amount of the Claim.

D. **Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action.

E. **Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a

mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Paragraph E*.

F. **Termination Of Mediation.** If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this *Paragraph 29*.

G. **Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *paragraph*. This *paragraph* may not be amended without the prior written approval of the Declarant and Owners holding a Majority of the total votes in the Association.

i. **Governing Rules.** If a Claim has not been resolved after Mediation as required by *paragraph E above*, the Claim will be resolved by binding arbitration in accordance with the terms of this *paragraph G* and the rules and procedures of the American Arbitration Association (“AAA”) or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Kerr County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA’s “Construction Industry Dispute Resolution Procedures” and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this *paragraph G*, this *paragraph G* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

- (1) one arbitrator shall be selected by Respondent, in its sole and absolute discretion;
- (2) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and
- (3) one arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

ii. **Exceptions to Arbitration; Preservation of Remedies.** No provision of, nor the exercise of any rights under, this *paragraph G* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

iii. **Statute of Limitations.** All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *paragraph G*.

iv. **Scope of Award; Modification or Vacation of Award.** The arbitrator shall resolve all Claims in accordance with the Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this *paragraph G*; provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of Applicable Law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Applicable Law; (ii) conclusions of Applicable Law that are erroneous; (iii) an error of federal or state law; or (iv) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

v. **Other Matters.** To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Kerr County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. The arbitrator shall have the power to award recovery of all costs and fees (including

attorney's fees, administrative fees, and arbitrator's fees) to the prevailing party. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

H. **Allocation Of Costs.** Except as otherwise provided in this *paragraph 29*, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

I. **General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

J. **Period of Limitation.**

i. **For Actions by an Owner.** The exclusive period of limitation for any of the Parties to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect for any Common Area Improvements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that an Owner discovered or reasonably should have discovered evidence of the Claim; or (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant conveyed an Estate to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom Declarant initially conveyed the Unit.

ii. **For Actions by the Association.** The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of the Common Elements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Elements, two (2) years and one (1) day after the Turnover Date.

K. **Approval & Settlement.** Notwithstanding any provision in this *paragraph 29* to the contrary, the initiation of binding arbitration for a Claim as required by this *paragraph 29* is subject to the following conditions:

i. **Owner Acceptance.** Each Owner, by accepting an interest in or title to an Estate, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this *paragraph 29*.

ii. **Owner Approval.** The Association may not initiate binding arbitration or any judicial proceeding without the prior approval of Owners holding at least a Majority of the total votes in the Association.

iii. **Funding Arbitration and Litigation.** The Association must levy a Special Assessment to fund the estimated costs of arbitration conducted pursuant to this *paragraph 29* or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

iv. **Settlement.** The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate the settlement of arbitration and litigation, and may execute any document related thereto, such as settlement agreement and waiver or release of claims.

v. **Amendment.** This *subparagraph K of paragraph 29* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding a Majority of the total votes in the Association.

**30. Appendix.** The following appendices are attached to this Declaration and are incorporated herein by reference:


Attachment 1 - Guide to Association's Major Management and Governance Functions

IN WITNESS WHEREOF, the undersigned, being the Declarant, has hereunto set its hand as of the date first written above.

**DARK SKY ESTATES, LLC,**  
A Texas limited liability company

By: Dark Sky Estates Manager, LLC,  
A Texas limited liability company,  
Its Manager

By: The Carnegie Holding Company, LLC.  
A Texas limited liability company.  
Its Manager

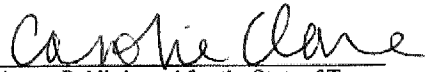
By:   
Name: ROMY MAGUIRE  
Title: Manager

**STATE OF TEXAS**

**COUNTY OF TARRANT**

BEFORE ME, the undersigned authority, on this day personally appeared Romy Maguire Manager of The Carnegie Holding Company, LLC, manager of Dark Sky Estates Manager, LLC, manager of Dark Sky Estates, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacities stated.

SUBSCRIBED TO BEFORE ME, this 23<sup>rd</sup> day of July, 2024.

  
Notary Public in and for the State of Texas

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**BEING 336.82 ACRES OF LAND LYING AND BEING SITUATED IN KERR COUNTY, TEXAS, OUT OF THE JOHN MATCHETT SURVEY NO. 43, ABSTRACT NO. 243; COMPRISING 1) 332.58 ACRES OUT OF THAT 527.5 ACRE TRACT DESCRIBED IN WARRANTY DEED FROM THOMAS WELLBORN TO ERNEST WELLBORN DATED THE 18TH DAY OF JULY, 1927, AND RECORDED IN VOLUME 47, PAGE 429, DEED RECORDS OF KERR COUNTY, TEXAS, AND 2) ALL OF THAT 4.24 ACRE, 100 FT. WIDE STRIP OF FORMER RAILROAD RIGHT-OF-WAY, DESCRIBED AS 3.847 ACRES IN WARRANTY DEED FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO EDWARD LEE WELLBORN, DATED MARCH 1, 1973, AND RECORDED IN VOLUME 163, PAGE 520, DEED RECORDS OF KERR COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING** at a ½" Iron stake found in the Northeast right-of-way line of State Highway No. 27, a 100 ft. wide right-of-way described in deed to the State of Texas, recorded in Volume 53, Page 578, Deed Records of Kerr County, Texas, the Southwest corner of that 6.0 acre old railroad tract described in deed to Lucille Sutherland Walker recorded in Volume 161, Page 353, Deed Records of Kerr County, Texas, the Southeast corner of that called 3.847 acre old railroad right-of-way described in deed to Edward Lee Wellborn recorded in Volume 163, Page 520, Deed Records of Kerr County, Texas, for the Southeast corner hereof, from which a 8" creosote fence post bears 5.2 ft. N 25° 43' E, a concrete right-of-way marker bears 188.36 ft. S 46° 48' E, and the Northeast corner of Survey No. 43 bears approximately 13,672 ft. N 00° 06' E;

**THENCE** generally along a fence, with said highway right-of-way line, the Southwest line of said called 3.847 acre tract, N 46° 40' 46" W 1845.58 ft. to a ½" Iron stake with "MDS" cap found at fence post, the Southeast corner of that 26.25 acre tract described in deed to the City of Kerrville and the County of Kerr recorded in Volume 581, Page 764, Real Property Records of Kerr County, Texas, the Southwest corner of said called 3.847 acre tract, for the Southwest corner hereof;

**THENCE** with the East line of said 26.25 acre tract, generally along a fence, N 00° 26' 58" W at 138.48 ft. passing the Northwest corner of said called 3.847 acre tract, continuing with the West line of said 527.5 acre tract, 1724.08 ft. to a 10" creosote fence post, the Northeast corner of said 26.25 acre tract, the Southeast corner of that 113.073 acre tract described in deed to Green Village Enterprises LLC recorded in Doc. No. 22-05560, Official Public Records of Kerr County, Texas;

**THENCE** with the East line of said 113.073 acre tract, the West line of said 527.5 acre tract, generally along a meandering fence, N 00° 13' 43" W 7854.48 ft. to a 12" cedar fence post with a ½" Iron stake found at its base, the Northeast corner of said 113.073 acre tract, the Southeast corner of Tract 7 of Creekwood II-C, a subdivision of record in Volume 6, Page 224, Plat Records of Kerr County, Texas;

**THENCE** with the East line of said Tract 7, the West line of said 527.5 acre tract, generally along a fence, N 00° 04' 25" W 432.21 ft. to a 12" metal fence post, the Southwest corner of that 77.75 acre tract described in deed to R.W. Armstrong recorded in Volume 896, Page 726, Real Property Records of Kerr County, Texas, for the Northwest corner hereof;

**THENCE** crossing said 527.5 acre tract, with the South line of said 77.75 acre tract, generally along a fence, S 89° 59' 01" E 1409.46 ft. to a 8" cedar fence post in the East line of said 527.5 acre tract, the Southeast corner of said 77.25 acre tract, the Southwest corner of Tract 5 of Creekwood III, a subdivision of record in Volume 6, Page 244, Plat Records of Kerr County, Texas, the Northwest corner of that 562.3 acre tract described in Partition Deed to Lucille Walker, recorded in Volume 193, Page 170, Deed Records of Kerr County, Texas, for the Northeast corner hereof;

**THENCE** with the East line of said 527.5 acre tract, the West line of said 562.3 acre tract, generally along a meandering fence, S 00° 06' 30" W 11276.49 ft. to the PLACE OF BEGINNING, containing 336.82 acres of land within these metes and bounds. Bearings based on True North per G.P.S. A plat of this survey has been prepared.



**Save and except the following 11.33 acre tract:**

**BEGINNING** at the southernmost southeast corner of said 336.74 acre tract, a found 1/2 inch diameter iron rod in the northeast line of State Highway 27, a one hundred (100) foot wide public right-of-way; said rod marks the southwest corner of an 331.74 acre tract recorded in Volume 969, Page 651, Official Public Records of Kerr County and the southeast corner of the herein described tract;

**THENCE**, with the southwest line hereof and the northeast right-of-way line of said State Highway 27, **N46°38'52"W (N46°40'45"W)** for a distance of **1200.49 feet** to a set 5/8" diameter iron rod with plastic cap stamped "WES 10194410" marking the south corner of Tract 24 Dark Sky Estates and the west corner of the herein described tract;

**THENCE**, with the northwest line hereof and the southeast line of said Tract 24 Dark Sky Estates, **N70°50'26"E** for a distance of **927.00 feet** to a set 5/8" diameter iron rod with plastic cap stamped "WES 10194410" in the west line of said 331.74 acre tract marking the southeast corner of Tract 24 Dark Sky Estates and the northeast corner of the herein described tract;

**THENCE**, with the east line hereof and the west line of said 331.74 acre tract, **S00°08'17"W (S00°06'30"W)** for a distance of **1128.36 feet** to the **POINT OF BEGINNING**, containing **11.33 acres**, more or less, within these metes and bounds, a companion document to a plat of this survey.

**ATTACHMENT 1**

**GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS**

This Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Board may, from time to time, use this Guide to consider what functions, if any, to delegate to one or more managers, managing agents, employees, or volunteers. Because laws and practices change over time, the Board should not use this Guide without taking account of applicable changes in law and practices.

<b>major management &amp; governance functions</b>	<b>Performed by Association officers or directors</b>	<b>Delegated to Association employee or agent</b>
<p><b><u>FINANCIAL MANAGEMENT</u></b></p> <p>To adopt annual budget and levy assessments, per Declaration.</p> <p>Prepare annual operating budget, periodic operating statements, and year-end statement.</p> <p>Identify components of the property the Association is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule. Annually update same.</p> <p>Collect assessments and maintain Association accounts.</p> <p>Pay Association's expenses and taxes.</p> <p>Obtain annual audit and income tax filing.</p> <p>Maintain fidelity bond on whomever handles the Association funds.</p> <p>Report annually to Members on financial status of the Association.</p>		
<p><b><u>PHYSICAL MANAGEMENT</u></b></p> <p>Inspect, maintain, repair, and replace, as needed, all components of the property for which the Association has maintenance responsibility.</p> <p>Contract for services, as needed to operate or maintain the property.</p> <p>Prepare specifications and call for bids for major projects.</p> <p>Coordinate and supervise work on the property, as warranted.</p>		
<p><b><u>ADMINISTRATIVE MANAGEMENT</u></b></p> <p>Receive and respond to correspondence from Owners, and assist in resolving Owners' problems related to the Association.</p> <p>Conduct hearings with Owners to resolve disputes or to enforce the Documents.</p> <p>Obtain and supervise personnel and/or contracts needed to fulfill Association's functions.</p> <p>Schedule Association meetings and give Owners timely notice of same.</p> <p>Schedule Board meetings and give directors timely notice of same.</p> <p>Enforce the Documents.</p> <p>Maintain insurance and bonds as required by the Documents or Applicable Law, or as customary for similar types of property in the same geographic area.</p> <p>Maintain Association books, records, and files.</p>		

<b>major management &amp; governance functions</b>	<b>Performed by Association officers or directors</b>	<b>Delegated to Association employee or agent</b>
Maintain Association's corporate charter and registered agent & address.		
<p><b><u>OVERALL FUNCTIONS</u></b></p> <p>Promote harmonious relationships within the community.</p> <p>Protect and enhance property values in the community.</p> <p>Encourage compliance with Documents and Applicable Laws and ordinances.</p> <p>Act as liaison between the community of Owners and governmental, taxing, or regulatory bodies.</p> <p>Protect the Association and the property from loss and damage by lawsuit or otherwise.</p>		

# FILED AND RECORDED

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COVENANTS, & CONDITIONS

**Filing and Recording Date:** 7/30/2024 10:50:48 AM

**Number of Pages:** 28

**GRANTOR** DARK SKY ESTATES LLC

**GRANTEE** DARK SKY ESTATES

**Returned To:** Kelly Hart & Hallman  
201 Main Street  
Fort Worth, TX 76102

I hereby certify that this instrument was FILED on the date and times stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Kerr County, Texas.



*Nadene Alford*

**Nadene Alford, Clerk**

Kerr County, Texas

By: KIM GATLIN DEPUTY CLERK

NOTICE: It is a crime to intentionally or knowingly file a fraudulent court record or instrument with the Clerk.

**DO NOT DESTROY - This document is part of the Official Public Record.**

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