

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE HEIGHTS OF KERRVILLE

This Declaration of Covenants, Conditions and Restrictions is made and entered into the undersigned (collectively, "Declarant").

RECITALS

A. Declarant is the owner of that certain real property located in Kerr County, Texas, which is a subdivision in Kerr County, Texas, per the plat recorded in Volume 8, Page 125, Plat Records, Kerr County, Texas ("Plat").

B. Declarant has devised a general plan of development for the real property described on the Plat which provides a common scheme of development designed to protect and preserve the character and natural beauty of such real property over a long period of time.

C. This general plan will benefit said real property in general and the parcel or tracts therein, the Declarant and each successive owner of an interest in such real property.

D. Therefore the Declarant desires to restrict such real property according to these covenants, conditions and restrictions in furtherance of this general development plan.

NOW, THEREFORE, it is declared that all of the real property specified in the Plat, except Lots 58, 60 and 61 on the Plat, ("Property"), subject to the provisions of paragraph 6.6, shall be held, sold, occupied, transferred and conveyed subject to the following easements, restrictions, covenants, charges, liens and conditions (collectively, these "Restrictions" or this "Declaration").

ARTICLE 1

Definitions

1.1 "Declarant" shall mean the undersigned and any assignee or successor thereof as set forth in writing specifying transfer of Declarant's rights hereunder and recorded by the undersigned; excluding any transfer of a Parcel or Tract to an Owner.

1.2 "Parcel" or "Tract" shall mean each lot, tract, parcel and portion of the Property as shown, described and established by the Plat of the Property referenced herein.

1.3 "Owner" shall mean the record owner or owners of the fee simple title to any Tract or Parcel in the Property. Even if there are several owners of a Tract the term "Owners" shall mean all of such owners of such Tract. Owner shall not include any lienholder, secured party, mortgagee, lessee, invitee or guest, but even though an Owner may lease a Tract or permit invitees or guests, and may delegate to each tenant, invitee or guest, the right and easement of use and enjoyment in and to the Roads, such parties and such use and enjoyment by such parties shall be subject to, and as provided in, the provisions of this Declaration, and any lease shall be provided to the Association, shall provide that the terms thereof shall be subject in all respects to the provisions of this Declaration and any failure by the lessee, invitee or guest to comply with the terms and provisions of this Declaration shall be and constitute

a default under such lease or agreement and shall be a violation of this Declaration with the same consequences as if such Owner delegating such right and easement had violated the same.

1.4 "Association" shall mean an incorporated association formed under the name The Heights of Kerrville Homeowners Association, a non-profit corporation formed under the Business Organization Code of the State of Texas. Each Owner of a Parcel or Tract shall become a Member of the Association contemporaneously with acquiring a Parcel or Tract, without any further documentation of any kind.

1.5 "Member" shall mean an Owner.

1.6 "Board" shall mean the Board of Directors of the Association.

1.7 "Residence" shall mean a detached building designed for and used as a dwelling by a single family and constructed on one or more Tracts.

1.8 "Roads" shall mean the common areas designated by Declarant and/or on the Plat of the Property, which shall include Lots A and 59 on the Plat and the roads and easements for ingress and egress established, described, shown and created by and on the Plat of the Property, and each Owner, and such Owners' tenants, guests and invitees, shall have the right and easement of use and enjoyment in and to the Roads in common with other Owners and Declarant, and their guests, tenants and invitees, which right and easement shall be appurtenant to such Owner's Tract, provided that the Roads shall be private (with security and access controlled by the Association). The Roads have been transferred by Declarant to the Association.

1.9 "Single Family" shall mean a group of individuals related by blood, adoption or marriage or a number of unrelated roommates not exceeding the number of bedrooms in the Residence.

1.10 "Owner's Approval" shall mean a fifty-one percent (51%) of the votes to be cast of Members at a meeting of Members duly called and at which a quorum of Members shall be present in person or by proxy subject to and as limited by applicable law, as amended.

ARTICLE 2

Architectural Control Committee

2.1 Declarant shall designate and appoint an Architectural Control Committee consisting of not less than three (3) persons which shall serve at the pleasure of Declarant. After Declarant has conveyed to third parties all of the Tracts in the Property, the Architectural Control Committee shall serve at the pleasure of the Board. Members of the Board may serve on the Architectural Control Committee.

2.2 The Architectural Control Committee must review and approve in writing the construction of any building, fence or other structure and any exterior addition, change, or alteration in any building, fence or other structure and the term "structure" as used in this Declaration means any improvement on a Tract including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

2.3 To obtain approval to do any of the work described in paragraph 2.2 immediately above, an Owner must submit an application to the Architectural Control Committee showing the plans and specifications for the proposed work, which plans and specifications shall detail the nature, shape, height, materials, colors and location of the proposed work.

2.4 The Architectural Control Committee shall review applications for proposed work in order to (i) ensure conformity of the proposal with these Restrictions, and (ii) ensure harmony of external design in relation to surrounding structures and topography. An application can be rejected for providing insufficient information. The Architectural Control Committee shall have broad, discretionary authority to interpret and apply these standards. In rejecting an application, the Architectural Control Committee should detail the reasons for rejection and suggest how the applicant could remedy the deficiencies.

2.5 If the Architectural Control Committee fails either to approve or reject an application for proposed work within sixty (60) days after submission, then the Architectural Control Committee approval shall not be required, and the applicant shall be deemed to have fully complied with this Article.

2.6 The members of the Architectural Control Committee shall not be entitled to compensation for, nor liable for damages, claims or causes of action arising out of, services performed pursuant to these Restrictions. Any two members of the Architectural Control Committee may approve or disapprove any matter before the Architectural Control Committee. The Architectural Control Committee may for good cause shown approve variances as to any of these Restrictions but such variance shall require approval of a majority of the members of the Architectural Control Committee. The determination and decision by the Architectural Control Committee as to whether a variance should be granted shall be final and binding on all Owners, and neither the Architectural Control Committee nor any of its members shall be liable for damages, claims or causes of action arising out of any decision or action performed or taken hereunder. The Architectural Control Committee may consider in granting or denying any variance the nature of the use of the land, the structure to be constructed, the topography of the land, land use and structures on surrounding areas, and the effect, if any, of the variance on the appearance of the completed structure. The Architectural Control Committee may impose such conditions as it deems appropriate in granting any such variance. Any such variance, if granted, shall apply only to the particular property and situation specified, and shall not amend this Declaration, or any provisions hereof nor shall it be a variance as to any other property or situation.

ARTICLE 3

Exterior Maintenance/Roads/Assessments

3.1 If any Owner of any Tract or Parcel fails to maintain the Tract or Parcel in a neat and orderly manner, the Declarant or the Association shall have the right, through its agents and employees, to enter the Tract or Parcel in order to repair, maintain, and restore the Tract or Parcel, including landscaping, and the exterior of any building and other improvements located on the Tract or Parcel, all at the expense of the Owner. Such expense shall be an assessment ("Maintenance Assessment") against such Owner and such Owner's Tract(s) to the same extent as provided in this Article 3 for other assessments.

3.2 The Declarant has dedicated and created the Roads, as private roads, under and by the Plat and upon the sale and transfer of the first Tract Declarant will convey the Roads to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements and mineral interests outstanding and of record in Kerr County, Texas.

3.3 The Roads shall be jointly used by the Owners and the Association for roadways, walkways, ingress and egress, for driveway purposes, and for the convenience and comfort of guests, invitees and tenants of the Owners and occupants of the Property and as such shall be private roads, not dedicated to the public; provided, that the Declarant may grant an easement for use of the Roads as access thoroughfare to or from properties contiguous or adjacent to the Property. Persons using the Roads in accordance with this Declaration shall not be charged any fee for such use. The Roads shall be used with reason and judgment so as not to interfere with the primary purpose of the Roads. The foregoing shall not

be construed as forbidding the granting of appropriate and proper easements for installation, repair and replacement of utilities and other proper services necessary for the orderly development and occupancy of the Property and improvements on the Property.

3.4

- A. The Roads shall be owned and held subject to the terms hereof and shall be maintained in good condition and repair, said maintenance to include without limiting the generality of the foregoing, the following:
- i. Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability,
 - ii. Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition,
 - iii. Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines,
 - iv. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as may be or have been installed by Declarant, if any, or otherwise authorized by the Association,
 - v. Maintaining the front gate in a good condition and state of repair, and
 - vi. Maintaining all landscaping areas and making such replacements of shrubs and other landscaping as is necessary.

All portions of the Roads shall be maintained as outlined above at the expense of the Association; provided that the Owners, as Members of the Association shall pay assessments for, and shall share in, such expenses on an equal basis, i.e., divided equally among the Owners based upon the number of Tracts owned ("Prorata Share" per Tract). The initial assessment ("Initial Assessment") shall be established by Declarant at the time of conveyance of the Roads to the Association. The assessments provided for herein shall commence as to all Tracts on the first day of the month following conveyance of the Roads and shall be payable in equal installments, in advance, on the first day of each month. A change in the assessments of more than twenty percent (20%) over the Initial Assessment shall require Owner Approval.

- B. The arrangement, improvement and location of the Roads shall not be changed except by Owner Approval at an annual or special meeting held as provided in paragraph 3.4.A above. By Owner Approval a third party may be appointed as an agent to maintain the Roads in a manner as above outlined and such third party may receive for such agency a fee to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the Owners through the Association.
- C. Each Owner hereby covenants and agrees and shall be deemed to covenant and agree to pay such maintenance assessments and charges for the improvement, repair and maintenance of the Roads, and as may be fixed, established and collected from time to time pursuant to the provisions hereof. The assessments, together with such interest thereon and costs of

collection, shall be a continuing lien upon the Tract owned by each Owner against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, shall also be the continuing personal obligation of the person or persons who owned such Tract at the time when the assessment fell due.

- D. Subject to Owner Approval the Board shall make an estimate of the net charges and maintenance expenses to be paid during subsequent years including a portion of anticipated repair and maintenance costs in the future (the "Estimated Cash Requirement"). The Estimated Cash Requirement shall be submitted to the Owners at a meeting of Members of the Association and upon Owner Approval shall be assessed to each Owner according to the Pro Rata Share of such Owner. If said sum estimated proves inadequate for any reason, including nonpayment of any Owner's assessment, a further assessment may be assessed ("Special Assessment") which shall be assessed to the Owner's in the same manner as the Estimated Cash Requirement. Each Owner shall be obligated to pay assessments made pursuant to this paragraph. All funds collected hereunder shall be expended for the purposes designated herein. The time and place for payment of assessments shall be established by the Board. There is created by recordation of this Declaration a present and continuing lien upon each Tract or Parcel to secure the payment of all assessments levied pursuant to the terms hereof, including each Owner's Pro Rata Share of the Estimated Cash Requirement, any Maintenance Assessment and Special Assessment. Each assessment shall be a separate, distinct and personal debt and obligation of the Owner against whom the same is assessed. Any delinquent assessment shall, after thirty (30) days' delinquency, bear interest from original due date at the rate of ten percent (10%) per annum. In the event of a default or defaults in payment of any assessment or assessments, and in addition to any other remedies herein or by law provided, any non-defaulting Owner may enforce each such obligation as follows:
- (i) By suit or suits at law by the Association to enforce each assessment obligation against the Owner personally obligated to pay the assessment and/or to foreclose the lien against the Tract(s); each such action to be authorized by the Board and any judgment rendered in any such action to include a sum for reasonable attorneys' fees, together with the costs of such action.
 - (ii) At any time an Owner is in default in paying such assessments, the Board may give a notice to the defaulting Owner, which notice shall state the date of the delinquency and the amount of the delinquency, and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the notice of assessment may be recorded against the Tract(s) of such delinquent Owner. Such notice of assessment shall state (1) the name of the record Owner, (2) a description of the Tract(s) against which the assessment is made, (3) the amount claimed to be due and owing, (4) that the notice of assessment is made pursuant to the terms of this Declaration (giving the date of execution and the date, book and page references of the recording hereof in the County of Kerr), and (5) that a lien is claimed against the described Tract(s) in an amount equal to the amount of the stated delinquency. The lien herein specified shall attach to such delinquent Owner's Tract(s). Each default shall constitute a separate basis for a notice of assessment or a lien. Any such lien may be enforced by action in court and attorneys' fees shall be payable in connection therewith.
 - (iii) The delinquent Owner will pay expenses which may be incurred by the Association and any non-defaulting Owner, in enforcing the terms hereof, or in

any suit to which they may become a party where this Declaration is in any manner involved and all expenses incurred in presenting a claim against the estate of a decedent or a bankrupt. In connection with a nonjudicial foreclosure, the delinquent Owner will pay attorney's fees to the extent permitted by applicable law.

3.5 The Association shall obtain public liability insurance with limits determined by the Association, but in no event less than \$3 million.

3.6 Each and every charge or burden imposed or that may be imposed upon the Tracts or Parcel pursuant to any provision of this Declaration is, and shall at all times be, senior and prior to the lien or charge of any mortgage or deed of trust affecting any Tract or Parcel or any part thereof, or any improvements now or hereafter placed thereon except as provided in paragraph 3.11 in this Article; but a breach of any of the covenants or conditions hereof shall not defeat or render invalid the lien or charge of any such mortgage or deed of trust.

3.7 If any Owner shall sell or transfer or otherwise terminate his interest as owner in a Tract, then from and after the effective date of such sale, transfer or termination of interest, such party as the case may be shall be released and discharged from any and all personal obligations, responsibilities and liabilities under this Declaration as to such Tract, except those which have already accrued as of such date.

3.8 It is expressly understood that the parties are not dedicating the Roads for use by the general public, but only for the Owners.

3.9 Declarant, for each Tract owned by it within the Property, hereby covenants and agrees, and each purchaser of any Tract by acceptance of a deed therefor, whether or not it be deemed to covenant and agree, to pay to the Association the assessments and charges specified in this Declaration.

3.10 Written notice of the assessment shall be delivered or mailed to every Owner subject thereto.

3.11 The lien of the assessments provided for herein shall be subordinate and inferior to the lien or equivalent security interest of any first mortgage or deed of trust now or hereafter placed upon a Tract subject to assessment if the mortgage or deed of trust is placed upon the Tract at a time when no default has occurred and is then continuing in the payment of any portion of the assessment for such Tract; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the time when the holder of any first mortgage or deed of trust comes into possession of a Tract under the provisions of the mortgage, by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure or the time when a purchaser at any such foreclosure sale comes into possession, except for claims for a share of such charges or assessments resulting from a reallocation of such charges or assessments to all Tracts including the mortgaged Tract in question. Such sale shall not relieve such Tracts from liability for the amount of any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

3.12 The omission of the Board, before the expiration of any year, to give notice of the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, for that or any subsequent year, but the assessment shall continue until notice is given.

ARTICLE 4

Use Restrictions and Architectural Standards

4.1 All Tracts and Parcels shall be used exclusively for one (1) Single Family, as herein defined, Residence, as herein defined, and the other associated uses permitted hereunder.

4.2 All Tracts shall be maintained in a neat and orderly manner.

4.3 No helicopters, trailers, boats, recreational vehicles (RVs), campers, buses or large trucks shall be parked on any Road, nor located on any Tract; provided that RVs, campers or boats, may, if approved by Architectural Control Committee be kept in garages or barns which are approved by the Architectural Control Committee.

4.4 No professional, business or commercial activity to which the general public is invited shall be conducted on any Tract or Parcel.

4.5 No church or other place of worship shall be erected on the Property.

4.6 No building shall be erected on any Tract other than a Single Family Residence and a guest home, a detached garage and such appurtenant structures as may be approved from time to time by the Architectural Control Committee, and the foregoing shall be constructed within the periods specified in a separate agreement entered into by Declarant with an Owner, as amended. No garages or barns shall face the Roads. Any garage, guest house, appurtenant structure and barn shall be located on a Tract and face as approved by, and subject to the approval of, the Architectural Control Committee. All buildings and other structures shall be of new construction. In no event shall any prefabricated buildings, mobile home, modular home, or existing residences or garages be moved onto any Tract. Modular homes, manufactured homes, manufactured housing, house trailers and mobile homes shall be prohibited.

4.7 No guest home shall be constructed prior to the construction of the main residential dwelling. No leases shall be permitted unless approved by the Board of the Association or a hardship of the Owner. No bed and breakfast or vacation rentals shall be permitted.

4.8 The main residential dwelling constructed on any Tract must have an air conditioned and heated ground floor area of not less than 2400 square feet, exclusive of open or screened porches, terraces, patios, driveways, enclosed swimming pools, carports, and garages. The exterior construction of any building must be completed within one year from the date of commencement of the construction. The exterior building design shall be as approved by the Architectural Control Committee and all exterior colors, textures, and materials must be compatible not only with this specified design motif, but also with adjacent and surrounding Tracts and the over-all appearance of the Property. The exterior walls of all residential buildings shall be constructed with brick, masonry, rock, or stucco for at least 90% of the total exterior wall area or other materials as may be approved by the Architectural Control Committee, in its sole discretion. Wall materials used on all Tracts shall be restricted to those types and colors approved by the Architectural Control Committee. The surface of all roofs of principal and secondary structures including garages, guest houses, and barns shall be of slate, stone, standing seam metal, concrete tile, clay tile or other tile of a ceramic nature or they may be of a metal of a style and design and color approved by the Architectural Control Committee. All asphalt, wood-shingle and/or built-up roofs are strictly prohibited. Roofs that in the Architectural Control Committee's opinion reflect light in a manner so as to make the roof "shiny" are prohibited.

4.9 No structure, walls, fences or hedges shall be built in front of the Residence or closer to any perimeter property line of any Tract or Parcel than the setback set forth on the Plat of the Property. Fences, walls and hedges shall not enclose more than twenty percent (20%) of the area of any Tract or

Parcel and shall be otherwise located thereon around the Residence, as approved by the Architectural Control Committee, and shall be constructed of materials approved by Architectural Control Committee.

4.10 No Parcel or Tract may be subdivided. If multiple Parcels or Tracts are used as one building site for one residence such Parcels and Tracts may be consolidated for such purpose and the restrictions set forth herein shall be applicable to one consolidated site and shall be varied to permit such consolidation.

4.11 No noxious or offensive activity shall be conducted on any Tract that may be or may become an annoyance or nuisance to other Owners within the Property.

4.12 No signs of any type, except onsite sale signs for that Tract, shall be allowed on any Tract which can be seen from the Roads and all signs shall have been approved by the Architectural Control Committee or comply with sign criteria adopted by such Committee.

4.13 No oil well drilling, development, or refining and no mineral quarrying or mining operations of any kind shall be permitted on any Tract.

4.14 No Tract shall be used or maintained as a dumping ground for rubbish or trash. All garbage and other waste shall be kept in sanitary containers. There shall be no burning or incineration of trash or garbage. Leaves, brush or other debris may be burned only in a safe and proper manner and in accordance with the rules and regulations promulgated from time to time by the Architectural Control Committee.

4.15 In the interest of public health and sanitation, and so that the above-described Property and all other land in the same locality may be benefited by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wild life, and other public uses of such property, no Tract or Parcel may be used for any purpose that would result in the pollution of any waterway that flows through or adjacent to such Tract or Parcel by refuse, sewage, or other material that might tend to pollute the waters of any such stream or streams or otherwise impair the ecological balance of the surrounding lands.

4.16 The raising or keeping of livestock, cattle, sheep, goats, horses, swine or hogs on the Property is prohibited. Domestic pets may be kept on the Property provided that the same are maintained within an approved enclosure or controlled on a leash or similar-restraint.

4.17 Hunting shall not be permitted.

4.18. Berms, dams, other impoundment structures, low water bridge crossings and the like may be constructed provided the same permit the reasonable flow of water in creeks or streams on the Property and provided the same comply with all applicable governmental laws and regulations, if any, or as approved by Architectural Control Committee.

4.19 After the completion of construction of the Residence on a Tract the Owner of such Tract shall construct a concrete or asphalt driveway from the Roads or as approved by the Architectural Control Committee.

4.20 No chain link or barbed wire fences shall be erected on any Tract. All fencing shall be in compliance with paragraph 4.9 and shall be approved by the Architectural Control Committee. Fences shall not exceed six (6) feet and will only be permitted as provided in this paragraph 4.20 and in paragraph 4.9.

4.21 Interior access gates to a Tract shall be allowed and all materials, designs and styles shall be compatible with the overall appearance of the Property and shall be approved by Architectural Control Committee.

4.22 No mercury or sodium vapor security lights shall be allowed. No dusk until dawn lighting shall be allowed. All exterior landscape and decorative lighting shall be approved by Architectural Control Committee. Nothing shall be done in any part of the Property, nor shall any outside lighting or loudspeakers or other sound-producing devices be used, which, in the judgment of the Architectural Control Committee, may be or become an unreasonable annoyance or nuisance to the other Owners. Said Architectural Control Committee's decision as to all such matters shall be conclusive and binding on all parties.

4.23 No cellular or commercial towers shall be located on, nor constructed on the Property.

4.24 Except for temporary service poles during construction no electricity poles or lines shall be erected along the Roads on the Property and no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Property whether upon individual Tracts, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Property, and all utility service facilities shall be buried underground unless otherwise required by a public utility. All utility meters, equipment air conditioning compressors and similar items must be visually screened and located in areas designated by the Architectural Control Committee. Wind energy and solar shall be permitted only upon approval of, and if approved by, the Architectural Control Committee as to appearance, size and location.

4.25 No antenna shall be greater than ten (10) feet above a roof, nor shall any antenna be visible from any roadway.

4.26. No Residence shall exceed forty (40) feet in height measured from finished grade to the highest point of the roof peak and shall not be more than two (2) stories as seen from the Roads.

4.27. No Residence shall be constructed next to or directly across the street from a Residence with the same front exterior design. The Architectural Control Committee shall have the right to not approve plans for construction of a Residence with a front exterior design that it deems, in its sole judgment, to be the same as a Residence located next to or across the street from the proposed Residence.

4.28. Each Residence erected on any Tract shall provide garage space for a minimum of two (2) conventional automobiles.

4.29. All retaining walls shall be constructed of stone, brick or other masonry material as approved by the Architectural Control Committee.

4.30 All clearing, excavation and alteration of any Tract shall be limited to that which is necessary for construction of the Residence on such Tract, as determined by, and subject to the standards and requirements of, the Architectural Control Committee.

ARTICLE 5

Creation

5.1 The Owners shall be Members of the Association. Each Owner of a Tract or Parcel, including Declarant, shall automatically be a Member of the Association. Association membership shall be appurtenant to ownership of a Tract or Parcel.

Transfer of Membership

5.2 Association membership shall only be transferred upon the conveyance of a Tract or Parcel in fee by an Owner and membership shall not be assigned, pledged, or transferred in any other way. Any attempt to make a transfer prohibited hereby shall be void.

Management of Association

5.3 The Association may be incorporated as a nonprofit corporation. The Association shall be managed by the Board pursuant to the procedures set forth in the Association's Articles of Incorporation and Bylaws, subject to the provisions of this Declaration.

Membership Voting

5.4 The Association shall have one class of voting membership and each Owner and Declarant, subject to and with the exception of the rights of Declarant provided in this Declaration, shall be entitled to one (1) vote for each Tract owned. When more than one person or entity holds an interest in any Tract or Parcel, all such persons or entities shall be Members.

Membership Meetings

5.5 There shall be at least one meeting of the membership each year. At that meeting, the Owners shall elect a Board consisting of three (3) or more directors, vote on any other matters the Board chooses to place before the membership, and discuss any matter of Association business that the Board or any Owner wishes to bring before the entire membership. Quorum and notice requirements for the Association meetings shall be as set forth in the Bylaws of the Association. Notwithstanding any contrary provision contained herein or in the Bylaws of the Association, until the Declarant has conveyed all of the Tracts within the Property to third parties Declarant shall appoint the Directors who need not be Members of the Association and the officers of the Association, who need not be Members of the Association.

ARTICLE 6

General Provisions

6.1 The Declarant or the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all of these Restrictions. The Board may adopt rules that do not conflict with law or the other governing documents. On request, Owner will be provided a copy of any rules. If the Association complies with all applicable notice requirements, an Owner is liable to the Association for all costs and reasonable attorney's fees incurred by the Association in collecting delinquent assessments, foreclosing the Association's lien and enforcing this Declaration or any governing documents. The Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Association's lien, or enforce or enjoin a violation of this Declaration or any governing documents. An Owner may bring an action against another Owner to enforce or enjoin a violation of this Declaration or

any governing documents. The Association may access an Owner's Tract to remedy a violation of this Declaration or any governing documents. If an Owner violates this Declaration or any governing documents, the Association may suspend the Owner's rights under this Declaration or any of the governing documents in accordance with law and impose fines until the violation is cured. Failure to enforce any of the Restrictions shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. All waivers must be in writing and signed by the party to be bound.

6.2 Invalidation of any one of these Restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

6.3 These Restrictions are for the purpose of protecting the value and desirability of the Property. Consequently, they shall run with the Property and shall be binding on all parties having any right, title, or interest in the Property in whole or in part, and their heirs, successors, and assigns. These Restrictions shall be for the benefit of the Property, each Tract or Parcel, and each Tract or Parcel Owner.

6.4 These Restrictions of this Declaration shall be effective for a term of twenty (20) years from the date this Declaration is recorded, after which period these Restrictions shall be automatically extended for successive periods of ten (10) years unless terminated by the Owners of all of the Tracts within the Property in writing; provided however, Declarant shall have and hereby reserves the right, at any time and from time to time, before it has conveyed to third parties 85% of the Tracts within the Property to appoint a majority of the Board of the Association, to approve any amendment of this Declaration or the Bylaws of the Association and without joinder or consent of any Owner or other party, to amend this Declaration, by an instrument in writing, duly executed and acknowledged by Declarant only, and recorded in the office of the County Clerk of Kerr County, for the purpose of correcting any typographical or grammatical error or any ambiguity or inconsistency appearing herein and / or to amend any of the Restrictions, as determined solely by Declarant, in its sole discretion to be deemed necessary or appropriate for the benefit of the overall development. These Restrictions and this Declaration may be amended by 67% of the votes of the Members and Owners at a meeting of the Association held in accordance with the provisions of the Bylaws of the Association and this Declaration, subject to the provisions and requirements of this Declaration regarding amendments and Declarant rights. Neither any amendment nor any termination shall be effective until recorded in the Real Property Records of Kerr County, Texas, and all requisite governmental approvals have been obtained.

6.5 This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Property.

6.6 The Property shall include and there shall be added to the Property any additional real property owned by Declarant as long as such additional real property is:

- (i) contiguous or adjacent to the real property herein described or to any real property contiguous or adjacent to such additional real property; and
- (ii) to be subdivided by Declarant, its successors or assigns, pursuant to a plat filed of record in Kerr County, Texas, indicating that such additional property will constitute an addition to this Declaration and the Property subject hereto; and
- (iii) to be developed by Declarant in a manner consistent with the concept contemplated by this Declaration.

Such additional real property may become subject to this Declaration by Declarant who may, without the consent of any Owner, which consent is expressly waived by each Owner, at any time and

from time to time, add to this Declaration and to the concept hereof any such property which it presently owns or which it may hereafter own, by filing of record a supplement to this Declaration, which shall extend the concept of the covenants, conditions and restrictions of this Declaration to such additional real property; provided, however, that such supplement may contain such complementary additions and modifications of the different character, if any, of the added properties and as are not inconsistent with the concept of this Declaration. In no event, however, shall such supplement modify or add to the covenants established by this Declaration. Declarant may make any such addition even though at the time such addition is made, Declarant is not the owner of any portion of the property described herein. Each supplement may designate the number of separate parcels or tracts comprising the properties added or such designation may be deferred to further and subsequent supplements as herein provided. Each such separate parcel or tract shall constitute a Parcel or Tract within the meaning of this Declaration.

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

6.8 Any notice required to be given to any Member or Owner or otherwise under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mails, postage prepaid, addressed to the last known address of the person to whom it is addressed, as appears on the records of the Association at the time of such mailing.

This Declaration is executed this 5 day of March, 2014.

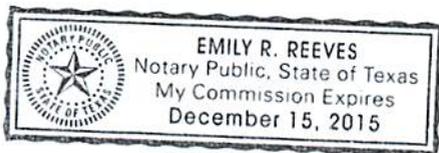
KERRVILLE HEIGHTS, LLC

BY: [Signature]
Scott Kocurek, Manager
- DECLARANT -

STATE OF TEXAS §

COUNTY OF Dallas §

This instrument was acknowledged before me on March 5th, 2014, by Scott Kocurek, Manager of KERRVILLE HEIGHTS, LLC, a Delaware limited liability company, on behalf of said company.



[Signature]
Notary Public, State of Texas

FILED AND RECORDED
At 1:25 o'clock PM
STATE OF TEXAS
COUNTY OF KERR



MAY 21 2014

Filed by and return to:
DAVID L. JACKSON
Wallace, Jackson & Lohmeyer, PC
Attn: Kathy
820 Main Street, Suite 100
Kerrville, TX 78028

I hereby certify that this instrument was filed in the filed number, sequence on the date and time stamped hereon on me and was duly recorded in the Official Records of Kerr County Texas.
Jannett Pieper, Kerr County Clerk
[Signature], Deputy

FILED AND RECORDED
At 1:00 PM
STATE OF ILLINOIS
COUNTY OF DEKALB
JAN 14 2014



NOTICE: This document is a true and correct copy of the original as filed with the County Clerk of DeKalb County, Illinois. It is not a certified copy. The County Clerk of DeKalb County, Illinois, is not responsible for the accuracy or completeness of the information contained herein. The County Clerk of DeKalb County, Illinois, is not responsible for the accuracy or completeness of the information contained herein.

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Bylaws

Property Owners Association: HEIGHTS OF KERRVILLE HOMEOWNERS ASSOCIATION, established by the Certificate of Formation filed with the Secretary of State of Texas on March 5, 2014 under file number 801946334 (copy attached).

Principal Office: 2100 Ross Avenue, Suite 2900, Dallas, Texas 75201. The Property Owners Association may have other offices.

Declaration: The Declaration of Restrictive Covenants of THE HEIGHTS OF KERRVILLE recorded in the Official Public Records, Kerr County, Texas.

Definitions: Capitalized terms used but not defined herein have the meaning set forth in the Declaration.

Voting Members: Members entitled to vote or their proxies.

A. Members

1. *Membership.* Every Owner is a Member of the Property Owners Association as set forth and subject to the terms, provisions and conditions of the Declaration. Membership is appurtenant to and may not be separated from ownership of a Lot. Each Member shall have such vote as is set forth in the Declaration.. When more than one person is an Owner, each is a Member, but votes may be cast for only the property owned.

2. *Place of Meeting.* Members meetings will be held at the Property Owners Association's Principal Office or at another place designated by the Board.

3. *Annual Meetings.* The first Members meeting will be held within two months after the formation of the Property Owners Association. Subsequent regular annual Members meetings will be held on the first Saturday in June.

4. *Special Meetings.* The president may call special meetings. The president must call a special meeting if directed by the Board or by a petition signed by ten percent (10%) of the votes of Members.

5. *Notice of Meetings.* Written notice stating the place, day, and hour of each Members meeting, other than a reconvened meeting, must be given to each Member not less than ten (10) nor more than sixty (60) days before the meeting. The special Members meeting notices must also state the meeting's purpose, and no business may be conducted except as stated in the notice. Notice to a Member is deemed given when hand delivered or mailed. If mailed, notice is deemed given (whether actually received or not) when deposited with the United States Postal Service, postage prepaid.

6. *Waiver of Notice.* A Member may, in writing, waive notice of a meeting. Attendance at a meeting is a waiver of notice of the meeting, unless the Member objects to lack of notice when the meeting is called to order.

7. *Quorum.* Members having a majority of the votes is a quorum. If a Members' meeting cannot be held because a quorum is not present, a majority of the Voting Members who are present may adjourn the meeting. At the reconvened meeting, ten percent (10%) is a quorum (Members having votes). If a quorum is not present, a majority of the Members who are present may adjourn the meeting. At the second reconvened meeting, a majority of the Board is a quorum. Written notice of the place, date, and hour of each reconvened meeting must be given to each Member not more than ten (10) nor less than sixty (60) days before the reconvened meeting.

8. *Majority Vote.* Votes representing more than 50 percent of the votes of Members present at a meeting at which a quorum is present are a majority vote, and when a quorum is present the vote of a majority of the votes of Members qualified to vote and present in person or represented by proxy shall decide any question properly brought before such meeting unless a greater number is required by law, the Declaration or these Bylaws.

9. *Proxies.* Voting Members may vote by written proxy.

10. *Conduct of Meetings.* The president will preside over Members meetings. The secretary will keep minutes of the meetings and will record in a minutes book the votes of the members.

11. *Action without Meeting.* Any action that may be taken at a Members meeting may be taken without a meeting by written consent setting forth the action taken signed by a sufficient number of Members as would be necessary to take that action at a meeting.

B. Board

1. *Governing Body; Composition.* The affairs of the Property Owners Association are governed by the Board. Each director has one vote. The initial Board is composed of the directors appointed in the certificate of formation. Each director must be a Member or, in the case of an entity Member, a person designated in writing to the secretary.

2. *Number of Directors.* The Board consists of three (3) directors.

3. *Term of Office.* The initial directors serve until the first annual meeting of Members.

Successor directors will have a term of one year.

Directors may serve consecutive terms.

4. *Election.* At the first annual meeting of Members, the Voting Members will elect directors to succeed the initial directors. At subsequent annual Members meetings, successors for each director whose term is expiring will be elected. Cumulative voting is prohibited. The candidate or candidates receiving the most votes will be elected. The directors elected by the Voting Members will hold office until their respective successors have been elected.

5. *Removal of Directors and Vacancies*

- a. *Removal by Members.* Any director may be removed, with or without cause, by a majority of the Voting Members. Any director whose removal is sought will be given notice of the proposed removal.
- b. *Removal by Board.* Any director may be removed at a Board meeting if the director—
 - i. failed to attend six (6) consecutive Board meetings;
 - ii. failed to attend fifty percent (50%) of Board meetings within one year;
 - iii. is delinquent in the payment of any Assessment for more than sixty (60) days; or
 - iv. is the subject of an enforcement action by the Property Owners Association for violation of the Governing Documents.
- c. *Vacancies.* A director's position becomes vacant if the director dies, becomes incapacitated, resigns, or is no longer a Member.
- d. *Successors.* If a director is removed or a vacancy exists, a successor will be elected by the remaining directors for the remainder of the term.

6. *Compensation.* Directors will not receive compensation. A director may be reimbursed for expenses approved by the Board.

7. *Powers.* The Board has all powers necessary to administer the Property Owners Association's affairs.

8. *Management.* The Board may employ a managing agent. Declarant, or an affiliate of Declarant, may be the managing agent.

9. *Accounts and Reports.* Accounting and controls must conform to good accounting practices. Accounts will not be commingled with accounts of other persons. The following financial reports will be prepared at least annually:

- a. An income statement reflecting all income and expense activity for the preceding period.
- b. A statement reflecting all cash receipts and disbursements for the preceding period.
- c. A variance report reflecting the status of all accounts in an "actual" versus "approved" budget format.

- d. A balance sheet as of the last day of the preceding period.
- e. A delinquency report listing all Owners who are delinquent by more than [number] days in paying any Assessment and describing the status of any action to collect those delinquent Assessments.

10. *Borrowing.* The Board may borrow money to maintain, repair, or restore the Common Area and for any other purpose, subject to the terms, conditions and provisions of the Declaration as to assessments and Owners approval, if any.

11. *Rights of Association.* With respect to the Common Area, and in accordance with the Declaration, the Property Owners Association will have the right to contract with any person for the performance of various duties and functions. Such agreements require the approval of the Board.

12. *Enforcement Procedures*

- a. *Notice.* Before the Board may (i) suspend an Owner's right to use a Common Area, (ii) file a suit against an Owner other than a suit to collect any Assessment, (iii) foreclose the Property Owners Association's lien, (iv) charge an Owner for property damage, or (v) levy a fine for a violation of the Governing Documents, the Property Owners Association or its agent must give written notice to the Owner by certified mail, return receipt requested. The notice must describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Property Owners Association from the Owner. The notice also must inform the Owner that the Owner (i) is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months and (ii) may request a hearing on or before the thirtieth day after the date the Owner receives the notice.
- b. *Hearing.* If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board or before the Board if the Board does not appoint a committee. If a hearing is to be held before a committee, the notice must state that the Owner has the right to appeal the committee's decision to the Board by written notice to the Board.

The Property Owners Association must hold a hearing under this section not later than the thirtieth day after the date the Board receives the Owner's request for a hearing and must notify the Owner of the date, time, and place of the hearing not later than the tenth day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement will be granted for a period of not more than

ten days. Additional postponements may be granted by agreement of the parties. The Owner or the Property Owners Association may make an audio recording of the meeting.

The hearing will be held in executive session affording the alleged violator a reasonable opportunity to be heard. Before any sanction hereunder becomes effective, proof of proper notice will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered the notice. The notice requirement will be satisfied if the alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may, but will not be obligated to, suspend any proposed sanction if the violation is cured within a 14-day period. Such suspension will not constitute a waiver of the right to sanction violations of the same or other provisions and rules by any person.

- c. *Appeal.* Following hearing before a committee, if any, the violator will have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the managing agent, if any, president, or secretary within 30 days after the hearing date.
- d. *Changes in Law.* The Board may change the enforcement procedures set out in this section to comply with changes in law.

C. Board Meetings

1. *Regular Meetings.* Regular meetings of the Board will be held at such time and place as determined by the Board, but at least four (4) such meetings will be held during each fiscal year. Notice of the time and place of the meetings will be given to directors not less than [number] days before the meetings.

2. *Special Meetings.* Special meetings will be held when called by written notice signed by the president or by any director. The notice will specify the time and place of the meeting and the matters to be covered at the meeting.

3. *Waiver of Notice.* The actions of the Board at any meeting are valid if (a) a quorum is present and (b) either proper notice of the meeting was given to each director or a written waiver of notice is given by any director who did not receive proper notice of the meeting. Proper notice of a meeting will be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of proper notice.

4. *Quorum of Board.* At all meetings, a majority of the Board will constitute a quorum, and the votes of a majority of the directors present at a meeting at which a quorum is present constitutes the decision of the Board. If the Board cannot act because a quorum is not present, a majority of the directors who are present may adjourn the meeting to a date not less

than ten (10) nor more than sixty (60) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business that may have been transacted at the meeting originally called may be transacted without further notice.

5. *Conduct of Meetings.* The president will preside at Board meetings. The secretary will keep minutes of the meetings and will record in a minute book the votes of the directors.

6. *Proxies.* Directors may vote by written proxy.

7. *Action without Meeting.* Any action that may be taken at a Board meeting may be taken without a meeting by written consent setting forth the action taken signed by a sufficient number of the Board as would be necessary to take that action at a meeting.

D. Officers

1. *Officers.* The officers of the Property Owners Association are a president, vice president, secretary, and treasurer, to be elected from the Members. The Board may appoint other officers having the authority and duties prescribed by the Board. Any two or more offices may be held by the same person, except the offices of president and secretary.

2. *Election, Term of Office, and Vacancies.* Officers will be elected annually by the Board at the first meeting of the Board following each annual meeting of the Voting Members. A vacancy in any office may be filled by the Board for the unexpired portion of the term.

3. *Removal.* The Board may remove any officer whenever, in the Board's judgment, the interests of the Property Owners Association will be served thereby.

4. *Powers and Duties.* Officers have such powers and duties as are generally associated with their respective offices and as may be specifically conferred by the Board. The president is the chief executive officer of the Property Owners Association. The treasurer has primary responsibility for the preparation of the budget and financial reports and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

5. *Resignation.* Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Resignation takes effect on the date of the receipt of the notice or at any later time specified in the notice.

E. Committees

The Board may establish committees by resolution and authorize the committees to perform the duties described in the resolution.

F. Miscellaneous

1. *Fiscal Year.* The Board may establish the Property Owners Association's fiscal year by resolution. In the absence of a Board resolution determining otherwise, the Property Owners Association's fiscal year is a calendar year.

2. *Rules for Meeting.* The Board may adopt rules for the conduct of meetings of Members, Board, and committees.

3. *Conflict.* The Declaration controls over these Bylaws.

4. *Inspection of Books and Records*

a. *Inspection by Member.* After a written request to the Property Owners Association, a Member may examine and copy, in person or by agent, any Property Owners Association books and records relevant to that purpose. The Board may establish rules concerning the (i) written request; (ii) hours, days of the week, and place; and (iii) payment of costs related to a Member's inspection and copying of books and records.

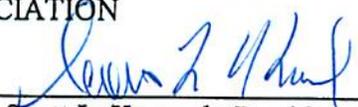
b. *Inspection by Director.* A director has the right, at any reasonable time, and at the Property Owners Association's expense, to (i) examine and copy the Property Owners Association's books and records at the Property Owners Association's Principal Office and (ii) inspect the Property Owners Association's properties.

5. *Notices.* Any notice required or permitted by the Governing Documents must be in writing. Notices regarding enforcement actions must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to (a) a Member at the Member's last known address according to the Property Owners Association's records and (b) the Property Owners Association, the Board, or a managing agent at the Property Owners Association's Principal Office or another address designated in a notice to the Members. Unless otherwise required by law or the Governing Documents, actual notice, however delivered, is sufficient.

6. *Amendment.* These Bylaws may be amended at any time by the majority vote. This provision will not be construed as limiting the Board's power to amend the enforcement procedures to comply with changes in law.

HEIGHTS OF KERRVILLE HOMEOWNERS
ASSOCIATION

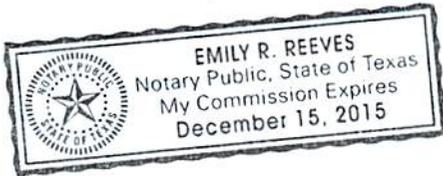
By: _____


Scott L. Kocurek, President

THE STATE OF TEXAS §

COUNTY OF Dallas §

This instrument was acknowledged before me on March 5th, 2014, by SCOTT L. KOCUREK, President of HEIGHTS OF KERRVILLE HOMEOWNERS ASSOCIATION, INC., a Texas corporation, on behalf of said corporation.





Notary Public, State of Texas

Filed by and return to:
DAVID L. JACKSON
Wallace, Jackson & Lohmeyer, PC
Attn: Kathy
820 Main Street, Suite 100
Kerrville, TX 78028



Office of the Secretary of State

**CERTIFICATE OF FILING
OF**

HEIGHTS OF KERRVILLE HOMEOWNERS ASSOCIATION
File Number: 801946334

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 03/05/2014

Effective: 03/05/2014



NANDITA BERRY

Nandita Berry
Secretary of State

**Certificate of Formation of HEIGHTS OF KERRVILLE HOMEOWNERS
ASSOCIATION, a Texas Nonprofit Corporation** Corporations Section

1. *Name.* The name of the corporation is HEIGHTS OF KERRVILLE HOMEOWNERS ASSOCIATION.
2. *Type of Filing Entity.* The type of filing entity being formed is a nonprofit corporation.
3. *Purpose.* The purpose for which the filing entity is formed is to be the property owners association under the Declaration of Restrictive Covenants of THE HEIGHTS OF KERRVILLE recorded in the Official Public Records, Kerr County, Texas.
4. *Period of Duration.* The period of duration of the filing entity is perpetual.
5. *Initial Registered Office.* The street address of the initial registered office of the filing entity and the name of its initial registered agent at that address are:

Name: Scott L. Kocurek

Address: 2100 Ross Avenue, Suite 2900, Dallas, Texas 75201
6. *Organizer.* The name and address of the organizer for the filing entity are:

Name: David L. Jackson

Address: 820 Main, Suite 100, Kerrville, Texas 78028
7. *Members.* The filing entity will be composed of Members.
8. *Initial Board of Directors.* The number of directors constituting the initial board of directors is three (3) and their names and addresses are:

Name: Scott L. Kocurek

Address: 2100 Ross Avenue, Suite 2900, Dallas, Texas 75201

Name: Daniel S. Levitan

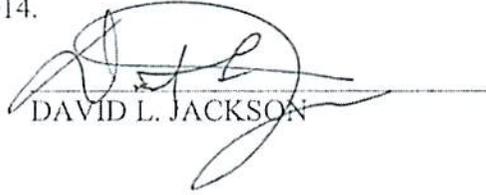
Address: 2100 Ross Avenue, Suite 2900, Dallas, Texas 75201

Name: David M. Porter

Address: 2100 Ross Avenue, Suite 2900, Dallas, Texas 75201
9. *Meetings.* Any action that may be taken at a Members or board of directors meeting may be taken without a meeting by written consent setting forth the action taken signed

by a sufficient number of Members or of the board of directors as would be necessary to take that action at a meeting.

Signed on March 5, 2014.


DAVID L. JACKSON

FILED AND RECORDED
At 1:25 o'clock P M
STATE OF TEXAS
COUNTY OF KERR
MAY 21 2014

I hereby certify that this instrument was filed in the filed numbered sequence on the date and time stamped hereon on me and was fully recorded in the Official Records of Kerr County Texas.
Jannett Pieper, Kerr County Clerk
 Deputy

FILED AND RECORDED
ALLIANCE COUNTY
STATES ATTORNEY
JOHN W. BAKER
MAY 11 2011



ALLIANCE COUNTY
STATES ATTORNEY
JOHN W. BAKER
MAY 11 2011