

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
TOPPERWEIN BLUFFS ENCLAVE- PLAT NO. 170001

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

KNOW ALL MEN BY THESE PRESENTS THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOPPERWEIN BLUFFS ENCLAVE- PLAT NO. 170001 (this "Declaration"), is made on the date hereinafter set forth by KC Renovations, Inc. a Texas Corporation ("Declarant"), for the purpose of evidencing the covenants, conditions and restrictions contained herein.

WITNESSETH:

WHEREAS, (i) Declarant, is the owner of that certain real property being developed as Topperwein Bluffs Enclave, with City of San Antonio Plat Number 17001 approved on June 28, 2017 and filed of record on Volume 9728, Page 212 in the real property records of Bexar County, Texas, with said subdivision hereinafter referred to as the "Development" or the "Subdivision," and (ii) such plat or plats recorded in the future that may comprise additional areas and/or phases in the Topperwein Bluffs Enclave, as may be amended or further re-platted, being referred to collectively as the "Plat," and (iii) the said real property described on the Plat is incorporated herein and made a part hereof for all purposes (the "Property"):

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions and conditions shall run with the Property and be binding on all parties and assigns and shall insure to the benefit of the Declarant and each owner thereof.

ARTICLE I

ADDITIONAL DEFINITIONS

1.1 Association. "Association" shall mean and refer to the Topperwein Bluffs Enclave Homeowners Association, Inc., its successors and assigns.

1.2 Areas of Common Responsibility. "Areas of Common Responsibility" shall mean those areas listed below in which the Association, upon title and ownership of same, shall maintain, upkeep and repair:

Any and all common areas as may be depicted on the Plat for the Development.

Any and all landscaping, entry way features, signage, landscaping and monument signage, screening walls, irrigation systems, lighting and improvements located within the Development including, but not limited to, the entry features and signage located within the Development and screening within the Development.

Any and all landscape and drainage easements, detention ponds, rights-of-way, and common areas that may be depicted on the Plat to the extent same is not maintained by the City, any governmental agency or other entity.

Any and all front lawn and landscape area adjacent to each Lot or Property.

1.3 Builder. The term "Builder" shall mean the Declarant or a third-party purchaser or owner of a lot or lots who purchases such lot or lots for the sole purpose of building a multi-family residence for resale.

1.4 Declarant. The term "Declarant" shall mean KC Renovations, Inc., a Texas corporation and any party to whom it shall expressly assign in writing, its rights, powers, privileges and prerogatives hereunder.

1.5 City. "City" shall mean the City of San Antonio, Texas.

1.6 County. "County" shall mean Bexar County, Texas, or the County where the property is located.

1.7 Home. "Home" shall mean a multifamily residential unit constructed comprised of no more than four single family residential units and no less than two single family residential units on a Lot being a part of the Property, including the parking garage for each respective single family residential unit utilized in connection therewith, if applicable, and the Lot upon which the Home is located.

1.8 Lienholder. "Lienholder" or "Mortgagee" shall mean the holder of any mortgage lien, lien construction or home improvement mortgage lien or a home equity lien, either on any Home and/or any Lot.

1.9 Lot. "Lot" or "Lots" shall mean and refer to a portion of the Property designated as a Lot on the Plats of the Property, excluding open space, streets, alleys and an Area of Common Responsibility. Where the context requires or indicates, the term Lot shall include the Home and all other improvements, which are or will be constructed on the Lot.

1.10 Member. "Member" shall mean and refer to every person or entity who holds membership in the Association. The Declarant and each Owner shall be a Member in the Association.

1.11 Owner. "Owner" shall mean and refer to the record Owner, other than Declarant whether one or more persons or entities, of a fee simple title to any Lot and shall include any Builder, but, shall exclude those having such interest merely as security for the performance of an obligation. However, the term "Owner" shall include any Lienholder or Mortgagee who acquires fee simple title to any Lot, which is a part of the Property, through deed in lieu of foreclosure or through judicial or nonjudicial foreclosure.

ARTICLE II

PROPERTY RIGHTS

2.1 Maintenance of Areas of Common Responsibility by the Declarant and the Association.

Initially, the Declarant will construct or create the Areas of Common Responsibility in a prudent manner to enhance the safety, security and overall appearance of the Development. As set out herein, the Association will eventually own the Areas of Common Responsibility at the appropriate time that the areas are deeded to the Association by the Declarant, and upon the promise of future payment by the Association to the Declarant to reimburse Declarant for the actual costs of constructing the swimming pool, roads and other park or recreational areas. Declarant will assist in the upkeep and maintenance of the Areas of Common Responsibility only though its financial contribution set out herein and will have no further financial obligation to the upkeep and maintenance of the Areas of Common Responsibility when deeded to the Association. At the time the Areas of Common Responsibility are to be deeded to the Association, the Association will be obligated to reimburse Declarant for the actual construction costs of said improvements on the Areas of Common Responsibility. Said reimbursement will be paid to Declarant by the Association in accordance with the terms of a real estate lien note drafted by Declarant. Upon receipt of title to the Areas of Common Responsibility, the Association shall be obligated to maintain and improve the Areas of Common Responsibility to enhance the safety, security and overall appearance of Development. As such, the Declarant and Association shall not, except as the Declarant or Association may reasonably deem appropriate to comply with applicable laws or to protect the health, safety or welfare of the Development or the Members, cause (i) any buildings or permanent structures to be constructed within the Areas of Common Responsibility, or (ii) allow any interference or conflict with the natural or planted vegetation or trees in the Areas of Common Responsibility. The Association shall have the following rights with regard to the Areas of Common Responsibility:

(a) the right to dedicate or transfer all or any part of the Areas of Common Responsibility to any public agency or authority subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless (a) an instrument of agreement to such dedication or transfer, signed by two-thirds (2/3) of each class entitled to vote (determined pursuant to language herein) is properly recorded, in the Real Property Records of the County where the Property is located, (b) a written notice of proposed action under this Section is sent to every Owner (including Lienholder or Mortgagees) not less than thirty (30) days, nor more than sixty (60) days in advance of said action, and (c) the City consents in writing to the dedication or transfer;

(b) the right to borrow money to be secured by a lien against the Areas of Common Responsibility only for the purpose of improving the Areas of Common Responsibility; however, the rights under such improvement mortgage shall be subordinate and inferior to the rights of the Declaration holding a lien on the property and the rights of Owners hereunder; and

(c) the right to enter upon and make rules and regulations relating to the use of the Areas of Common Responsibility and the right to entry upon any access, maintenance or other easements for the purposes of maintaining the Areas of Common Responsibility.

2.2 Title to Areas of Common Responsibility. The recordation of this Declaration, as well as

the recordation of a deed, shall serve as a dedication and conveyance to the Association, with or without consideration, the fee simple title to the Areas of Common Responsibility owned by Declarant.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Declarant, during the time it owns any Lots, and each person or entity who is a record Owner of a fee or undivided interest in any Lot shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from any ownership of any Lot, which is subject to assessment by the Association. Transfer of ownership, either voluntarily or by operation of law, shall terminate such Owner's membership in the Association, and membership shall be vested in the transferee; provided, however, that no such transfer shall relieve or release such Owner from any personal obligation with respect to assessments which have accrued prior to such transfer.

3.2 Voting Rights. The Association shall have two classes of voting membership.

(a) Class "A". The Class "A" Members shall be all Owners. The Class "A" Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) Class "B". The Class "B" Member shall be Declarant or a representative of Declarant. The Declarant, or a representative of Declarant, shall be entitled to three votes for each Lot it owns, or ten votes for each acre owned; provided however that Declarant shall cease to be a Class "B" Member and shall become a Class "A" Member entitled to one vote per Lot on the happening of either of the following events:

(i) when the total votes outstanding in the Class "A" membership equals the total votes outstanding in the Class "B" membership, or

(ii) the expiration of ten (10) years from the recording date of this instrument in the Real Property Records of the County where the Property is located.

3.3 No Cumulative Voting. At all meetings of the Homeowners' Association, there shall be no cumulative voting. Prior to all meetings, the Board of Directors shall determine the total number of votes outstanding and entitled to vote by the Members.

3.4 Association's Powers. In addition to the rights of the Association set forth in other sections of this Declaration, the Association shall have the right but not the obligation to enforce the covenants under this Declaration and maintain all Areas of Common Responsibility and shall have the right, power, and authority to do any act which is consistent with or required by the provisions of this Declaration of the Bylaws, whether the same be expressed or implied including, but not limited to, the following:

(a) The power to levy and collect Assessments (as hereinafter defined), of whatever nature for the maintenance, repair or replacement of the Areas of Common Responsibility existing on the Property and for such other purposes as are herein provided;

(b) The power to keep accounting records with respect to the Association's activities;

(c) The power to contract with and employ others for maintenance and repair; and

(d) The power to adopt rules and regulations concerning the operation of the Association.

ARTICLE IV

ASSESSMENTS MAINTENANCE FUND AND ASSESSMENT LIENS

4.0 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (i) annual assessments or charges (ii) charges in connection with the transfer of a Lot, and (iii) special assessments for capital improvements. Such assessments (collectively, the "Assessments") are to be fixed, established and collected as provided herein. Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot and shall be secured by a continuing lien which is hereby created and impressed for the benefit of the Association upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest costs and reasonable attorney's fees shall also constitute a personal obligation of the person or entity that was the record Owner of such Lot at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by such successors; however, the lien upon the Lot shall continue until paid.

4.1 Purpose of Assessments The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, welfare and value of and for the Owners of the Lots, the improvements and maintenance of the Areas of Common Responsibility and any other property owned by the Association, and the performance and/or exercise of the rights and obligation of the Association arising hereunder. Assessments shall include, but not be limited to, funds to cover actual Association costs (including reasonable reserves) for all taxes, insurance, repair, replacement, maintenance and other activities as may from time to time be authorized by the Board of Directors; legal and accounting fees, and any fees for management services; expenses incurred in complying with any laws, ordinances or governmental requirements applicable to the Association or the Property; reasonable replacement reserves and the cost of other facilities and service activities including, but not limited to, mowing grass, grounds care, sprinkler system, landscaping, pool and recreation area maintenance, and other charges required or contemplated by this Declaration and/or that which the Board of Directors of the Association shall determine to be necessary to meet the primary purpose of the Association, including the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein.

4.2 Basis and Maximum of Annual Assessments and Transfer Fees on the Sale of Lots.

(a) From and after the date of recordation of this Declaration, the regular annual assessment will be established at the rate of \$50.00 per month per door; the regular annual

assessment may be increased at a maximum rate of Twenty Percent (20%) per year, compounded annually ("Allowed Increase"), solely by the Board of Directors. Any increase over and above the Allowed Increase shall be done only by the prior written approval of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes (determined pursuant to language herein) held by the Members at a meeting at which a quorum is present in person or by proxy.

(b) In addition to the regular annual Assessment, as a condition to the sale of every Lot by an Owner in the Development, a transfer fee of \$500.00 shall be charged to the purchaser of such Lot being conveyed and the pro-rata share of annual assessments then due on such Lot shall be paid by the purchaser of the Lot to the Association. The reserve fee provided for herein shall be for the benefit of the Association, to be used to establish a capital reserve for the Association and shall only increase by an amount to be determined by the Board of Directors.

4.3 Special Assessments. In addition to the regular annual Assessment and reserve fees payable on the sale of lots authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the costs incurred by the Association pursuant to the provisions of this Declaration, provided that any such Assessment shall have the prior written approval of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes (determined pursuant to language herein) held by the Members at a meeting at which a quorum is present in person or by proxy. Any Special Assessment shall be prorated based on the period of time the Owner owns the Lot during such year.

4.4 Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.3 and 4.4 hereunder shall be given to all Members not less than ten (10) days nor more than thirty (30) days in advance of such meeting. At such meeting, the presence of Members or of written proxies entitled to cast sixty percent (60%) of all the votes entitled to be cast by the Members of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

4.5 Uniform Rate Assessment. Both the Regular Annual and Special Assessments shall be fixed at a uniform rate for all Lots and shall commence and be due in accordance with the provisions of Section 4.7 hereof. Each Owner (other than Declarant who is required only to pay the deficiency described below), shall pay one hundred percent (100%) of the established Assessment for each Lot he or it owns.

4.6 Date of Commencement of Annual Assessments; Due Dates.

(a) The obligation to pay regular annual assessments provided for herein shall commence no earlier than the date this Declaration is recorded. The Assessments shall then be due on such payment dates as may be established by the Association. Assessments shall be due and payable on an annual basis unless otherwise designated by the Association.

(b) As long as Declarant is a Class "B" Member pursuant to Section 3.2 hereof, Declarant shall pay the deficiency resulting in the event the cost of maintenance of the Areas of Common Responsibility exceeds the amount of the Assessments received from the owners; provided, however, in such event, Declarant shall not otherwise be required to pay Assessments with respect to portions of the Property owned by Declarant; and further, provided, however, in no event shall

Declarant be required to pay an amount which is in excess of one hundred percent (100%) of the established Assessment for each Lot it owns. When the Declarant is converted to a Class "A" Member, the Declarant (i) shall no longer be responsible for contributing shortfalls outlined in the preceding sentence but rather, (ii) shall commence making regular annual and Special Assessments pursuant to Sections 4.3 and 4.4 hereof calculated on the number of Lots Declarant then owns.

(c) Unless provided above, the annual Assessments for the first Assessment year shall be fixed by the Association prior to the sale of the first Lot to an Owner. Except for the first Assessment year, the Association shall fix the amount of the annual Assessment in advance of each Assessment year, which shall be the calendar year; provided, however, that the Association shall have the right to adjust the regular annual Assessment upon reasonable notice given to each Owner, as long as any such adjustment does not exceed the maximum permitted pursuant to Section 4 hereof. Written notice of the regular Annual Assessment shall be given as soon as is practicable to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed either by a Director of the Association or a representative of the management company, setting forth whether the Annual and Special Assessments on a specified Lot have been paid and the amount of any delinquency. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(d) No Owner may exempt himself from liability for Assessments by waiver of the use or enjoyment of any portion of the Development or Areas of Common Responsibility or by abandonment of his home.

4.8 Effects of Non-Payment of Assessments; Remedies of the Association.

(a) All payments of the Assessments shall be made to the Association at its principal place of business in Bexar County, Texas or at such place as the Association may otherwise direct or permit. Payment shall be made in full regardless of whether any Owner has any dispute with Declarant, the Association, any other Owner or any other person or entity regarding any matter to which this Declaration relates or pertains. Payments of the Assessments shall be both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

(b) Any Assessment provided for in this Declaration, which is not paid when due shall be delinquent. If any such Assessment is not paid within thirty days after the date of delinquency, the Assessment shall bear interest from the date of delinquency (with no notice required to be given), until paid, at the rate of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is the lesser. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or, upon compliance with the notice provisions hereof, foreclose the lien against the Lot as provided in Subsections 4.8 (d) hereof. There shall be added to the amount of such Assessments the costs of collection fees, preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include said interest and reasonable attorney's fees, together with the costs of actions. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or in equity foreclosing such lien against such Owner, and the expenses incurred in connection therewith, including interest, costs and reasonable attorney's fees shall be chargeable to the Owner in default. Under no circumstances, however, shall Declarant or the Association be liable to any Owner or to any other person or entity for failure or inability to enforce any Assessments.

(c) Without limiting the enforcement authority stated in this Section, the Assessment lien established herein may be enforced by judicial or nonjudicial foreclosure. To secure the payment of maintenance assessments and to ensure compliance with the applicable covenants, conditions, restrictions and easements set forth herein, each Owner, upon acceptance of his or her deed to a Lot governed by this Declaration subjects itself to a Special Deed of Trust. If an Owner fails to tender payment of maintenance assessments or reimbursements when due, or if an Owner fails to perform any of the Obligations under or maintain any condition required by this Declaration, the Association may perform those obligations, advance whatever funds may be required, and then be reimbursed by the Owner on demand for any sums so advanced, including attorney's fees, plus interest on those sums from the dates of payment at the highest legal rate. The sum to be reimbursed shall be secured by this Special Deed of Trust. If the Owner fails on demand to reimburse the Association for the sums advanced or for the assessments owed, and such failure continues after the Association gives the Owner notice of the failure and the time within which it must be cured, as may be required by law or by written agreement, then the Association, as the Beneficiary of this Special Deed of Trust, may (1) request the trustee to be named, or his successor, to foreclose the liens created herein, in which case the Association shall give notice of the foreclosure sale as provided by the Texas Property Code then in effect or any successor statute thereto; and (2) sell the Lot at any foreclosure sale by offering the highest bid and then have the bid credited to the reimbursement or satisfaction of the outstanding indebtedness owed to the Association. The Association shall have the right, but not the obligation, to purchase the Lot if it is the highest bidder at the foreclosure sale. If by the Association to foreclose this lien, a trustee shall (a) personally or by agent give notice of the foreclosure sale as required by the Texas Property Code then in effect (or any successor statute thereto), (b) sell and convey the Lot to the highest bidder for cash with a general warranty binding the Owner, subject to prior liens and to other exceptions to conveyance and warranty; and (c) from the proceeds of the sale, pay, in this order, (i) expenses of foreclosure, including a commission to the trustee of five percent (5%) of the successful bid; (ii) to the Association, the full amount advanced, attorney's fees, and other charges due and unpaid; (iii) any amounts required by law to be paid before payment to the Owner; and (iv) to the Owner, any remaining balance. A management company may be appointed the trustee for the purpose of enforcing the covenants, conditions and restrictions imposed by this Declaration, and also for the collection of maintenance assessments. The Association, as Beneficiary, may appoint a substitute or successor trustee, succeeding to all rights and responsibilities of the trustee to be appointed, by completing an appropriate designation of substitute trustee. From and after any such foreclosure, the occupants of such Lot shall be required to pay a reasonable rent for the use of such Lot and such occupancy shall constitute a tenancy-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 Lot by forcible detainer without further notice.

(d) It is the intent of the provisions of this Section to comply with the provisions of Texas Property Code, as may be amended hereafter, and, which amendment is applicable hereto. The Association, acting without joinder of any Owner or mortgagee of any Owner, may, by amendment to this Declaration filed in the office of the County Clerk of Bexar County, Texas, or the County where the Property is located, amend the provisions hereof so as to comply with said Texas Property Code.

(e) Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the

case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and filling or recording the lien and the release. The Assessment lien and the right to foreclosure sale hereunder shall be in addition to and not in substitution of all other rights and remedies which the Association and its successors or assigns may have hereunder and by law, including the right of suit to recover a money judgment for unpaid Assessments, as above provided.

(f) In exercising the rights and remedies set out in this Section, and in all other respects as applicable to this Declaration, the provisions of the Texas Property Code, Texas Residential Property Owners Protection Act shall apply and shall take precedence over any provision in conflict therewith.

4.9 Subordination of Lien to Mortgages. The lien securing the Assessments provided for herein shall be expressly subordinate to any lien of any mortgage, construction or home improvement lien or any home equity lien. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any first lien mortgage, pursuant to a decree of foreclosure or a non-judicial foreclosure under such first lien mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due, in accordance with the terms herein provided.

4.10 Management and Agreements. In order to ascertain compliance and conformity with the Subdivision development, restrictions, maintain the quality of the Subdivision, and preserve the value of the real property within the Subdivision, it shall be managed by a property management individual or company designated by the Declarant, at Declarant's sole discretion for a period of ten (10) years. The Declarant herein designates K Clark Property Management, Ltd. as the initial property Management Company from the date entered below. At the expiration of the initial ten (10) year period, the Association shall be authorized to enter into management agreements with third parties in connection with the operation and management of the development and the performance of its obligations hereunder for each maximum term of fifteen years, which term can be renewed. A copy of all such agreements shall be available to each Owner. The Association may, at its discretion, assume self-management of the development by the Association.

4.11 Insurance Requirements. The Association may obtain insurance policies covering the Areas of Common Responsibility covering all damage or injury caused by the negligence of the Association, any of its employees, officers, management companies, directors and/or agents, including, but not limited to, commercial general liability insurance, director's and officer's liability insurance, and such other insurance as the Association may from time to time deem necessary or appropriate.

4.12 Independent Accounting Firm Review. The Association may elect to have its income and expense statements, balance sheets and other books and records reviewed by an independent accounting firm annually (beginning the first full calendar year that new homes are sold), such review to be performed within 90 days following the end of the Association's fiscal year. The review shall be performed in accordance with guidelines established by the American Institute of Certified Public Accountants.

ARTICLE V

ARCHITECTURAL REVIEW COMMITTEE

5.1 Appointment of Members. The Association shall initially nominate the Board of the HOA to serve as the Architectural Control Committee (the "Committee"). All matters before the Committee shall be decided by a majority vote of its members. In the event of death, incapacity or resignation of a member of the Committee, the successor for such member shall be appointed by the Board of Directors of the Association. The Declarant is not subject to any determinations of the Architectural Control Committee for any new home construction in the Subdivision. The Builder, if a third party builder, is subject to all building and construction restrictions contained herein and Declarant shall review for approval Builder's construction plans.

5.2 Submission of Plans to Architectural Control Committee. No building, fence, wall, parking area, swimming pool, spa, pole, mail box, driveway, fountain, pond, tennis court, sign, exterior shape, or modification of a structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same are submitted to and approved by the Committee. Plans and specification shall be submitted to the Committee at least thirty (30) days prior to the commencement of any construction or modification. The following shall be submitted for approval: a site plan showing the entire Lot with existing improvements, and floor plan and elevations of all faces of the proposed structure; and a description of all exterior construction materials. A copy of the above described plans and specifications may be retained by Declarant.

5.3 Approval of Plans. The Committee shall review the plans and specifications and notify the Owner in writing of its approval or disapproval. If the Committee fails to approve or disapprove said plans and specifications within thirty (30) days after the same has been submitted to it, no approval will be required, and the Owner may proceed; however, any non-action on the part of the Committee shall not be deemed approval by the Committee. Any disapproval shall set forth the elements disapproved and the reason or reasons thereof. The judgment of the Committee in this respect in the exercise of its sole and absolute discretion shall be final and conclusive and the Owner shall promptly correct the plans and specifications (if disapproved) and resubmit them for approval. No construction, alteration, change or modification shall commence until (i) thirty (30) days after such construction, alteration, change or modification is presented to the Committee for approval or (ii) approval has been granted by the Committee. The Committee may approve any deviation from these covenants and restrictions as the Committee, in its sole and absolute discretion, deems consistent with the purpose hereof. No member of the Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the denial of any submittal or grant of any deviation to an Owner. Future requests for deviations submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a deviation to any Owner shall not constitute a waiver of the Committee's rights to strictly enforce the Declaration and the architectural standards provided herein against any other Owner. Approval by the Committee of the plans and specifications or its determination that the completed construction or modification has been constructed in accordance with the plans and specifications shall be deemed to be an acknowledgment by the Committee that such are in accordance with this Declaration and such acknowledgment shall be binding against the Owners of the Lots and the Property.

5.4 COMMITTEE MEMBERS' LIABILITY. NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD, THE COMMITTEE NOR ANY EMPLOYEES, OFFICERS, DIRECTORS OR MEMBERS THEREOF SHALL BE LIABLE FOR DAMAGES

OR OTHERWISE TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS FOR APPROVAL OR TO ANY OWNER AFFECTED BY THIS DECLARATION BY REASON OF MISTAKE OF JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY PLANS OR SPECIFICATIONS. ANY ERRORS IN OR OMISSIONS FROM THE PLANS OF THE SITE PLAN SUBMITTED TO THE COMMITTEE SHALL BE THE RESPONSIBILITY OF THE OWNER OF THE LOT TO WHICH THE IMPROVEMENTS RELATE, AND THE COMMITTEE SHALL HAVE NO OBLIGATION TO CHECK FOR ERRORS IN OR OMISSIONS FROM ANY SUCH PLANS, OR TO CHECK FOR SUCH PLANS' COMPLIANCE WITH THE GENERAL PROVISIONS OF THIS DECLARATION, CITY CODES, STATE STATUTES OR THE COMMON LAW, WHETHER THE SAME RELATE TO LOT LINES, BUILDING LINES, EASEMENTS OR ANY OTHER ISSUE.

ARTICLE VI

CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

6.1 Residential Use. Any and all structures, fences, walls, recreational facilities or other improvements erected, altered or placed on any portion of the Property shall be of new construction, and except as provided in this document, no structure of a temporary character shall be used on any Lot at any time for storage or as a residence, either temporarily or permanently. No prefabricated dwelling or building previously constructed elsewhere may be placed or maintained on any Lot. No modular or mobile home, whether or not the wheels have been removed, may be placed or maintained on any Lot. The Committee must approve all structures of a temporary character in advance.

(a) **Dwelling Size.** Each single family residential unit constructed on a Lot shall contain the minimum, contiguous square feet of living space set forth below, such square feet being exclusive of open or screened porches, terraces, patios, driveways, carports, and garages from the primary living area; to wit:

Minimum: Twelve Hundred (1200) square feet

(b) **Maximum Height.** No building or structure erected, altered or placed on, within or in the Property shall exceed thirty-five feet in height (measured from the top of the foundation to the utmost part of the roof, nor be more than two and one-half stories in height without the written consent of the Committee; provided, however, that all applicable ordinances, regulations, and statutes with respect to the maximum height or building and structures shall, at all times, be complied with.

(c) **Placement of Structures on Lots.** Each garage, living unit, and other improvements constructed on a Lot shall comply with the setback requirements set forth in the recorded plat of the Subdivision. Porches and steps shall be considered a part of the structure. The location of all structures shall comply with all applicable government codes. In no event may any structure be constructed or maintained upon any utility or other easement.

(d) All Lot setbacks will comply with the setbacks required as stated on the

recorded plat of the Subdivision.

(e) Masonry. For all purposes of these Restrictions, masonry includes stucco, brick, stone, Hardy- Plank and all materials found by the Committee to be commonly referred to as masonry in the South Texas, building industry. The front elevation should consist of substantially masonry except to allow covered porches or other unique design elements. The residence shall be constructed of a minimum of twenty-five percent (25%) masonry, brick, stucco or Hardy-Plank. Window and door openings shall be included as masonry in order to perpetuate visual harmony and continuity within the project, all brick, rock, stucco and exterior colors are subject to approval by the Committee. Rockwork shall be limited to a uniform color range of white to cream, tan to gray, or gray to rust. The Committee may waive or vary the foregoing masonry percentage requirement for split-level or multi-level construction and be deemed to have done so when the plans and specifications so indicate and are approved by the Committee as submitted without conditions attached. Notwithstanding the requirements of this Section, and in addition to variance power granted to the Committee hereinafter, the Committee is empowered to waive one or more requirements of this Section if in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and in the opinion of the Committee, the resulting structure or appearance will not detract from the general appearance of the neighborhood.

(f) Roofing and Gutters. Roofing shall be laminated composition of 200 pounds or greater, as approved by the Committee within the gray/brown, weathered wood, color range as approved by the Committee. No flat roofs are permitted. All roofs shall have a traditional style with hips and gables and a pitch of 4: 12 or greater.

(g) Windows and Glass. Windows, jambs and mullions shall be wood, vinyl, or factory job-finished painted metal windows in a color approved by the Committee. The design of windows may be double or single hung casements or projecting. All front elevation windows shall have baked-on painted or anodized aluminum windows (no mill finish). All glass in exterior windows shall be of a color and type approved by the Committee. No reflective glass is permitted.

(h) Insulation. All ceilings, except garages, shall have no less than R-19 rated batt insulation or comparable rated insulation. All exterior walls, except garages, shall have no less than R-11 rated batt insulation or comparably rated insulation.

(i) Siding and Exterior Paint and Stain. Subject to the limitations imposed herein, wood siding may be used. The Committee must approve all other siding materials, and all siding colors. All exterior colors shall be light, natural-weathered wood hue or earth tone and shall be harmonious with the masonry color of the living unit.

(j) Exterior Lighting. The Committee must approve all exterior lights and light fixtures of each residence. No exterior lighting shall be erected or maintained in such a manner as to unduly interfere with or affect the enjoyment of adjoining property.

(k) **Driveways and Front Yards.** Each driveway must accommodate two vehicles end-to-end in front of the garage for off-street parking requirements. Driveways on all Lots must be constructed of concrete, and the design and location must be approved by the Committee. The driveway turnout shall be constructed in such manner as to provide an attractive transitional radius from the curb and gutter into the driveway entrance and shall prevent escape of drainage water from the street onto any Lots. Driveways and sidewalks must be shown on the site plan submitted for approval by the Committee. At the time of construction of a residence on a Lot, if required by subdivision plat, the Builder or Owner shall also construct a concrete sidewalk, with the design and width in accordance with the subdivision plan for sidewalk, which shall be approved by the Committee. Each residence will be landscaped in front by the Builder as an Area of Common Responsibility, with grass, trees and shrubs and shall have wooden fences along the sides and back of the residences.

(l) **Garage Requirement.** Each Living Unit shall at all times maintain an enclosed garage large enough to accommodate under roof a minimum of one (1) full-sized automobiles which conforms in design and materials with the main structure. No garage shall be permanently enclosed for conversion to any other use. Garage Doors visible from any street shall be kept in the closed position except that an owner or occupant may have the door open while actively performing special functions that reasonably require the door to be open for convenience or safety reasons.

(m) **Variances and Architectural Control Committee Approvals.** The approval of the Committee granted from time to time under terms of this Declaration for variances or waivers to this Declaration or as special permission for otherwise non-permitted facilities, shall be on a case-by-case basis, and the granting in any one or more cases shall not be deemed to establish a precedent for granting subsequent approvals on what may seem to be a similar situation. All decisions of the Architectural Control Committee shall be considered final. All matters set forth in this Declaration requiring approval shall require the express, advance, written approval of the Committee.

6.2 Single Family Use. Each single-family residence shall be limited to occupancy by only one family consisting of persons related by blood, adoption or marriage or no more than two unrelated persons residing together as a single housekeeping unit.

6.3 Restrictions on Re-subdivision. No Lot shall be subdivided into smaller Lots.

6.4 Driveways. All driveways shall be surfaced with concrete or similar substance approved by the Committee.

6.5 Uses Specifically Prohibited.

(a) No temporary dwelling shop, trailer or mobile home of any kind or any improvement of a temporary character shall be permitted on any Lot except that the Builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a specifically permitted Lot during construction of the residence on that Lot or sales by any Builder of homes in

the Development. No building material of any kind or character shall be placed or stored upon the Property until construction is ready to commence, and then such material shall be placed totally within the property lines of the Lot upon which the improvements are to be erected.

(b) No boat, marine craft, hovercraft, aircraft, recreational vehicle, pick-up camper, travel trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the driveway or front yard of any dwelling or parked on any public street on the Property, nor shall any such vehicle or equipment be parked for storage in the side or rear yard of any residence. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked while in use for the construction, maintenance or repair of a residence in the Development.

(c) No vehicle of any size which transports flammable or explosive cargo may be kept on the Property at anytime.

(d) No motorized vehicle or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (including those with attached bed campers) that are in operating condition and have current license plates and inspection stickers and are in current use. A maximum number of three vehicles may be parked permanently at each residence.

(e) No structure of a temporary character, such as a trailer, tent, shack, barn, underground tank or structure or other out-building shall be used on the Property at any time as a dwelling house; provided, however, that any Builder may maintain and occupy model houses, sales offices and construction trailers during the construction period, but not as a residence.

(f) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in or on the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Property. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Property.

(g) No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats or other qualified domestic animals may be kept as household pets. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the Property so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the peace and quiet and health and safety of the community. No more than three pets will be permitted on each Lot. Pets must be restrained or confined to the homeowner's rear yard within a secure fenced area or within the house. It is the pet owner's responsibility to keep the Lot clean and free of pet debris or odor noxious to adjoining Lots. All animals must be properly registered and tagged for identification in accordance with local ordinances.

(h) No Lot or other area of the Property shall be used as a dumping ground for rubbish or accumulation of unsightly materials of any kind, including without limitation, broken or rusty equipment, disassembled or inoperative cars and discarded appliances and furniture. Trash, garbage or other waste shall not be kept except in sanitary containers in compliance with applicable

governmental ordinances, rules and regulations. All containers for the storage or other disposal of such material shall be kept in clean and sanitary condition and must be hidden from public view except when awaiting collection on a regularly scheduled collection day. Materials incident to construction of improvements may only be stored on Lots during construction of the improvement thereon.

(i) No individual water supply system shall be permitted on any Lot.

(j) No individual sewage disposal system shall be permitted on any Lot.

(k) No garage, garage house or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person prior to the erection of a residence.

(l) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any front wall or window of a residence. No evaporative cooler shall be installed on the front wall or window of a residence.

(m) Except with the written permission of the Committee or as preempted by the FCC or other governmental agency, no antennas or other equipment for receiving or sending sound or video signals shall be permitted in or on the Property except antennas for AM or FM radio reception and UHF and VHF television reception. Any satellite dishes must be hidden from view from the street or neighboring property and will be allowed only with written permission of the Committee.

(n) No Lot or improvement thereon shall be used for a business, professional, commercial or manufacturing purposes of any kind for any length of time. No business activity shall be conducted on the Property, which is not consistent with family residential purposes. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit a Builder's temporary use of a residence as a sales/construction office for so long as such Builder is actively engaged in construction on the Property.

(o) No shrub, tree, object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines of such lot and a line connecting such property lines at point located on each said street property lines at a distance of twenty-five (25) feet from the point where such lines intersect or would intersect if extended; nor shall any such obstruction be placed or permitted to remain on any lot within the triangular area formed by the street side property lines of such lot, the edge line of any driveway or alley pavement, and a line connecting said lines at points located on each of said lines at a distance often (10) feet from the point at which said lines intersect or would intersect if extended.

(p) Within those easements on each Lot as designated on the Plat or any subsequent approved and recorded Plat of the Development, no improvement, structure, planting or materials shall be placed or permitted to remain which might damage or interfere with the installation, operation and maintenance of public utilities, or which might alter the direction of flow within drainage channels or which might obstruct or retard the flow of water through drainage channels.

The general grading, slope and drainage plan of a Lot as established by the Declarant's approved development plans may not be altered without the approval of the City and/or other appropriate agencies having authority to grant such approval.

(q) An Owner shall be entitled to display one sign thereon from time to time for purposes of selling or renting the property; provided, that each face of such sign shall be rectangular in shape and shall not exceed five (5) square feet in surface area, and that the content of such sign be limited to the words "Sold", "For Sale", or "For Rent" or similar language and the name and telephone number of the seller or real estate agent, and the words "Shown by Appointment Only". No "Sold" signs shall remain on a lot more than two (2) weeks after completion of the sale. In addition, during the period of lot sales and construction of new residences, Builders maintaining a sales or construction office within the Subdivision, Declarant, and other Builders with consent of Declarant shall have the right to place directional signs and other "Sold" and "For Sale" signs (not exceeding eight square feet in size) in the Subdivision.

(r) An Owner shall have the right to install one sign noting the existence of a residential security system; no such sign shall be placed greater than two (2) feet from the residence. The Association may place signs on Lots noting special accomplishments, such as awards for "Yard of the Month", holiday decorating, and landscaping. Owners may also place holiday decorations in yards. No other sign, advertisement, billboard or advertising structure of any kind may be erected or maintained within subdivision boundaries without first having obtained the consent in writing of the Board of Directors of the hereinafter named Association, which consent may be withheld without cause and which consent may not be given unless the Board finds that the sign will create a benefit for the general membership of the Association. Said Board of Directors of the Association shall have the right to remove any unpermitted sign, advertisement, billboard or structure which is erected or placed on any lot or adjacent easement or right-of-way without such consent, and in so doing, shall not be subject to any liability for trespass or other tort in connection therewith. No sign shall be displayed on any motor vehicle, trailer, bus, truck, boat, camper or related means of transportation, except for commercial vehicles upon which the following may appear: (1) the name of the business owning or leasing the vehicle, (2) the street address of the business owning or leasing the vehicle, (3) the telephone number of the business owning or leasing the vehicle, (4) any license number of the business owning or leasing the vehicle required by a regulatory authority, and (5) any logo of the business owning or leasing the vehicle. As used herein the term "commercial vehicle" shall mean a motor vehicle that (1) is owned or leased by a business, (2) is utilized solely in the furtherance of the business purpose, (3) is utilized solely for transporting equipment, parts and tools used for the business purpose, (4) is covered by a policy of insurance as a commercial vehicle, and (5) is not used for general transportation of the primary driver. No sign of a temporary nature, i.e. magnetic or easily removed and replaced, shall be allowed. No sign of any kind shall be placed or allowed to remain on any private street, public street, or right-of-way. The provisions of this Section may be enforced at anytime by any person or entity named, referenced or identified on any sign.

(s) Outdoor clothes lines and drying racks visible to adjacent Properties are prohibited. Owners or residents of Lots where the rear yard is not screened by solid fencing or other such enclosures, shall construct a drying yard or other suitable enclosure or screening to shield from public view clothes drying racks, yard maintenance equipment and/or storage of materials.

(t) Except within fireplaces in the main residential dwelling and equipment for outdoor cooking, no burning of anything shall be permitted anywhere on the Property.

6.6 **Sidewalks.** All walkways along public right-of-way(s) shall conform to the minimum property standards of the proposed Plat, the City, FHA and VA.

6.7 **General Maintenance of Lots.** Following occupancy of the Home upon any Lot, each Owner shall maintain and care for the Home, all improvements and all trees, foliage, plants, and lawns on the Lot and otherwise keep the Lot and all improvements thereon in good condition and repair and in conformity with the general character and quality of properties in the immediate area, such maintenance and repair to include, but not be limited to: (i) the replacement of worn and/or rotted components, (ii) the painting of all painted exterior surfaces, (iii) the maintenance, repair and replacement of roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, drives, parking areas and other exterior portions of the improvements to maintain an attractive appearance, and (iv) regular mowing and edging of lawn and grass areas. Furthermore, each lot shall have a 5- foot maintenance easement which allows for repairs to be done on a said unit. Upon failure of any Owner to maintain a Lot owned by him in the manner prescribed herein, the Declarant or the Association, or either of them, at its option and discretion, but without any obligation to do so, but only after ten (10) days written notice to such Owner to comply herewith, may enter upon such Owner's Lot and undertake to maintain and care for such Lot to the condition required hereunder and the Owner thereof shall be obligated, when presented with an itemized statement, to reimburse said Declarant and/or Association for the cost of such work within ten (10) days after presentment of such statement. This provision, however, shall in no manner be construed to create a lien in favor of any party on any Lot for the cost or charge of such work or the reimbursement for such work.

6.8 **Property Management.** In order to ascertain compliance and conformity with the Subdivision restrictions, maintain the quality of the Subdivision, and preserve the value of the real property within the Subdivision, any residence leased or rented to a party other than Owner of title to the residence must be managed by the property management individual or company designated by the Declarant, at Declarant's sole discretion. An Owner may not rent or lease property in the Subdivision without contracting for the services of the property manager designated by Declarant. Duties of the property manager for residences in the Subdivision used as rental properties shall consist of obtaining and securing tenants for the rental properties, drafting all lease documents and monitoring compliance with the terms of the lease documents, and maintaining the compliance of the leasehold structures and the tenants with all terms and conditions of this Declaration. Owners shall contract with the property manager under the terms of the property manager's agreement and for the cost of services compatible with the then current residential property management market for the San Antonio area.

ARTICLE VII

GENERAL PROVISIONS

7.1 **Additional Easements.**

(a) **Utility and Telecommunication Utility Easements.** The Declarant hereby reserves the right to grant perpetual, non-exclusive easements in gross for the benefit of the Property, upon, across, over, through and under any portion of the Property designated on the plat thereof

for easements for the purpose of ingress, egress, installation, replacement, repair, maintenance, use and operation of any and all utility and service lines and service systems, public and private, including, without limitation, telephone, cable, fiber optic and any other cable or wiring system designed to provide or deliver communication of any form, video or telecommunications, computer access, "Internet" or email access, security monitoring or other services to any Owner. The Declarant also reserves the right to grant perpetual, non-exclusive easements in gross for the benefit of the Property across and over any portion of the Property for the purpose of delivering satellite, "broadband", cellular or other wireless communication designed to provide or deliver communication of any form, video or telephone communications, computer access, "Internet" or email access, security monitoring or other services to any Owner. In addition, the Declarant also reserves the right to grant perpetual, non-exclusive easements in gross in the Areas of Common Responsibility to erect one or more transmission towers as required, to facilitate the providing or delivering of satellite, "broadband", cellular or other wireless communication, designed to provide communication of any form, video or telephone communications, computer access, "Internet" or email access, security monitoring and other services to any Owner.

(b) **Continued Maintenance Easement.** In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency, or in the event the Association requires entry upon any Lot to repair or maintain any Area of Common Responsibility, the Association shall have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

(c) **Drainage Easements.** Easements for installation and maintenance of utilities, storm water retention/detention ponds, and/or a conservation area are reserved as may be shown on the Plat or any subsequent approved and recorded Plat. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible. Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property.

The Owner of each Lot shall maintain the original drainage design and construction of drainage on the Lot. The original drainage design and construction shall not be altered without prior approval by the Committee; also during the first ten (10) years of the existence of each Lot, no approval for alteration of the drainage design or construction of any Lot shall be effective unless Declarant has given its written approval of such change. Declarant shall have no liability of any kind for its approval or rejection of any request for alteration of drainage. The Owner of the Lot upon which drainage is altered shall have the sole responsibility for any damages arising therefrom.

No landscape plan or design, which would have the effect of altering the drainage of any individual Lot to hold water or would increase the flow of water to another Lot, may be approved. Each Owner is solely responsible for changes to the drainage upon each Owner's Lot including, but not limited to, damages to such Owner's property and surrounding properties.

(d) **Temporary Completion Easement.** All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant and any Builder, their employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent thereto, provided that such easement shall terminate twelve (12) months after the date such burdened Lot is conveyed to the Owner by the Declarant or a Builder.

(e) **Universal Easements.** The Owner of each Lot (including Declarant so long as Declarant is the Owner of any Lot) is hereby granted an easement not to exceed three (3) foot in width over all adjoining Lots for the purpose of correcting any encroachment or protrusion due to unintentional engineering or fence line errors, trees, landscaping or retaining wall located along property lines, errors in original construction, surveying, settlement or shifting of any building. The easements hereinabove referred shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to each affected Lot and shall pass with each conveyance of said Lot.

7.2 **Enforcement.** The Declarant or the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or the By-Laws or the Articles of Incorporation. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party.

7.3 **Severability.** If any condition, covenant or restriction herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remain in full force and effect.

7.4 **Term.** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Declarant (during the time it owns any Lots), the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of ten years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote, of the then Owners of 67% of the Lots agree in writing to terminate or change this Declaration in whole or in part and such writing is recorded in the Real Property Records of the County where the Property is located. The term referenced herein is inferior to the Texas Property Code and the Texas Residential Protection Act.

7.5 **Amendment.**

(a) This Declaration may be amended or modified solely at the discretion of the Declarant for application to property owned by Declarant, or upon the express written consent of at least sixty-six and two-thirds percent (66-2/3 %) of the outstanding votes (determined pursuant to language herein) held by Members at a meeting at which a quorum is present in person or by proxy. If the proposed amendment involves a modification of any of the Association's agreements, covenants or restrictions pertaining to the use, maintenance, operation, maintenance and/or supervision of any Areas of Common Responsibilities, the approval of the City must also be obtained for such amendment. Any and all amendments, if any, shall be recorded in the office of the County Clerk of the County where the Property is located. Notwithstanding the foregoing, Declarant shall have the right to execute and record amendments to this Declaration without the consent or approval of any other party if the sole purpose of the amendment is for the purpose of correcting technical errors or for purposes of clarification.

(b) Declarant intends that this Declaration may be amended to comply (if not in compliance with all requirements of the Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association ("FNMA"), FHA and VA. Notwithstanding anything to the contrary contained herein, if this Declaration does not comply with FHLMC, FNMA, VA or FHA requirements, the Board and/or the Declarant shall have the power in its discretion (on behalf of the Association and each and every Owner) to amend the terms of this Declaration or to enter into any agreement with FHLMC, FNMA, VA, and FHA, or their respective designees, reasonably required by FHLMC, FNMA, VA or FHA to allow this Declaration to comply with such requirements. Should the FHLMC, FNMA, VA or FHA subsequently delete any of their respective requirements which necessitate any of the provisions of this Declaration or make any such requirements less stringent, the Board and/or the Declarant, without approval of the Owners, may, upon reasonable justification, cause an amendment to this Declaration to be executed and recorded to reflect such changes.

7.6 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, in all cases shall be assumed as though fully expressed in each case.

7.7 Remedies. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity, including, without limitation, an action for injunctive relief, it being acknowledged and agreed that a violation of the covenants, conditions and restrictions contained herein could cause irreparable injury to Declarant and/or the other Owners and that the Declarant's and/or the other Owner's remedies at law for any breach of the Owners' obligations contained herein would be inadequate. Enforcement may be commenced by the Association, the Declarant, the City, or any Owner against any person or persons violating or attempting to violate them, and failure by the Association, the Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The rights created herein are unique and enforceable by specific performance. In

addition to the remedies set forth herein, the Association will also have the right and power to levy fines against any Owner in breach of their obligations set forth in this Declaration.

7.8 Notices to Member/Owner. Any notice required to be given to any Member and/or Owner under the provisions of this Declaration shall be deemed to have been properly delivered forty-eight (48) hours after deposited in the United States Mail, postage prepaid, certified or registered mail, and addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

7.9 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender and words in the singular, shall be held to include the plural and visa/versa unless the context requires otherwise.

7.10 Formation of Association; Inspection of Documents, Books and Records. The Association shall be formed by Declarant as a non-profit corporation in accordance with the laws of the State of Texas. Management and governance of the Association shall be implemented and/or undertaken in accordance with its Articles of Incorporation, in accordance with this Declaration, and in accordance with the Bylaws, which shall be adopted by the Association following its formation. The Association shall make available copies of the Declaration, Bylaws, Articles of Incorporation, rules and regulations governing the Association as well as the books, records and financial statements of the Association for inspection by Owners or any Mortgagee during regular business hours or other reasonable times.

7.11 Indemnity. The Association shall indemnify, defend and hold harmless the Declarant, the Board, the Committee and each director, officer, employee and agent of the Declarant, the management company, the Board and the Committee from all judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses including attorneys' fees) incurred by such indemnified person under or in connection with this Declaration or the Property to the fullest extent permitted by applicable law. Such indemnity to include matters arising as a result of the sole or concurrent negligence of the indemnified party, to the extent permitted by applicable law.

7.12 FHANA Approval Requirement. As long as there remains any Class B membership and any lien mortgage is in effect with respect to any Lot which is insured by FHA or VA, the following actions shall require prior approval of FHA or VA if such approval is required under the then applicable FHA or VA regulations: amendment of the Articles of Incorporation, Declaration or Bylaws; annexation of additional property; mortgaging or dedication of the Open Space; and dissolution of the Association.

7.13 Failure of Declarant or Association to Perform Duties. Should the Declarant or the Association fail to carry out its duties as specified in this Declaration, the City or its lawful agents shall have the right and ability, after due notice to the Declarant or the Association, to remove any landscape systems, features or elements that are the responsibility of and cease to be maintained by the Declarant or the Association; to perform the responsibilities of the Declarant or the Association if either party fails, to do so in compliance with any of the provisions of this Declaration or of any applicable City codes or regulations; to assess the Declarant or the Association for all costs incurred by the City in performing said responsibilities if the Declarant or the Association fails to

do so; and/or to avail itself of any other enforcement actions available to the City pursuant to state law or City codes and regulations. Should the City exercise its rights as specified above, the Association shall indemnify and hold harmless the City from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscape systems, features or elements that cease to be maintained by the Association or from the City's performance of the aforementioned operations, maintenance or supervision responsibilities of the Declarants or the Association's failure to perform said duties. The obligations described in this paragraph are solely obligations of the Association and no other party, including without limitation, any Owner, shall have any liabilities or obligations in connection therewith.

7.14 Binding Effect. Each of the conditions, covenants, restrictions and agreements herein contained is made for the mutual benefit of, and is binding upon, each and every person acquiring any part of the Property, it being understood that such conditions, covenants, restrictions and agreements are not for the benefit of the owner of any land except land in the Development. This Declaration, when executed, shall be filed of record in the Real Property Records of the County where the Property is located so that each and every owner or purchaser of any portion of the Development is on notice of the conditions, covenants, restrictions and agreements hereincontained.

7.15 Recorded Plat; Other Authorities. All dedications, limitations, restrictions and reservations that are shown on the Plat or any subsequent approved and recorded plats comprising the Topperwein Bluffs Enclave are deemed to be incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed or to be executed by the Declarant, conveying the Lots, whether specifically referred to therein or not. If other authorities, such as the City or the County, impose more demanding, expensive, extensive or restrictive requirements than those that are set forth herein (through zoning or otherwise), the requirements of such authorities shall be complied with. Other authorities' imposition of lesser requirements than those that are set forth herein shall not supersede or diminish the requirements that are set forth herein.

7.16 Additions to the Development. Additional property may become subject to this Declaration in any of the following manners:

(a) The Declarant may add or annex additional real property to the scheme of this Declaration by automatically by filing of record additional Plats for the Topperwein Bluffs Enclave or by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of this Declaration to such property, provided, however, that such Supplementary Declaration is not necessary to extend this Declaration to other areas of the Topperwein Bluffs Enclave and may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration.

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such annexation must have the prior written consent and approval of the majority of the outstanding votes within each voting class of the Association; however, so long as Declarant owns any Lot in the Development, it has the right to veto any addition or annexation pursuant to this Section, at its sole and absolute discretion. Any additions made pursuant to paragraphs (a) and (b) of this Section, when added, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the

properties added.

(c) The Declarant shall have the right and option, without the joinder, approval or consent of any person(s) or entity(ies) to cause the Association to merge or consolidate with any similar association then having jurisdiction over real property located in whole or part within one mile of any real property then subject to the jurisdiction of this Association.

717 No Warranty of Enforceability. While the Declarant has no reason to believe that any of the restrictive covenants or other terms or provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants. Any Owner acquiring a Lot in the Development 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 Lot, agrees to hold Declarant and the Committee harmless therefrom. The Declarant shall not be responsible for the acts or omissions of any individual, entity or other Owners.

718 Right of Enforcement. The failure by Declarant or the Committee to enforce any provision of this Declaration shall in no event subject Declarant or the Committee to any claims, liability, costs or expense; it being the express intent of this Declaration to provide Declarant with the right (such right to be exercised at its sole and absolute discretion), but not the obligation to enforce the terms of this Declaration for the benefit of any Owner(s) of any Lot(s) in the Development.

719 Residential Construction Liability Act. Without waiving any rights under law or equity, all Owners acknowledge, covenant and agree that residential construction defect claims regarding any Home against any Builder are controlled by the Texas Residential Construction Liability Act (Tex. Prop. Code §27.001 et seq., as amended) which preempts the Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code § 17.41 et seq., as amended) and any other law.

720 EPA Compliance. The Owner of each Lot agrees to comply with all EPA rules and regulations regarding erosion control and compliance with a Storm Water Pollution Prevention Plan affecting the Lots (the "Plan"), which will include elements necessary for compliance with the nationwide general permit for construction activities administered by the EPA under the National Pollutant Discharge Elimination System. Each Owner acknowledges that the Declarant and any Builder will not bear any responsibility for complying with a Plan on any Lot upon the sale of each Lot in the subdivision.

721 Soil Movement. Each Owner acknowledges that the failure or excessive movement of any foundation of any Home in the Subdivision can result in the diminished value and overall desirability of the entire Development. Each Owner agrees and understands that the maintenance of the moisture content of the soils on each Lot is necessary to preserve the structural integrity of each home in the Development. Each Owner also acknowledges that the long term value and desirability of the Development is contingent upon each Owner maintaining their Home so that no structural failure or excessive soil movement occurs within the Development.

EACH OWNER IS HEREBY NOTIFIED THAT THE SOIL COMPOSITION
IN TEXAS IN GENERAL AND THE DEVELOPMENT IN PARTICULAR
AND THE CONDITION OF THE LOTS MAY RESULT IN THE SWELLING

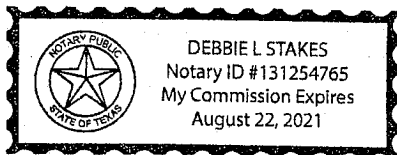
AND/OR CONTRACTION OF THE SOIL IN AND AROUND THE LOT IF THE OWNER OF THE LOT DOES NOT EXERCISE THE PROPER CARE AND MAINTENANCE OF THE SOIL REQUIRED TO PREVENT SOIL MOVEMENT.

If the Owner fails to exercise the necessary precautions, damage, settlement, movement or upheaval to the foundation may occur. Owners are highly encouraged to install and maintain proper irrigation around their Home or take such other measures to ensure even, proportional, and prudent watering around the foundation of the Home.

By each Owner's acceptance of a warranty deed to any Lot, each Owner, on behalf of Owner and Owner's representatives, successors and assigns, hereby acknowledge that the developer, Declarant, all Builders in the Subdivision, the Association, and the Committee shall not be responsible or liable for any damage, settlement, movement or upheaval to the foundation or any other part of the residence constructed on said Lot and hereby releases and forever discharges, developer, all Builders in the Subdivision, Declarant, Association, and the Committee, and their respective shareholders, members, officers, directors, partners, employees, agents, representatives, affiliates, attorneys, successors and assigns, of and from any and all claim for the relief and/or causes of actions, liabilities, damages and claims whatsoever, known or unknown direct or indirect, arising from or relating to the foundation and/or the residence constructed upon the Lot, including but not limited to any damage thereto caused by and/or related in any fashion to the soil condition upon which the same are constructed, the presence of groundwater and any other subsurface condition affecting the Lot and/or from the failure or improper or uneven watering of the Lot, inadequate grading or drainage facilities to carry water away from the foundation, or planting of improper vegetation near the foundation or any action which affects the drainage of any Lot. The Owner of each Lot, and the Owner's legal representatives, successors and assigns, shall assume all risk and consequences to the residential structure, including but not limited to those arising or relating to the subsurface and surface soil condition in and around the Lot, the failure of the Owner or any other person or entity to exercise prudent maintenance procedures and/or the Owner's negligence in protecting and maintaining the integrity of the foundation and structure of the residence.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereto set its hand.

FOR KC RENNOVATIONS, INC.



Signature

Kevin E Clark

Name Printed

THIS DOCUMENT WAS ACKNOWLEDGED BEFORE on 7/20/18 by Debbie Stakes

Notary Public, State of Texas