

**FIRST AMENDED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HELOTES PARK TERRACE PLANNED UNIT DEVELOPMENT**

**STATE OF TEXAS** §

§ **KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF BEXAR** §

**WHEREAS**, HPTMG Joint Venture (“HPTMG”) and HPT Partners, L.P. (“HPT”) were the owners of that certain Real Property described in Exhibit “A” attached hereto and desired to create a residential community thereon;

**RECITATIONS**

This First Amendment ("Amendment") to the Covenants, Conditions and Restrictions for Helotes Park Terrace Planned Unit Development, is executed as of the date set forth following the signature hereto. This Amendment alters, amends and changes those portions of the Covenants, Conditions and Restrictions for Helotes Park Terrace Planned Unit Development executed effective January 23, 1997, as recorded in Volume 6990 at Pages 1759-1795 of the Bexar County Deed Records of Bexar County, Texas and also referenced to as Document Number 97-0010968 (the "CCRs"). CCRs have been imposed upon all lots located in Helotes Park Terrace Planned Unit Development, a subdivision located in Bexar County, Texas, as described in the original plat of such subdivision recorded in Volume 9535 at Pages 179-180 of the Deed and Plat Records of Bexar County, Texas, including all land annexed or added from the 85.34 acres subject to the CCRs as provided in Section 8.2 therein (Volume 6990, Pages 1782-1783), specifically including but not limited to land annexed as shown in documents filed in Volume 7605, Page 0411, Volume 8159, Page 1426, and Volume 8876, Page 9r4 of the Bexar County Deed Records.

The undersigned Secretary of the Helotes Park Terrace Owners Association, Inc. (the "Association") hereby certifies pursuant to Section 7.2 of the CCRs (Volume 690, Page 1782) that members having more than two-thirds (2/3) of the total votes in the Association have voted in favor of the Amendments provided herein, such votes available to be cast at the duly called, noticed and conducted meeting of the Association after a quorum being duly established.

Therefore, the following amendments to the CCRs as allowed by Section 7.2, (Volume 6990, Page 1782) therein are hereby adopted and established. These Amendments are to run with the land and to be applied to the use, occupancy and conveyance of any and all subdivided lots within Helotes Park Terrace Planned Unit Development and each contract or deed which may be executed with regard to any such property shall be held to have been executed, delivered and accepted subject to the original Covenants, Conditions and Restrictions,

this Amendment and the "Architectural Standards Bulletin" of the Association, as it may be amended from time to time.

**NOW THEREFORE**, in order to create and carry out a general and uniform plan for the improvement, development, sale and use of Lots (hereinafter defined) in the subdivision (hereinafter defined), for the benefit of the present and future Owners (hereinafter defined), of the Lots, do hereby establish and adopt the following Restrictions (hereinafter defined):

## **ARTICLE I**

### **DEFINITIONS**

As used in these Restrictions, the terms set forth below shall have the meanings indicated;

1. **ANNUAL MAINTENANCE CHARGE** - The assessment made and levied by the Board against each Owner and his/her Lot in accordance with the provisions of these Restrictions.
2. **ARTICLES OF INCORPORATION** - The Articles of Incorporation of the Association.
3. **ASSOCIATION - HELOTES PARK TERRACE OWNERS ASSOCIATION, INC.**
4. **BOARD OR BOARD OF DIRECTORS** - The Board of Directors of the Association, whether such board be appointed by the Declarant or elected by the Association in accordance with the provisions of these Restrictions.
5. **BY-LAWS** - The By-laws of the Association.
6. **COMMENCEMENT OF CONSTRUCTION** - The date on which foundation forms are sent for a Unit.
7. **COMMON AREAS** - The land, save and except the Lots.
8. **DECLARANT** - HPTMG and HPT, and their successors and assigns that have been designated as such by Declarant pursuant to a written instrument duly executed and recorded in the Office of the County Clerk of Bexar County, Texas.
9. **EXTERIOR AREA** - The portion of a Lot not covered by a Unit.
10. **LAND** - That certain tract or parcel of land situated in Bexar County, Texas, such tract or parcel of land being more particularly described on the Plat, and Exhibit "A" attached hereto.

11. LOT OR LOTS - Each of the Lots shown by the Plat. Moreover, "LOT" shall also mean a building site for a Unit designated pursuant to Section 2.2 (A).
12. MAINTENANCE FUND - Any accumulation of (i) the annual maintenance charges collected by the Board in accordance with the provisions of these Restrictions for the continued maintenance, insuring, repair and operation of, and the construction of improvements on, the Subdivision and (ii) interest, penalties, assessments and other sums and revenues collected by the Board pursuant to these Restrictions.
13. MEMBERS OR MEMBERS - A Member or Members of the Association, as more particularly described in Article III hereof.
14. MORTGAGE - A security interest, mortgage, deed of trust, or lien instrument granted by an Owner to secure the repayment of a loan made by the Owner, duly recorded in the Office of the County Clerk of Bexar County, Texas, and creating a lien or security interest encumbering a Lot and some or all improvements thereon.
15. OWNER OR OWNERS - Any person or person, firm, corporation or other entity or any combination thereof that owns, or record, title to a lot or lots.
16. PLAT - The map or maps plat or plats, recorded in Volume 9535, Pages 179 and 180, in the Plate Records of Bexar County, Texas, relative to the Land, and any replat thereof, if any.
17. PLANS - The final construction plans and specifications (including a related site plan) for any building or improvement of any kind erected, placed, constructed, maintained or altered on any portion of the Land.
18. RESTRICTIONS - The covenants, conditions, restrictions, easements, reservations and stipulations that shall be applicable and govern the improvement, use, occupancy, and conveyance of all the Lots and Common Areas in the Subdivision as set out in this instrument or any amendment thereto.
19. SUBDIVISION - The Land, together with all improvements now or hereafter situated thereon and all rights and appurtenances thereto.
20. SUPPLEMENTAL DECLARATION - Rules adopted from time to time by the Board concerning the management and administration of the Subdivision for the use, benefit and enjoyment of the Owners.
21. UNIT - Single Family Resident and appurtenances constructed on a Lot.
22. UTILITY COMPANY OR UTILITY COMPANIES - Any public entity, utility district, governmental entity (including without limitation, districts created under

Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution) or one or more private entities that regulate, provide or maintain utilities and drainage.

## ARTICLE II

### GENERAL PROVISIONS RELATING TO USE AND OCCUPANCY

#### Section 2.1. USE RESTRICTIONS:

- A. **General:** Each Owner shall use his Lot and his Unit, if any, thereon for single family residential purposes only. As used herein, the term "Single Family Residential Purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for duplex apartments, garage apartments or other apartment or multifamily uses or for any business, professional or the other commercial activity of any type. No Owner shall use the Common Areas or use or permit such Owner's Unit to be used for any purpose which would (I) void any insurance in force with respect to the subdivision; (ii) make it impossible to obtain any insurance required by these Restrictions; (iii) constitute a public or private nuisance, which determination may be made by the Board of Directors in its sole discretion; (iv) constitute a violation of the Restrictions, any applicable law, ordinance, rule or regulation (including the Rules and Regulations); or (v) unreasonably interfere with the use and occupancy of the Subdivision by other Owners.
- B. **Trailers, Boats and Motor Vehicles.** No mobile home, trailers, horse trailers, truck campers, R.V.s, campers, permanent tent or similar structure, or boat shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired upon any property or street (public or private) within the subdivision, except within garages. However, the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, or used exclusively in connection with the construction of any improvement approved by the Architectural Review Committee. Utility trailers (flatbed) will be allowed to the rear of the property, but must be kept parked, stored, or maintained within an enclosed structure or an area that prevents or limits the view thereof from adjacent lots or streets.
- C. **Maintenance of Lawns and Plantings.** Each Owner of property within the Subdivision shall keep all shrubs, trees, grass and planting of every kind on his property, including setback areas and planted areas between set back areas and planted areas between set back lines and the street curb, if any, and on any property located between the boundary line of his property and the street (public or private) on which such property abuts, neatly trimmed, properly cultivated and free of trash and other unsightly material. The Association shall have the right, at any time, to plant, replace, maintain and cultivate shrubs, trees, grass and plantings on any property not part of any Lot, regardless of whether an owner or the Association is

responsible hereunder for maintenance of such area. No Owner shall remove, alter, injure or interfere in any way with any shrubs, trees, grass or plantings placed upon any property within the Subdivision by Declarant or the Association without the written consent of the Association having been first obtained. The Association or its authorized agents shall have the right to enter upon any property not contained in any Lot, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such shrubs, trees, grass or planting, and shall not be liable for trespass for so doing within the Subdivision boundary, Notwithstanding anything to the contrary in these Restrictions, the Association shall encourage the use of water efficient plantings including xeriscape treatments.

- D. **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property within the Subdivision, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to an other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operated upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes, shall be located, used or placed on any such property.
- E. **Repair of Building.** No building or structure upon any Lot shall be permitted to fall in to disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.
- F. **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any part of the Subdivision except in covered containers of a type, size and style which are approved by the Board. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and, then only the shortest time reasonably necessary to effect such collection.
- G. **Clothes Drying Facilities.** Outside clothesline or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.
- H. **Right-of-Way.** During reasonable hours, Declarant, any member of the Architectural Review Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, for the purpose of ascertaining whether or not the provisions of the Restrictions have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

- I. **Animals.** No animals or birds, other than a reasonable number of generally recognized house or yard pets, shall be maintained in any part of the Subdivision and then only if they are kept, bred or raised thereon solely as domestic pets and not of commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing, or confinement of any animal or bird shall be maintained so as to be visible from neighboring property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal or bird is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable.
- J. **Disease and Insects.** No Owner shall permit any thing or condition to exist upon any part of the Subdivision which shall induce, breed or harbor infective plant diseases or noxious insects.
- K. **Restriction on Further Subdivision.** No Lot shall be further subdivided, and no portion less than all of any such Lot, nor any easement or other interest thereon, shall be conveyed by any Owner without the prior written approval of the Architectural Control Committee. Notwithstanding the foregoing however, portions of Lots may be sold in order to comply with the minimum building site requirements set out in Section 2.2(A).
- L. **Signs.** Unless otherwise prohibited by Applicable Law, no sign of any kind may be displayed to the public view on any Lot without the prior written approval of the Association, except for:
- (a) signs which are permitted pursuant to the Rules and Regulations;
  - (b) one (1) temporary "For Sale" sign placed on the Lot. The sign must be professionally made and shall be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The sign must be removed within two (2) business days following the sale or lease of the Lot;
  - (c) political signs may be erected provided the sign; (a) is erected no earlier than the 90<sup>th</sup> day before the election to which the sign relates; (b) is removed no later than the 10<sup>th</sup> day after the date of the election to which the sign relates; and (c) is ground mounted; and is no larger than four feet by six feet. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any components or characteristics described in Section 202.009 (c) of the Texas Property Code are prohibited.

If approved by the Association, signs (excluding political signs) must be

professionally made and shall be limited to a maximum face area of five (5) square feet on each visible side, and if free standing is mounted on a single or frame post.

- M. **Parking.** All vehicles may only be parked either in a garage, or on a driveway surface (concrete, asphalt, or designated gravel). Parking on unpaved surfaces in front or rear of the property, to include grass, mulch, yard, and anything other than a driveway surface for a period of more than 36 hours is prohibited. The use of unimproved lots for parking vehicles is prohibited at all times.
- N. **Grantor's Exemption.** Nothing contained in these Restrictions shall be construed to prevent the erection or maintenance by the Declarant, the Association, or their duly authorized agents, of structures or signs necessary or convenient to the development, advertisement, sale, operation or other disposition of property within the Subdivision. Moreover, banks or other lenders supplying financing to Grantor in connection with the development of the Subdivision or improvements thereto may erect signs in the Subdivision in the Common Areas or on Lots owned by Declarant, which signs identify such lenders and the fact that they are supplying such financing.
- O. **Sidewalks.** No sidewalk shall be constructed on any Lot parallel to the street on which the Lot fronts. Provided, however, that the foregoing prohibition as to sidewalks shall not apply as to areas located between the rear of a Unit and the rear lot line on which said Unit is located.
- P. **Hunting and Firearms.** No hunting, including, but not limited to, bow hunting, shall take place within the P.U.D. No rifles, shotguns, pistols or other firearms may be discharged thereon at any time.
- Q. **Storage Building / Garden Sheds** Notwithstanding anything to the contrary contained in the CCRs, it is specifically provided that storage buildings, garden sheds and all other similar structures shall be allowed on a Lot only if the following conditions are satisfied:
1. **Size.** The maximum allowable length shall be 12 feet.  
The maximum allowable height (stud height) shall be 8 feet. The maximum allowable width shall be 10 feet.
  2. **Style.** The structure should be of the same architectural style of the primary residence located on the Lot.
  3. **Completely Enclosed.** The structure must be completely enclosed.
  4. **Exterior Materials.** The exterior materials shall be one of the following materials:

- a. Wood siding - Painted same color as primary residence.
- b. Natural Cedar - Stained or Unstained.
- c. Hardi - Plank - Painted same color as primary residence.
- d. Brick/Stucco - Same color and type as primary residence.

5. There shall be no metal sheds or buildings allowed.

6. Foundation. The foundation of the structure shall be slab, pier and beam, or footings.

7. Plans. Plans for the structure must be submitted in compliance with Section 2.2 of the CCRs and no structure shall be constructed unless and until such plans are approved as provided therein.

8. Compliance with Architectural Standards Bulletin. The construction of the structure must comply with the Architectural Standards Bulletin.

- R. **Rentals** Nothing in this Declaration shall prevent the rental of any Lot and the improvements thereon by the homeowner thereof for residential purposes; provided that all rentals must be for terms of a minimum of six (6) months. All leases shall be in writing with the homeowner and lessee. The homeowner must provide to his/her lessee copies of the Helotes Park Terrace Homeowner's restrictions and bylaws. Lessee contact information, along with rental duration will be remitted to the Association by the homeowner on or before the expiration of ten (10) days after the effective date of the lease.

## SECTION 2.2 APPROVAL OF PLANS.

- A. No building or improvement of any kind will be erected, placed, constructed, maintained, or altered on any portion of the land until the plans for such building or improvement have been submitted to and approved in writing by the Board. The determination of the Board shall be in its sole discretion. No Unit shall be constructed on a building site of a size smaller than a Lot (as originally shown on the Plat). The building site in accordance with foregoing sentence shall be designated in the plans submitted to the Board.
- B. In determining whether such plans shall be approved, the Board may take into consideration factors deemed appropriate by the Board. Such factors may include, without limitation, the following:
- (1) Compliance with these Restrictions;
  - (2) Quality of the building materials or improvements;



- (3) Harmony of external design of such building or improvement with existing and proposed buildings and improvements and with the design or overall character and aesthetics of the Subdivision;
  - (4) Location of such building or improvement within the Lot on which it will be constructed or placed;
  - (5) The number of square feet to be contained in such building or improvement;
  - (6) Compliance with the Rules and Regulations as developed under the Bylaws of the Association; and
  - (7) Compliance with laws, ordinances, rules and regulations of any County, State, Municipal or other Governmental authority.
- C. The Board shall approve or disapprove the plans in accordance with the following procedures:
- (1) Two (2) complete sets of plans and sepias shall be delivered to the Board at the address set forth in the Rules and Regulations.
  - (2) If the plans are approved by the Board, a letter of approval, including a description of qualifications or modifications, if any, will be prepared for the countersignature of the Owner. Such approval shall be dated and shall not be effective for construction commenced more than six (6) months after such approval. If construction is not commenced within six (6) months after such approval, Owner shall not begin construction of any building or improvement of any kind until the corresponding plans have been resubmitted and re-approved by the Board in accordance with the provisions of this Section 2.2.
  - (3) If the plans are disapproved by the Board, one set of such plans shall be returned marked "Disapproved". Disapproved plans shall be accompanied by a statement of reasons for disapproval.
  - (4) If the Board fails to indicate its approval within thirty (30) days after receipt of plans, it will be deemed that the Board has approved such plans.
  - (5) The Board may require payment by any party who submits plans for approval of a cash fee to compensate for the expense of reviewing such plans.
  - (6) The Board may from time to time promulgate and publish Architectural Standards Bulletins. A copy of such Architectural Standards Bulletins. A copy of such Architectural Standards Bulletins in effect at the time will be

furnished to Owners on request. Such Architectural Standards Bulletins will supplement these Restrictions and may make other and further provisions as to the approval and disapproval of plans and specifications, prohibited materials and other matters relating to the appearance, design and quality of improvements. Such Architectural Standards Bulletins, as they be promulgated from time to time by the Board, shall be incorporated in these restrictions by reference.

- D. Approved Contractors. No construction of any building, fence, wall recreational facilities, landscaping or other structure or improvements shall be commenced on, into or within the Properties until the primary contractor to perform such construction shall have been approved in writing by the Master Design Committee.
  
- E. All decisions of the Board shall be final and binding and there shall be no review of any action of the Board. The Board shall have the right to delegate its rights and obligations under this Article II to an Architectural Review Committee (hereinafter the "Committee") composed of individuals selected by the Board. No approval of plans, and no publication of Architectural Standards Bulletins shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed structure. Such approvals and standards shall in no event be construed as a representation or guarantee by the Board or Committee that any structure will be built in a good or workmanlike manner. Neither Declarant, nor the members of the Committee or the Board or their representatives, shall be liable in damages to anyone submitting plans to the Committee or the Board for approval, or to any Owner or lessee of any part of the subdivision affected by these Restrictions, by reason of or in connection with the approval or disapproval or failure to approve any plans submitted. Every person who submits plans to the Board for approval agrees, by submission of such plans, and every Owner or lessee of any portion of the Subdivision agrees, by acquiring Title thereto or interest thereon, that he will not bring any action or suit against Declarant or the members of the Board or members of the Committee, or their representatives to recover any such damages.

**SECTION 2.3                    DECORATION, MAINTENANCE, ALTERATION AND REPAIRS**

- A. Subject to the provisions of Section 2.2, and subject to the Rules and Regulations, each Owner shall have the right to modify, alter, repair, decorate, redecorate or improve such Owner's Unit, provided that all such action is performed with a minimum inconvenience to other Owners and does not constitute a nuisance. Notwithstanding the foregoing, the Board may require any Owner to remove or eliminate any object situated on such Owner's Unit or Lot that is visible from any Common Areas or from any other Lot, if , in the Board's sole judgment, such object detracts from the visual attractiveness of the Subdivision.

- B. Each Owner shall maintain his Lot, his Unit and his improvements in good order and repair at all times.
- C. The Association shall maintain the Common Areas, but not streets maintained by public authorities.

**SECTION 2.4 CONSTRUCTION**

- A. Storage. Without the prior written consent of the Board, no building material of any kind or character shall be placed or stored upon any Lot more than thirty (30) days before the construction of a structure or improvements is commenced. All materials permitted to be placed on a Lot shall be placed within the property lines of the Lot. At the completion of such building or improvements, any unused materials shall be removed immediately from the Lot. After commencement of construction of any structure or improvements on the Lots, the work thereon shall be prosecuted diligently, to the end that the structure or improvements shall not remain in a partially finished condition any longer than reasonably necessary for completion thereof. Unless otherwise authorized in writing by the Board prior to commencement of construction, the construction of any structure or improvements on a Lot shall be completed within eighteen (18) months from date of commencement of construction, excepting delays due to strikes, war, acts of God or other causes beyond the control of the Owner.
- B. Temporary Structures. No structures of a temporary character, trailer (with or without wheels and whether or not attached to a foundation), mobile home (with or without wheels and whether or not attached to a foundation), modular or prefabricated home, tent, shack, barn or any other out-building structure or building, other than the permanent residence to be built thereon, shall be placed on any Lot, either temporarily or permanently and no residence, house, garage or other structure appurtenant thereto, shall be moved upon any Lot, from another location. Notwithstanding the foregoing, Declarant reserves the exclusive right to erect, place and maintain, and to permit builders to erect, place and maintain, such facilities in and upon the land as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and sale of residences and construction of other improvements in the Subdivision.
- C. Materials. Only new materials (except for brick) shall be used in constructing any structure or improvements situated in a Lot, unless otherwise approved in writing by the Board, all Units situated on any Lot shall have not less than seventy-five percent (75%) masonry (such as stone or brick, stucco, plaster, and trowel applied material" construction, or its equivalent (at the discretion of the Board), and design approved expressly by the Board. Unless otherwise approved in writing by the Board, all attached garage interiors must be sheet-rocked and painted.

- D. Roofs. Roofs may be constructed with only the following materials.
- (1) Concrete tile
  - (2) Standing seam metal or other as approved by the Committee.
  - (3) Composition shingle of 30-year quality with a 30 pound minimum weight. Roof mounted mechanical equipment is prohibited on any roof, unless in the judgment of the Master Design Committee it does not adversely affect views from streets, other Lots, or Common Facilities. When permitted such equipment must be screened from view from streets, other Lots, or Common Facilities. All sloped roof materials used at Helotes Park Terrace must be approved by the Master Design Committee.
- E. Carports. No carports shall be constructed on any Lot without the prior written consent of the Board. All garages must have garage doors constructed or faced with wood siding or wood shingles or any similar material in order to be harmonious in quality and color with the exterior of the appurtenant Unit and shall be installed with electric opening and closing devices, which device shall at all times be kept in a serviceable condition.
- F. Air-Conditioners. No window, roof or wall type air-conditioner that is visible from any public street shall be used, placed or maintained on or in any Unit.
- G. Landscaping. Within ninety (90) days of the sale of the home and occupancy thereof and thereafter, all yards of all Lots must be landscaped.
- H. Antennas and Satellite Dishes. No satellite dish or antenna exceeding one meter in diameter or in diagonal measurement may be placed or kept on any Lot in view from any other Lot, street or Common Area.
- Placement of satellite dishes and communications antennae is subject to Association approval; provided however, that the Association shall not make or enforce any decision which:
- (a) Unreasonably delays or prevents installation, maintenance, or use;
  - (b) Unreasonably increases the cost of installation, maintenance, or use; or
  - (c) Precludes reception or transmission of an acceptable quality signal.
- I. Foundations. No more than five feet (5') of vertical surface of concrete slab of any Unit shall be exposed to view from any public street or adjacent Lots. Any slab in excess of five feet (5') in height above finished grade shall have at least that excess in height covered with siding or masonry used on constructing the Unit. Any Unit

with pier and beam foundation shall have all mechanical, electrical, plumbing lines and fixtures located thereunder screened from view from any public street and from adjacent Units. The Board, in its sole discretion, will determine the adequacy of any screening technique employed.

**SECTION 2.5            SIZE OF RESIDENCES**

No Unit erected on any Lot shall have more than two and one-half (2 ½) stories. No Unit with an interior area of less than the applicable minimum number of square feet set forth below, exclusive of the area of attached garages, porches or other appurtenances or appendage, shall be erected on any Lot:

| TYPE OF STRUCTURE                                                                        | MINIMUM INTERIOR AREA                                                 |
|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| (A) One (1) story residence                                                              | 2,000 square feet                                                     |
| (B) One and one-half (1 ½ ),<br>two (2), and two and one-half<br>(2 ½) story residences. | 2,200 square feet (with at least 1,400 square<br>feet on first floor) |

Setback lines from the perimeter of the development for each Lot shall be as designated on the Plat. No structural improvements, except for exterior lighting, and sidewalks leading from the street to the Unit, shall be located on any Lot between the building setback lines pertaining to such Lot and the street right-of-way on which such Lot fronts. No Unit or any part thereof shall be located nearer than twelve feet (12') from the rear lot line on any Lot within said Subdivision. For the purposes of this Section 2.5, eaves, steps, and open porches shall not be considered to be part of the building or structure; provided, however, that the foregoing shall not be construed to permit any surface encroachment on to an adjacent Lot. For the purpose of these Restrictions, the front lot line of each Lot shall coincide with and be the property line abutting the private street (Lot 11, Magnolia Way). Unless otherwise approved in writing by the Board, each Unit shall face the front lot line of the Lot upon which it is constructed, and each detached garage shall be provided with a minimum twelve foot (12') wide concrete drive access. Such access into the garage must comply with the terms stated in Section 2.4. and with all requirements established by the Board.

**SECTION 2.6            WALLS, FENCES AND HEDGES**

- A. No walls, fences or hedges shall be erected or maintained nearer to the front line of any Lot than the walls of the dwelling situated on such Lot that are nearest to such front lot line, but may be located on side lot lines.
- B. All fences and walls wherever located on a Lot must be of ornamental iron, wood or masonry construction. No chain link fences shall be permitted.
- C. Ownership of any wall, fence or hedge erected on a Lot shall pass with title to such Lot and it shall be the new Owner's responsibility to maintain such wall, fence or

hedge thereafter. In the event any Owner or occupant of any Lot fails to maintain said wall, fence or hedge and such failure continues after thirty (30) days written notice thereof, Declarant, its successors or assigns, or the Association, may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause to be repaired or maintained or to do any other thing necessary to secure compliance with these Restrictions, and to place said wall, fence, or hedge in a satisfactory condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of such Lot, to pay such charges immediately upon receipt of the corresponding statement.

- D. Declarant shall have the right, but no obligation, to construct, within the subdivision, fences or walls. Owners shall be responsible for any damage, and costs, attributable thereto, caused to such fence or wall by said Owner or their respective assigns, agents, guests, invitees and representatives.

**SECTION 2.7                    RESERVATIONS AND EASEMENTS**

- A. Title to all streets, drives, boulevards and other roadways, and to all easements shown on the Plat, is hereby expressly reserved and retained by Declarant subject only to the grants and dedications expressly made on the Plat.
- B. Declarant reserves the utility easements, roads and rights-of-way shown on the Plat for the construction, addition, maintenance and operation of all utility systems (which systems shall include systems for drainage purposes) now or hereafter deemed necessary by Declarant for all utility purposes (which purposes shall include drainage purposes), including systems of electric light and power supply, drainage, telephone service, cable television service, gas supply, water supply and sewer services, including systems for utilization of services resulting from advances in science and technology. There is hereby created an easement upon, across, over and under all the Subdivision for ingress and egress for the purpose of installing, replacing, repairing and maintaining all utilities. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying services to install and maintain pipes, wires, conduits, service lines, or other utility facilities (which facilities shall include drainage facilities) or appurtenances thereto, under the land within the drainage and utility easements now or from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this Section 2.7(B) no utilities (including drainage) or appurtenances thereto may be installed or relocated on the Subdivision until approved by Declarant or the Board.
- C. Declarant reserves the right to impose further restrictions and dedicate additional easements and roadway rights-of-way, by instrument recorded in the Office of the County Clerk of Bexar County or by express provisions in conveyances, with respect

to Lots that have not been sold by Declarant.

- D. Declarant reserves the right to make changes in and additions to all easements for the purpose of aiding in the most efficient and economic installation of utility systems.
- E. An easement is hereby granted to the Association in and to the Subdivision for the purposes of providing and maintaining utility services (including, without limitation, electricity, gas, water, sanitary sewer, storm sewer, telephone and television antenna, and similar services) to the Units and the Common Areas.

SECTION 2.8 TITLE TO AND OPERATION OF THE COMMON AREAS

- A. An easement is hereby granted to each Owner in and to the Common Areas for each such Owner's use and enjoyment of the Common Areas for access to each Owner's Lot, such easement being subject to the Rules and Regulations adopted from time-to-time by the Board and to the Board's right to control the use and operation of the Common Areas pursuant to Section 2. 8(B).
- B. The Board shall have the exclusive right to control the use, maintenance, and operation of the Common Areas. Such right includes, without limitation, the following:
  - (1) The right to permit non-owners to use the Common Areas on terms acceptable to the Board.
  - (2) The right to borrow money for the purpose of maintaining, operating, or constructing improvements in the Common Areas and, in connection with any such borrowing, to grant a lien against the Common Areas to secure the Board's obligation to repay such money.
  - (3) The right to restrict the rights of any Owner who violates any of the provisions of these Restrictions to use the Common Areas in accordance with the provisions of this Section 2.8.
  - (4) The right to dedicate or transfer all or any part of the Common Areas that have been conveyed to the Association to any public agency, authority or utility, and to sell, lease, or pledge those Common Areas to any third party, if the Board deems such action to be in the best interest of the Association.
- C. The Board's right to control the operation of the Common Areas as set forth in Section 2.8 (B) are not a warranty or representation that any of such rights are contemplated or will be exercised by the Board. Furthermore, Declarant shall have no responsibility whatsoever to construct any improvements in the Common Areas.

- D. An easement is hereby granted to the Association to enter upon the Lots for the purposes of landscaping, maintaining, and repairing the Common Areas in accordance with the terms and provisions of these Restrictions.
- E. Declarant may, from time to time, convey all or any portion of the Common Areas to the Association in trust for the benefit of the Owners.

### **ARTICLE III.**

#### **MANAGEMENT AND OPERATION OF SUBDIVISION**

##### **SECTION 3.1 MANAGEMENT BY ASSOCIATION**

The affairs of the Subdivision shall be administered by the Association. The Association shall have the right, power and obligation to provide for the management, acquisition, construction, maintenance, repair, replacement, administration, insuring and operation of the Subdivision as herein provided for and as provided for in the Bylaws and in the Rules and Regulations. The business and affairs of the Association, shall be managed by its Board of Directors. The Declarant shall determine the number of Directors and appoint, dismiss and reappoint all of the members of the Board until the first meeting of the Members of the Association is held in accordance with the provisions of Section 3.4 and a Board of Directors is elected. The Board of Directors elected at the first meeting of Members of the Association is herein sometimes called the "First Elected Board". The Board of Directors appointed by Declarant pursuant to the provisions of this Section 3.1 is herein sometimes referred to as the "Appointed Board".

The Appointed Board may engage the Declarant or any entity, whether or not affiliated with Declarant, to perform the day to day functions of the Association and to provide for the maintenance, repair, replacement, administration and operation of the subdivision. Without limiting the generality of the foregoing, the Association, acting through the Board, shall be entitled to enter into such contracts and agreements concerning the Subdivision as the Board deems reasonably necessary or appropriate to maintain and operate the subdivision in accordance with the Restrictions, including without limitation, the right to grant utility and other easements for uses the Board shall deem appropriate and the right to enter into agreements with adjoining or nearby land owners or governmental entities on matters of maintenance, trash pickup, repair, administration, security, traffic, operation of recreational facilities, or other matters of mutual interest.

##### **SECTION 3.2 MEMBERSHIP IN ASSOCIATION**

Each owner, including Declarant during the period of time in which Declarant owns any Lot, shall be a Member in the Association and such membership shall terminate automatically when such ownership ceases. Upon the transfer of ownership of a Lot, howsoever achieved, the new Owner thereof shall, concurrently with such transfer, become a Member in the Association.



### SECTION 3.3 VOTING OF MEMBERS

Each Member, including Declarant, shall have a vote or votes in the Association as set forth in the Bylaws. The total voting power shall be the sums of the votes that correspond to all of the Lots. In the event that ownership interests in a Lot are owned by more than one Member of the Association, such Members shall exercise their right; to vote in such manner as they may among themselves determine, but in no event shall more than one vote be cast for each Lot. such owners shall appoint one of them as the Member who shall be entitled to exercise the vote of that Lot at any meeting of the Association. Such designation shall be made in writing to the Board and shall be revocable at any time by actual written notice to the Board. The Board shall be entitled to rely on any such designation until written notice revoking such designation is received by the Board. In the event that a Lot is owned by more than one member of the Association and no single Member is designated to vote on behalf of the Members having an ownership interest in such Lot, then none of the such Members shall be allowed to vote. All Members of the Association may attend meetings of the Association and all voting Members may exercise their vote at such meetings either in person or by proxy. The Declarant may exercise the voting rights with respect to Lots owned by it.

### 3.4 MEETING OF MEMBERS

A. The first meeting of the Members of the Association shall be held when called by the Appointed Board upon no less than ten (10) and no more than fifty (50) days prior written notice to the members. Such written notice may be given at any time but must be given not later than thirty (30) days after ninety percent (90%) of all of the Lots have been sold by the Declarant and a Deed recorded in the Office of the county Clerk of Bexar County, Texas. for each such Lot. The First Elected Board shall be elected at the first meeting of the Members of the Association.

B. Thereafter, annual and special meetings of the Members of the Association shall be held at such place and time and on such dates as shall be specified in the Bylaws.

### SECTION 3.5 ELECTION AND MEETINGS OF THE BOARD OF DIRECTORS

The Board of Directors shall be elected and shall meet in the manner set forth in the Bylaws.

### SECTION 3.6 DISPUTES

In addition to its other powers conferred by law or hereunder, the Board shall be empowered to create procedures for resolving disputes between Owners and the Board of the Association, including appointment of committees to consider and recommend resolutions of or to resolve any such disputes.

### SECTION 3.7 PROFESSIONAL MANAGEMENT

The Board may retain, hire employ or contract with such professional management as the Board deems appropriate to perform day to day functions of the Association and to provide for the

construction, maintenance, repair, landscaping, insuring, administration, and operation of the Subdivision as provided for herein and as provided for in the Bylaws.

**SECTION 3.8 BOARD ACTIONS IN GOOD FAITH**

Any action, inaction or omission by the Board made or taken in good faith shall not subject the Board or any individual member of the Board to any liability to the Association, its members or any other party.

**ARTICLE IV.  
MAINTENANCE EXPENSE CHARGE AND MAINTENANCE FUND**

**SECTION 4.1 ANNUAL MAINTENANCE CHARGE**

Each Lot shall be subject to an annual maintenance charges of \$120.00 per year. The amount of the annual maintenance charge for each Lot may be increased or decreased by the Board from time to time, but not more often than once per year. However, if any such change increases the annual maintenance charge by more than twenty percent (20%) of the amount of the annual maintenance charge in the preceding calendar year, the change must be approved by a majority of the owners of Lots in the Subdivision by written vote taken not less than ten (10) days prior to the first day of January of the year in which such increase is scheduled to become effective, and the Owners of each Lot in the Subdivision shall have one (1) vote as set forth in Section 3.3.

**SECTION 4.2. PAYMENT OF ANNUAL MAINTENANCE CHARGE BY DECLARANT AND BUILDERS**

Notwithstanding anything to the contrary herein, no Lot owned by Declarant shall be subject to payment of an annual maintenance charge. The Board may grant temporary maintenance charge exemptions for Lots owned by bonafide builders who buy Lots for construction of Units for third parties.

**SECTION 4.3 MAINTENANCE FUND**

Subject the provisions of Section 4.1 hereof, the annual maintenance charges collected by the Board shall be paid into the maintenance fund and shall be held, managed, invested and expended by the Board, at its discretion, for the benefit of the Subdivision and the Owners of Lots therein. The Board shall, by way of illustration and by way of limitation, expend the maintenance fund for the administration, management, and operations of the Subdivision and for the landscaping, maintenance, insuring, repair, and operation of, and the construction of improvements on, the Common Area; for the enforcement of these Restrictions by action at law or in equity, or otherwise, and by payment of Court costs as well as reasonable and necessary legal fees; and for all other purposes that are, in the discretion of the Board, desirable in order to maintain the character and value of the Subdivision and the Lots therein. The Board and its individual members shall not be

liable to any person as a result of actions taken by the Board with respect to the maintenance fund, except for willful misdeeds.

#### Section 4.4. SPECIAL ASSESSMENTS

If the Board at any time, or from time to time, determines that the annual maintenance charges assessed for any period are insufficient to provide for the continued operation of the Subdivision, the maintenance of the Common Areas, or any other purposes contemplated by these Restrictions, then the Board shall have the authority to levy such special assessments ("Special Assessments") as it shall deem necessary to provide for such continued maintenance and operation. Without limiting the generality of the foregoing, such Special Assessments may be assessed because of casualty or other loss to any part of the Common Areas. No Special Assessment shall be effective until the same is approved in writing by Members holding at least a majority of the votes in the Association, or by a majority at any regular or special meeting of the Members. Any such special assessment shall be payable (and the payment thereof may be enforced) in the manner herein specified for the payment of the annual maintenance charges .

#### Section 4.5 ENFORCEMENT OF ANNUAL MAINTENANCE CHARGE

The annual maintenance charge assessed again each owner shall be due and payable, in advance, on the date of the sale of such Lot by Declarant for that portion of the calendar year remaining, and on the second (2nd) day of each January thereafter. Any such amount not paid and received by the tenth (10th) day of each January thereafter shall be deemed delinquent, and, without notice, shall bear interest at the highest contract rate per annum allowed by law from the date originally due until paid.

To secure the payment of the annual maintenance charge, special assessments levied hereunder and any other sums due hereunder (including without limitation interest, late fees or delinquency charges), a Vendor's Lien and Superior Title shall be and is hereby reserved in and to each Lot and Unit assigned to the Association, without recourse, which Lien shall be enforceable as hereinafter set forth by the Association or the Board on behalf of the Association. The liens described in this Section 4.5 and the Superior Title herein reserved shall be deemed subordinate to any mortgage for the purpose or improvements of any Lot and any renewal, extension, rearrangements or refinancing thereof. The collection of such annual maintenance charge and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest, costs and attorney's fees shall be chargeable to and be a personal obligation of the defaulting Owner.

Notice of the Lien referred to in the preceding paragraph may be given by the recordation in the Office of the County Clerk of Bexar County, Texas, of an Affidavit, duly executed, and acknowledged by an Officer of the Association setting forth the amount owed, the name of the Owner or Owners of the affected Lot, according to the books and records of the Association, and the legal description of such Lot.

Each owner, by acceptance of a Deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such lot and hereby vests in the Board the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid annual maintenance charge and other sums due hereunder as a debt, and to enforce the aforesaid Lien by all methods available for the enforcement of such Liens, both judicially and by non-judicial foreclosure pursuant to Article 3810 of the Texas Revised Civil statutes (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the Deed to its Lot, each Owner expressly grants, bargains, sells and conveys to the President of the Association from time to time serving, as Trustee (and to any substitute or successor Trustee as hereinafter provided for) such owner's lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid annual maintenance charge, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time. The Trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and attested to by the Secretary of the Association and filed in the Office of the County Clerk of Bexar County, Texas. In the event of the election by the Board to foreclose the lien then it shall be the duty of the Trustee, or his successor, as herein above provided, at the request of the Board (which request shall be presumed) to enforce this trust and .to sell such Lot, and all rights appurtenant thereto, at the door of the County Courthouse of Bexar County, Texas, on the first Tuesday in any month between the hours of 10:00 o'clock a.m. and 4:00 o'clock p.m. to the highest bidder for cash at public venue after the Trustee and the Board respectively shall have given notices of the proposed sale in the manner hereinafter set forth and to make due conveyance to purchaser or purchasers, with General Warranty of Title to such purchaser or purchasers binding upon the Owner or owners of such Lot and his heirs, executors, administrators and successors. The Trustee shall give Notice of such proposed sale by posting a written Notice of time, place and term of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse Door of Bexar County, Texas and, in addition, the Board shall serve written Notice at twenty-one (21) consecutive days preceding the date of sale or the proposed sale by certified mail on each of such Owner or Owners according to the records of the Council, and file the appropriate Notice with the County Clerk's Office of Bexar county, Texas. service of such Notice shall be completed upon deposit of the Notice, enclosed in a postpaid wrapper, properly addressed to such owner or owners at the most recent address as shown by the records of the Association, in a Post Office or official depository under the care and custody of the United states Postal Service. The affidavit of the person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service.

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the Lien foreclosed. 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, and the purchaser at such foreclosure sale 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.

It is the intent of the provisions of this Section to comply with the provisions of Article 3810, Texas Revised Civil Statutes, relating to non-judicial sales by power of sale and, in the event of the amendment of said Article 3810 hereafter, which amendment is applicable hereto, the President of the Association, acting without joinder of any other owner or mortgagee or other parson may, by amendment to these Restrictions filed in the Office of the County Clerk of Bexar County, Texas, amend the provisions hereof so as to comply with said amendments to Article 3810.

#### Section 4.6 NOTICE OF SUMS OWING

Upon the written request of an owner, the Association shall supply to such owner a written statement setting out the then current total, all maintenance charges, special assessments, and other sums, if any, owing by such Owner with respect to its Lot; in addition to such Owner, the written statement from the Association so advising the owner shall also be addressed to and be for the benefit of a perspective lender or purchaser of the Lot. Same may be identified by said Owner to the Association in the written request for such information.

#### Section 4.7 FORECLOSURE

In the event of a foreclosure of a mortgage with respect to a Lot, the purchaser at the foreclosure sale shall not be responsible for maintenance charges, special assessments, or other sums, if any, owing by the prior owner of the Lot to the Association prior to the foreclosure, but said purchaser and its successors shall be responsible for maintenance charges, special assessments, and other sums, if any, becoming due and owing to the Association with respect to said Lot thereafter.

### ARTICLE V.

#### INSURANCE

##### SECTION 5.1 GENERAL PROVISIONS

The Board shall obtain Public Liability insurance for the Subdivision in such amounts as the Board shall deem desirable, so as to provide adequate public liability protection to the Association, as well as appropriate and adequate hazard insurance on the improvements which are subject to damage or destruction situated upon Common Areas.

##### SECTION 5.2 POLICIES

All policies of insurance provided for in this Article V shall name as insured the Association. Each such policy shall be without contribution with regard to any other policies of insurance carried individually by an Owner, and shall provide that such policy shall not be terminated for any cause without at least thirty (30) days prior written notice to the Association. Any proceeds paid in respect of any insurance policy obtained by, the Board pursuant to this Article V shall be held and disbursed by the Board in accordance with these Restrictions.

SECTION 5.3 SUBROGATION

Each Owner and the Association agree to and hereby waive all rights of subrogation against the Declarant that they may have now or in the future under or with respect to any insurance policies.

Section 5.4 INDIVIDUAL INSURANCE

Each Owner shall be responsible for insuring his Lot and his Unit, its contents and furnishings. All policies of casualty insurance carried by each Owner shall be without contribution with respect to the policies of casualty insurance, if any, obtained by the card for the benefit of all of the owners as provided above. Each Owner, at his own cost and expense, shall be responsible for insuring against the liability of such Owner.

ARTICLE VI

FIRE OR CASUALTY: REBUILDING

Section 6.1 REBUILDING

In the event of a fire or other casualty causing damage or destruction to a Lot or the Unit located thereon, the owner of such damaged or destroyed Lot or Unit shall within three (3) months after such fire or casualty contract to repair or reconstruct the damaged portion of such Lot or Unit and shall cause such Lot or Unit to be fully repaired or reconstructed in accordance with the original plans therefor, or in accordance with new plans presented to and approved by the Board, and promptly shall commence repairing or reconstructing such Unit, to the end that the Unit shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. Alternatively, such damaged or destroyed Unit shall be razed and the Lot restored as nearly as possible to its prior condition.

Section 6.2 PAYMENT OF INSURANCE PROCEEDS

All insurance proceeds and other funds received by the Association pursuant to these Restrictions as a result of fire or other casualty loss causing damage or destruction to Common Areas shall be applied toward the cost of repair, restoration or rebuilding of the damaged Common Areas. Any funds remaining after the repair, restoration or rebuilding of such damaged Common Areas shall be retained by the Board as part of the maintenance fund.

Section 6.3 INDEMNITY OF ASSOCIATION

Each Owner shall be responsible for any costs incurred as a result of such Owner's negligence or misuse or the negligence or misuse (i) of his family, tenants, guests, invitees, agents or employees, or (ii) of any other resident or occupier of his Unit, and shall indemnify the Association and all other Owners against any such costs.

ARTICLE VII

AMENDMENT TO DECLARATION AND DURATION OF RESTRICTION

Section 7.1 AMENDMENT BY DECLARANT

Notwithstanding anything to the contrary contained in these Restrictions, the Declarant shall have and hereby reserves the right at any time, without the joinder or consent of any other party or entity to amend these Restrictions by an instrument in writing duly signed, acknowledged and filed for record in the Office of the County Clerk of Bexar County, Texas, so long as such Amendment (in the sole discretion of the Board) will not be inconsistent with the general overall plan for the development of the Subdivision.

Section 7.2 AMENDMENT

Except as otherwise provided by law and by Section 8.1, the provisions hereof may be amended by an instrument in writing signed by the Secretary of the Association certifying that Members having not less than two-thirds (2/3 rds) of the total votes in the Association that may be cast thereupon, have voted in favor of such Amendment, but no such Amendment shall be effective until a written notice thereof is duly recorded in the Office of the County Clerk of Bexar County, Texas. The Bylaws of the Association may be amended as therein set forth. Without joinder of Declarant, no Amendment may diminish the rights of or increase the liability of Declarant under these Restrictions.

Section 7.3 DURATION

These Restrictions shall remain in full force and effect until January 1, 2021, and shall be extended automatically for successive ten (10) year periods; provided, however, that these Restrictions may be terminate on January 1, 2021, or on the commencement of any successive ten (10) year period by filing for record in the Office of the County Clerk of Bexar county, Texas, an instrument in writing signed by members having not less than two-thirds (2/3 rds) of the total votes in the Association that may be cast thereupon.

ARTICLE VIII.

PROPERTY SUBJECT TO THIS DECLARATION:

ADDITIONS OR MODIFICATIONS THERETO

SECTION 8.1 EXISTING PROPERTY

The real property which initially is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is Helotes Park Terrace, a Planned Unit Development, in Bexar County, Texas, as described in paragraph 1 of the Recitations, all of which real property is

sometimes hereinafter referred to as the "Existing Property".

## SECTION 8.2 ADDITIONS TO EXISTING PROPERTY

Additional lands may become subject to this Declaration and made a part of the P.U.D. in the following manner:

A. Additions by Declarant: For a period of twenty (20) years from the date of this instrument, the Declarant shall have the right to bring additional properties out of the 85.34 acres within the scheme of this Declaration in future stages of development without the consent of other Members being required. Any such additions shall be made by filing of record in the Real Property Records of Bexar County, Texas, either an Annexation Certificate and/or an Amended or supplementary Declaration of Covenants and Restrictions with respect to the additional property, each shall extend the scheme of the covenants and restrictions of this Declaration to such property; and the execution thereof by the Declarant shall constitute all requisite evidence of the required approval thereof. Such Amended or supplementary Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands. In no event, however, shall any such Amended or supplementary Declaration revoke, replace, or add to the covenants established by this Declaration as they are applicable to the Existing Property, unless such Amended or Supplementary Declaration is approved by the Lot Owners in accordance with Section 4 of Article III.

## Section 8.3. MASTER PLAN

Although a Helotes Park Terrace Master Plan has been prepared and submitted to and approved by the city of Helotes, such Master Plan shall not bind the Declarant to make any additions proposed therein, or to adhere to the Plan in any subsequent development of any tract of land proposed as an addition to the Existing Property.

## ARTICLE IX.

### ON-SITE INSPECTIONS

#### Section 9.1 CAVES AND SINKHOLES

Natural caves and sinkholes may occur on some of the Lots in the P.U.D. Prior to closing the purchase of his Lot, each prospective Lot owner should personally inspect the Lot in which he is interested and/or obtain the services and advice of a professional inspector to assure himself of the location of any such caves and/or sinkholes. If he completes the purchase of a Lot, such Lot owner agrees that such purchase shall evidence the fact that he or a professional inspector acting on his behalf has made an inspection to determine the location of any such caves and/or sinkholes.

#### Section 9.3 SITE IMPROVEMENTS



A. Streets. Each prospective Lot Owner is hereby notified that the streets in the P.U.D. are not public streets, but are private streets within a Planned Unit Development and are not as wide as public streets. After they have been completed and approved by the city of Helotes, the streets shall be conveyed to the Association, which shall have the responsibility of maintaining them. Although there is a fifty foot (50') street right-of-way indicated on the Subdivision Plat, the paved area generally is limited to twenty two feet (22') and the shoulders to one foot (1'). In order to maintain the aesthetics of a rural subdivision and the ambience of country lanes, the Declarant has made a concerted effort to preserve native trees along the streets wherever possible. These are sometimes located within the unpaved portion of the street right-of-way. Each prospective Lot owner should carefully note the width of the paved portion of the streets, the proximity of trees to pavement, and the location of trees within various esplanades. In completing the purchase of a Lot, the Owner specifically agrees that such purchase shall evidence the following:

- (1) his acknowledgment of the narrow nature of the streets within the P.U.D.
- (2) his acknowledgment of the proximity of the trees to the pavement.
- (3) his assumption of the risk for himself, his family, guests and all other invitees for whom he may legally do so of driving on narrow streets among trees, without, however, interjecting himself to the claims of invitees as third-party beneficiaries of such agreement.
- (4) his agreement to drive on such streets in a safe manner, given the particular weather conditions that may exist from time to time, in accordance with all traffic laws, rules and regulations of the state of Texas (the same as if they pertained to private streets), in accordance with all posted traffic signs and warnings and rules and regulations of the Association, and in accordance with the terms of the Declaration, as it may be amended from time to time, and
- (5) his release, to the fullest extent permitted by law, of Declarant, Declarant's officers, directors, contractors, employees and agents from any liability any of them might otherwise incur to the Owner and/or the owner's family, guests and other invitees arising out of or in connection with the narrowness of the paved portion of the streets of the P.U.D. or the location of trees within the unpaved portion of the street right-of-way.

B. Drainage. Each prospective Lot owner also is notified that the bridge(s), drainage ditches, culverts and other drainage facilities within the street rights-of-way in the P.U.D. are not publicly owned, but are privately owned. Once they have been completed, the drainage facilities located within the road rights-of-way shall be conveyed to the Association, which shall have the responsibility for maintaining them. Each prospective Lot owner should carefully note the location of the drainage facilities and of any creek beds and 100 year flood plain areas. In completing the purchase of a Lot, the Owner specifically agrees that such purchase shall evidence the following:

- (1) his acknowledgment that the bridges, drainage ditches, culverts and other drainage

features located within the street rights-of-way of the P.U.D. are not owned by a public entity, but shall be owned and maintained by the Association.

(2) his acknowledgment that he has carefully checked the Plat of the Lot to determine if

any of the Lot is affected by a creek bed or a 100 year flood plain area.

(3) his assumption of the risk for himself, his family, guests and all other invitees for whom he may legally do so of owning property subject to such bridges, drainage facilities, creek beds and 100 year flood plan areas and knowing the location thereof, without, however, subjecting himself to the claims of invitees as third-party beneficiaries of such agreement.

(4) his agreement to refrain from unsafe conduct in the proximity of such bridges, drainage facilities, creek beds and 100 year flood plain areas and to carefully supervise the conduct of any children for whom he is responsible who may be in or near such bridges, drainage facilities, creek beds and 100 year flood plain areas, and

(5) his release, to the fullest extent permitted by law, of Declarant, Declarant's officers, directors, contractors, employees and agents from any liability any of them might otherwise incur to the Owner and/or the owner's family, guests and other invitees to the Lot arising out of or in connection with his or their unsafe conduct in the proximity of such bridges, drainage facilities, creek beds or 100 year flood plain areas.

### Section 9.3 "AS IS" - WHERE IS"

A. Acknowledgement. Each prospective Lot Owner acknowledges that other than those expressly stated herein, Declarant, its officers, employees, brokers, agents and salesmen, make no express or implied warranties as to the condition of the Lot, the Common Facilities, nor the P.U.D, itself. Each prospective Lot owner is responsible for thoroughly inspecting and examining the Lot in which he/she is interested and for Conducting such investigations, either personally or through professional inspectors, of the Lot and the P.U.D. as he/she deems necessary for them to evaluate their purchase. By completing the purchase of a Lot, each Lot Owner is acknowledging that he/she is purchasing the Lot on an "As Is - Where Is" and "With All Faults" basis and is further acknowledging the following:

(1) Water. Each Lot owner is responsible for extending a water line into his Lot from the water service line located next to his Lot and for paying the San Antonio Water System's required meter fee.

(2) Septic system. Each Lot owner is responsible for installing and maintaining his own septic tank system pursuant to all applicable land use regulations, including, but not limited to, those promulgated by the Bexar County Public works Department and the Texas Natural Resource Conservation Commission. Declarant has no obligation with respect to sewerage

disposal facilities.

(3) Electricity. Each Lot owner is responsible for extending electricity into his Lot from a transformer or a pull-box located on or near a property line of his Lot.

(4) Streets. The Association will have the responsibility for maintaining the private streets within the P.U.D. once they are completed and conveyed to the Association. The Association also shall maintain commercial general liability insurance with coverage sufficient to adequately protect the Association, its officers, directors, employees and any Members acting on its behalf, as well as the Declarant, its general partners, and the respective chief executive officers of those general partners, from liability arising out of the construction, maintenance and/or ownership of the Common Facilities.

B. Agreement. If he completes the purchase of a Lot, the owner specifically agrees that such purchase also shall evidence the following:

(1) his acknowledgement of the existence in the P.U.D. of narrow street, trees in close proximity, to streets, creek beds, 100 year flood plain areas, bridges, culverts, drainage facilities, caves and/or sinkholes.

(2) his agreement to accept the risk of such features for himself and his family, guests and other invitees, only to the extent, however, that the law makes such acceptance binding on his invitees without subjecting himself to the claims of invitees as third-party beneficiaries of such agreement.

(3) his agreement to waive any claim that he may have in the foreseeable future, whether known or unknown, against Declarant, Declarant's officers, directors, contractors, employees and agents arising out of the existence within the P.U.D. of narrow streets, trees, within the unpaved portion of street right-of-way, creek beds, 100 year flood plain areas, bridges, drainage facilities, caves and/or sinkholes, and

(4) his agreement to indemnify and hold harmless Declarant, Declarant's officers, directors, contractors, employees, brokers, agents and salesmen from and against any claim that such Lot Owner or any heir or assign of such Lot owner might bring against any of them in contravention of his agreements contained in this subpart (b).

## ARTICLE X.

### MISCELLANEOUS

#### Section 10.1 SEVERABILITY

In the event of the invalidity or partial invalidity or partial unenforceability of any provision or a portion of these Restrictions, the remainder of the Restrictions shall remain in full force and

effect.

Section 10.2                    RULES AND REGULATIONS

The Rules and Regulations may be amended from time to time by the Board. The Rules and Regulations are of equal dignity with, and shall be enforceable in the same manner as, the provisions of these Restrictions, but in the event of a conflict, these Restrictions shall control. Each owner, by accepting conveyance of a Lot, agrees to comply with and abide by the Rules and Regulations, as the same may be amended from time to time.

Section 10.3                    NUMBER AND GENDER

Pronouns, whenever used herein, and of whatever gender, shall include natural persons and corporations, entities and associations of every kind and character, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 10.4                    ARTICLES AND SECTIONS

Article and Section headings in these Restrictions are for convenience of reference and shall not affect the construction of interpretation of these Restrictions. Unless the context otherwise requires, references herein to Articles and Sections are to Articles and Sections of these Restrictions.

Section 10.5                    DELAY IN ENFORCEMENT

No delay in enforcing the provisions of these Restrictions with respect to any breach or violation thereof shall impair, damage, or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar reach or violation thereof at any later time or times.

Section 10.6.                    LIMITATION OF LIABILITY

Declarant, as well as its agents, employees, officers, and directors, shall not be liable to any owner or lessee of the Land or any portion thereof or to any other party for any loss, claim or demand in connection with a breach of any provisions of these Restrictions by any party other than Declarant.

Section 10.7                    ENFORCEABILITY

The Restrictions adopted and established for the Subdivision by these Restrictions are imposed upon and made applicable to the subdivision and shall run with the Subdivision and shall be binding upon and inure to the benefit of and be enforceable by Declarant, the Association, each purchaser, grantee, owner and lessee in the Subdivision, or any portion thereof, and the respective heirs, legal representatives, successors and assigns of the Subdivision, the Association and each such purchaser, grantee, owner and lessee.

Section 10.8 REMEDIES

In the event any one or more persons, firms, corporations or other entities shall violate or attempt to violate any of the revisions of the Restrictions, the Declarant, the Association, each purchaser, grantee, owner of lessee of the Subdivision, or any portion thereof, may institute and prosecute any proceeding at law or in equity

- (i) to abate, preempt or enjoin any such violation or attempted .violation or
- (ii) to recover monetary damages caused by such violation or attempted violation. Upon the violation of any of the provisions of these Restrictions by any owner, in addition to any other rights and remedies available to it at law, in equity or otherwise, the Association, acting through the Board, shall have the right to pursue any or all of the following remedies:
  - A. The Board may restrict the right of such owner to use the Common Areas in such manner as the Board deems fit and appropriate; and

Section 10.9 ATTORNEYS FEES

In the event that (I) any Owner, Owners, contractor or homebuilder, files suit against the Association, or the Board of Directors (or any of them) or the Architectural Control Committee, for any reason; or (ii) file suit against any Owner, Owners, contractor or home builder for violations of the CCR's, or the Architectural Standards Bulletin (including any Amendments thereto), and the Owner, Owners, contractor or home builder is not a prevailing party, then said Party shall be liable for all attorneys fees, court costs, expert witness fees, videotaped deposition expenses, copy costs and all other litigation expenses of any kind of the opposing party.

As referenced above, the undersigned Secretary of the Helotes Park Terrace Homeowners Association, Inc. (The "Association") hereby certifies pursuant to Section 7.2 of CCR's (Volume 6990, Page 1782) that members having more than two-thirds (2/3) of the total votes in the Association have voted in favor of the Amendments provided herein, such votes available to be cast at the duly called, noticed and conducted meeting of the Association after a quorum being duly established.

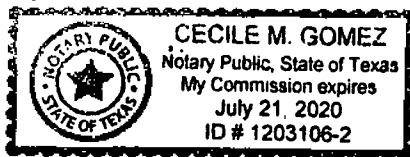
WITNESS THE EXECUTION HEREOF this 10<sup>th</sup> day of November 2018.

Twyla HulsKotter  
 Signature  
 Printed Name: Twyla HulsKotter  
 Secretary, Helotes Park Terrace  
 Homeowners Association, Inc.

STATE OF TEXAS       §  
                                  §  
COUNTY OF BEXAR    §

Before me, the undersigned authority, on this day personally appeared Troya Hubkottter known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 10 day of NOV, 2018.



Cecile M. Gomez  
Notary Public, State of Texas me  
My Commission Expires: 6/21/2020

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20190000535  
**Recorded Date:** January 02, 2019  
**Recorded Time:** 1:54 PM  
**Total Pages:** 31  
**Total Fees:** \$142.00

**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

**\*\* Do Not Remove \*\***

Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 1/2/2019 1:54 PM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk