



**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**BUFFALO HEIGHTS WEST, SECTION ONE, TOM GREEN COUNTY, TEXAS**

STATE OF TEXAS

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COUNTY OF TOM GREEN

This Declaration is made on November 8, 2023 by Buffalo Heights West Development, LLC, a Texas Limited Liability Company ("Declarant") whose address is PO Box 1669, San Angelo, Texas 76902.

**RECITALS**

WHEREAS, Declarant is the owner in fee simple of certain real property located in Tom Green County, Texas, legally described in Exhibit A attached hereto, and known by official plat designation as Buffalo Heights West, Section One, a subdivision of Tom Green County, Texas, pursuant to a plat recorded on October 23, 2023, in Instrument Number 202313634 at Plat Cabinet H, Slide 95, Plat Records, Tom Green County, Texas..

NOW, THEREFORE, For the purpose of enhancing and protecting the value, attractiveness, and desirability of the lots or tracts constituting such subdivision, declarant declares that all of the real property described above and each part of it will be held, sold, and conveyed only subject to the following easements, covenants, conditions, and restrictions, which will constitute covenants running with the land and will be binding on all parties having any right, title, or interest in the above described property or any part of it, their heirs, successors, and assigns, and will inure to the benefit of each owner of such right, title, or interest.

**ARTICLE I.  
DEFINITIONS**

- Section 1. "Act" means Chapter 209 of the Texas Property Code applicable to property owners' associations, as amended from time to time.
- Section 2. "Affiliates" means any Person who controls, is controlled by, or is under common control with another Person.
- Section 3. "Annexed Property" means any real property added to the Property by a Supplemental Declaration that subjects such real property to this Declaration.

- Section 4. "Architectural Control Committee" means the committee established in accordance with Article XI of this Declaration ("ACC").
- Section 5. "Architectural and Design Guidelines" means any procedural or substantive rules, guidelines, criteria, standards and procedures that may be adopted by Declarant, or the Board, from time to time, regarding the design, standards, development, planning and construction of Improvements and the use or occupancy of the Lots, as the same may be amended from time to time.
- Section 6. "Articles" means the Articles of Association or Certificate of Formation for the Association filed September 25, 2022 with the Secretary of State of Texas, as may be amended from time to time.
- Section 7. "Assessments" means Regular Assessments, Special Assessments and Individual Assessments owing to the Association by an Owner or levied against any Lot by the Association.
- Section 8. "Association" means and refers to Buffalo Heights Homeowners Association, Inc., its successors and assigns, created for the purposes and possessing the rights, powers, authority and obligations set forth in the Governing Documents, whose address is P.O. Box 61542, San Angelo, Texas, 76906, as may be changed by the Association from time to time.
- Section 9. "Board" means the board of directors of the Association.
- Section 10. "Budget" means an annual budget prepared by the Association that sets forth the anticipated Common Area Expenses for the ensuing fiscal year.
- Section 11. "Builder" means an Owner who is in the business of constructing residences for resale to third parties and intends to construct a residence on such Lot for resale to a third party.
- Section 12. "Bylaws" means the Bylaws adopted by the Board of Directors and recorded in the Real Property Records of the County, as may be amended from time to time.
- Section 13. "Charges" means any costs, expenses, dues, interest, fees, late fees, fines, collection costs, attorneys' fees and any other sums arising under the Governing Documents owing to the Association from an Owner other than Common Area Expenses.
- Section 14. "Claim" means any and all demands, actions, causes of action, losses, costs, expenses (including reasonable attorneys' fees whether incurred at pre-trial, trial or on appeal), damages or liability of any kind or nature.

- Section 15. "Class A Members" means the Owners, to include Builders, of each Lot.
- Section 16. "Class B Member" means the Declarant, and its affiliate entities, at all times on or before the termination of the Declarant Control Period.
- Section 17. "Common area" means all real property owned by the Association for the common use and enjoyment of the owners.
- Section 18. "Common Area Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any and all applicable reserves, including: (a) expenses of administration, maintenance or repair of any Common Area; (b) expenses due and payable in accordance with this Declaration; (c) expenses designated as Common Area Expenses by the Governing Documents or by the Board; (d) such reasonable reserves, as may be established by the Association.
- Section 19. "County" means Tom Green County, Texas.
- Section 20. "Declarant" means Buffalo Heights West Development, LLC, and its heirs, successors, and assigns provided such successors or assigns acquire more than one undeveloped lot from declarant for the purpose of development.
- Section 21. "Declarant Control Period" means the period commencing on the date of this Declaration and continuing until the earlier to occur of the date when: (a) 5 years after the date on which this Declaration was recorded; (b) when, in Declarant's sole discretion, it voluntarily relinquishes such right by written notice executed by Declarant and recorded in the Real Property Records; or (c) when Declarant no longer owns a Lot in Buffalo Heights West, Section One.
- Section 22. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Buffalo Heights West, Section One, as may be amended and supplemented from time to time.
- Section 23. "Deed of trust" means a deed of trust or a conventional mortgage.
- Section 24. "Designee" means a Person acting at the request of another Person, including Builders, contractors, subcontractors, employees, agents, representatives, and licensees.
- Section 25. "Development Rights" means those rights set forth in Article X of this Declaration.
- Section 26. "Drainage Facilities" means the detention ponds, drainage channels, drainage swales, discharge structures, and grading, connector, and outfall

pipes, and all other items and structures, whether located in Common Areas or on Lots, whether public or private, necessary for the proper drainage of surface storm water runoff within the Property.

- Section 27. "Easement Area" means any portion of the Property burdened by an Easement.
- Section 28. "Easements" means, collectively, those easements described in this Declaration.
- Section 29. "Environmental Laws" means any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Property or the Improvements.
- Section 30. "Governing Documents" means those documents listed in Article II, Section 2 of this Declaration, as they may be amended from time to time.
- Section 31. "Governmental Approvals" means all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any Governmental Authority.
- Section 32. "Governmental Authority" means any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental entity (federal, State, County, district, municipal, City or otherwise) whether now or hereafter in existence.
- Section 33. "Governmental Impositions" means all real property and personal property taxes, assessments, standby fees, excises and levies, and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution of this Declaration, may be assessed, levied or imposed upon the Property or any Lot therein by any Governmental Authority.
- Section 34. "Hazardous Substances" means any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law.
- Section 35. "Improvements" means any and all physical structures, facilities, alterations or changes of any type or nature made to or on any portion of the Property, Common Areas, and Lots including any buildings, residences, parking lots, parking structures, roadways, driveways, ramps, loading areas, mechanical equipment, window coverings, signs, utilities, fencing, antennae, walls,

screens, landscaping, street scapes, grading changes, park areas, walkways, bridges, recreational facilities, exterior lighting facilities, drainage structures, curbs, retaining walls, grates and man-made objects of every type, existing or in the future placed on any portion of the Property, including all cable television, cellular phone, internet and other utility or communication installations or equipment.

- Section 36. "Indemnified Party" shall have the meaning assigned to such term in Article XI, Section 9 of this Declaration.
- Section 37. "Individual Assessments" mean assessments established, imposed and levied from time to time by the Association pursuant to Article III, Section 2 of this Declaration.
- Section 38. "Insurance Trustee" means the Association acting in the capacity of a trustee in accordance with the provisions of Article XIII, Section 4 of this Declaration to negotiate losses under any property insurance policies required to be obtained by the Association in this Declaration.
- Section 39: "Legal Requirements" mean restrictive covenants and any other matters of record and any and all then- current judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to the use and enjoyment of any portion of the Property or any Lot, including Environmental Laws, zoning ordinances, subdivision and building codes, flood disaster laws and applicable architectural barrier and health laws and regulations.
- Section 40. "Lot" means any plot of land shown on the recorded subdivision plat referred to above with the exception of the common area and portions marked "reserved", if any.
- Section 41. "Maintenance" means the exercise of reasonable care to keep buildings, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping further means the exercise of generally accepted garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth.
- Section 42. "Maintenance Standard" means good repair and condition for the Property necessary to maintain the Common Areas and Lots, as applicable, in a condition reasonably suitable for their intended purpose.
- Section 43. "Manager" means any professional manager or management company that is engaged by the Association to perform any of the duties, powers or functions of the Association.

- Section 44. "Members" means Class A Members and the Class B Member.
- Section 45. "Membership" means the rights and obligations associated with being a Member.
- Section 46. "Mortgagee" means any Person that is the holder, insurer or guarantor of any mortgage or deed of trust securing indebtedness on the Property or on a Lot.
- Section 47. "Occupant" means any Person from time to time entitled to the use and occupancy of a Lot or Improvements thereon pursuant to an ownership right or any lease, sublease, license, or other similar agreement.
- Section 48. "Owner" means any Person (including Declarant) owning fee title to a Lot, but excluding any Person having an interest in a Lot solely as security for an obligation.
- Section 49. "Past Due Rate" means the maximum lawful rate of interest allowed under Texas law or, if no maximum lawful rate exists, the rate of 18% per annum.
- Section 50. "Past Due Payment Plan" shall have the meaning assigned to such term in Article III, Section 3 of this Declaration.
- Section 51. "Person" means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association and any other legal entity, including any Governmental Authority and any fiduciary acting in such capacity on behalf of any of the foregoing and any Designee.
- Section 52. "Phase" shall mean and refer to each and every portion of the Property which is the specific subject of the Buffalo Heights West, Section One plat filed of record in the Map and Plat Records of Tom Green County, Texas, as it may be revised from time to time.
- Section 53. "Plans" mean the plans and specifications for the development and construction of improvements with respect to a particular Lot, prepared by or on behalf of an Owner and approved by all applicable Governmental Authority, and which includes all items set forth in the Architectural and Design Guidelines, as applicable and any other information requested by the Architectural Control Committee.
- Section 54. "Property" means that certain real property located in the County and more particularly described in Exhibit A attached to this Declaration together with all and singular the Easements, rights, and appurtenances pertaining thereto, including any Annexed Property and excluding any property withdrawn pursuant to Article X.

- Section 55. "Real Property Records" means the records of the office of the county clerk of the County where instruments concerning real property are recorded.
- Section 56. "Regular Assessments" mean assessments established, imposed and levied by the Association pursuant to Article III of this Declaration.
- Section 57. "Rules and Regulations" mean all rules, regulations and procedures as the same may be adopted and amended from time to time by the Board.
- Section 58. "Special Assessments" mean assessments established, imposed and levied from time to time by the Association pursuant to Article III of this Declaration.
- Section 59. "State" means the State of Texas.
- Section 60. "Supplemental Declaration" means a written instrument, executed by Declarant and recorded in the Real Property Records that subjects Annexed Property to this Declaration or otherwise supplements the covenants, conditions or restrictions contained in this Declaration.
- Section 61. "Systems" mean all fixtures, utilities, equipment, pipes, lines, wires, computer cables, conduits, circuits, junction boxes, hangers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers, cisterns, sprinkler devices and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, audio and video signals, and other utility services
- Section 62. "Systems Easement" means an easement as more particularly described in Article IV, Section 4 of this Declaration.
- Section 63. "Taking" means the taking or threat of taking of all or a portion of the Property or Common Area for any public or quasi-public use, by eminent domain proceedings or otherwise, by a Governmental Authority or by an action in the nature of eminent domain (whether permanent or temporary) or the sale or other transfer of the Property or Common Area in lieu thereof.
- Section 64. "Utility Provider" means any Governmental Authority, quasi-Governmental Authority, or private provider of Utility Services to the Buffalo Heights West, Section One.
- Section 65. "Utility Services" means any utility servicing Buffalo Heights West, Section One including without limitation, water, sewer, electricity, gas, telephone, cable television, and similar services.

ARTICLE II.  
MEMBERSHIP IN ASSOCIATION; VOTING RIGHTS

- Section 1. Every Owner of a Lot will be a member of the Association; membership will be appurtenant to and may not be separated from ownership of a Lot. Each Owner is subject to this Declaration and all other Governing Documents and the covenants and restrictions contained therein. By acceptance of a deed, or other instrument establishing title, ownership or the right of occupancy in any portion of the Property, including any Lot or any portion of a Lot, each and Occupant acknowledges that it has been given notice of this Declaration and the other Governing Documents; that use of any portion of the Property and Lot is limited and governed by the provisions of the Governing Documents; that the Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents; that the use, enjoyment and marketability of the Property and the Lots can be affected by this Declaration; and that the Governing Documents may change from time to time. All Owners shall notify the Association in writing of any transfer of ownership of such Owner's Lot providing the name of the new Owner.
- Section 2. The Property's Governing Documents consist of the following documents, and in the event of any conflict between the provisions of the Governing Documents, the Governing Documents shall control in the following order: (a) the Act; (b) this Declaration, as amended by any Supplemental Declaration or amendment; (c) the Articles; (d) the Architectural and Design Guidelines; (e) the Bylaws; (f) the Rules and Regulations; and (g) any other policies adopted by the Board of Directors and recorded in the Real Property Records of Tom Green County, Texas, as each of the documents listed in items (a)-(g) may be amended from time to time. Any conflict between the provisions of multiple Supplemental Declarations applying to the same portion of Property or Annexed Property shall be resolved by granting control to the Supplemental Declaration with the latest date of filing in the Real Property Records which shall control over any prior Supplemental Declarations filed for such portion of Property. It is Declarant's intention for the Governing Documents to be in compliance with the Act and Declarant may amend the Governing Documents during the Declarant Control Period in its absolute and sole discretion to bring such documents in compliance with the Act and any other Legal Requirement.
- Section 3. Supplemental Declarations. During the Declarant Control Period, and pursuant to Article X of this Declaration, Declarant shall file any Supplemental Declaration in the Real Property Records which shall include the following: (a) an adequate legal description covering the Property or any Annexed Property, as applicable, subject to a Supplemental Declaration; (b) a signature page duly executed by the Owner of the Lot and/or the owner of any Annexed Property, as applicable; (c) a description of any conditions



or restrictions that apply to the Property other than those set forth in this Declaration; and (d) a reference to this

Section 4. The association will have two classes of voting members as follows:

Class A.

Class A members will be all Owners and Builders with the exception of Declarant, and will be entitled to one vote for each Lot owned. When more than one person holds an interest in a given lot, all such persons will be members and the vote for such lot will be exercised as they may determine among themselves. In no event may more than one vote be cast with respect to any lot owned by Class A members.

Class B.

The Class B Member shall be entitled to exercise two (2) votes for every one vote entitled to be cast by the Class A Members with respect to any matter on which Members shall be entitled to vote in accordance with the Governing Documents. THE CLASS A MEMBERS ACKNOWLEDGE AND AGREE, BY THEIR ACCEPTANCE OF THE DEED TO THEIR LOT, THAT UNTIL THE TERMINATION OF THE DECLARANT CONTROL PERIOD, THE CLASS B MEMBER POSSESSES THE MAJORITY OF THE VOTING INTERESTS IN THE ASSOCIATION AND SHALL BE ABLE TO CONTROL, THROUGH THE VOTING PROCESS, ANY MATTERS COMING BEFORE THE ASSOCIATION FOR A VOTE, SUBJECT TO THE REQUIREMENTS OF THE GOVERNING DOCUMENTS. Upon the expiration or termination of the Declarant Control Period, there shall be no more classes of Members and the rights of all Members shall be identical, including the election of the Board, and the procedures for the election of the members of the Board shall be in accordance with the Act and as set forth in the Bylaws. Unless a different allocation of votes is required by any Legal Requirement or in this Declaration, the Members shall be entitled to exercise one vote per Lot with respect to any matter of the Association on which Members shall be entitled to vote.

Section 5. Proxies Of Owners. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner in the form required by the Association. If a Lot is owned by more than one Person, any one co-Owner of the Lot may cast the vote of that Lot or register a protest to the casting of the vote of that Lot by the other co-Owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section 6 except by written notice of revocation to the individual presiding over a meeting of the Association.

### ARTICLE III. ASSESSMENTS

Section 1. Regular and Special Assessments by the Association. The Association shall possess the right, power, authority and obligation to establish a Regular Assessment for the payment of Common Area Expenses and such Special Assessments as provided for in this Declaration. The assessments levied by the Association shall be used as follows: (a) for the purpose of promoting the interests of the Association and the recreation, health and welfare of the residents of the Property, and in particular for the improvement, repair and maintenance of the entry ways or any other properties, services and facilities devoted to this purpose and comprising or directly relating to the use and enjoyment of the Common Properties, including, but not limited, to the payment of taxes on and insurance in connection with the Common Area, and the repair, replacement and additions thereto; (b) for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Area; (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article XI hereafter including, but not limited to, the payment by the Association of all assessments and charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting (if any) of the Common Area; (d) for paying the cost of maintenance of the monument sign for the Property, if any, in the event the appropriate governmental authority refuses to maintain the same; or (e) for carrying out the purposes of the Association as stated in its Certificate of Formation.

(a) Fees. Declarant herein establishes and reserves the right for the Association to collect certain fees set forth herein upon the closing of sale of a Lot. The below listed fees shall not be considered an advance payment of any Assessments set forth herein and are not refundable. Declarant shall not be required to pay any fees set forth in this Section 1(a).

I. Replacement and Repair Reserve Fund Fee. A Replacement and Repair Reserve Fund Fee shall be paid to the Association upon the closing of sale of a Lot. Each Owner, excluding Builders and Declarant, shall at the time such Person purchases a Lot, contribute a one-time amount equal to the Replacement and Repair Reserve Fund Fee for the scheduled replacement or major repair of Common Area Improvements, which amount may be amended by Declarant in its sole discretion at any time prior to expiration or termination of the Declarant Control Period and by the Board at any time thereafter. A Replacement and Repair Reserve Fund Fee shall be paid to the Association by such Owner at

closing on a Lot in the amount of One Hundred and No/100 Dollars (\$100.00) for each Lot acquired. Such fee is not refundable.

II. Builder Fees. Each Builder shall pay to the Association an amount of One Hundred Fifty and No/100 Dollars (\$150.00), upon the closing of sale of a Lot, for Lots such Builder purchased in the Property.

III. Fees Upon Sale. The Association or Manager may have fees, which will be charged to an Owner for the transfer of a significant estate or fee simple title to a Lot and the issuance of a "Resale Certificate" (herein so called). The Association or Manager shall not be required to issue a Resale Certificate until payment for the cost thereof has been received by the Association or its agent. Transfer fees and fees for the issuance of a Resale Certificate shall initially be set at \$75.00 and in no event may exceed \$200.00 for each Lot being conveyed and are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments, and are in addition to any other contribution which may exist or be established from time to time. This Section does not obligate the Board or any third party to levy such fees.

(b) Common Area Expenses. The Association shall establish the amount sufficient in the judgment of the Association to pay all Common Area Expenses when due and possesses the right, but not the obligation to establish and maintain a reserve fund for such purposes. The amount established to pay Common Area Expenses shall be assessed to the Owners and against the Lots (the "Regular Assessments"), shall be divided, allocated and assessed equally among the total number of Lots and shall be due and payable semi-annually, or on such dates as otherwise determined by Declarant or established by the Association, and shall be applied to the payment of Common Area Expenses for which the Association is responsible.

(c) Budget for Common Area Expenses. Prior to the commencement of each fiscal year of the Association, the Association shall establish and adopt the Budget for the next following fiscal year, notify Owners of such Budget and make the Budget available for review by all Owners. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Regular Assessments payable under this Declaration, and the failure of the Association to timely notify and make available for review by Owners such Budget shall not excuse or relieve an Owner from the payment

of the Regular Assessments contemplated thereby, in which case, each Owner shall continue to pay to the Association an amount equal to such Owner's Regular Assessments and on the same schedule as established pursuant to the most recent Budget made available to the Owners. The Board shall have the right to amend the Budget at any time in which event the portion of the Regular Assessments assessed against each Lot and the corresponding payment obligation of each Owner shall be adjusted accordingly. Notwithstanding the foregoing, and only after expiration or termination of the Declarant Control Period, no Budget, or amendment thereof, may increase the amount of Regular Assessments allocated to a Lot and payable by an Owner by more than 25% from the immediately preceding fiscal year, without the affirmative vote of at least 51% of the Members entitled to vote at such time. The maximum annual assessment for each Lot for the year 2023 shall be Two Hundred and Fifty AND No/100 Dollars (\$250.00).

(d) Special Assessments by Association. In addition to the Regular Assessments contemplated in this Declaration, the Association shall establish Special Assessments from time to time as may be necessary in the judgment of the Association to pay (i) non-recurring Common Area Expenses relating to the maintenance, care, alteration, improvement, replacement, operation and management of the Property and the administration of the Association; (ii) capital expenditures necessary to replace Improvements on or within the Common Area; (iii) additional Common Area Expenses if the Regular Assessments are not sufficient to cover all of the Common Area Expenses, except as otherwise set forth in Article III with regard to Declarant's funding responsibilities during the Declarant Control Period; and (iv) contractual and other liabilities of the Association that have not been included in the Budget. Special Assessments so established shall be payable by and allocated among the total number of Lots and allocated to each Owner based upon the number of Lots such Owner owns within 30 days of receipt of notice of such Special Assessment, or as otherwise specified in such notice.

Section 2. Individual Assessments. In addition to the Regular Assessments and the Special Assessments contemplated in this Article VI, the Association shall possess the right, power and authority to establish or levy the Individual Assessments in accordance with the provisions of this Declaration against an individual Owner and its Lot for Charges properly borne solely by one or more but less than all Owners, such as (without limitation) charges for additional services, damages, fines or fees, interest, collection costs, attorneys' fees, insurance deductible payments or any other amount owing the Association by an Owner. The Individual Assessments shall be the

personal obligation of the Owner against whom the Individual Assessment is assessed, and shall constitute a lien against the Lot in the same manner and with the same consequences as the Regular Assessment and any duly authorized Special Assessment.

**Section 3. Obligation to Pay Assessments.** Each Owner shall be personally obligated to pay the Owner's share of all Assessments to the Association in the amounts and on the dates established pursuant to this Declaration. Unpaid Assessments due as of the date of the conveyance or transfer of a Lot, or a portion thereof, shall not constitute a personal or entity obligation, as applicable, of the new Owner but the lien provided for in Section 4 below shall not be affected by such conveyance as the former Owner shall continue to have personal or entity liability for such unpaid Assessments. No Owner, other than Declarant and a Builder as set forth in Section 5, shall be entitled to exemption from liability for the Owner's obligation to pay such Assessments for any reason, including claims of (a) waiver of the use and enjoyment of the Common Area or the facilities as to which any Assessments relate; (b) an abandonment or vacation of the Lot or Improvements thereon; (c) offsets or reductions; and (d) Declarant, the Association, or the Board or any other entity is not properly exercising its duties and powers under the Governing Documents. Any Assessment not paid within 30 days of the date due thereof shall bear interest at the Past Due Rate, and shall be recoverable by the Association, together with interest as aforesaid and all costs and expenses of administering the Past Due Payment Plan, hereinafter defined, and other collection methods, including reasonable attorneys' fees, by suit in a court of competent jurisdiction or in a mediation or arbitration in the County pursuant to the provisions of Article XIV of this Declaration. The Association shall adopt and record in the Real Property Records guidelines establishing an alternative payment schedule by which an Owner may make partial payments to the Association for delinquent Assessments pursuant to such guidelines (the "Past Due Payment Plan"). It shall be the responsibility of the Association to collect any such delinquent Assessments, the existence of which shall be made known by written notice delivered to the defaulting Owner and, if requested, the Owner's Mortgagee pursuant to and in accordance with the Act; provided, however, if the Association is not taking the action permitted in this Section 3 the Declarant may exercise such rights for its own benefit and the benefit of the Association.

**Section 4. Lien to Secure Payment of Assessments.** Declarant hereby reserves and assigns to the Association a lien against each Lot which shall be and constitute a lien and encumbrance, in favor of the Association, upon such Lot. Subject to Section 9 of this Declaration, the liens established in this Declaration shall be prior and superior to all other liens and encumbrances subsequently created upon such Lot regardless of how created, evidenced or perfected, other than the liens for Governmental Impositions. So long as

the Association satisfies the requirements set forth in the Act, and any other applicable Legal Requirement with regard to delinquent assessments and foreclosure of assessment liens, assessment liens created in this Declaration may be foreclosed on or enforced by any means available at law or in equity. The lien securing the obligation for the payment of Assessments shall not be enforceable against the purchaser at a foreclosure sale of a lien encumbering a Lot in order to satisfy the indebtedness for a Mortgagee (or against the grantee by deed in lieu of any such foreclosure) for any Assessments which became payable prior to the date of such foreclosure sale (or conveyance in lieu thereof); provided, however, in no event shall a defaulting Owner be relieved from liability incurred for unpaid Assessments owed by such Owner.

**Section 5. Commencement of Obligation to Pay Assessments.** Each Owner, other than Declarant, shall be obligated to commence payment of all Assessments against a Lot on the date the Lot is conveyed to the Owner. On the date on which a Lot is conveyed to an Owner, such Owner shall be obligated to pay only the Assessment against such Lot for the following year. Notwithstanding the foregoing, Declarant, during the Declarant Control Period, has the right, but not the duty, to reduce or waive any assessment obligation set forth in this Article VI of a Builder. During the Declarant Control Period, Declarant is exempt from the obligation to pay Assessments on Lots or other portions of the Property it owns. Declarant shall have no obligation to pay Special Assessments during the Declarant Control Period. Annual assessments shall be payable in advance on the first (1st) business day of each January; provided, if the Board so elects, annual assessments may be paid in monthly, quarterly, or semi-annual installments.

**Section 6. Notice of Default.** If an Owner defaults in the Owner's monetary obligations to the Association, the Association shall notify the Owner and other lien holders in accordance with the Act and shall state the Association's intent to foreclose its lien.

**Section 7. Alternative Actions.** Nothing contained in this Declaration prohibits the Association from taking a deed in lieu of foreclosure from an Owner or from filing suit to recover a money judgment for sums that may be secured by the Association's lien.

**Section 8. Statement of Expenses and Access to Records.** Upon proper delivery of a written request from an Owner to the Board or the Manager containing the requisite information as set forth in the Act, the Association shall provide current copies of or make reasonably available for examination, the requested books, records, financial statements and any other requested information maintained by the Association in accordance with the Bylaws, any record retention policy adopted by the Board and filed of record in the

Real Property Records, and the Act. The costs associated with compilation, production and reproduction of information contemplated in this Section 6.8 shall be set forth in the records retention, inspection, production and copying policy adopted by the Board.

- Section 9. Subordination of Lien for Assessments. The lien for the payment of Assessments shall be subordinate to the lien of any valid mortgage or deed of trust that secures lien indebtedness from an Owner for a Lot that was recorded prior to the date any such Assessment becomes delinquent under the provisions of this Declaration. A sale or transfer of any lot will not affect the assessment lien.

#### ARTICLE IV. PROPERTY RIGHTS

- Section 1. Owner's easements of enjoyment. Every owner of a lot will have a right and easement of enjoyment in and to the common area which will be appurtenant to and will pass with the title to such lot, subject to the following rights of the Association:

(a) The right to charge reasonable admission and other fees for the use of any recreational facility situated within the common area;

(b) The right to suspend the right of use of recreational facilities and the voting rights of any owner for periods during which assessments against the owner's lot remain unpaid, and the right, after hearing by the board of directors, to suspend such rights for a period not exceeding 120 days for any infraction of the published rules and regulations of the association; and

(c) The right to dedicate or transfer all or any part of the common area to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed on by the members. No such dedication or transfer will be effective unless approved by 51% of the Members entitled to vote at such time.

- Section 2. Delegation of use. Subject to such limitations as may be imposed by the Bylaws of the Association, each owner may delegate the right of enjoyment in and to the common areas and facilities to the members of the owner's family, and to guests, tenants, and invitees.

- Section 3. Easements of encroachment. There will exist reciprocal appurtenant easements as between adjacent lots and between each lot and any adjacent portion or portions of the common area for any encroachment due to the placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction,

reconstruction, or alteration is in accordance with the terms of this declaration. Such easement will exist to a distance of not more than one (1) foot as measured from any point on the common boundary between adjacent lots, and between each lot and any adjacent portion of the common area, along a line perpendicular to such boundary at such point. No easement for encroachment will exist as to any encroachment occurring due to the willful conduct of an Owner.

Section 4. Other easements.

(a) Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded subdivision plat. Within these easements, no structure, planting, or other material will be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement area of each lot and all improvements in such area will be continuously maintained by the Owner of such lot, except for improvements for maintenance of which a public authority or utility company is responsible. Owners are responsible for the installation, maintenance, and repair of culverts and culvert pipes in the easement area between the Owner's driveway and the street. Culvert pipes must be sufficient in size to not impede stormwater runoff.

(b) No dwelling unit or other structure of any kind will be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way will at all times be open and accessible to public and quasi-public utility corporations, their employees, and their contractors, and will also be open and accessible to declarant, its successors and assigns, all of whom will have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.

(c) There will exist appurtenant easements of access to all private streets within the subdivision to the County of Tom Green for the use of county personnel and equipment on County business, for law enforcement, fire protection and emergency medical service agencies and personnel.

(d) Declarant hereby reserves and grants a perpetual, assignable and non-exclusive common area easement over, on and across the Common Areas for its own benefit and for the benefit of each Lot (that is an intended beneficiary of such Common Area), the Owners



and the Association for ingress and egress from each Lot and for the use of the Common Area.

(e) Declarant hereby reserves and grants a perpetual, assignable and non-exclusive utility easement over, on and across the Common Area:

I. for its own benefit, and the benefit of utility companies supplying Systems and service to the Lots for supplying such Systems and service to any Lot; and

II. for its own benefit and the benefit of the Association for the right to grant additional Systems Easements. Declarant may record an easement agreement or easement relocation agreement in the Real Property Records, specifically locating or relocating any Systems Easement subsequent to the recordation of this Declaration, and each Owner, by acceptance of the deed to a Lot, hereby grants Declarant an irrevocable power of attorney, coupled with an interest, with full power and authority to locate or relocate any Systems Easement.

(f) The Easements are for the benefit of Declarant, the Association, the Architectural Control Committee, Owners and certain Designees only. No Owner is required to allow any Person other than a Designee the benefit of such Easements and, further, all Owners are obligated to undertake all reasonable efforts to prohibit Persons other than Designees from benefiting from or using such Easements in relation to their respective Lot. If an Owner finds that Persons other than Designees are attempting to benefit from or use such Easements in relation to their respective Lot, and such Owner, despite diligent efforts, is unable to cause such Persons to cease and desist from so doing, then the Owner shall notify the Association in writing of the problem, stating with specificity the problems that have occurred and such Owner's efforts to combat the problems and the Association shall have the right (but not the obligation) to attempt to cause the offending Persons to cease and desist from benefiting (or attempting to benefit) or using (or attempting to use) such Easements.

(g) None of the Easements reserved or granted in this Article IV shall be used in a manner which materially adversely affects the structural integrity of the Improvements. Use and availability of any facilities or areas covered by the Easements are subject to the Governing Documents.

(h) There is hereby reserved on and across each Lot in the Subdivision a 10' wide blanket underground utility easement in favor of Declarant and each Designee or Utility Provider for the purpose of installing, operating and maintaining Utility Service to the dwelling constructed on that Lot. The utility easements reserved herein include the right to remove all trees within the easements, as well as the right to trim overhanging trees or shrubs located on the Lot.

(i) There is hereby reserved on, over and across a perpetual drainage easement reserved over each Lot for the purpose of allowing stormwater to be discharged as described on the Plat. Such easement shall not preclude the construction of buildings or improvements or the impounding of stormwater on said Lots provided that such does not prohibit the enjoyment of the blanket drainage easement granted. Each Owner shall be responsible for managing and allowing for the passage of stormwater onto, over and across said Lot(s).

Section 5. Right of entry. The Association, through its duly authorized employees and contractors, will have the right after reasonable notice to the Owner of any Lot, to enter any Lot at any reasonable hour on any day to perform such maintenance as may be authorized in this Declaration.

Section 6. No partition. There will be no judicial partition of the common area, nor will declarant, or any owner or any other person acquiring any interest in the subdivision or any part of it, seek judicial partition of the common area. However, nothing contained in this declaration will be construed to prevent judicial partition of any lot owned in co-tenancy. No Lot may be subdivided.

Section 7. Power to Grant Easements. Declarant, during the Declarant Control Period, and the Association (to the extent permitted by the Act) shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the Common Areas for any lawful purpose, including without limitation, the provision of emergency services, utilities (including water, sanitary sewer, storm sewer, gas, and other energy services), telephone, cable television, fiber optic, and other telecommunication services, and other uses or services to one or more of the Owners, subject to the prior review and approval of such easement by Declarant or Association, whichever is applicable. The requesting Owner for an easement pursuant to this Section 7 shall be responsible for, all costs and expenses incurred by the Association regarding the creation of such easement.

ARTICLE V.  
MAINTENANCE RESPONSIBILITIES

Section 1. Maintenance.

(a) Maintenance of Lots. All maintenance, repairs and replacements of, in or to any Lot or Improvements thereon, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Owner of such Lot or Improvements in accordance with the Maintenance Standard.

(b) Maintenance of Common Areas. Except as otherwise provided in the Governing Documents, the Common Areas shall be maintained by the Association, the cost and expense of which shall constitute a Common Area Expense and shall be payable as a Common Area Expense, as set forth in this Declaration. Nothing in this Declaration shall be deemed or construed as relieving any Owner from liability or responsibility for damage to the Common Areas caused by the negligence or misconduct of an Owner or an Owner's Designees.

(c) Maintenance of Easements. Except as expressly provided in Article IV, Section 2 of this Declaration, all maintenance, repairs and replacements of, in or to any Easement Area, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Owner of each Lot in which the Easement Area is located and in accordance with the Maintenance Standard. If the Easement Area is located in a Common Area, then all maintenance, repairs and replacements of, in or to any Easement Area, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Association and shall be payable as a Common Area Expense, as set forth in this Declaration.

Section 2. Owner Failure to Maintain. If any Owner fails or neglects to maintain, repair or clean any portion of the Property or certain Improvements, as required to be maintained by such Owner pursuant to the Governing Documents and by Article V, Section 1 of this Declaration, and such failure or neglect continues for an unreasonable time period in light of the surrounding circumstances as may be determined on a case by case basis by the Association, after Owner's receipt of written notice of such neglect or failure from the Association, then the Association may, but shall not be obligated to, enter the Property, and take appropriate steps to perform, or cause to be performed, the maintenance obligations of the Owner required by this Declaration. The defaulting Owner shall, upon demand, reimburse the Association for performing such required maintenance and all costs and expenses incurred in the exercise of its rights pursuant to this Section 2 or as otherwise set forth in this Declaration.

Section 3. Disputes. Any Dispute arising among any or all of the Owners or the Association as to the proper Person to bear a maintenance cost or expense shall be resolved by Alternative Dispute Resolution or Mediation.

Section 4. Mechanic's Liens. No labor or services performed or materials furnished and incorporated in a Lot, the Improvements thereon or any Common Area shall be the basis for the filing of a lien against any Lot or Common Area not expressly approved in writing by the Owner of such Lot or by the Association with respect to Common Areas. All contracts for labor, services and/or materials with respect to any of the Lots shall be in compliance with the provisions of the Governing Documents.

#### ARTICLE VI.

#### CONSTRUCTION OF IMPROVEMENTS AND USE RESTRICTIONS ON LOTS

Any building or structure to be placed or constructed on a Lot is subject to approval in writing by the Architectural Control Committee (ACC) under Article XI. The Property shall be used for single-family residential purposes and home office only and accessory uses. To operate a home-based business, you must be an Owner or a renter of an Owner. The Owner or renter may not operate the business as a storefront business or any business that displays products from the Lot to the public. Using signage to advertise a home-based business from the Lot is strictly prohibited. Home-based businesses shall not cause unreasonable traffic congestion or disturbance. The subdivision will be occupied and used only as follows, subject to applicable restrictions of record, the Architectural and Design Guidelines and Rules and Regulations, and the Governing Documents and Legal Requirements:

Section 1. Each Lot will be used as a residence for a single family and for no other purpose. No more than one (1) single family residential structure may be located on any Lot.

Section 2. [deleted]

Section 3. [deleted]

Section 4. In furtherance of the purposes of this Declaration, the Board from time to time may adopt, amend or repeal the Rules and Regulations concerning and governing the Property, Lots or any portion thereof, including the establishment and enforcement of penalties for any infraction of the Rules and Regulations.

Section 5. No sign of any kind will be displayed to public view on a lot or the common area without the prior written consent of the association, except customary name and address signs and lawn signs of not more than five (5) square feet in size advertising a property for sale or rent.

- Section 6. Nothing will be done or kept on a lot or on the common area which would increase the rate of insurance relating to such lot or area without the prior written consent of the association, and no owner will permit anything to be done or kept on the owner's lot or the common area which would result in the cancellation of insurance on any residence or on any part of the common area, or which would be in violation of any law.
- Section 7. No Owner shall obstruct or interfere with the use of the Common Areas by other Owners, Declarant or the Association. No Owner shall keep or store anything on any part of the Common Areas without the prior written approval of the Association. No Owner shall alter any of the Common Areas or construct on or remove anything from the Common Areas without the prior written approval of the Association. Neither the Association nor Declarant is obligated to construct any Improvements on or within the Common Areas but shall have the right to do so at its election.
- Section 8. On any Lot, an Owner may possess domestic livestock at the rate of ½ animal unit plus 1 horse for tracts of .5 - .99 acres, 1 animal unit plus one horse for Tracts of 1 to 4 acres, and 2 animal units plus one horse on Tracts of 4 to 10 acres. An animal unit is defined as one of the following: one (1) horse; four (4) goats; four (4) sheep; or two (2) llamas. A cow over 1 year old shall be considered to be 2 animal units. No swine, bison, donkeys, ostriches, or emus shall be kept on any Lot. All animals including chickens, roosters, and household pets, must be well cared for and kept confined to Owner's Lot and must not create a nuisance. No more than three (3) dogs are allowed on any Lot. Any animals not listed here shall require Declarant's written approval during the Declarant Control Period, or the ACC after the Declarant Control Period has ended.
- Section 9. No rubbish, trash, garbage, or other waste material will be kept or permitted on any Lot or on the common area except in sanitary containers located in appropriate areas concealed from public view. Front-load metal dumpsters must have a properly fit lid and be placed off the street or cul-de-sac and cannot block any drainage culvert. Residential sanitary containers may be placed at the front of the Lot for trash pickup only on the scheduled collection date. The sanitary container shall not obstruct traffic. No sanitary container or dumpster shall exceed the following dimensions: 6' x 4.5' x 4'. Sanitary containers or dumpsters exceeding the aforementioned dimensions shall require ACC approval before being placed at the street corner of any Lot. Any damage to the street or common areas that occurs while the metal dumpster is being delivered or removed, as well as during regular collection, shall be repaired by the lot owner.
- Section 10. Fences and Walls. Any privacy fence or wall that touches the residential building must be constructed of brick, wood, wrought iron or other material

approved by the Declarant during the Declarant Control Period or the ACC after the Declarant Control Period has ended. Any perimeter fence shall be net wire with 2 strands of slick wire on top and would be held up by six-foot (6') T posts on twenty-foot (20') centers and every 5th post shall be 2 3/8" steel pipe, 2 wire stays shall be placed between each post. Corner posts shall be 2 3/8" pipe cemented into place. All wire materials and T posts must be new. Used pipe may be acceptable as long as it is in good condition, free of a significant amount of rust, and will hold paint. All pipes must be painted green to match the T posts. Any variations from this policy requires written permission of the Declarant during the Declarant Control Period or the ACC after the Declarant Control Period has ended.

No fence or wall shall be permitted to extend nearer to any street than thirty feet (30') from the front of any residence. However, all side yard fencing on corner Lots shall run parallel to the curb and may be placed no nearer than ten feet (10') inside the side Lot line and shall not extend beyond a point of ten feet (10') behind the front of the residence on that side. Fences or walls erected by Declarant shall become the property of the Owner of the Lot on which the same are erected and as such shall be maintained and repaired by such Owner. Any fence or portion thereof that faces a public street shall be so constructed so that all structural members and posts will be on the side of the fence facing away from the street so that they are not visible from any street. No portion of any fence shall extend more than six feet (6') in height without the express written consent of the ACC. The ACC may, at their sole discretion, allow a maximum of eight foot (8') foot fencing. Decisions of the ACC may be based solely on aesthetic appearances and considered on a case by case basis.

- Section 11. No outbuilding, basement, tent, shack, garage, trailer, shed, or temporary building of any kind will be used as a residence either temporarily or permanently.
- Section 12. Nothing will be altered in, constructed on, or removed from the common area except on the written consent of the association.
- Section 13. [deleted]
- Section 14. No Owner shall handle, store, deposit, use, process, manufacture, dispose of or release or allow any of its Designees or Occupants to handle, store, deposit, use, process, manufacture, dispose of or release any Hazardous Substances from, on, in, under or in the air above any part of the Property, including any surface waters or groundwater located on the Property or into public sanitary or storm sewer systems serving the Property without complying with all Legal Requirements including performing pre-treatment, obtaining permits and giving notices as required by Environmental Laws. Each Owner shall be responsible for and shall pay all costs and expenses

related to cleanup and remediation required by any Governmental Authority of Hazardous Substances it or its Designees or Occupants causes in, on, under or above the Property.

Section 15. Minimum Set Back Lines. No dwelling or other structure shall be constructed on any Lot nearer to the front of the Lot than the building set back line shown on the recorded Plat of the Subdivision. No dwelling or other structure shall be constructed on any Lot nearer than twenty-five feet (25') from the back property line of the Lot. No dwelling or other structure shall be constructed on any Lot nearer than ten feet (10') from any side property line of the Lot. No dwelling or other structure shall be constructed on any Lot nearer than thirty feet (30') from any front property line of the Lot. Minimum set back lines may be modified by written approval of Declarant during the Declarant Control Period and thereafter by the Board of the Association.

Section 16. Declarant or the transferees of Declarant will undertake the work of developing all lots included within the subdivision. The completion of that work, and the sale, rental, or other disposal of residential units is essential to the establishment and welfare of the subdivision as an ongoing residential community. In order that such work may be completed and the subdivision be established as a fully occupied residential community as soon as possible, nothing in this declaration will be understood or construed to:

(a) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of declarant or declarant's transferees from doing on any part or parts of the subdivision owned or controlled by Declarant or Declarant's transferees or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;

(b) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from constructing and maintaining on any part or parts of the subdivision property owned or controlled by declarant, declarant's transferees, or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the subdivision as a residential community, and the disposition of lots by sale, lease, or otherwise;

(c) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of declarant or declarant's transferees from conducting on any part or parts of the subdivision property owned or controlled by declarant or declarant's transferees or their representatives, the business of completing such work, of

establishing the subdivision as a residential community, and of disposing of lots by sale, lease, or otherwise; or

(d) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from maintaining such sign or signs on any of the lots owned or controlled by any of them as may be necessary in connection with the sale, lease, or otherwise of subdivision lots.

As used in this section, the word "transferees" specifically exclude purchasers of lots improved with completed residences.

Section 17. Conflict Between Declaration and Governmental Regulations. In the event of any conflict between the restrictions contained in this Declaration and any applicable Governmental Regulations, then such Governmental Regulations shall control, except, however, that if the restrictions contained herein are in any respect more restrictive than such Governmental Regulations, then the restrictions contained herein shall control.

Section 18. Leasing.

(a) Abide by Rules. The Owner must make available to the tenant copies of the Governing Documents. Tenant must agree to abide by all Association rules and must acknowledge that failure to do so may constitute a default under the lease terms and agreement. Owner must obtain a signed acknowledgment from the tenant that this section of the CCR's has been explained in detail.

(b) Owner shall be responsible at all times for his tenant, all occupants and guests. The maintenance and upkeep of the home and lot shall be borne by the Owner. Should the tenant violate a rule and a violation notice is sent, the Owner shall be responsible for ensuring the tenant's compliance and ensuring the violation is immediately abated. Should a fine for non-compliance result, the Owner shall be responsible for payment to the Association for all fines or any monetary expense the Association may incur for the enforcement and abatement of a violation. Fine(s) will be levied against the Owner's account for payment to the Association and shall be subject to collections as may be set forth in this Declaration or any existing collection policy of the Association which may be adopted at any time and from time to time. Owners shall maintain accurate and updated billing and mailing addresses at all times with the Association. An incorrect address does not dismiss.



Section 19. Driveways. The first thirty feet (30') of a Lot's driveway, other than Lot 780A, 780B and 781, which may have driveways constructed from caliche or limestone, shall be surfaced with concrete or asphalt. No widening of driveway is allowed without the proper written consent of the ACC. No construction of any improvements or obstructions of any type, except for driveways, shall be allowed in any portion of the ten-foot (10') easement adjoining any roadway. All driveways connecting to any roadway shall have a drainage culvert of sufficient size to prevent the damming or diversion of water flow. All drainage areas must be maintained in such a way as to allow water to flow freely as engineered to prevent the flooding of properties and structures.

Section 20. Garage Required. Each residence shall have an enclosed two car garage and shall conform to the requirements set forth in the Architectural and Design Guidelines. The garage shall conform in design and materials with the main structure and may not be used as a living-quarters at any time or for the purpose of conducting business of any kind.

Section 21. Specific Prohibitions.

(a) The erection, construction, placement or installation of any television, radio or other electronic tower, serial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcast signals or other means of communication upon a Lot or upon any improvement thereon is prohibited, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Board shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. To the extent that reception of an acceptable signal would not be impaired or the cost of installation would not be unreasonably increased, an antenna permissible pursuant to the Declaration or the rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the dwelling and surrounding landscape upon prior express written consent of the ACC. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land-use and building regulations.

(b) There shall be no outside toilet or outhouse built or used on the premises except during the initial construction period.

- (c) There shall be no discharging or shooting of firearms upon any Lot.
- (d) There shall be no excavation of any materials on a Lot, other than for landscaping, initial construction of buildings and driveways, without prior written approval from the Board, or the Declarant during the Declarant Control Period.
- (e) Dams may be built on creeks or natural waterways only if (1) written permission is obtained from the Board, or the Declarant during the Declarant Control Period, and the Owner of the Lot adjacent to such waterway on the opposite side of the waterway; (2) such dam will not be built so as to unreasonably inundate the Lot of another Owner, unless a written easement is obtained from such other Owner; (3) such dam will not cause the flooding of any roadway; and (4) such dam is constructed in accordance with all Federal, State and Tom Green County regulations governing said construction.
- (f) No radio towers or wind turbines shall be constructed on any Lot without written permission of the Board.
- (g) No tracts shall be subdivided.

**Section 22. Parking.** Parking in front of mailboxes, blocking driveways, intersections, or other publicly accessed areas is prohibited. All accessory buildings, RV or equipment parking, and fuel tanks, etc., must be located in the rear of any residence and their placement and construction must be approved by the Declarant. No camper or recreational vehicle may be occupied overnight on any Tract except for periods of no more than fourteen (14) days out of any period of ninety (90) days. Recreational vehicles housed inside a Declarant approved enclosure may be occupied during construction of the residence (not to exceed 9 months). The Board, in its discretion, may enact additional rules governing such temporary, irregular use or, in the absence of specific rules, shall have discretion in determining what constitutes permissible parking under such circumstances. As used in this Section, the term "vehicles" includes, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles. **The Association will utilize towing subject to all applicable laws and ordinances available to it for the towing of any unauthorized vehicle. If a vehicle is towed, it will be at the sole expense of the Owner of the vehicle and Owner assumes all risk and responsibility for the vehicle as well as any personal items within the vehicle at the time the vehicle is towed.**

**Section 23. Minimal Floor Area and Maximum Height Restrictions.** The total air-conditioned living area of the main residential structure constructed on each

Lot, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be in accordance with the applicable laws, but in no event shall be as follows:

- (a) Lots 752 through 762 and 764 through 774. Residential buildings on Lots 752 through 762 and Lots 764 through 774 shall contain the following square footage and roof pitch requirements, exclusive of open porches, breeze ways, carports and garages: 1650 square feet with a 7/12 roof pitch or steeper.
- (b) Lots 776 through 782. Residential buildings on Lots 776 through 782 shall contain the following square footage and roof pitch requirements, exclusive of open porches, breeze ways, carports and garages: 1600 square feet with a 6/12 roof pitch or steeper.
- (c) Lots 763 and 775. Residential buildings on Lots 763 and 775 shall contain the following square footage and roof pitch requirements, exclusive of open porches, breeze ways, carports and garages: 1500 square feet with a 5/12 roof pitch or steeper.

Section 24. Building Materials. The building materials to be used for each residence and other structure must conform to the requirements set out in the Architectural and Design Guidelines. Allowed roofing materials shall be set forth by the Declarant during the Declarant Control Period and in the Architectural and Design Guidelines once the Declarant Control Period has terminated. The color of roofing shall be consistent throughout the Subdivision and shall otherwise conform to the Architectural and Design Guidelines. All residential structures shall consist of on-site built residential structures only and three of the four sides of the residential structures shall be constructed of brick, stone, stucco, or, during the Declarant Control Period, Declarant approved materials.

Section 25. Mailboxes and Address Blocks. Mailboxes shall be standardized throughout Buffalo Heights West, Section One. Mailboxes for Lots may be cluster mailboxes of a standardized design approved by the Declarant and shall conform to any applicable the United States Postal Service or other applicable governmental authority. In the event that any cluster mailbox installed in the Buffalo Heights West, Section One requires maintenance, replacement or repairs, such maintenance, replacement and/or repairs shall be performed by the Association and the costs and expenses incurred by the Association in connection therewith shall, if considered necessary or appropriate by the Board, be charged on a pro rata basis (based on the total number of mailbox units within such cluster mailbox) as a special individual assessment to the Owners with mailbox units within the cluster mailbox that has been maintained, repaired and/or replaced. The Association does not provide or maintain keys for the cluster mailboxes. Owners shall be

responsible for obtaining keys at time of purchase of home from the United States Post Office.

Section 26. [deleted].

Section 27. Architectural and Design Guidelines. In addition to any requirements set forth in this Declaration, all Owners are required to comply with the Architectural and Design Guidelines in the construction of improvements within the Property and the maintenance and of trees and landscaping within the Property.

Section 28. [deleted]

Section 29. Initial Construction. Prior to the commencement of any construction, all construction materials, structures, buildings, improvements, fences and driveways, and their placement on the lot shall be approved by the Declarant. Any damage caused to the adjoining road during construction shall be repaired by the Owner. Once construction commences on the residential building of any Lot, said residential building must be substantially completed within nine (9) months. Electrical installation in all buildings, commercial or residential, shall be constructed and thereafter maintained in accordance with the City of San Angelo Building Code. Concho Valley Electric Cooperative, Inc. shall be the sole electric provider for all buildings. The installation of septic tanks or other on-site sewage facilities shall be in accordance with the regulations and requirements of Federal, State and Tom Green County laws and regulations. Every building that has or is connected to plumbing facilities, shall be connected to a septic tank of adequate size that is properly installed, with adequate lateral lines, no line or other appurtenance of which shall be within twenty feet (20') of any boundary line of any Tract without Declarant's written approval. Any water wells must meet all Federal, State and Tom Green County regulations.

## ARTICLE VII. THE ASSOCIATION

Section 1. General Purposes and Powers of the Association. The Association has been incorporated as a nonprofit corporation under the Texas Nonprofit Corporation Act ("TNCA"). In addition to the powers conferred on the Association under the TNCA, the Association may take all actions authorized by the Governing Documents. Any and all actions taken by the Association pursuant to the Governing Documents are binding on all Owners. The Association shall be governed by the Act, TNCA and the Governing Documents.

Section 2. Deemed Assent Ratification and Approval. All Owners and Occupants of the Property shall be deemed to have assented to, ratified and approved

the general purposes of this Declaration and the other Governing Documents and the power, authority, management rights of the Association, acting through the Board as permitted in and authorized by this Declaration and other Governing Documents.

Section 3. Manager. The Association may enter into contracts with a Manager for the day-to-day management and administration of either or both of the Property and the Association.

Section 4. Election of the Board of the Association. The Board shall be elected by the Owners pursuant to the provisions of the Bylaws.

Section 5. Duty to Accept Common Areas and Improvements Transferred by Declarant. The Association shall accept any Common Areas, including any Improvements, equipment and personal property thereon conveyed or transferred to the Association by Declarant, together with the responsibility to maintain such property and perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Any portion of the Common Areas transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes), but shall be subject to the terms of the Governing Documents applicable thereto. The Improvements located on the Common Areas may be changed or altered from time to time as determined by the Board.

Section 7. Rights of the Board. The Association acts solely through the Board or through the Architectural Control Committee as provided in the Governing Documents. Whenever in the Governing Documents there is a reference to action by the Association, such reference means the Association acting through and based on the decisions and direction by the Board.

#### ARTICLE VIII. INSURANCE

Section 1. Requirements. Unless otherwise determined by Declarant or the Board of Directors pursuant to the Bylaws, all insurance coverage required of the Association pursuant to Article VIII of this Declaration or purchased at the election by the Association shall:

- (a) be in such form and issued by responsible insurance companies licensed to do business in the State and shall be rated by Best's Insurance Guide (or any successor publication of comparable standing) as "A- VI" or better;

(b) shall be carried in a blanket form naming Declarant only during the Declarant Control Period, the Association, the Board, and the respective officers, directors and employees of the Association as insureds;

(c) provide that insurance trust agreements shall be recognized.

Section 2. Insurance by Residence Owners. An Owner shall be responsible for obtaining and maintaining at such Owner's sole cost and expense insurance policies covering: (a) 100% of replacement cost of all improvements, additions and betterments made upon such Owner's Lot and (b) any other insurance required by any Mortgagee or other lender in relation to such Owner's Lot. Nothing in this Declaration shall be deemed or construed as prohibiting an Owner, at its sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as such Owner may deem necessary or appropriate. Nothing in this Section 2 shall be construed to require the Association to monitor the existence or adequacy of insurance coverages on any Lots.

Section 3. Other.

(a) Neither the Association, Board, Declarant, any Owner nor each of their respective Affiliates shall be liable for failure to obtain any insurance coverage required by the Governing Documents or for any loss or damage resulting from such failure, if such failure is a result of such insurance coverage is not reasonably available.

(b) The insurance purchased by the Association shall not cover Claims of one Owner against any other Owner.

## ARTICLE IX CASUALTY AND CONDEMNATION

Section 1. Casualty. If any Improvements located on any Lot are damaged or destroyed by fire or other casualty, the Owner of such Lot must, within a reasonable period of time, either (a) repair, restore and rebuild such Improvements (and any damage to Improvements not on the Lot caused by such fire or other casualty) in accordance with Plans approved by the Architectural Control Committee as provided in the Governing Documents; or (b) raze all of the damaged Improvements on its Lot, clear its Lot of all debris resulting from such razing, and seed or sod the Lot with grass. Notwithstanding the above, an Owner must repair, restore and rebuild any Improvements in the Common Areas that is damaged or destroyed as the result of such fire or other casualty).

Section 2. General Condemnation Provisions. If all or any part of the Common Area is subject to a Taking, the Association will be the exclusive representative of the Owners. The expense of participation in such proceedings by the Association shall be a Common Area Expense. The Association is specifically authorized to obtain and pay for assistance from attorneys, appraisers, architects, engineers, expert witnesses and other Persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to condemnation proceedings. The cost of any restoration or repair of the Common Area following a partial Taking shall be a Common Area Expense.

Section 3. Payment of Awards. Any awards resulting from condemnation of any Common Areas shall be deposited into the reserve fund account for the Association or may used to repair and replace any damage or destruction of the Common Area caused by the condemnation.

#### ARTICLE X DEVELOPMENT RIGHTS

Section 1. Development Rights. In accordance with and only if permitted by the Act, Declarant reserves for itself, during the Declarant Control Period or other time period in accordance with the Governing Documents, the following Development Rights to: (a) add real property to the Property as Annexed Property and designate or restrict uses on any portion thereof; (b) designate or create additional Lots and Common Areas, and to convert Lots into Common Area or Common Areas into lots, (c) subject portions of the Property owned by Declarant to Supplemental Declarations, as Declarant may determine; (d) whether by plat or otherwise, relocate boundaries between adjoining Lots owned by Declarant and enlarge or reduce Lots owned by Declarant, enlarge or reduce the Common Areas, reduce or diminish the size of portions of the Common Area, split, combine, divide or subdivide Lots owned by Declarant and change set back requirements; (e) establish specifications for construction of all Improvements, amend such specifications and complete or make Improvements on Lots owned by Declarant and construct Improvements on Common Areas; (f) create and use and permit others to use the Easements or any other easements pursuant to the Governing Documents; (g) amend this Declaration, maps or plats in connection with the exercise of any Development Right; (h) change the permitted use of, any portion of the Property that is owned by Declarant; (i) make amendments to the Governing Documents; (j) market, promote, sponsor marketing events, erect and maintain signs and advertising in Common Areas and on other portions of the Property other than on Lots owned by an Owner other than Declarant; (k) maintain construction, sales, and management offices, signs advertising the Property, Lots and models, and to conduct general sales from such offices on Lots owned by Declarant or Builders (and their assignees); (l) establish in the Common Areas, from

time to time, by dedication or otherwise, public and private streets and utility and other easements for purposes including public access, access, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions; (m) construct, in a way that does not materially adversely affect the development plans of any Owner, underground utility lines, pipes, wires, ducts and conduits, storm drains, detention ponds, and other facilities for the purpose of furnishing services to the Property; (n) approve or disapprove the recordation of any declaration; (o) exercise any additional reserved right created by any other provision of the Governing Documents; (p) record an instrument surrendering a Development Right; and (q) any other right granted to Declarant by the Governing Documents.

**Section 2. Annexation of Additional Property.**

(a) Manner of Annexation. At any time after the date this Declaration is recorded in the Real Property Records, until the expiration of the Declarant Control Period, Declarant may add Annexed Property to the Property by way of a Supplemental Declaration and make such Annexed Property subject to the Governing Documents. Declarant may subject any Annexed Property to all or any portion of this Declaration, may replat the Property and such Annexed Property as Declarant desires, and may create additional Lots and Common Areas from or out of such Annexed Property.

(b) Effectiveness and Applicability of Provisions of Supplemental Declaration. Effective upon the recording of an Supplemental Declaration in the Real Property Records, or as otherwise stated in such Supplemental Declaration: (i) the covenants and restrictions contained in this Declaration and the other Governing Documents shall automatically, and without further action by any Person, apply to Annexed Property in the same manner that such covenants and restrictions apply to all other portions of the Property; and (ii) any lien arising from ownership or construction upon Annexed Property shall affect only such Annexed Property and Improvements located thereon.

**Section 3. Withdrawal of Real Property.** During the Declarant Control Period, Declarant reserves the right to withdraw any portion of the Property or any Lot from the Property and from this Declaration and the other Governing Documents for any reason. Such withdrawal shall be accomplished by the execution, acknowledgment and recordation of a written notice of withdrawal (the "Withdrawal Notice"); provided no Assessments have then commenced with respect to the Property or Lot to be withdrawn. The Withdrawal Notice shall: (a) be executed and acknowledged by Declarant



and the Owner of the Lot to be withdrawn (if Declarant is not the Owner) without the necessity of the joinder or consent of any other Person; (b) contain an adequate legal description of the Lot to be withdrawn; and (c) contain a statement and declaration that the Lot is withdrawn from the Property and from the effect of this Declaration and the other Governing Documents. The withdrawal shall be effective upon filing of the Withdrawal Notice in the Real Property Records. Nothing in this Section 3 shall be interpreted to prohibit later annexation of any withdrawn Property.

**Section 4. No Approval Required for Exercise of Development Rights.** No approval of any Owner or its Mortgagee shall be required for the exercise of any Development Right. Declarant may exercise any Development Right on all or any portion of the Property and in whatever order determined by Declarant. Declarant shall not be obligated to exercise any Development Right or to expand the Property beyond the number of Lots initially submitted. The exercise of any Development Right as to some portion of the Property shall not obligate the Declarant to exercise any Development Right as to other portions of the Property. No provision of this Declaration shall be construed to prevent or limit Declarant's right, and Declarant expressly reserves the right, to complete the development of the Property within the boundaries of the Property and to construct or alter Improvements on any Property owned by Declarant within the Property.

**Section 5. Rights Transferable.** Rights created or reserved under Article X of this Declaration for the benefit of Declarant may be transferred to any Person by an instrument executed by Declarant and the transferee describing the rights transferred and recorded in the Real Property Records.

**Section 6. Reciprocal Easements.** If part of the Property is withdrawn or de-annexed by Declarant during the Declarant Control Period, the Owners of the Property and the withdrawn Property shall be deemed to have and enjoy whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Property and withdrawn Property. Within a reasonable time after the necessity for any such easement appears, Declarant shall prepare and record in the Real Property Records whatever documents are necessary to evidence such easements and shall amend this Declaration to include reference to the recorded easements. Such recorded easements shall specify that the Owners of the Property and the owners of the withdrawn Property shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's real property upon such reasonable basis as Declarant shall establish in the easements. Preparation and recordation of an easement pursuant to this Section 6 shall exclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable in

relation to each portion of withdrawn Property and the Property as contemplated by this Section 6.

## ARTICLE XI ARCHITECTURAL CONTROL COMMITTEE

Section 1. Required Approval. The Plans for initial construction of any Improvements, which includes single-family residential buildings, must first be submitted to and approved in writing by the Declarant during the Declarant Control Period and by the Architectural Control Committee after the Declarant Control Period has ended, prior to the commencement of any work on such Improvements. Changes to the exterior of any building (after initial installation or construction) on a Lot that meet any of the criteria set forth in this Section 1 must first be submitted in writing to and approved in writing by the Declarant during the Declarant Control Period and by the Architectural Control Committee after the Declarant Control Period has ended: (a) any addition to the exterior of an Improvement; (b) a change or alteration to the architectural style and character of an Improvement including the exterior appearance, finish material, color or texture; (c) any addition of an accessory or additional structure to the Lot; (d) any change that results in a substantial change to the roof plane or lines of an Improvement; (e) demolition or destruction by voluntary action of any Improvement; (f) installation or modification of any fencing; or (g) any grading, excavation, filling or similar disturbance to the surface of any portion of the Property including change of grade, change of ground level, or change of drainage pattern. The Architectural Control Committee may require other information be submitted with applications as further described in the Architectural and Design Guidelines. Any Owner of a Lot, excluding Declarant, shall not be permitted to divide or sub-divide such Owner's Lot, nor convey any easements or other interests in the Lot less than in their entirety without the prior written approval of the Declarant during the Declarant Control Period or the Architectural Control Committee after the Declarant Control Period. Any powers granted herein to the Architectural Control Committee shall be powers exclusive to the Declarant during the Declarant Control Period.

Section 2. Establishment of the Architectural Control Committee. The Architectural Control Committee shall be established by the Association, and shall initially consist of up to three members appointed by the Board of the Association. The Board shall have the right to appoint and remove members of the Architectural Control Committee upon the expiration or termination of the Declarant Control Period. Members of Architectural Control Committee after the expiration or termination of the Declarant Control Period shall serve for a term as may be designated by the Board or until resignation or removal by the Board. During the Declarant Control Period, there shall be no Architectural Control Committee. After the Declarant Control Period, the

Board may, at any time and from time to time change the authorized number of members of the Architectural Control Committee, but at no time shall the number of members of the Architectural Control Committee be less than three. A majority of the Architectural Control Committee shall constitute a quorum of the Architectural Control Committee, and a vote of the majority of the Architectural Control Committee members present at any meeting where a quorum is present shall be required for the Architectural Control Committee action. Declarant may, from time to time, during the Declarant Control Period, adopt, promulgate, amend or otherwise revise the Architectural and Design Guidelines, or any other standards, rules, regulations and procedures governing development control of the Property for the purposes of (a) further enhancing, defining, or interpreting which items or Improvements are covered by Article XII of this Declaration; and (b) providing for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or Legal Requirements, or for any other reason that Declarant deems to be proper, necessary or in the best interests of the Property; provided that neither Declarant nor the Architectural Control Committee in its review or approval of any matter, shall be deemed to be giving any opinion, warranty or representation as to compliance with any of the matters set forth in this Declaration.

**Section 3. Architectural and Design Guidelines.** After the Declarant Control Period, the Board may adopt Architectural and Design Guidelines from time to time. The Architectural and Design Guidelines shall not be inconsistent with the provisions of the Governing Documents, as both may be amended and if there are any inconsistencies, the provisions of the Declaration shall control.

**Section 4. Reply and Communication.** The Architectural Control Committee shall respond to applications made in accordance with this Article XII within the time periods and in the manner as set forth in the Architectural and Design Guidelines. All communications and submittals shall be addressed to the Architectural Control Committee in writing at such address as the Architectural Control Committee may designate in the Architectural and Design Guidelines. Any approvals granted by the Architectural Control Committee, or its designees, shall be granted solely for the benefit of the applicant only with respect to its application and shall not be construed as an approval for any other Person, Owner or Occupant planning to perform the same or similar type construction, architectural change or other improvement for which an application would be necessary pursuant to this Declaration and the Architectural and Design Guidelines.

**Section 6. Variances.** The Architectural Control Committee may grant variances or adjustments from the Architectural and Design Guidelines or from any conditions and restrictions imposed by this Article XI pursuant to variance

criteria established by the Architectural Control Committee and as may be set forth in the Architectural and Design Guidelines.

- Section 7. Appeal Rights of Owners. If any request by an Owner under the provisions of this Article XI is disapproved by the Architectural Control Committee, then the applicant shall have the right of appeal to the Board. In considering the appeal, the Board can overturn the Architectural Control Committee's decision if the Board determines, in its sole discretion that the Architectural Control Committee abused its discretion or acted in an arbitrary or capricious manner.
- Section 8. No Deemed Waivers. No action or failure to act by Declarant, the Architectural Control Committee or by the Board shall constitute a waiver or estoppel with respect to any future action by the Architectural Control Committee or the Board, with respect to any Improvement to a Lot. Specifically, the approval by the Architectural Control Committee of any Improvement to a Lot shall not be deemed a waiver of any right or an estoppel to withholding approval for any similar Improvement to another Lot or any similar proposals, plans, specifications or other materials submitted with respect to any other improvement to another Lot.
- Section 9. Limitation on Liability. Declarant, the Architectural Control Committee and the members thereof, as well as any designee of the Architectural Control Committee designated to act on its behalf, shall not be liable in damages to any Owner or Person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within the jurisdiction of the Architectural Control Committee under the Governing Documents. Declarant and the Architectural Control Committee shall not be responsible for structural, engineering or any other defects in Plans approved or for violations of any building or zoning code or other land use regulations or Legal Requirements, and any Claim against an Indemnified Party in connection therewith shall be subject to indemnification under and pursuant to the provisions of Article XXIII, Section 1 of this Declaration.
- Section 10. Records. The Architectural Control Committee shall or shall cause the Manager to maintain records, electronic or written, of all applications submitted to it and of all actions taken by it with respect thereto in accordance with the record retention, inspection, production and copying policy adopted by the Board. Such records shall be open and available for inspection by any Owner pursuant to such policy and in accordance with the Act.
- Section 11. Enforcement of Article XI of this Declaration.
- (a) Nonconforming Improvements. Any Improvement to a Lot made in violation of Article XI of this Declaration or of the Architectural and

Design Guidelines shall be deemed to be nonconforming. Should the Architectural Control Committee determine that any Improvement has been made without approval or was not made in substantial compliance with the description and materials furnished, and any conditions imposed, or was not completed with due diligence, the Architectural Control Committee, acting on behalf of the Association, shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance. Upon receipt of any such notice, the Owner of the Lot upon which such Improvement has been made shall, at such Owner's own cost and expense, remove such structure or Improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming Improvement. Should the Owner fail to take such action within the time specified in the notice of noncompliance, the Association shall have the right to record a copy of such notice of noncompliance in the Real Property Records. Further, the Association shall have the right to enter the Lot, correct or remove the Improvement that constitutes the violation, and restore the Lot to substantially the same condition as the Lot previously existed. All costs, together with interest at the Past Due Rate, may be assessed against the benefited Lot and collected as an Assessment. The provisions of this Section 11 are in addition to all other legal and equitable remedies available to the Association.

- (b) Additional Remedies. In addition to the enforcement rights of the Association set forth in Section 1 of this Declaration, the Association shall have the right, but not the obligation, to institute, maintain and prosecute proceedings at law or in equity against any Person violating or attempting to violate any of the terms and provisions of Article XI of this Declaration. In any action instituted or maintained under Article XI of this Declaration, the Association, shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by a court. Failure of the Association or the Architectural Control Committee to enforce any covenant, condition or restriction contained in the Governing Documents shall not be deemed a waiver of the Association or the Architectural Control Committee's right to do so thereafter.

Section 12. Obtaining Governmental Approvals. Prior to commencement of construction of any Improvements, an Owner shall obtain all required Governmental Approvals in order for the Owner to construct, operate and maintain the Improvements.

ARTICLE XII.  
REMEDIES CUMULATIVE

Each remedy provided under the Governing Documents is cumulative and nonexclusive.

ARTICLE XIII.  
OWNERS' OBLIGATION TO REPAIR

Each owner will, at such owner's sole cost and expense, repair such owner's residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

ARTICLE XIV.  
OWNERS' OBLIGATION TO REBUILD

If all or any portion of a residence is damaged or destroyed by fire or other casualty, it will be the duty of the owner, with all due diligence, to rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction will be undertaken within six (6) months after the damage occurs, and will be completed within twelve (12) months after the damage occurs, unless prevented by causes beyond the control of the owner. Notwithstanding the foregoing, express written consent by the ACC may be given after application or request by the Owner to extend construction time or to change the appearance of the rebuild.

ARTICLE XV.  
ENFORCEMENT

Declarant, the association, or any owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration. Failure by declarant, the association, or by any owner to enforce any covenant or restriction so imposed will in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XVI.  
SEVERABILITY

Invalidation of any one of these covenants or restrictions by judgment or court order will in no way affect any other provisions, which will remain in full force and effect.

## ARTICLE XVII. AMENDMENTS

Section 1. Amendment of Declaration by Declarant. Pursuant to Declarant exercising any Development Right until the termination or expiration of the Declarant Control Period pursuant to this Declaration, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or the other Governing Documents, may be amended by Declarant by the recordation of a written instrument, executed by Declarant (without the necessity of the joinder or consent of any other Person), setting forth such amendment. Each deed, security interest, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and an approval of the reservation of, the power of Declarant to make, execute and record an amendment under this Section. During the Declarant Control Period, Declarant, without a vote of the Owners or approval by the Mortgagees or the Association, may amend the Governing Documents in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal National Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration or the Act (as may be amended).

Section 2. Amendment of Declaration by Owners. After the Declarant Control Period has terminated or expired, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, repealed, added to, or changed from time to time by an amendment upon the vote of 51% of the votes entitled to be cast at a duly called meeting of the Members at which a quorum is present. Any such amendment shall be effective upon the recording thereof in the Real Property Records, which shall contain a certification that the amendment has been approved as set forth in this Section.

## ARTICLE XVIII. DEDICATION

Section 1. No Public Dedication. Nothing in this Declaration shall be deemed to be a gift or dedication of any portion of the Property, or of any Lot to the general public or for any public use or purpose whatsoever, it being the intent that this Declaration be strictly limited to and for the purposes expressed in this Declaration for the development, maintenance and operation of a private real estate development on private property solely for the benefit of the Owners, except that certain easements, rights-of-way, streets, water facilities and similar utilities and improvements of the Property may be dedicated by plat or by separate documents.

Section 2. Dedication of Common Areas in Subdivision. Declarant in recording of the plat of Buffalo Heights West, Section One has designated certain areas of land, intended for use by the Owners in Buffalo Heights West, Section One for recreation, transportation, drainage, water detention and other related activities.

The designated areas are not dedicated for use by the general public but are hereby dedicated to the common use and enjoyment of the Owners in Buffalo Heights West, Section One as more fully provided in this Declaration of Covenants, Conditions and Restrictions applicable to Buffalo Heights West, Section One.

#### ARTICLE XIX. INTERPRETATION

Declarant shall have the right, power and authority to determine all questions arising under or in connection with the Governing Documents and to reasonably construe and interpret its provisions in accordance with the laws of the State and the laws of the United States applicable to transactions in the State. Any such determination, construction or interpretation made by Declarant shall be binding on the Owners. In all cases, the provisions set forth or provided for in the Governing Documents shall be construed together and given that interpretation or construction which, in the reasonable opinion of Declarant, shall best effect its general plan of development as reflected herein in accordance with the laws of the State and the laws of the United States applicable to Declarant. The provisions of the Governing Documents shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. Uses of the word "including" shall be deemed to be followed by the words "without limitation."

#### ARTICLE XX. NO REPRESENTATIONS OR WARRANTIES

No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its Affiliates, in connection with any portion of the Property, its physical condition, the Legal Requirements, fitness for intended use, or in connection with the development, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof.

#### ARTICLE XXI. INDEMNIFICATION

Section 1. GENERAL. EACH OWNER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL CONTROL COMMITTEE, THE BOARD AND EACH OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (EACH AN "INDEMNIFIED PARTY"), FROM ANY AND ALL



CLAIMS OF ANY NATURE THAT ARISE AS THE RESULT OF OR ARE CAUSED BY (i) SUCH OWNER'S (OR THE OCCUPANT OF SUCH OWNER'S LOT OR IMPROVEMENTS THEREON) NON-COMPLIANCE WITH ANY OF THE PROVISIONS OF THE GOVERNING DOCUMENTS, OR (ii) ANY ACT OR OMISSION OF SUCH OWNER (OR THE OCCUPANT OF SUCH OWNER'S LOT OR IMPROVEMENTS THEREON).

Section 2. PLAN REVIEW. NO OWNER SUBMITTING PLANS TO AN INDEMNIFIED PARTY PURSUANT TO THE GOVERNING DOCUMENTS, BY DISSEMINATION OF THE SAME, AND NO OWNER, BY ACQUIRING TITLE TO A LOT, SHALL MAKE ANY CLAIMS AGAINST ANY INDEMNIFIED PARTY RELATING TO OR ARISING OUT OF ANY INDEMNIFIED PARTY'S REVIEW OF SUCH SUBMITTED PLANS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO INDEMNIFIED PARTY REVIEWING SUCH PLANS SHALL BE RESPONSIBLE FOR OR SHALL HAVE OBLIGATIONS TO COMMENT ON OR ASSURE COMPLIANCE OF SUCH PLANS FOR STRUCTURAL INTEGRITY AND SAFETY, SOUNDNESS, WORKMANSHIP, MATERIALS, USEFULNESS, CONFORMITY WITH BUILDING OR OTHER CODES OR INDUSTRY STANDARDS OR COMPLIANCE WITH ANY LEGAL REQUIREMENTS. FURTHER, EACH OWNER AGREES TO INDEMNIFY, DEFEND, AND HOLD EACH INDEMNIFIED PARTY HARMLESS FROM ANY PLANS OF AN OWNER SUBMITTED UNDER THE GOVERNING DOCUMENTS OR THE CONSTRUCTION OF IMPROVEMENTS OF SUCH OWNER'S LOT.

## ARTICLE XXII. LIMITATION OF LIABILITY

Section 1. Limitation of Liability. Neither Declarant, the Association, the Architectural Control Committee, the Board nor any of their respective officers, directors, employees or agents shall be, individually or in combination, liable for Claims of: (a) any Owner or any other Person submitting Plans, proposed uses or variance for approval, by reason of mistake in judgment, negligence, gross negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any Plans, proposed use or variance submitted for approval; (b) an Owner, in connection with any design, engineering or construction defect associated with any Improvement or building constructed on the Property; (c) an Owner, in connection with the breach or violation of any provision of the Governing Documents by an Owner including the restrictive covenants in the Governing Documents covering the use of such Owner's Lot; (d) an Owner, in connection with: (i) injury or damage to any Person or property caused by the elements or by such Owner or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from or over any portion of the Common Areas or from any pipe, drain, conduit, appliance or

equipment which the Association is responsible to maintain hereunder; (ii) loss by damage, theft or otherwise of any property that may be stored in or upon any of the Common Areas; or (iii) damage or injury caused in whole or in part by the failure of the Association or any officer, director, employee or agent of the Association to discharge its or their responsibilities under this Section 15 of this Declaration (collectively, "Common Area Damage"); or (e) any Claim for breach of representation or warranty, express or implied, by an Owner or any other Person in connection with any portion of the Property, its physical condition, the Legal Requirements, fitness for intended use, or in connection with the development, sale, operation, maintenance, taxes or regulation thereof ("Breach of Representation or Warranty"), unless and except specifically set forth in writing and executed by the Person against whom the Claim is asserted. No Designee of Declarant, the Association, the Architectural Control Committee or the Board shall be liable to any Owner or any of its Designees, for any Claims, except as otherwise expressly set forth in the Governing Documents and such Designee shall be indemnified in accordance with the provisions of the Governing Documents.

THE OWNERS, BY ACCEPTANCE OF A DEED TO THEIR RESPECTIVE LOTS, RELEASE AND FOREVER DISCHARGES DECLARANT, THE ASSOCIATION, THE BOARD AND THE ARCHITECTURAL CONTROL COMMITTEE, AND THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, FROM ALL CLAIMS IN CONNECTION WITH (a) ANY DESIGN, ENGINEERING OR CONSTRUCTION DEFECT ASSOCIATED WITH ANY IMPROVEMENT CONSTRUCTED ON THE PROPERTY; (b) THE BREACH OF ANY PROVISION OF THE GOVERNING DOCUMENTS BY AN OWNER, INCLUDING THE RESTRICTIVE COVENANTS IN THIS DECLARATION COVERING THE USE OF SUCH OWNER'S LOT; (c) ANY BREACH OF REPRESENTATION OR WARRANTY; OR (d) COMMON AREA DAMAGE.

**Section 2. Liability of Owners for Damage.** Each Owner shall be liable to the Association, for any damage to the Common Areas or for any expense or liability incurred by the Association that may be sustained by reason of any act or omission of such Owner or its Occupants or its Designees, and for any violation by such Owner or its Occupants or its Designees, of the Governing Documents. The Association shall have the power to levy and collect an Individual Assessment against an Owner to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of the Governing Documents, including interest and reasonable attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

**Section 3. Reimbursement of Expenses.** Except as otherwise expressly stated in this Declaration or the other Governing Documents, whenever a sum is due and

payable by an Owner to the Association, Architectural Control Committee or Declarant such sum shall be paid within 30 days of an Owner's receipt of notice of such payment. If an Owner fails to make such payment within such 30 day time period, such outstanding amount shall accrue interest at the Past Due Rate. Additionally, such outstanding payment is subject to the rights of the Association contained in this Declaration.

#### ARTICLE XXIII. SUBORDINATION

No breach of any of the conditions contained in this declaration or reentry by reason of such breach will defeat or render invalid the lien of any deed of trust made in good faith and for value as to the subdivision or any lot in it; provided, however, that such conditions will be binding on any owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

#### ARTICLE XXIV. DURATION

The covenants and restrictions of this declaration will run with and bind the land, and will inure to the benefit of and be enforceable by the association or any member of it for a period of thirty (30) years from the date of this declaration, and thereafter will continue automatically in effect for additional periods of thirty (30) years, unless otherwise agreed to in writing by the then owners of at least 75% of the subdivision lots.

#### ARTICLE XXV. ARBITRATION

Any differences, claims, or matters in dispute arising between the parties out of this agreement or connected with this agreement shall be submitted by them to arbitration by the American Arbitration Association or its successor, and the determination of the American Arbitration Association or its successor shall be final and absolute. The arbitrator shall be governed by the rules and regulations of the American Arbitration Association or its successor, and the pertinent provisions of the laws of the State of Texas relating to arbitration. The decision of the arbitrator may be entered as a judgment in any court of the State of Texas or elsewhere.

#### ARTICLE XXVI. TEXAS LAW AND VENUE

The terms, conditions, and provisions of this agreement shall be governed, controlled and construed by the laws of the state of Texas. The undersigned parties expressly agree that venue for all purposes shall be Tom Green County, Texas.

ARTICLE XXVII.  
NOTICES

All notices or other communications required or permitted to be given pursuant to this Declaration shall be in writing and shall be considered as properly given if: (a) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (b) by delivering same in person to the intended addressee, (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee or (d) by prepaid telefacsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of Declarant and the Association shall be as set forth below and the address of each Owner shall be the address of the Lot unless an alternate address is provided by an Owner to the Association. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the Association in the manner set forth herein:

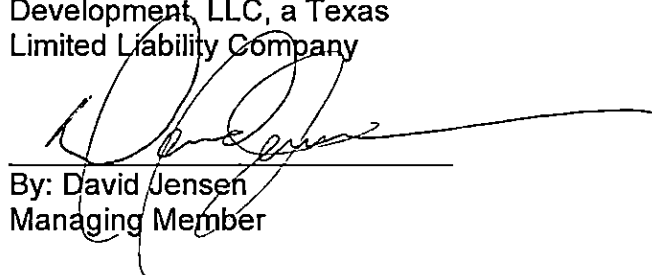
Declarant:

Buffalo Heights West Development, LLC  
PO Box 1669,  
San Angelo, Texas 76902

Association:

Buffalo Heights Homeowners Association, Inc.  
P.O. Box 61542  
San Angelo, Texas, 76906

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 8 day of November, 2023.

By: Buffalo Heights West  
Development, LLC, a Texas  
Limited Liability Company  
By: David Jensen  
Managing Member

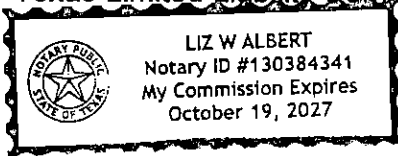
**ACKNOWLEDGMENT**

STATE OF TEXAS

§  
§  
§

COUNTY OF TOM GREEN

SUBSCRIBED AND SWORN TO before me on November 8, 2023 by  
David Jensen, as Managing Member of Buffalo Heights West Development, LLC, a  
Texas Limited Liability Company



Liz W. Albert  
Notary Public, State of Texas  
My commission expires: 10/19/27

Exhibit A – Legal Description of the Property

## EXHIBIT A

FIELD NOTES  
FOR  
BUFFALO HEIGHTS WEST  
SECTION ONE

41.567 Acres

October 3, 2023  
22-S-0012\_secone

Being an area of 41.567 acres of land out of H. & T. C. R. Co., Block 4, Survey No. 27, Abstract No. 1042, Tom Green County, Texas, and being out of that certain 98.133 acre tract recorded in Instrument No. 202312875, Official Public Records of Tom Green County, Texas and said 41.567 acre tract being more particularly described by metes and bounds as follows:

Beginning at a ½" iron rod found for the southeast corner of this tract, said certain 98.133 acre tract and in the south line of said Survey No. 27 and the north line of Survey No. 16 of said Block 4 and said beginning corner also being the southwest corner of certain 30.000 acre tract described and recorded in Instrument No. 202205564, Official Public Records of Tom Green County, Texas;

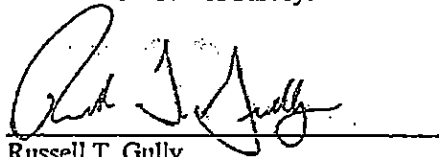
Thence with the south line of this tract, said 537.00 acre tract and said Survey No. 27 and the north line of said Survey No. 16, N. 89° 50' 02" W. 652.89 feet to a ½" iron rod with cap set for the southwest corner of this tract;

Thence with the west line of this tract as follows, N. 00° 07' 41" E. 1842.56 feet to a ½" iron rod with cap set for an ell corner, S. 89° 52' 19" E. 10.01 feet to a ½" iron rod with cap set for an ell corner, N. 00° 07' 41" E. 235.00 feet to a ½" iron rod with cap set for an ell corner, N. 59° 52' 19" W. 125.00 feet to a ½" iron rod with cap set for an ell corner, N. 00° 07' 41" E. 593.50 feet to a ½" iron rod with cap set for the northwest corner of this tract and in the north line of said 98.133 acre tract;

Thence with the north line of this tract and said 98.133 acre tract, S. 88° 54' 42" E. 772.24 feet to a ½" iron rod with cap set for the northeast corner of this tract and said 98.133 acre tract and in the west line of Buffalo Heights, Section Ten-A as per the map or plat recorded in Cabinet G, Slide 315, Plat Records of Tom Green County, Texas;

Thence with the east line of this tract, said 98.133 acre tract and the west line of said Section Ten-A, S. 00° 13' 11" W. at 551.56 feet pass a ½" iron rod with cap found for the southwest corner of said Section Ten-A and the northwest corner of Buffalo Heights, Section 11-A as per the map or plat recorded in Cabinet G, Slide 387, Plat Records of Tom Green County, Texas, at 1476.62 feet pass a ½" iron rod with cap found for the southwest corner of said Section 11-A and the northwest corner of said certain 30.000 acre tract, in all a total distance of 2658.56 feet to the place of beginning and containing an area of 41.567 acres of land.

See Attached Plat of Survey.



Russell T. Gully  
Registered Professional Land Surveyor No. 5636  
SKG Engineering, LLC  
Firm No. 10102400



UNOFFICIAL COPY

CERTIFIED FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS



*Christina Ubando*

Christina Ubando County Clerk  
Tom Green County, Texas  
11/09/2023 08:50 AM  
Fee: \$206.00  
202314317 DEC