

**ANNEXATION CERTIFICATION AND AMENDMENT OF
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS**

FOR COMAL TRACE, UNIT 6

OR

THE HEIGHTS OF COMAL TRACE

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ANNEXATION CERTIFICATION
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FOR COMAL TRACE, UNIT 6
OR
THE HEIGHTS OF COMAL TRACE

STATE OF TEXAS §
 §
COUNTY OF COMAL §

WHEREAS, Amrose Development Partners, Ltd., is the developer of Comal Trace, Unit 6, Comal County, Texas, and as owner and developer has executed and recorded a Declaration of Covenants, Conditions, Easements, and Restrictions, dated October 23, 1997, recorded as Document Number 9706022421 of the Real Property Records of Comal County, Texas (the "Declaration"), covering the property described therein and which Declaration authorized Amrose Development Partners, Ltd., to subject additional units of the Comal Trace Subdivision to the Declaration and the Owners Association created therein.

WHEREAS, Amrose Development Partners, Ltd. ("Developer") is the owner of 71.16 acres of land out of the Theodore Miller Survey No. 323, Abstract No. 384, Comal County, Texas, which has been subdivided and platted of record as the COMAL TRACE SUBDIVISION, UNIT 6 (hereinafter referred to as the "*The Heights of Comal Trace*" or the "Unit 6") as shown on the Plat recorded as Document No. 200306022221 in Volume 14, Page 285 of the Map and Plat Records of Comal County, Texas; and

WHEREAS, it is the desire and intention of the Developer to subject the property within *The Heights of Comal Trace* to the Declaration as hereby amended and restated for Unit 6 so that all of the land *within The Heights of Comal Trace* or Unit 6 be restricted according to a common plan as to allowed uses and permissible construction, so that all of Unit 6 and each successive owner of all or any part of Unit 6 shall benefit by the restrictions including the preservation of the value, character and desirability of the land within Unit 6.

WHEREAS, it is the intention of Declarant to amend and modify the easements, restrictions, covenants and conditions of the Declaration as to Unit 6 without modifying the Declaration as it applies to other units and Declarant has elected to amend and restate in full the Declaration of Covenants, Conditions, Easements and Restrictions as to Unit 6 rather than amend and delete portions in a separate document. It is Declarants intention that Unit 6 is subject to the Declaration as hereby amended and restated so that: (i) the owners of other land subject to the

Declaration may enforce these restrictions on Unit 6; (ii) the owner of lots in Unit 6 may enforce the easements, covenants, conditions and restrictions of the Declaration as they apply to other units or lots; and (iii) that owner of lots in Unit 6 are members of the Comal Trace Homeowner Association on the same terms as all other owners of lots subject to the Declaration.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and expressly for the benefit of and to bind the Developer, its successors and assigns, and in order to create and carry out a general and uniform plan for the development, improvement and use of lots within Comal Trace, Unit 6, the Developer hereby declares that Unit 6 is and shall be held, sold and conveyed subject to the Declaration including all easements, restrictions, covenants and conditions set out therein as hereby amended and restated:

ARTICLE I DEFINITIONS

The following words when used in this Declaration or any supplemental declaration (unless the context shall prohibit or text otherwise provides) shall have the following meanings.

(a) "The HEIGHTS ACC" shall mean the Comal Trace Architectural Control Committee for the Heights of Comal Trace established pursuant to the terms and provisions of this Declaration.

(b) "Association" shall mean and refer to the Comal Trace Homeowners Association, a Texas non-profit corporation, its successors and assigns as provided for herein.

(c) "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Comal Trace Homeowners Association, the election and procedures of which shall be as set forth in the Articles of Incorporation and By-Laws of the Association.

(d) "Committee" and "Architectural Control Committee" or "HEIGHTS ACC" shall mean and refer to the committee created hereinafter, subject to the provisions herein, by Declarant for Unit 6 and all additional units made subject to the Unit 6 Declaration.

(e) "Common Areas" and "Common Facilities" shall mean and refer to all property leased, owned, or maintained by the Association for the use and benefit of the Members of the Association. The Common Area may include, but shall not necessarily include or be limited to, any or all of the following: greenbelts or open spaced roads owned by the Association, common recreational areas, and all entrance monuments, perimeter walls, drainage facilities and detention ponds, esplanade and right-of-way landscaping and such other areas lying with indicated public easements or rights-of-way as deemed appropriate by the Board of Directors of the Association for the preservation, protection and enhancement of the property values and the general health, safety or welfare of the Owners. One or more areas or Lots ("Restricted Use Lot") may be designated on the plat as being for the benefit of one or more specific designated Lots (the "Benefited Lots") in which event only the Benefited Lots shall bear costs of the Restricted Use Lot. Any such Restricted Use Lot shall be owned by the owners of the Benefited Lot(s) or by an association composed of the Benefited Lot(s).

(f) "Declarant" shall mean and refer to Amrose Development Partners, Ltd., a Texas corporation, its successors or assigns who are designated as such in writing by Declarant with respect to the Lots acquired by such successor or assign.

(g) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Heights at Comal Trace, and any amendments, annexations and supplements hereto made in accordance with the terms hereof.

(h) "Living Unit" or "Residence" shall mean and refer to a single family residence and its attached or detached garage and accessory buildings situated on a Lot.

(i) "Lot" shall mean and refer to any of the plots of land shown on a plat of COMAL TRACE, UNIT 6, which is not designated or identified on the Plat as a road, common recreational area or for any use other than for a single family residence.

(j) "Member" shall mean and refer to all those owners who are members of the Association as provided herein.

(k) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot, within the Properties, including contract sellers but excluding those having interest merely as security for the performance of an obligation.

(l) "Properties" and "Subdivision" shall mean and refer to the above described properties known as COMAL TRACE SUBDIVISION, UNIT 6, and such additional land, as are subject to this Declaration or any amended or supplemental declaration by Developer.

(m) "Single Family" shall mean and refer to a group related by blood, adoption, or marriage or a number of unrelated house mates equal to the number of bedrooms in a living unit.

(n) "Unit 6 Plat" shall mean and refer to the map or plat of COMAL TRACE, UNIT 6, Comal County, Texas, filed for record as Document No. 200306022221 in Volume 14, Page 285 of the Map and Plat Records of Comal County, Texas, and any amendment thereof and any plat for additional tracts identified as units or a part of the Comal Trace, Unit 6, upon filing of same for record in the Deed and Plat Records of Comal County, Texas.

ARTICLE II

SCOPE OF RESTRICTIONS AND USE RESTRICTIONS

Section 1. Scope of Restrictions. The covenants, conditions, restrictions and easements herein set forth shall constitute COVENANTS RUNNING WITH THE LAND and shall be binding upon Developer, its successors and assigns, and upon all persons or entities acquiring an individual Lot or Lots or all or any portion of the Subdivision, whether by purchase, descent, devise, gift or otherwise, and each such person or entity, by the acceptance of title to any part of

the Subdivision, shall thereby agree and covenant to abide by the covenants, conditions, easements and restrictions set forth herein and to perform the covenants hereby imposed on Owners of the Lots within the designated portions of the Subdivision.

Section 2. Annexation. From time to time the Developer may wish to include additional land within the Subdivision by annexation by the Developer. The annexation shall be evidenced simply by identifying the land to be annexed as "COMAL TRACE SUBDIVISION, Unit ____" (with the appropriate Unit number being inserted) on a subdivision plat recorded in Comal County Map and Plat Records with the statement on the plat that the land subject to the plat is annexed into and a part of the Subdivision. Developer shall have the right, without the joinder of any other party, to impose the same restrictions or other restrictions on any new Unit, if any, of the Subdivision by instrument in writing duly signed, acknowledged and recorded in the Official Real Property Records of Comal County, Texas and such modified restrictions shall apply only to the designated land described in the document creating such restrictions. Only the owners of Lots subject to these restrictions or which have been specifically annexed into the Subdivision by the Developer and therefore subject to the general plan of development even though specific restrictions on various units may vary, shall have the right to enforce the restrictions or assert rights under these restrictions.

Section 3. Residential Use. All Lots within Unit 6 are hereby restricted exclusively to single-family residential use unless designated for recreational or common uses on Unit 6 Plat. No structures shall be erected, placed or maintained on any Lot other than a conventionally constructed single-family private residence with such accessory structures and buildings as guest houses, gazebos, cabanas, playhouses, tree houses, storage buildings and garages; provided, however, no such accessory structures or buildings may be used or occupied until the Residence on the Lot has been completed. All such accessory buildings are to be built simultaneously with or subsequent to construction of the Residence structure. The term "conventionally constructed single-family private residence" shall exclude specifically mobile homes, house trailers, modular homes and move-on homes. This covenant shall not prevent Developer from erecting and maintaining such temporary structures as are customary in connection with the development of a Subdivision, including temporary structures used in connection with a sales program in residential subdivisions or for construction of Common Facilities for the Subdivision. During construction of a building, a contractor, with the approval of the HEIGHTS ACC, may maintain a construction office trailer or building on a Lot.

Lots 221, 224 and 226. No habitable structures or septic systems will be permitted on Lots 221, 224 or 226 of the Comal Trace, Unit 6, as shown on the plat at Volume 14, Page 285 of the Map Records of Comal County, Texas.

Any Community Facility such as a recreational or meeting area or private roadway owned by the Association or all of the Owners in common, including the improvements located thereon, shall be considered approved residential uses for the land within the Subdivision.

Lots 213, 214 and 215 are designated Pond Lots pursuant to the Comal Trace Pond Declaration of Covenants, Conditions and Restrictions dated October 23, 1997 recorded as

Document Number 9706022420, Comal County Real Property Records and are subject to such Pond Lot Declarations.

ARTICLE III
SITE PLANNING

Section 1. Minimum Structure Size. No single-family residence erected on a Lot shall have less than two thousand four hundred (2,400) square feet of living area, exclusive of open or screened porches, terraces, patios, garages and other accessory structures and buildings or areas of a similar nature that are typically not air conditioned. Two story residences shall have not less than two thousand eight hundred (2,800) square feet.

Section 2. Minimum Setbacks and Placement of Structures. All buildings or other structures, permanent or temporary, habitable or not, must be constructed, placed and maintained in conformity with the setback lines hereby established and those shown on Unit 6 Plat. In no event shall any building or other structure be constructed, placed or maintained within fifty feet (50') any front Lot line, within forty feet (40') of any side Lot line, or within seventy five feet (75') of the rear boundary. In no event may any structure be constructed or maintained upon any utility or other easement. There shall be no projections nor encroachment into any utility or drainage easement. Eaves of buildings shall not be deemed to be a part of a building or structure, but steps and porches shall be deemed to be a part of a building or structure for the purpose of this covenant. If a Residence is constructed on a homesite consisting of more than one (1) Lot, the combined area shall be considered as one (1) Lot for purposes of this provision and the setbacks shall apply to the exterior boundary of the combined Lots and shall not apply to the common interior boundary lines of the combined Lots. If a 100-year floodplain and/or drainage easement encroaches on any portion of a Lot, the limits of the flood plain or drainage easement will be considered as the applicable setback line if such setback is greater than the setback requirements set forth in this Section 2.

Additional building setbacks:

The following lots are subject to the following designated lots:

Lot 186 – The setback along Lomas Escondidas Unit 2, Lots 4 and 6 shall be 40 feet rather than 75 feet;

Lot 188 – The rear setback shall be 50 feet rather than 75 feet;

Lot 211 – The rear setback shall be 50 feet rather than 75 feet; and

Lot 213 – The rear setback shall be 50 feet rather than 75 feet.

The building setback requirements set forth herein will not apply to Lots 221, 224 and 226 Comal Trace, Unit 6.

The HEIGHTS ACC shall have the right to grant variances to the setbacks established in this Section 2 to accommodate the topography and trees on a Lot or the architectural design of

the proposed improvements, provided, however, that such variance shall comply with any applicable setbacks required by Comal County as shown on Unit 6 Plat.

Section 3. Easements. In addition to those that may be set forth in this Declaration, each Lot shall be subject to all easements, setback lines, covenants and restrictions set forth on the recorded plat covering that particular Lot. Lot Owners may not place, erect or construct any structure or payment in these easement areas, with the exception of driveways. Owners should refer to the easement locations as shown on Unit 6 Plat of the applicable Lots plat recorded in the Map and Plat Records of Comal County, Texas in order to determine the extent which such platted easements may affect the Lot.

Section 4. Driveways. All driveways shall be of a hard surfaced material, as expressly approved by the Committee. These may include, but are not necessarily limited to, asphalt, stained or pebble finished concrete, concrete pavers or brick pavers. No raw concrete drives will be permitted. Except with approval of the Committee, no circular driveway may be proposed or approved if the impervious cover of the driveway material exceeds forty percent (40%) of the front building setback area. All driveway entrances shall be at least ten feet (10') in width and shall not be more than fourteen feet (14') in width. The paved surface of every driveway must be at least ten feet (10') in width and may not exceed fourteen feet (14') in width. Driveway locations shall be only as approved by the Committee. Each driveway shall have twenty foot (20') wide maximum concrete approach a the street. No more than one (1) driveway entrance per Lot shall be permitted without prior approval of the Committee. Exceptions to the one (1) driveway requirement may be considered by the HEIGHTS ACC for Lots located at the corners of streets. Every driveway must be designed to allow for at least two (2) uncovered parking spaces for regular sized vehicles. Builders and contractors are required to clean streets immediately after aggregate finished driveways have been washed.

It is the responsibility of each Lot Owner to contact Comal County Road Department to obtain a driveway permit and Comal County Road Department will advise of all requirements. Culvert headwalls must be concreted at each end of the culvert pipe.

Section 5. Garages. A garage able to accommodate at least two (2) and at most four (4) regular sized automobiles must be constructed and maintained as such for each Residence. The garage must be built and occupied at the same time the principal Residence is built. Garages will be allowed as builder's sales offices but must be reverted to use as a garage upon the conveyance or occupancy of home by a resident.

Section 6. Utilities. Overhead and underground utility services must extend to the property line of each Lot. Power, telephone and cable television service utility connection locations are generally clustered at the utility easement located on one of the front corners of each Lot. The location of water point-of-connections vary from Lot to Lot. The extension of services from these stub locations is the sole responsibility of each Owner. All water, sewer, telephone, electric, gas, cable and utility services shall be underground from the stub location at or near the Lot boundary to the house and other structures on the Lot. The utility extensions must be routed in a manner that minimizes disruption to any existing natural landscape. The routes must be considered in the site planning phase, and where possible, be sited at the same

locations as other interruptions through the front setback line, such as alongside the driveway. All utilities extending from the point of connection to the residence must be placed underground. Utility connections, meter boxes and similar apparatus must be fully screened from view from adjoining Lots and streets or located on a side of a structure that cannot be viewed from any location outside the Lot. Propane tanks must be screened by a low wall so as not to be visible from adjoining Lots or streets. Propane tanks must be located within all building setbacks on the Lot.

Section 7. Grading and Drainage. No structure, landscaping, or other material shall be placed or shall be permitted to remain on a Lot and no other activities shall be permitted to be undertaken on a Lot that may damage or interfere with established slope lines, create erosion or land sliding problems, change the direction of flow of drainage channels, or obstruct or retard the flow of water through drainage channels.

No excessive excavation or fill will be permitted on any Lot. Every effort must be made to minimize cut and fill necessary for the construction of a home and related improvements. Excess fill must be legally disposed of outside the Subdivision. For Lots adjacent to a 100-year flood plain, the finished elevations of the primary Residence and other improvements must be a minimum of two feet (2') above the flood plain elevation. Excavation for finished grade may not exceed five feet (5') in vertical depth. Grading must be limited to that reasonably necessary for the construction of a home and related structures. The topographic transition from the building locations to setbacks must appear gradual and natural. Grading near the setbacks may not result in abrupt transitions to adjacent Lots or streets.

Section 8. Sight Lines. No shrub, tree, fence or wall that obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be constructed, planted or permitted to remain on any Lot corner within the triangular area formed by the curb lines of such intersecting streets, or the extensions thereof, and a line connecting such curb line at points twenty five feet (25') back from their intersection. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than six feet (6') above ground level.

ARTICLE IV LANDSCAPING

Section 1. Hardscape. Natural building materials such as stone, clay bricks or concrete pavers are approved materials for exterior ground surfaces. Salt finishes and stained and patterned concrete are also acceptable surface materials. Where possible, colors should be chosen to blend into the existing ground plane. All hardscape selections must be presented to and approved by the HEIGHTS ACC prior to installation.

Section 2. Landscape Lighting. Landscape lighting may be installed with prior approval by the HEIGHTS ACC. The HEIGHTS ACC shall review all submitted plans to ensure that the lighting scheme is limited in area and intensity, and with consideration that the primary purpose of such landscape lighting is for safety and diffused mood lighting only. Landscape lighting shall not be used solely for decoration. Step lights, pole and pilaster mounted lighting fixtures

shall be permitted when placed appropriately. Filters and shields are required to hide all light sources. Fluorescent, metal halide and low pressure sodium lamps will not be permitted. No lighting fixtures shall be permitted within the setback areas of the Lot.

Section 3. Landscaping Guidelines. Not more than twelve thousand (12,000) square feet of Lot area may be irrigated or watered on any one Lot. The irrigated area shall be shown on the landscape plans submitted for approval to the HEIGHTS ACC in connection with the construction of the residence.

All areas disturbed by construction activities shall be cleaned and vegetated with native materials at a minimum. Decorative ground cover rock in the front and side yards may not exceed twenty (20%) percent of the total area of the front and side yards. Cuts into natural grade visible from the street are to be faced with masonry, sodding or landscaping. Allowances may be made for areas left in a natural state depending upon their appearance.

All landscape plans and plans for other improvements on a Lot shall be submitted to the HEIGHTS ACC for its approval, or disapproval, prior to the construction, alteration and/or placement of such items.

The HEIGHTS ACC shall have the right to grant a variance or waiver of the requirements of this section of the landscaping guidelines from time to time promulgated in such instances as it shall determine that such waiver is advisable in order to accommodate a unique, attractive or advance landscaping concept, design or material and the resulting appearance, in the opinion of the HEIGHTS ACC, will not detract from the general appearance of the neighborhood. No such variance or waiver shall be presumed and any such grant of variance or waiver shall be in writing.

ARTICLE V ARCHITECTURAL DESIGN

Section 1. Introduction. The Lots in *The Heights at Comal Trace* provide a wide range of topography and landscape options. Owners should carefully consider the proposed style, size and scale of their future Residence prior to selecting a Lot for purchase.

Section 2. Design Character. It is the intent of *The Heights at Comal Trace* to encourage the use of architectural styles that are appropriate for this region. Approved styles will include, but shall not be limited to, Texas Hill Country, Traditional, Mission and Tuscan. Colonial and Mediterranean styles shall not be permitted. All other submittals will be reviewed by the HEIGHTS ACC on a case-by-case basis. The interpretation of style appropriateness and architectural character shall be determined solely by the HEIGHTS ACC.

Section 3. Building Mass and Form. Residences shall be composed of several building masses as viewed from any elevation. All side and rear elevations are expected to be articulated to break up the façade into smaller elements. Large blank walls will not be allowed.

Section 4. Building Height. Building height will be limited to thirty-five feet (35') above average existing grade within building setbacks. Small roof areas such as peaks, cupolas, towers, monitors, etc. may extend to forty feet (40') at the discretion of the HEIGHTS ACC.

The formula for determining conformance with height restrictions will consist of taking the average of all natural grade elevation at building setback intersections and adding thirty-five feet (35'). This will determine allowable height of main roofs. Special consideration in determining average grade will be given for lots with grade areas above thirty percent (30%).

Section 5. Building Elevations. Homes must be designed with all four (4) elevations in mind. The designs of homes within The Heights at Comal Trace are expected to capture those qualities of hand-crafted richness and detail that are often associated with an earlier time. The use of proportion, light, shade, shadow and other visual elements must be clearly evident in the design of each home, whether such home is intended to be modest or large.

Section 6. Roof Design. The surface of roofs of principal and secondary structures, including garages and domestic living quarters, shall be of standing seam metal or clay barrel tiles. Metal roofs shall be galvanized or pre-finished and shall be in earth tone colors. Barrel tiles must be natural or earth tone in color. Specific three hundred (300) pound dimensional composition shingles roofs may be approved by the HEIGHTS ACC on a case-by-case basis. Main pitched roofs, not including porches, may be gabled, shed or hipped and must have a minimum slope of six (6) in twelve (12) and a maximum slope of twelve in twelve. Shed or porch roofs may be lower than six (6) in twelve (12). Flat roofs may be approved on an individual basis if the overall design is consistent with the general appearance of Unit 6. Exposed roof mounted mechanical equipment shall not be allowed. Roofs must be designed with careful consideration of the visual environment of the overall Subdivision. Large, unbroken expanses of single-pitched roofs will not be permitted. The HEIGHTS ACC shall have the authority to approve other roof treatments and materials if the form utilized will, in its sole discretion, be harmonious with the surrounding homes and the Subdivision as a whole.

Section 7. Exterior Walls and Finishes. The exterior walls of each primary Residence constructed on any Lot shall be at seventy-five percent (75%) by area composed of masonry or masonry veneer. Said percentage shall apply to the aggregate area of all exterior walls. In determining compliance with this section window and door openings surrounded by masonry material shall be considered masonry and window and door openings surrounded by non-masonry materials shall be considered non-masonry. The exterior walls of any structure constructed or placed on any Lot shall not be surfaced with more than three (3) different types of materials. One material should dominate over the other materials and the materials combined should express logical structural relationships. All materials on any exterior wall must extend to the roof soffit. However, small panels of masonry skirts may be approved on a case by case basis. Stucco finishes must extend down within twelve inches (12") of the finished grade with painted full pargeting to the finished grade to match the stucco. All other finishes must extend to within eighteen inches (18") of the finished grade with full pargeting to the finished grade. When stone is used as a veneer, it should be laid as if to resemble an actual masonry load bearing wall with more or less rectilinear joints. Points and jagged edges which belie the thinness of the stone should be avoided and may not be permitted. Stone of bold and contrasting colors will not

be allowed. The Architectural Control Committee is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the neighborhood. Masonry or masonry veneer includes square cut native or regional stone, wood mold, handmade brick of muted color and subtle hand troweled stucco, but shall exclude hardiplank and concrete board and any product, regardless of composition, which is manufactured to have a wood or non-masonry appearance. Other materials of historical or unique application may be approved by the HEIGHTS ACC on an individual basis. Absent the express written consent of the HEIGHTS ACC, vinyl siding and aluminum siding shall not be allowed.

Section 8. Colors. The exterior colors of all improvements on a Lot, including any repainting of improvements, shall be subject to approval by the HEIGHTS ACC. Paint and stain colors shall be earthy tones ranging from white to cream to light brown or taupe. Other colors must be approved on an individual basis. Small amounts of contrasting trim that accords with the main color scheme will be considered by the HEIGHTS ACC. A sample of the masonry, roofing, material, paint colors and any additional exterior materials shall be submitted to the HEIGHTS ACC for review prior to its application. Any changes to exterior material or color shall be submitted to the HEIGHTS ACC for review.

Section 9. Doors and Windows. Windows shall be wood, clad wood, vinyl, or factory or job-finished painted metal windows in a color approved by the HEIGHTS ACC. The design of windows may be double or single hung, casements or projecting, except that, as necessary, sliding windows may be single pane. The style of the windows must match the architectural context of the structure. No reflective glass is permitted on any exterior door or window.

Section 10. Fireplaces and Chimneys. The exterior of all chimneys shall be one hundred percent (100%) stone, brick or stucco, and such material shall be of a type and color matching the primary masonry on the exterior walls of the Residence. If a prefabricated metal fireplace is used with the prior approval of the HEIGHTS ACC, a decorative metal bonnet must be incorporated at the chimney cap in order to reduce the visual impact of the spark arrestor.

Section 11. Garages and Driveways. Every effort should be made to minimize the visual impact of the garage entrance. Large or unarticulated areas above garage doors will not be approved by the HEIGHTS ACC. Garages on all Lots other than corner Lots shall not be oriented so as to directly face the street. Entry to garage must be from side or rear of the residence. The entrance to detached garages may be oriented to the front of the Lot if the garage is situated behind the main structure. Specialized garages for recreational vehicles, boats, campers, trailers and similar vehicles must be designed to accord with the architectural context of the primary Residence, paying particular attention to ensure that the nature of the home and the home site is such that may visually accommodate such a garage.

ARTICLE VI DETAILS

Section 1. Walls, Screens and Fences. Plans for fencing must be submitted to and approved by the HEIGHTS ACC prior to installation when needed for security, screening, containment or sound attenuation. No fences shall be installed in front of any line of the primary residence on any side which fronts the street. No fence may be built between the street and the front setback line of the Lot. The location of fences must comply with the other provisions of this Declaration. The perimeter fences must be cedar post or metal post with King Ranch net wire and the height of such fences shall not exceed sixty inches (60") from the ground. Masonry or wrought iron fences may be permitted on a case-by-case basis after approval by the HEIGHTS ACC. No chain link fencing shall be allowed or approved. All fences must be built by a professional fence contractor.

Section 2. Exterior Lighting. Exterior lighting shall be designed so as to minimize the visual impact on neighboring homes. All exterior lighting fixtures must be shielded from view of the adjacent Lots and streets. A shadow of light may not be cast onto an portion of the adjoining property. Simple, traditional fixtures that cast a soft glow are recommended. The primary function of lighting shall be safety. Security flood lighting may be installed but may not be left on continuously and shall not be controlled by a photocell device.

Section 3. Utility Elements and Devices. Materials such as chimney flues, vents protruding vents located on roofs of exterior walls, louvers, flashing, chimney caps, railings, utility boxes, exterior mounted mechanical equipment and metal work of any kind must be finished to match one of the color in the building's color palette, unless specific approval is given by the HEIGHTS ACC prior to installation. Electric service meters, air conditions, pool equipment and any other utility or mechanical equipment must be screened from view of the street and adjacent Lots. Proposed screening plans and materials must be provided to the HEIGHTS ACC during final review of the building plans.

Section 4. Related Structures. Every outbuilding, including but not limited to such structures as guests houses, gazebos, cabanas, playhouses, tree houses, and storage buildings must be designed in such a way as to be complementary of the main structure and shall be integral elements of the home site as a whole. The overall design and the materials, colors and finishes used for such structures shall be similar to the main structure. Small storage buildings that are specifically designed for the home site and which are constructed on the Lot may be allowed by the HEIGHTS ACC if they are complementary to the main structure. Prefabricated storage buildings will not be approved. All accessory buildings must comply with all applicable setback and easement requirements. The design, materials and location of all such buildings shall be subject to the written approval of the HEIGHTS ACC and all such structures shall be approved in writing by the HEIGHTS ACC prior to installation or construction.

Section 5. Flagpoles. Flagpoles may be displayed if specific approval is received from the HEIGHTS ACC prior to installation. Flagpoles may not exceed twenty feet (20') in height and shall only be used to display national and/or state flags and flags. Flags exhibiting other insignia

must be approved by the HEIGHTS ACC prior to display. Flags may not be larger than four feet (4') by six feet (6') in size.

Section 6. Address Identification. Simple and well-designed small scale numerals must be affixed to the front façade of each home for identification purposes. House numbers must be of a contrasting color, but shall not be in red, orange, yellow or similar brightly hued or fluorescent tones. If the affixed address identification numerals are not visible from the street, a single marker may be placed near the driveway upon approval by the HEIGHTS ACC. Such marker must be comprised of either (1) a stone that blends in with the surrounding topography and landscape character or (2) be constructed of materials that are consistent with the main Residence's materials, finishes and overall color palette. Address markers may not exceed three feet (3') in height and four feet (4') in width. Markers must be located off of the street right-of-way and within ten feet (10') of either side of the driveway.

Section 7. Exterior Recreational and Play Equipment. Basketball hoops and similar sporting equipment may be allowed by the HEIGHTS ACC on a case-by-case basis. No basketball goals or backboards or any other similar sporting equipment of either a permanent or temporary nature shall be located on any Lot closer than eighty feet (80') from the front property line or closer than forty feet (40') to the side property line. The HEIGHTS ACC will have the right to regulate the appearance and placement of all sporting apparatus including basketball goals. All basketball backboards shall be maintained in a playable condition at all times and any damaged structure shall be repaired or removed immediately. The illumination of such basketball goals shall only emanate from the overall lighting of the primary residence. No flood lights or similar types of spot lights will be permitted.

Play structures, trampolines, swing sets, slides or other such equipment must be properly placed and screened so as not to be visible from the street. Such equipment must be limited to ten feet (10') in height. Brightly colored play equipment will not be permitted.

Section 8. Sport and Tennis Courts. Tennis court and other sport court fencing shall require the prior written approval of the Architectural Control Committee and any Owner desiring to install the same shall submit design and site plans and landscaping plans. Tennis courts and other sport court facilities may not be lighted. Landscaping and fencing requirements may be set by the Committee for the purpose of screening courts in an aesthetically pleasing manner. No chain link fencing will be allowed. Electric service meters, air conditioners, and other utility or mechanical equipment relating to exterior recreational facilities must be screened from the street and from adjoining home sites. All screening plans must be provided to the HEIGHTS ACC for review during the final review of the building plans.

Section 9. Swimming Pools and Spas. Swimming pools shall be designed in such a way as to be visually connected to the primary Residence and must be positioned on the Lot with consideration for visual and noise impact on the adjacent Lots and streets. Any swimming pool constructed on a Lot must be enclosed with a fence or other device completely surrounding the swimming pool which, at a minimum, satisfies other applicable governmental requirements. Pool equipment and utility or other mechanical equipment must also be screened from the street and adjacent home sites. Screening for equipment must be either an opaque wall or with plant

material of sufficient size to form a solid hedge at the time of planting. Nothing in this Section is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable government regulations concerning swimming pool enclosure requirements.

All plans for swimming pools, and all related fencing, screening and construction must be submitted to the HEIGHTS ACC for review prior to the start of construction. When swimming pool construction accompanies the initial construction of a Residence, such plans (include clear site plans) shall accompany the submission of plans for the Residence.

Section 10. Refuse Can Storage. Lot Owners shall keep each Lot clean and free of unused building materials, trash, rubbish and other debris. Owner (or Owner's contractor) shall provide adequate dumpsters or other containers for removal of construction matter, trash and debris during the period of construction. The dumpster shall be promptly emptied when full. No trash, garbage, construction debris, rubbish, abandoned or junk cars or other refuse may be dumped, disposed of or maintained on any Lot, vacant or otherwise. All rubbish trash, garbage and other waste shall be kept in sanitary refuse containers with tightly fitting lids. No refuse shall be burned on any Lot during construction of improvements or at any other times. Garbage and trash disposal must be provided by a private company contracting with the Lot owner. The private company providing garbage and trash disposal for a Lot owner must provide curb service and be properly licensed to provide such services. Neither the Developer or the Owner's Association is obligated to provide garbage or trash disposal services. All garbage cans, recycling bins and other refuse containers must be stored so as to be out of view of the street and adjacent properties, except that such containers may be neatly placed in front of the Lots from 5:00 p.m. on day prior and until 8:00 p.m. on the days designated for garbage pickup.

Section 11. Pet and Dog Runs. One (1) dog run made of a sturdy material may be constructed and maintained within the building setback lines of each Lot. Chain link fencing may be approved if the fencing of the dog run is screened from view of the streets and/or the chain link fence is vinyl clad.

ARTICLE VII MISCELLANEOUS USE RESTRICTIONS & PROVISIONS

Section 1. Nuisances. No noxious, offensive, undesirable, unlawful or immoral activity shall be conducted on any Lot, nor shall anything be done or permitted to be done thereon which may be or become a nuisance or annoyance to the owners of adjacent Lots or to the Subdivision as a whole. Any determination by the Committee that an activity is noxious, offensive, undesirable or immoral shall be final and binding on all parties, and the owner causing such nuisance shall stop such activity.

Section 2. Oil, Gas and Mineral Development. No oil or gas drilling, exploration or development operations, oil or gas refining or treatment, quarrying or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained or permitted on any Lot.

Section 3. Storage of Building Materials. No building materials of any kind shall be placed or stored upon any Lot except during construction; and then such materials shall be placed within the property lines of the Lot on which the improvements are to be erected. All such building materials must be removed within ninety (90) days of completion of the structure.

Section 4. Animals. No animals, livestock, swine, poultry, or other exotic or dangerous pets of any type (including, but not limited to pit bulls, boa constrictors, ferrets, etc.) shall be raised, bred or kept on any Lot; other than (a) household cats, dogs (excluding pit bulls and similar fighting breeds) and other generally recognized household pets (including Vietnamese pot belly pigs), and (b) an animal raised as part of a project for school, FFA, 4-H or a similar organization which animal has the prior written approval of the HEIGHTS ACC to be kept for on the Lot. Up to three (3) household pets (household cats, dogs, etc.) may be kept on any Lot. Only one (1) adult animal (meaning an animal one year or older) may be kept on any Lot for a school or similar project. All animals shall be restricted to the Lot(s) of their owners by fences or other enclosures or restraints and not allowed to run at large. All animals must be fenced behind the front wall line of the residence on the Lot. All animals shall be kept in strict accordance with all applicable laws and ordinances (including leash laws), and in accordance with all rules established by the Comal Trace Homeowners Association. In any event, every animal must be kept within the confines of the Lot of its Owner and no animal shall be allowed to run at large within the Subdivision. Notwithstanding any other provision hereof, no animal may be kept on a Lot which may pose a safety or health threat to the community or which is offensive to the reasonable sensibilities of other Lot owners by virtue of appearance, odor or noise. Each Owner agrees that he shall be financially responsible for all harm or damage done to others, or to the property of others, including that of the Association, by any animal maintained on his Lot.

Section 5. Signs. No signs or advertisements may be displayed on any Lot except to advertise its sale. No more than one (1) sign advertising a Lot for sale shall be displayed on any one (1) Lot and such sign shall be no larger than six (6') square feet. However, Developer shall have the right to construct and maintain signs in the subdivision advertising the Subdivision and the sale of Lots in the Subdivision and to identify common areas. In addition, one (1) builder sign no larger than six (6') square feet shall be permitted during the construction of the Residence but must be removed when the Residence is occupied.

Section 6. Hunting and Firearms. No hunting, including, but not limited to, bow hunting, shall take place within the Subdivision. No firearms may be discharged in the Subdivision at any time.

Section 7. Prohibited Activities. No professions, business, or commercial activity to which the general public is invited shall be conducted on any Lot other than the sale of Lots by developer or the owner of a Lot reselling the Lot and improvements thereon.

Section 8. Mailboxes. The type, style and placement of mailboxes for the Lots in the Subdivision shall be in accordance with the current postal authority standards and subject to the approval of the Committee. All mailboxes must be approved by the HEIGHTS ACC to conform with the residence on the Lot and the surrounding area.

Section 9. Radio, TV Antennae, Television Dishes, Solar Panels, Window Air Conditioners and Miscellaneous Equipment. No radio or television aerial wires, towers, antennae, discs, satellite dishes, solar panels, window or wall mounted air conditioners, or other unsightly apparatus or equipment of any type shall be erected, installed or placed on any Lot which extend more than eight (8') feet above the highest part of the roof of that dwelling and shall not be located on the front part of the dwelling or on the side of the dwelling nearer than ten (10') feet to the front wall line of the dwelling. No microwave dishes, antennas, receivers, or transmitters shall be placed on any Lot without being fully enclosed or fully screened from public view. Satellite or cable television dishes of eighteen inch (18") or smaller diameter are permitted without screening if they are maintained at locations not readily visible from the streets. Clothes lines shall be permitted on the Lot if located behind the principal residence structure and is not readily visible from the streets. Yard equipment and storage piles incident to normal residential requirements of a typical family must be screened from view from adjacent lots and streets.

Section 10. Propane and Natural Gas Tank. All propane, natural gas and similar fuel tanks in excess of five (5) gallons in size must be screened from public view and may not be located between the front line of the Residence and the street.

Section 11. Vehicles. Recreational vehicles, boats, campers, trailers, and similar vehicles may be kept in a garage after construction of the Residence. No dismantling or assembling of motor vehicles, boats, trailers or other machinery or equipment is permitted in any driveway or yard adjacent to a street. No commercial vehicle larger than a one (1) ton truck bearing commercial insignia or names shall be parked on any Lot except within an enclosed structure or a screened area that prevents view thereof from adjacent Lots and streets, unless the vehicle is temporarily parked for the purpose of serving the Lot.

Section 12. Maintenance of Lots. The Owners of all Lots shall maintain their Lot(s) in a sanitary, healthful, and attractive manner. No objectionable or unsightly usage of Lots, or condition on any Lot will be permitted which is visible to the public view. Building materials shall not be stored on any Lot except when being employed in construction upon such Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from such Lot within ninety (90) days of completion of the structure. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements or any of them, such default continuing ten (10) days from date of a written notice thereof deposited in the United States mail, Declarant, or the Association may, without liability to Owner or any occupants in trespass or otherwise, enter upon said Lot, cut or cause to be cut, such lawn, weeds and grass and remove or cause to be removed, such dead vegetation, garbage, trash and rubbish or do any other thing necessary to secure compliance with the terms of this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition. The Association may charge the Owner or occupant of such Lot for the cost of such work, plus a reasonable administrative charge and reasonable attorney's fees. The Owner shall pay such charges on demand and payment of said charges shall be secured by a lien upon the Lot which was cleaned.

Each Owner shall provide and maintain safe and adequate drainage within and across his Lot and no Owner shall construct or maintain any building, fence, walk, landscaping, or any condition which causes drainage to divert unnaturally onto an adjoining Lot.

Section 13. Appearance. All structures shall be maintained in a neat and orderly manner and their appearances, both before, during and after construction, shall be subject to the review and approval of the Committee. In the event an owner of a Lot should fail to maintain the premises and structures situated thereon in a neat and orderly manner, the Declarant or the Association shall have the right (and is hereby granted a license for this purpose), but not the obligation, through its agents and/or employees to enter upon the Lot and to repair, maintain and restore the Lot and exterior of the structures and any other improvements erected thereon to a neat and orderly manner, all at the expense of the owner of such Lot and a lien is granted to the mechanics and materialmen providing the labor and/or materials for such work.

Section 14. Exterior Modifications. Every proposed addition or exterior modification to any structure or improvement shall be subject to the terms of this Declaration and the plans and specifications for same shall be submitted to the HEIGHTS ACC for approval.

Section 15. Sanitary Facilities. Each Owner and/or Contractor shall be required to provide adequate temporary sanitary facilities for his construction workers. Such Sanitary facilities shall be placed within the building set back lines of the Lot on which the workers are working.

Section 16. Restriction on Further Subdivision. No Lot shall be re-subdivided or conveyed or encumbered in any size less than the full dimensions shown on the originally recorded plat of each respective Unit of the Subdivision, unless it meets the requirements of and is approved by all governmental authorities having jurisdiction thereof and the specific written approval of the HEIGHTS ACC has been obtained. Notwithstanding the restriction in the size of Lots, a Lot owner may transfer land for widening of a roadway without violation of this restriction. A landowner may combine two (2) or more contiguous Lots into one (1) Lot and such combined Lot when replatted shall be treated as one Lot.

Lots 187, 199, 201 and 213. Lots 187, 199, 201 and 213 of the Comal Trace, Unit 6, will not meet the minimum road frontage requirements for resubdivision in Comal County, Texas. Subdivision of these Lot for any purpose will not comply with requirements set forth in this Declaration.

Section 17. Sewage. No outside toilets shall be used, constructed or permitted on a Lot, except temporary portable toilets used during the construction of a Residence. No installation of any kind for disposal of sewerage shall be constructed or maintained which would result in treated or untreated sewerage or septic tank drainage being drained onto or into the surface of any part of the Subdivision, or onto or into any body of water located in the Subdivision. No means of sewerage disposal may be installed, used or maintained except a septic tank, an improved gray water system or a similar or improved means of sanitary sewerage disposal which meets the requirements of and is approved by all governmental authorities having jurisdiction thereof. No structure placed upon a Lot shall be used until sanitary sewerage disposal facilities complying with this paragraph have been completely finished. The location of the septic system

shall be accurately located on the site plan. The Developer is in no way obligated to install any such sewerage systems.

Section 18. Preservation of Natural Vegetation. Except as is reasonably necessary in connection with the construction and maintenance of improvements approved by HEIGHTS ACC, owners of Lots shall take reasonable steps to preserve and maintain the trees and natural vegetation. However, owners of such Lots may landscape, including pruning and removal of cedar trees. Lot owners are strongly encouraged to use natural or native vegetation for landscaping and to use xeriscaping where permissible to conserve water and promote natural vegetation.

Section 19. Caves and Sinkholes. Natural caves and sinkholes may occur on some of the Lots in the Subdivision. Each prospective Lot Owner should personally inspect the Lot in which he is interested to assure himself or herself of the location of any such caves and/or sinkholes which may be located thereon.

ARTICLE VIII DESIGN REVIEW PROCEDURES

Section 1. General Overview. Site sensitive and site specific design is fundamental to the concept of *The Heights at Comal Trace*. The architect and designer's planning process and the design and construction documents created should evolve from a careful and thorough analysis of the setting and features of the Lot, Unit 6 and the Subdivision. Therefore, owners and design consultants must refrain from approaching an individual Lot with a predetermined design expecting to make such design fit with little regard for the Lot and Subdivision's existing features and constraints. *The Heights at Comal Trace* has established this review procedure to assist each applicant through the design process in the appropriate sequence.

All submittals must be approved in writing by the HEIGHTS ACC as to the conformity and harmony of exterior design with existing structures in the Subdivision, the location with respect to topography, existing trees, and finished elevation, and apparent conformity with the requirements of this Declaration. In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. The HEIGHTS ACC shall have the power to employ professional consultants to assist it in discharging its duties and may create and impose reasonable fees for processing of applications.

Section 2. Pre-Design Conference. Prior to beginning the preliminary plans for any proposed residential improvement in Unit 6, a pre-design meeting with a representative of the HEIGHTS ACC is required. It is mandatory that the architect or designer selected for the project be in attendance at this pre-design meeting. The objectives of this meeting are to discuss *The Heights at Comal Trace* improvement requirements, resolve any questions regarding building and other applicable requirements, and to provide an individualized discussion and agreement on the approximate location of the proposed residence and any other major improvements. A two hundred dollar (\$200.00) Design Review Fee must be submitted at the time of the pre-design meeting. Checks should be made payable to Comal Trace Owner's Association or Amrose

Development Partners, Ltd. as designated by Declarant. This one-time fee will cover all design submittals and review of the proposed Residence and other improvements.

The architect or designer must provide a site plan drawing of a one-eighth inch (1/8") to one foot (1') or one inch (1") to 20 feet (20') scale with all the elements required for site analysis drawn or sketched on the plan. Site specific issues should be discussed at this time prior to the commencement of design. If questions arise after this pre-design meeting, the architect or obligor should contact the HEIGHTS ACC Design Review Administrator for clarification and assistance.

Section 3. Submittals and Deadlines. Submittals must be made to the Design Review Administrator's office at least five (5) working days prior to a scheduled HEIGHTS ACC meeting in order to allow the HEIGHTS ACC time to review such proposals. The Design Review Administrator will verify the completeness of the submittal package with the architect or designer within three (3) working days of submittal. Late or incomplete submittals will not be accepted.

Section 4. Preliminary Design Submittal. When the preliminary design is complete, one set of rolled plans (twenty four inches (24") by thirty six inches (36") or larger) must be submitted to the HEIGHTS ACC. The drawings required at this time shall include a site plan showing flat work and fences, floor plans and all four (4) exterior elevations. A proposed finished floor elevation must be provided and existing grades must be accurately projected on all exterior elevations. A preliminary stake-out of the residence and improvements on the Lot must be completed for review at least three (3) days prior to this meeting.

Section 5. Preliminary Design Review. Once the preliminary submittal is complete, an HEIGHTS ACC Design Review Administrator will visit the site to verify the site staking and to ensure that the structures will be appropriately located on the Lot.

The HEIGHTS ACC will meet bimonthly to review all submittals and will respond in writing to specific submittals within five (5) business days of the meeting. Owners, architects and designers are encouraged to attend the preliminary design review meeting. Points of deviation from the restrictions and clarification of design intent may be discussed in order to provide a complete and thorough review of each submittal.

Section 6. Final Design Submittal. When the final design is complete, one (1) set of rolled plans (twenty four inches (24") by thirty six inches (36") or larger) must be submitted to the HEIGHTS ACC for review. Required drawings include the site plan, floor plans with all area calculations, building sections, roof plan, exterior elevations and electrical plans. All drawing must be identified by the property's lot, block and section number and the street address. In addition, all exterior material and color boards must be submitted at this time. Actual samples of exterior materials and colors (including windows) and a picture or sketch of the proposed entry door with color swatch must be provided. All of these samples must be labeled with the street address.

Section 7. Final Design Review. Upon submission of the complete final plans, the HEIGHTS ACC will meet to review the plans and will respond in writing to specific submittals within ten (10) business days after each meeting. If the building location as shown on the final plans is substantially different from that shown on the preliminary submittal, a re-staking of the home site may be requested.

Section 8. Design Variance Requests. The HEIGHTS ACC shall have the right, but not the obligation, to grant variances and waivers relative to deviations and infractions of the Declaration or to correct or avoid hardships to Owners. Upon submission of a written request for same, the HEIGHTS ACC may, from time to time, in its sole discretion, permit an owner to construct, erect or install a dwelling which is in variance from the covenants, restrictions or architectural standards which are provided in this Declaration. In any case, however, the dwelling with such variances must, in the Committee's sole discretion, blend effectively with the general architectural style and design of the neighborhood and must not detrimentally affect the integrity of the subdivision or be incompatible with the natural surroundings. All requests for variances shall be in writing, shall be specifically indicated to be a request for variance, and shall indicate with specificity the particular standard sought to be varied and the nature of the variance requested. All requests for variances shall be deemed to be disapproved if the Committee has not expressly and in writing approved such request within thirty (30) days of the submission of such request. No member of the Committee shall be liable to any owner for any claims, causes of action or damages arising out of the grant of any variance to an owner. No individual member of the HEIGHTS ACC shall have any personal liability to any Owner or any other person for the acts or omissions of the HEIGHTS ACC if such acts or omissions were committed in good faith and without malice. Each request for a variance submitted hereunder shall be reviewed independently of similar requests and the grant of a variance to any one Owner shall not constitute a waiver of the Committee's right to deny a variance to another Owner. The decisions of the Architectural Control Committee with respect to variances shall be final and binding upon the applicant.

Section 9. Additions, Exterior Remodels and Refinishing. The Owner must contact the Design Review Administrator for specific instructions prior to adding, remodeling or refinishing an item on any structure on a Lot. All such work must be approved by the HEIGHTS ACC prior to commencement of work. Repairs to elements involving the same materials and/or colors that have been previously approved for use by HEIGHTS ACC in relation to that element may be made without submittal of the proposed work to the HEIGHTS ACC.

Section 10. Non-Waiver. The approval of The Heights at Comal Trace HEIGHTS ACC of any plans, drawings or specifications for any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing or specification subsequently submitted for approval. Any failure of the HEIGHTS ACC to enforce any provision of this Declaration shall not constitute a waiver of the same.

It should be noted that approval of a project does not constitute approval of each element within that project. If an element that does not comply with the requirements and provisions set forth in this Declaration is discovered in a future submittal or during construction of the overall project, modification of the non-compliant element may be required by the HEIGHTS ACC.

The HEIGHTS ACC will notify the Lot Owner of such non-compliance in writing within five (5) days of discovery of the non-compliant element. The HEIGHTS ACC, Developer or any employee, agent or member thereof shall not be liable for any costs or inconveniences incurred to remedy such non-compliance.

Section 11. Decisions Final. All decisions of the HEIGHTS ACC shall be final and binding, and there shall not be revisions of any action of the HEIGHTS ACC except by procedure for injunctive relief when such action is patently arbitrary and capricious. In the event of construction of improvements or threatened construction of improvements in violation of this Declaration, any Owner, the Association, Declarant or the HEIGHTS ACC may seek to enjoin such construction or seek other relief against the Owner or builder responsible therefor provided that each such offending party shall first be given written notice of the perceived violation and the opportunity to remedy the violation prior to the filing of suit. Neither the Declarant, the HEIGHTS ACC, nor any member of such HEIGHTS ACC shall be liable in damages, or otherwise, to anyone submitting plans and specifications for approval or to any Owner who believes himself adversely affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance in connection with the approval or disapproval of plans or requests for variance. The HEIGHTS ACC is not required to police or enforce compliance with such considerations as minimum size, setbacks, or other specific, objective construction requirements.

Section 12. Construction Deposit. A homeowner or builder to deposit a sum not to exceed Two Thousand Dollars (\$2,000.00) with the HEIGHTS ACC as a security deposit for the HEIGHTS ACC and the Association to collect reimbursement from the Owner and/or builder for damages to streets and common areas and to maintain Lots. Cost of cleaning trash and debris may be charged against the deposit by the HEIGHTS ACC. The HEIGHTS ACC shall establish the rules for such deposits.

Section 13. Suggested Guidelines and Recommendations. The distinct character of the natural landscape of Comal Trace, beyond the natural rolling topography, is primarily a combination of mature trees, understory vegetation, brush, and native grass pasture. The variety of height, color, density and distribution of vegetation gives the Texas Hill Country its unique habitat. While there are many different types of trees in the Hill Country area, the Live Oak, Elm, and Red Oak are the most prevalent at Comal Trace. Standards for preservation of the natural environment at Comal Trace will apply not only to trees and brush, but also to ground cover. Native wild grasses and wild flowers shall be preserved as the predominant ground cover for each Lot.

Each Owner is encouraged to be creative in the design process and to plan to alter the site as little as possible from its original native condition, protecting existing watershed and drainage ways where practical. Structures should be limited to the area on the site where drainage, soil and geological conditions will provide a safe foundation. Care should be taken to protect all plants within the Properties, therefore, all improvements should be sited to avoid existing trees if at all possible. Track mounted equipment should not be used within the Lot, as the natural appearance of the Lot could be severely damaged.

The HEIGHTS ACC has found the plant lists developed by the national Wildflower Research Center "Recommended Species for Central Texas" and "Recommended Species for South Texas" to be inherently compatible with the Comal Trace landscape ethic and approves the use of these plants within Comal Trace as provided within these guidelines. Any species of trees or shrubs not listed which have been found to be indigenous to Comal Trace may also be acceptable, but upon specific review and approval of the Committee.

In order to help Owners and their landscape designers, the additional National Wildflower Research Center publications "Native Plant Bibliography for Texas", "Texas Sources for Native Plants and Seeds", "Gardening and Landscaping with Native Plants", and "Wildflower Meadow Gardening" are maintained by the Committee for inspection and reference. In addition, the National Wildflower Research Center has consultants available at a nominal fee to help Owners either by prepaid telephone conversations or personal appointments. A list of native plants and publications are available, on request, from the Declarant.

All Owners are advised to secure from the Texas Forest Service, local county agent, Texas Extension Forester at Texas A&M University, or elsewhere, information on oak wilt and other diseases which may affect their trees and may spread to trees on other Lots. Each Owner is responsible for taking such action as may be necessary on his property to ensure that oak wilt and other diseases are not spread to the trees of other Owners. Because there is no known cure for oak wilt and oak wilt almost always will spread from a diseased tree to its neighboring oaks at a minimum, each Owner should: 1) Destroy all infected oaks, 2) Avoid unneeded pruning of trees, especially during the period February 1 - June 1, and immediately apply dressing to all wounds on oaks, 3) Where oak wilt is detected, trench three feet deep in advance of infection front (100 feet is recommended) to stop the spread through connecting roots, 4) Avoid infected oak firewood. As a precaution do not keep any oak firewood for more than one heating season and cut firewood only in the summer and 5) Use fungicide propiconazole to treat uninfected oaks when you become aware of oak wilt nearby.

The foregoing regarding oak wilt is provided to alert Owners and neither Declarant or the Association shall be liable to any Owner in connection with the existence or spread of oak wilt on any Lot.

Section 14. Comal Trace Water Ethics. In keeping with the development's concern for the natural environment, Comal Trace encourages the conscientious consideration of water as a precious natural resource. Each owner in the Comal Trace Subdivision should become a steward of the land and its resources. A few of the things an owner should consider in planning a new home to conserve and protect water include: 1) Install drought tolerant indigenous landscaping, 2) Discontinue irrigation once new plants have established themselves, 3) Use low flow plumbing fixtures, 4) Limit use of high water consumption turf grasses, 5) Install "instant" hot water heaters near points of use, 6) install and maintain a greywater or aerobic digestion system for irrigation, 7) Install a cistern to catch rainfall in order to provide or augment irrigation, and 8) Omit the use of pesticides and fertilizers within natural drainage areas to prevent contamination. Those items are suggestions only and are not required for HEIGHTS ACC approval.

ARTICLE IX
GOVERNMENTAL REQUIREMENTS

Section 1. Owners Acknowledgment. Each Owner is responsible for ascertaining all governmental requirements and prohibitions with respect to his Lot and, by acceptance of a deed to a Lot, agrees to abide by the same. No statement herein, nor action by the Declarant, Committee, or Association shall act to relieve an Owner from such duty of compliance.

Section 2. Additional Obligations of Builders and Contractors. By acceptance of a deed to a Lot, or initiating construction of a residence or improvements to a Lot, each Owner and each of Owner's contractors assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable governmental rules, regulations, and permits, and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Commission on Environmental Quality related to each Lot. Each Owner and their contractors, by acceptance of a deed to a Lot or undertaking the making of improvements to a Lot, holds harmless and indemnifies Declarant from any cost, loss, or damage occasioned by the failure to abide by any applicable governmental statute, rule, regulation or permit related to the Properties.

Section 3. Remedies of Declarant and the Association. By acceptance of a deed to a Lot, each Builder Member and Owner agrees that Declarant and the Association shall have the right to enter upon any Lot on which one or more conditions or activities prohibited by appropriate governmental authority is maintained, or on which there has been a failure to perform any act required by appropriate governmental authority, for the purpose of curing any such violation, provided that the Owner has been given five days prior written notice and has failed to remedy the complained of violation within such time, and each such Owner or Builder Member indemnifies and holds harmless Declarant and the Association from all cost and expense of such curative action and any cost or expense of penalty or fine levied by any governmental authority as a result of the act or failure to act of the Owner with respect to his Lot. The foregoing remedy shall be cumulative of all other remedies for violations of provisions of these covenants.

ARTICLE X
PROPERTY SUBJECT TO THIS DECLARATION:
ADDITIONS OR MODIFICATIONS THERETO

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration are Lots as shown on Unit 6 Plat, which real property is sometimes referred to herein as the "Unit 6 Property".

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions without Association Approval. Either Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration, and without the consent of Members, additional properties in future stages of the development, and within twenty (20) years from the date of this instrument; provided that such additions lie within the area

described in Exhibit "B" attached hereto and incorporated herein by reference. Declarant, its successors and assigns, shall not be bound to make any additions to the Subdivision Property or to follow any particular type of development on the land described in Exhibit "B". Any additions authorized under this and the succeeding subsections shall be made by filing of record a Declaration of Covenants, Conditions and Restrictions or similar instrument with respect to such additional property which shall extend the general scheme of the covenants and restrictions of this Declaration to such property, and the execution thereof by the Declarant shall constitute all requisite evidence of the required approval thereof. Such document may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands and are consistent with the overall development.

ARTICLE XI ARCHITECTURAL CONTROL COMMITTEE

Section 1. Creation and Initial Composition. There is hereby created an Architectural Control Committee, being the "HEIGHTS ACC" initially composed of James Ritchie McCulloch, III, Michael Velasco and Rene Wender to serve until their successors are named. A majority of Committee may act for the Committee and no notice of any of its meetings shall be required. Subject to the terms hereinafter set forth, Declarant shall have the right to remove or add members to the Committee and fill vacancies in the committee membership and Declarant may assign such rights to the Association. The sale of the last Lot owned by Declarant within the Properties shall be deemed to be an assignment to the Association of Declarant's powers with respect to HEIGHTS ACC membership if Declarant has not sooner as signed the power to the Association. Committee members shall not be entitled to compensation for their services rendered in such capacity.

Section 2. Powers. The Committee shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one interpretation. The goal of the Committee is to encourage the construction of dwellings of good architectural design, quality and proper size compatible with Declarant's conceptual plan for the subdivision. Dwellings should be planned and designed with particular attention to the design and aesthetic appearance of the exterior and the use of such materials, which, in the sole judgment of the Committee, create an attractive and harmonious blend with existing and proposed dwellings in the immediate area and the natural surroundings. The Committee may disapprove the construction or design of a home on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or values of the neighborhood and of other Homeowners or to preserve the serenity and natural beauty of any surroundings. Members of said Committee and their representatives shall not be liable to any person subject to or possessing or claiming the benefits of these restrictive covenants for any damage or injury to property or for damage or loss arising out of their acts hereunder. The Committee's evaluation of Required Plans is solely to determine compliance with the terms of this Declaration and the aesthetics or the proposed improvements and the Committee disclaims any responsibility to determine compliance with any applicable building code or other standard for construction.

Section 3. Continued Existence and Turnover to Association. The Architectural Control Committee shall be duly constituted and shall continue to function for the entire duration of this Declaration, including any extensions thereof. Upon completion of construction of the last residence in the Properties, or such prior time as Declarant may elect in writing, the Association, acting through its Board of Directors, shall succeed to the powers of Declarant with respect to the Committee and shall thereafter have the right and obligation to appoint the members of the Committee.

At such time when the Architectural Control Committee is turned over to the Association, the process for appointing committee members shall be as follows:

1. Three (3) or more Association members who live in Unit 6 or any additional Comal Trace Subdivision units that are subject to this Heights Declaration and are subject to the HEIGHTS ACC shall be named by legal name and legal address. Owners owning lots subject to the HEIGHTS ACC may vote to elect the HEIGHTS ACC Committee members.
2. The committee shall be under the jurisdiction of the Board of Directors and shall function as any other committee that may be formed by the Board. Subject to the understanding that the Committee discussions are to be made by Owners subject to the HEIGHTS ACC.
3. The committee shall receive its orders from the Board and shall follow the guidelines in reporting to the Board as deemed necessary by the Board.
4. By order and majority of the Board, any member on the HEIGHTS ACC as set up in the above appointment guidelines may be removed, from the HEIGHTS ACC at any time as deemed necessary and a replacement, subject to the requirements of 1 above, named by the Board,

Section 4. Enforcement. Developer, its successors and assigns, shall have the right, but not the obligation, to enforce observance and performance of the restrictions, easements, covenants and conditions contained herein and, in order to prevent a breach or to enforce the observance or performance of same, shall have the right, in addition to all other legal remedies provided herein or by law, to an injunction, either prohibitive or mandatory. The Committee, as well as the owner of any Lot or Lots in the Subdivision, likewise shall have the right either to prevent a breach of any such restriction or covenant or to enforce the performance thereof. Acquiescence in any violation shall not be deemed as waiver of the right to enforce against the violator or others the conditions so violated or any other conditions. The owner of any Lot against whom enforcement is undertaken shall be obligated to reimburse the Developer or the Committee, as the case may be, for the costs of any such enforcement action in which the Developer or Committee prevails.

ARTICLE XII

MEMBERSHIP IN THE ASSOCIATION AND CLASSES OF MEMBERS

Every person or entity who is a record Owner of a free or undivided interest in any Lot which is subject to the jurisdiction of and to assessment by the Association shall be a member of the Association, provided, however, that any person or entity holding an interest in any such Lot or Lots merely as security for the performance of an obligation, shall not be a member.

The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Article I with the exception of the Declarant and Builder Members. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by this Article. When more than one person holds such interest of interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B Members shall be the Declarant and Builder Members. Class B Members shall be entitled to three votes for each Lot in which they hold the interest required by this Article, provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On January 1, 2015.

From and after the happening of these events, whichever occurs earlier, the Class B Members shall be deemed to be Class A Members entitled to one vote for each Lot in which they hold the interest required for membership under this Article.

A Builder Member is an owner of two (2) or more Lots held for resale to the public and on which no home or residence has been built.

ARTICLE XIII PROPERTY RIGHTS IN THE COMMON FACILITIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Sections 3 and 4 of this Article, every Member shall have a common right and easement of enjoyment in and to the Common Facilities and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Facilities. The Declarant may retain the legal title to any Common Facilities until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same, but notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors

and assigns that it will convey the Common Facilities to the Association, not later than two years after the filing of record of this Declaration.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The rights and easements existing or hereafter created in favor of others as provided for in Unit 6 Plat and/or in this Declaration.

(b) The rights of the Association, once it has obtained legal title to the Common Facilities, as provided above in Section 2 of this Article, to do the following:

(1) to borrow money for the purpose of constructing or improving the Common Facilities and, in aid thereof, to mortgage said properties and facilities, in accordance with the Articles of Incorporation and Bylaws of the Association;

(2) to take such steps as are reasonably necessary to protect the above described properties and facilities against foreclosure; and

(3) to enter into one or more contracts or agreements for the maintenance or improvement of the Common Facilities.

Section 4. Entry Gate, Streets and Security. The Association may make rules governing the use (including parking) on any private subdivision streets.

Security may be provided by the Association, from time to time; however, the Declarant and Association are not providers of security. Each Owner must provide their own security for their home and property.

ARTICLE XIV ASSESSMENTS AND ASSOCIATION LIENS

Section 1. Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements or extraordinary expenses, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the obligation accrued.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting recreation, health, safety and welfare of the Members,

preserving or enforcing the rights and obligations of the Owners and the Association, or for the improvement, maintenance and operation of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Properties by the Members.

Section 3. Basis and Maximum of Annual Assessments. The annual assessments for both Improved and Unimproved Lots shall be determined by the Board of Directors in the manner provided for herein after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made, but the annual assessment for Unimproved Lots shall not exceed twenty-five percent (25%) of the annual assessment for Improved Lots. A Lot shall be deemed to be an "Improved Lot" when construction of a Living Unit thereon is completed, and a closing of a sale thereof has taken place, when a Living Unit on the Lot has been occupied as a residence, or twenty-four (24) months after the closing of the sale thereof by Declarant, whichever first occurs. All other Lots shall be "Unimproved Lots". The maximum annual assessment for all Lots shall be subject to increase as provided in Section 5 of this Article.

If a homeowner owns two (2) or more contiguous Lots incorporated with a single Residence but not replated as a single Lot, then the Owner may apply to the HEIGHTS ACC for waiver of assessments on the additional Lots incorporated in a homesite if at least fifty percent (50%) of the unimproved additional Lot into a common yard with the Lot on which the Residence is located. Accessory buildings may be placed on the vacant Lot with HEIGHTS ACC approval provided the Accessory building is constructed simultaneously with or subsequent to the construction of the principal residence.

Section 4. Special Assessments. In addition to the annual assessments provided for in Section 3 of this Article, the Association may levy, in any assessment year, a Special Assessment on Improved Lots only, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Facilities, or to finance or defray the cost of any extraordinary expense of the Association, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of a quorum of each of the Improved Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Improved Lot Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. For all annual assessments accruing after January 1 of the year following conveyance of the first Lot by Declarant, the maximum annual assessment may be adjusted by majority vote of the Board of Directors but shall not be increased by more than ten percent (10%) above that of the previous year without a vote of the membership. Any increase in the maximum annual assessment of more than ten percent (10%) above that of the previous year shall require approval of two-thirds (2/3) vote of a quorum of each class of Members voting at a meeting duly called for that purpose.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5. The quorum required for any action by Members authorized by Sections 4 and 5 of this Article hereof shall be as follows:

At the first meeting called, as provided in Article XIV, Sections 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the requirements set forth in Article XIV, Section 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following conveyance of the first Lot by Declarant, or such later date as the Board may determine. The first annual assessments shall be made for the balance of the calendar year, shall be prorated for such partial year, and shall be due and payable, and shall be collected, quarterly in advance, unless the Board of Directors shall determine otherwise. When a Lot becomes an Improved Lot after the annual assessment for it as an Unimproved Lot has been paid, there shall be payable as of the first day of the month following the month when it becomes an Improved Lot, a sum equal to the difference between the annual assessments for Unimproved Lots and the annual assessment for Improved Lots prorated over the balance of the year then remaining. The due date of any special assessment under Article XIV, Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. In December of each year, the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot for the following year and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid or the balance due. Such certificate, when signed by an authorized officer or agent of the Association, shall be conclusive evidence of payment of any assessment herein stated to have been paid. The Association may charge a reasonable fee for issuing such a certificate.

Section 9. Effect of Non-Payment of Assessments: The Lien: Remedies of the Association. If any assessment or other sum due the Association hereunder is not paid on the date when due, then such assessment or amount shall become delinquent and shall, together with such interest thereon and cost of collection thereof provided, thereupon becoming a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner to pay the same or to foreclose the lien against the property, and there shall be added

to the amount of such assessment all reasonable expenses of collection including the costs of preparing and filing the complaint, reasonable attorney's fees and costs of suit.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon the Lots subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The charges and liens created herein shall apply only to the Lots, and the remainder of the Properties shall not be subject thereto.

ARTICLE XV AMENDMENT

This Declaration may be amended until January 1, 2020, by written instrument executed by the Owners of eighty percent (80%) or more of the residential lots subject to the jurisdiction of Association, such amendment to be effective upon recording of such written instrument in the Real Property Records of Comal County, Texas, provided that until such date no amendment hereto shall be effective unless approved and executed by Declarant. After January 1, 2020, this Declaration may be amended in like manner by eighty percent (80%) of the Owners of residential Lots subject to the jurisdiction of Association but the approval and joinder of Declarant shall not be required after said date. Notwithstanding the foregoing, Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by any other Owner of Lots, or any interest therein, for the limited purposes of correcting a clerical error, clarifying an ambiguity, or removing any contradiction in the terms hereof.

ARTICLE XVI ENFORCEMENT

In addition to the remedies for enforcement provided for elsewhere in this Declaration or by law, the violation or attempted violation of the provisions of this Declaration, or any amendment hereto, or of any guidelines, rules, regulations, bylaws, or Articles of Incorporation herein referenced or permitted, by any Owner, his family, guests, lessees or licensees shall authorize Declarant or the Association (in the case of all of the following remedies) or any Owner [in the case of the remedy provided in (c), below], including Declarant, to avail itself of any one or more of the following remedies:

- (a) The suspension by the Association of rights to use any Association property for a period not to exceed thirty (30) days per violation, plus attorney's fees incurred by the Association with respect to the exercise of such remedy;

(b) The right of Declarant or the Association to enter the Lot to cure or abate such violation through self help and to charge the expense thereof, if any, to such Owner, plus attorney's fees incurred by the Association with respect to the exercise of such remedy; or

(c) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court costs.

Before the Association may invoke the remedy of suspension of privileges as set forth in Section (b) above, it shall give written notice of such alleged violation to Owner, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Association's right to proceed with the suspension of privileges shall be absolute. Each day a violation continues after notice thereof has been given to the Owner shall be deemed a separate violation. Failure of the Association, the Declarant, or of any Owner to take any action upon any violation shall not be deemed a waiver of any right to take enforcement action thereafter or upon a subsequent violation. No Owner shall have the right to compel or require the filing of suit by Declarant or the Association. Neither this Article nor the other terms of this Declaration shall be deemed or construed to impose an obligation on Declarant or the Association to police, control, restrain, enjoin or seek redress for any violation of the terms hereof.

All assessments, charges and costs imposed by the Association and unpaid when due shall bear interest at the rate of ten percent (10%) per annum from the date due until paid.

ARTICLE XVIII MISCELLANEOUS

Section 1. Limitations of Liability. Neither the Developer, nor the Committee, nor any member of the Committee, shall be liable in damages or otherwise to anyone submitting plans, specifications and plot plans for approval or to any owner of a Lot in the Subdivision by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans, specifications, plot plans or other matters submitted to it or arising out of any other action taken, including enforcement actions, or not taken by them, jointly or severally, pursuant to the provisions of this Declaration. All decisions of the Developer and the Committee shall be final and binding, and there shall be no revisions of any action and/or decision of the Developer and/or the Committee except procedures for injunctive relief when such action and/or decision is arbitrary and capricious.

Section 2. Partial Invalidity. Invalidation of any of these covenants, conditions, easements or restrictions (by court judgment or otherwise) shall not affect, in any way, the validity of all other covenants, conditions, easements and restrictions contained herein.

Section 3. Laws and Regulations. All owners of any Lots within Unit 6 shall at all times comply with all applicable laws, regulations and ordinances of municipal, county, state, federal or other governmental authorities.

Section 4. Attorneys' Fees. If any controversy, claim, or dispute arises relating to this Declaration, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.

Section 5. Duration. These covenants, conditions, easements and restrictions shall run with the land and shall be binding upon and against the Subdivision for an initial period ending January 1, 2020, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of eighty percent (80%) of the Owners of Lots has been recorded agreeing to change said covenants in whole or in part. No such agreement to change shall be effective unless made and recorded within three months immediately prior to the date the covenants otherwise would be automatically extended. These covenants, conditions, easements and restrictions may be terminated in whole at any time after January 1, 2020, by an instrument signed by owners of eighty percent (80%) of the Owners of Lots being recorded agreeing to terminate said covenants in whole.

Section 6. Reservation of Rights. Developer shall have, and reserves the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration by instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration, and shall not materially impair or affect the vested property or other rights of any Lot owners. Notwithstanding this reserved right, Developer shall have no obligation to take any action under this provision.

Section 7. Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part hereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 8. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions herein apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

ARTICLE XIX PURCHASE "AS IS"

Each prospective purchaser is responsible for thoroughly inspecting and examining the Lot in which he is interested and for conducting such investigations of such Lot(s) as he deems necessary for him to evaluate his purchase. By completing the purchase of a Lot, each prospective purchaser is acknowledging that he is purchasing the Lot on an *"as is," "where is" and "with all faults" basis.* By purchasing a Lot, each Owner agrees to indemnify and hold harmless Declarant, its partners, officers, directors, contractors, employees and agents from and against any claims, costs, fees, expenses, damages or liabilities that an Owner, his family, employees, guests, contractors and any other invitees may suffer or incur as a result of, arising

out of or related to the above described caves, sinkholes, streets, trees within or near the street rights-of-way and/or drainage facilities. Each Owner unconditionally releases Declarant, its partners, officers, directors, contractors, employees and agents, both known and unknown, present and future, arising out of or related to said caves, sinkholes, streets, trees within or near the street rights-of-way and/or drainage facilities.

[Signatures on following page]

IN WITNESS WHEREOF the undersigned have executed this instrument as of the _____ day of December, 2003.

AMROSE DEVELOPMENT PARTNERS, LTD.,
a Texas limited partnership

By: RMMV PROPERTIES, INC.,
its managing general partner

By: _____
James Ritchie McCulloch, III

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by James Ritchie McCulloch, III, Vice President of RMMV Properties, Inc., managing general partner of Amrose Development Partners, Ltd., a Texas limited partnership, as the act and deed of said partnership.

NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO:

Amrose Development Partners, Ltd.
6800 Park Ten Boulevard, Suite 2665
San Antonio, Texas 78213

IN WITNESS WHEREOF the undersigned have executed this instrument as of the 31st
day of December, 2003.

AMROSE DEVELOPMENT PARTNERS, LTD.,
a Texas limited partnership

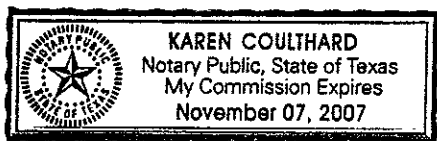
By: RMMV PROPERTIES, INC.,
its managing general partner

By: James Ritchie McCulloch III
James Ritchie McCulloch, III

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this 31 day of December, 2003, by James Ritchie McCulloch, III, Vice President of RMMV Properties, Inc., managing general partner of Amrose Development Partners, Ltd., a Texas limited partnership, as the act and deed of said partnership.

Karen Coulthard
NOTARY PUBLIC, STATE OF TEXAS



AFTER RECORDING RETURN TO:

Amrose Development Partners, Ltd.
6800 Park Ten Boulevard, Suite 2665
San Antonio, Texas 78213