

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
FRIO CANYON ESTATES SUBDIVISION

THE STATE OF TEXAS

COUNTY OF UVALDE

KNOWN ALL MEN BY THESE PRESENTS:

WHEREAS, Frio Canyon Estates Association, a Texas non-profit corporation (the "Association"), has been formed to provide for the maintenance, preservation and architectural control of the Lots and Reserved Areas in Frio Canyon Estates, a subdivision in Uvalde County, Texas, according to the map or plat thereof filed of record in Volume 3, Page 91 of the Map Records of Uvalde County, Texas (the "Subdivision"), and to promote the health, safety and welfare of the residents in the Subdivision;

WHEREAS, each tract or parcel of land in the Subdivision is currently bound by the restrictions, covenants and conditions set out in the instrument entitled "Restrictions Governing The Use Of And Construction Of Improvements In Frio Canyon Estates Unit #1" dated August 26, 1981, and filed of record at Book 237, Page 164 of the Deed Records of Uvalde County, Texas, as such instrument currently exists or has been amended, revised or restated (the Current Restrictions"); and

WHEREAS, the Association, in order to promote desirable residential living in the Subdivision, to insure harmony in connection therewith, to maintain the suitability of the Subdivision for private residential purposes, and to carry out a general plan for the protection, benefit, use, recreation and convenience of each and every purchaser of a tract or parcel of land in the Subdivision, now desires to amend, revise and restate the Current Restrictions.

NOW THEREFORE, from and after the date hereof, each tract or parcel of land in the Subdivision (the "Property"), being all of the land shown and described on Exhibit "A" attached hereto and made a part hereof for all purposes, shall be held,

sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall constitute covenants running with, the real property, shall be binding on all parties having any right, title or interest in the Property or any part thereof and each of their heirs, administrators, executors, successors and assigns, and shall inure to the benefit of the Association, each party having any right, title or interest in the Property of any part thereof, and each their respective heirs, administrators, executors, successors and assigns, and the Current Restrictions are hereby amended, revised and restated to read as follows:

ARTICLE I

DEFINITIONS

SECTION 1: "Association" shall mean and refer to Frio Canyon Estates Association, Inc., a Texas non-profit corporation, its successors and assigns. The Association shall have all those powers, duties and responsibilities set out herein, and such other powers, duties and responsibilities set out herein, and such other powers, duties and responsibilities not inconsistent herewith provided for in its Articles of Incorporation and its Bylaws as the same may be amended from time to time by proper action of its members.

SECTION 2: "Committee" shall mean and refer to the Architectural Control Committee designated and constitute provided herein.

SECTION 3: "Owner" shall mean and refer to the record owner, whether one or more persons or entitles, of a fee simple title to and Lot which is a part of the Property, including contract seller(s), but excluding those having such interest merely as security for the performance of an obligation.

SECTION 4: "Plat" shall mean and refer to the subdivision plat of the Frio Canyon Estates, recorded in Volume 3, Page 91, of the Map Records of Uvalde County, Texas, as currently existing or as subsequently amended, revised or restated.

SECTION 5: "Property, shall mean and refer to all of the land shown and described on Exhibit "A" attached hereto and made a part hereof.

SECTION 6: “Lot” shall mean and refer to each lot shown or designated on the Plat of Frio Canyon Estates Subdivision to which map or plat reference is here made for all purposes and any additional lots shown or designated upon any subsequent replat of any lot shown on the plat.

SECTION 7: “Common Area” shall mean all property shown or designated on the Plat for the common use and benefit of the Owners, together with any improvements thereon, including but not limited to the land designated as “Reserve Area” on the Plat and the private streets shown on the Plat or any replat. “Common Area” includes the Frio Canyon Estates River Access Area, approximately 6.5 acres of land located approximately ½ mile south of the Subdivision.

SECTION 8: “Declaration” means and refers to this instrument, as it currently exists or is subsequently amended, revised or restated.

SECTION 9: “Member” means and refers to those persons entitled to membership in the Association.

SECTION 10: “Board of Directors” means and refers to those persons duly elected to and serving as a member of the Board of Directors of the Association.

ARTICLE II

USE RESTRICTIONS

SECTION 1a: Limited use: Each Lot shall be restricted to residential use, none of said tracts or improvements erected thereon, unless otherwise designated on the plat or map, shall be used for any commercial purposes, except that private residences may be rented or leased to single families from time to time as the Owner may determine, and professional services of a purely personal nature may be rendered which does not attribute to the property any appearance of any commercial use thereof. No other uses are permitted.

SECTION 1b: It is recognized that, in view of the unusual nature of the Subdivision, it is particularly important that rules and regulations be revised from

time to time in order to maintain and preserve the Subdivision in accordance with the best interests of the Owners. The Board of Directors is therefore authorized to make additional rules and regulations with respect to the Lots and the Common Area, the activities being conducted thereon, the improvements to be constructed thereon, and the use thereof, not inconsistent with the provisions thereof, as it may deem appropriate, and the same shall be enforced in the same manner as provided herein. The Board of Directors is also authorized when it deems it appropriate and for the best interest of the Owners to alter or vary the provisions hereof by an instrument duly executed and acknowledged by a majority of the Board of Directors. Prior to filing the alteration(s) or variation(s) (hereafter termed modification(s)) at the Uvalde County courthouse, the Board of Directors must provide notification to the current Owners via certified mail and 1st class mail of the proposed modification(s) and must allow for a 60 day period after the notification for the Owners to review and respond to the proposed modification(s). If 45% or greater of the Owners opposes the proposed modification(s) by sending to the Board of Directors via certified mail within the 60 day period a list of the Owners who are in opposition to the modification(s) then the proposed modification(s) must be withdrawn by the Board of Directors.

SECTION 2: Residential Use:

- A. Construction:** No building shall be erected, altered or permitted to remain on any Lot other than one (1) single-family residential dwelling not exceeding two (2) stories in height, which may have a private garage, carport, bona fide servant's quarters, guest quarters, shop building(s) and storage building(s). Structures may be occupied only by members of the family occupying the main residence or by domestic servants employed on the premises or bona fide non-paying guests and no room(s) in the main residential dwelling and no space in any other structure shall be let or rented: PROVIDED, HOWEVER, that the foregoing shall not preclude the main residential structure and guest structure from being leased or rented in its entirety to not more than one family or four adult persons for a length of time not less than three (3) months. Any leasing or rental shall be for a minimum of three (3)

months to the same lessee or renter as above provided and shall not be sub-leased or rented to any subsequent party during such time.

- B. Motor Homes.** Motor homes may be occupied for residential use in the Subdivision only (i) in that portion of the Common Area designated for motor home use by the Board of Directors, and (ii) on a temporary basis not to exceed four (4) months in any calendar year. Placement or occupancy of a motor home on a Lot (whether occupied or not) is required to be removed from the Subdivision. Motor homes not occupied for residential use may be parked in that portion of the Common Area Designated for motor home storage by the Board of Directors for a period not to exceed four (4) months in any calendar year.

As used herein, “motor home” is defined to include the following:

1. A motor vehicle which is designed to provide temporary living quarters and which is built onto as integral part or, or is permanently attached to, a motor vehicle chassis and otherwise satisfies the requirements or definition of a “motor home” under the Motor Vehicle Commission Code of the State of Texas, Art. 4413 (36), as the same as may be amended:
2. Recreational travel trailers designed to be towed by an ordinary motor vehicle; and
3. Camper trailers (including “pop-ups”).

“Motor Home” does not include a mobile home or manufactured home, and no mobile or manufactured home may be permitted on the Property, or in the Common Area.

SECTION 3: Non-Owner Occupancy of Residence: When a Lot is occupied as a primary residence by persons other than the Owner thereof, the Owner shall deliver to such occupants a complete copy of this Declaration. Occupancy by such non-owners shall not be permitted until such occupants have executed an agreement to be bound by all the provisions hereof, on a form

promulgated and provided by the Association. Violation of or noncompliance with this Section may be enforced as provide herein for other violations.

SECTION 4: Architectural Control: The Architectural Control Committee ("Committee") is hereby created and shall consist of five (5) persons subject to appointment and removal by the Board of Directors. Neither the Association nor the Committee nor the individual members thereof shall be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. All actions of and by the Committee shall be by a majority vote of the Committee's members; provided, however, that a majority of the Committee's may appoint one of the members of the Committee to act on behalf of the Committee as to all matters other than variances permitted by this Declaration.

No buildings, walls, hedges, fences, or improvements of any character shall be erected or placed or the erection thereof begun, or changes made in the design thereof after original construction, on any Lot or Common Area until the construction plans and specifications and a plan showing the location of the structure or improvements have been submitted to an approved in writing by the Committee, as to size, roof pitch, exterior stone type and pattern, quality of material, harmony of external design, materials and color scheme with existing and proposed structures and as to location with respect to topography and finish grade elevation and otherwise as to compliance with this Declaration. As to color scheme, colors shall be "earth tone" or comparable colors approved by the Committee. All building structures shall have not less than seventy five (75) percent (%) of the first floor level of the exteriors of brick, stone, stucco, log, cedar, or other exterior siding approved by the Committee; provided , however, that no metal exterior (other than roofs) will be permitted. The exterior of any approved structure shall be completed within six (6) months after the date on which construction begins or construction material is placed on the building site, which eve occurs first. The approval of any construction that is not commenced within six (6) months after approval by the Committee shall be void.

In the event the committee fails to indicate its approval or disapproval within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied provided no variance from these declarations exists. The approval or lack of disapproval by the Committee shall not be deemed to constitute any warranty or representation by such Committee including, with limitation, any warranty or representation relating to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations.

Notwithstanding anything to the contrary herein contained, a majority of the Committee is hereby authorized and empowered, at its sole and absolute discretion, to make and permit reasonable modifications of and deviations from any of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in construction of any building or improvement on any lot and of the size and location of any such building or improvement when, in the sole and final judgment and opinion of a majority of the Committee, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the property and its improvements as a whole.

The Committee may require the submission to it of such documents and items (including as examples, but without limitation, written request for and description of the variances requested, plans, specifications, plot plans and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for variance. If a majority of the Committee shall approve such request for a variance, the Committee shall evidence such approval, and grant its permission for such a variance, only by written instrument, addressed to the Owner of the Lot (s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved (including as examples, but without limitation, the time limitation of such approved variance, if any, the type of alternate materials to be permitted,

or specifying the location, plans and specifications applicable to the approved outbuilding), and signed by a majority of the then members of the Committee. Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval by the Committee; or

(b) Failure by the committee to respond to the request for variance within thirty (30) days after the Committee's receipt of written notice of such request for variance. In the event the Committee or any successor to the authority thereof shall not then be functioning and/or the term of the Committee shall have expired, no variance from the covenants of this Declaration shall be permitted.

SECTION 5: Minimum Square Footage Within Residential Improvements: The living area of the main residence structure (exclusive of porches, garages and servant's quarters) shall not be less than one thousand two hundred (1,200) square feet.

SECTION 6: Location of Improvements upon the Lot: Front yard setbacks for buildings and other improvements shall not be less than twenty-five (25) feet from the street right-of-way line. Other than fences (see Section 14) side and rear yard setbacks shall not be less than fifteen (15) feet from the side property lines. Further, no improvements of any nature (including fencing, shrubbery, landscaping or other improvements) shall be place in any Common Area.

As used herein, "front yard" shall mean and refer to that part of each Lot from the adjacent street right-of-way line to the front building setback line; and on corner Lots, the front yard shall be all that area on both street rights-of-way to the building setback of each such Lot.

SECTION 7: Adjoining Lots and Resubdivision:

A. Composite Building Site. Any Owner of one or more adjoining Lots or portions thereof may consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such site, in which case side setback lines and utility easements as provided in

this Declaration shall be measured from the resulting side property lines rather than from the Lot lines shown on the recorded Plat. The Committee must approve any such proposed composite building site(s) in writing.

- B. Resubdivision or Replat. A Lot may be resubdivided provided each of the resubdivided Lots either (1) contain not less than one (1) acre of land and has street frontage of not less than one hundred (100) feet, or (2) is joined with an existing adjacent Lot to create a new Lot.

SECTION 8: Easements: Easements for utilities are as shown and provided on the plat and no structure of any kind shall be erected upon any of said easements. Neither the Association, nor any utility company using the easements, shall be liable for any damage done by either of them or their assigns, their agents employees or servants, to the shrubbery, trees, flowers or improvements of the Owner located on the land within or affected by such easement.

A blanket easement is hereby created on all Lots and the Common Area for ingress and egress, installation, repair construction, replacement and maintenance of all utilities, including but not limited to, water, telephone and electricity. In the event that any utility company or other entity or person furnishing a service covered by the general easement herein provided, requests a specific easement on the Property by separate recordable instrument, the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof, provided that granting of any such easement does not adversely affect any mortgage theretofore given to secure either a purchase money or improvement loan on any Lot affected by such easement.

SECTION 9: Prohibition of Trade and Offensive Activities: No Lot or any improvements thereon shall be used for any commercial purpose, except that nothing herein shall be construed to prevent an Owner or tenant or any Owner from rendering professional services of a purely personal nature as long as such services do not attribute to the Lot any appearance of a commercial or non-residential use and no sign of any nature is displayed.

SECTION 10: Use of Temporary Structures: No structure of a temporary character, mobile home, camper, trailer, basement, tent, shack, privy, outhouse, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, temporary or permanent. Portable buildings used for accessory or storage shall not be permitted on any Lot. Notwithstanding anything to the contrary herein contained, temporary structures or trailers may be used by Owner or his assigns as storage during construction periods. Such structures shall be not be unsightly and shall be removed immediately after completion of construction and shall be subject to the prior approval of the Committee.

SECTION 11: Storage of Automobiles, Boats, Trailers and Other Vehicles: Except only for storage permitted by the Committee within the Common Area which may be designated for such purposes by the Committee, no boat trailer, boats, inoperative automobiles, or vehicles of any kind shall be semi-permanently or permanently stored on any Common Area or within any building setback lines. Storage of such items and vehicles must be screened from public views, within the garage or such other area as may be from time to time designated and approved by the Committee. All such storage in an area designated by the Committee shall meet all conditions of storage as approved by the Committee.

SECTION 12: Mineral Operation: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or Common Area, nor shall any tanks, tunnels, mineral excavation, or shafts be permitted upon any Lot or Common Area. No derrick or other structures designated for the use of boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot or Common Area.

SECTION 13: Animal Husbandry: No animal of any kind shall be kept at any time on any tract which may by their presence be a nuisance to any other Owner nor shall any animal of any kind be permitted on any reserved area without the approval of the Committee. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot: provided that dogs, cats or other common household pets of the domestic variety may be kept provided that they

are not kept, bred or maintained for commercial purposes and provided that no more than two (2) of each type animal is kept. All pets shall be on leash(s) at all times except when they are confined within the premises on the Lot of the Owner. All exotic or obnoxious pets are prohibited.

SECTION 14: Walls, Fences and Hedges: No wall, fence or hedge shall be erected or maintained within the front yard setback line of any Lot or within any Common Area. No side or rear fence, wall or hedge shall be more than seven feet (7') in height. Any wall, fence or hedge erected on a lot shall pass ownership with title to the Lot and it shall be Owner's responsibility to maintain said wall, fence or hedge thereafter. No walls, fences and/or hedges shall be erected or maintained on any Lot without the prior written consent of the Committee.

SECTION 15: Storage of Materials: Accumulation of Trash, Etc.: Owners shall in no event use any Lot for storage of material and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. No garbage or trash shall be placed or kept on any Lot or Common Area except in covered containers of a type, size and style approved by the Committee. The accumulation of garbage, trash or rubbish of any kind or the burning of any such materials is prohibited. In the event of default on the part of the Owner or occupant of any Lot, in observing the above requirements, such default continuing after ten (10) day's written notice thereof, the Association or its assigns may, without being under any duty to do so or liability, in trespass or otherwise, for so doing, enter upon said Lot, and remove or cause to be removed such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions and to place said Lot in a neat, attractive, healthful and sanitary condition. The Association may assess the Owner or occupant of such Lot for the actual cost of such work including legal fees incurred by the Association in connection with such default and assessment. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. In the event any such charge shall remain unpaid for thirty (30) days after written

notice thereof, such charge shall be added to and become a Special Assessment on such Lot.

SECTION 16: Signs or Advertisements: No signs of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot, one sign of size not more than five square feet advertising the property for sale, or signs used by a builder advertising the property during construction and sales period. The Association, or its assigns, shall have the right to remove any such prohibited sign, advertisement, billboard or structure which is placed on any Lot, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

SECTION 17: Antenna: No antenna or other device of any type for the transmission or reception of television signals, radio signals or any form of electromagnetic radiation, for commercial purposes, shall be erected, constructed, placed or permitted to remain on any Lot, houses, buildings or structures.

SECTION 18: Utility Services: Services for utilities on the property shall be both underground and above ground. The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirement of local utility companies and the National Electrical Code) such connections and metering equipment on or about the Lot to the satisfaction of the utility company or party furnishing services.

Sanitary sewer service shall be by separate septic facilities owned and maintained by the Owner in compliance with all applicable laws, rules and regulations. No outside toilets will be permitted, and no installation of any kind for disposal of sewage shall be allowed which would result, in the opinion of the Committee, in raw or untreated sewage being carried into water bodies or the Common Area. All individual sewage disposal systems shall be located, constructed, and equipped in accordance with standards and requirements for such systems and recommended by State and County Health Departments.

SECTION 19: Maintenance: Each Owner and occupant of a Lot shall be responsible for the maintenance of the exterior of all buildings, homes and appurtenant structures on such Lot at a standard in keeping with the level of such maintenance exhibited by a majority of the improvements on the Property, and such Owner and occupant shall be responsible for maintenance and repairs to roofs, glass in windows and doors, and for all structural matters, as well as plumbing, electrical equipment, foundation maintenance and repairs, landscaping, and improvements on such Lot and the driveways extending from such Lot to the street, and the regular mowing of grass and weeds and removal of flood debris. 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 after ten (10) days' written notice thereof, the Association or its assigns may, without being under any duty to do so or liability in trespass or otherwise, for so doing, enter upon said Lot and the driveways extending from such Lot to the street, and perform such maintenance, repairs and landscaping or doing and other thing necessary to secure compliance with these restrictions as stated in this paragraph. The Association may assess the Owner or occupant of such Lot for the actual cost of such work and legal fees incurred in connection with such default and assessment. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. In the event any such charge shall remain unpaid for thirty (30) days after written notice thereof, such charge shall become a Special Assessment on such Lot.

SECTION 20: Care of Yard and Common Area: Each Owner and occupant of a Lot shall be responsible for the design, maintenance and upkeep of the yard, shrubs and trees on such Lot. The Association shall be responsible for design, maintenance and upkeep of the Common Area.

SECTION 21: Clearance of Lots: All Lots upon which there has occurred a fire or other casualty shall be cleared of all damaged improvements within six (6) months of the occurrence of the casualty.

SECTION 22: Firearms: No Owner shall use or discharge or permit the use or discharge, on or from his Lot or elsewhere on the Property, any pistol, rifle (including a pellet gun, air rifle, paintball gun or pistol), shotgun or any other firearm, or any bow or arrow, or any other device capable of killing or injuring or causing property damage.

SECTION 23: Wildlife Sanctuary: All of the Property is designated as a Wildlife Sanctuary. No killing of wildlife or birds by any means shall be permitted on the Property.

SECTION 24: Excavation: No excavation shall occur on any Lot or Common Area for removal of soil, rock, gravel, or other substance of any kind except as necessary for construction of improvements and construction and maintenance of road and utility services as permitted by this Declaration.

SECTION 25: Deleted.

SECTION 26: Ponding: No modification of the existing topography of a Lot (whether by fill, placement of improvements, grading, beams or other method or means) shall be permitted that would result in the ponding or accumulation of surface drainage water along any street or across any adjoining Lot.

SECTION 27: Other Activities and Uses: The following activities and uses are prohibited:

- (a) Maintenance, repair, or oil changing of any vehicles, boats, motorcycles or trailers, unless performed in an Owner's enclosed garage or other enclosed structure.
- (b) The operation of any four-wheeled, all terrain vehicles, motorcycle or other motorized vehicle (other than electric carts) on the Common Area other than the private streets in the Subdivision.
- (c) The storage of trash cans where exposed to public view.
- (d) Any butane, propane, or other compressed gas tanks whose location and installation have not been approved by the Architectural Control

Committee except those being used as an accessory to outdoor cooking grills.

- (e) Any activity or use for the erection or maintenance of any structure which violates in any way any law, statute, ordinance, regulation or rules of any Federal, State, county or governmental entity.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any such Lot. Ownership of such Lot shall be the sole qualification for membership. The membership held by an Owner shall not be alienated, transferred or pledged in any way except by the sale or encumbrance of such Lot, and then only to the purchase or mortgage of such Lot.

SECTION 2. The Association shall have one class of voting membership. Each Owner of a Lot shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any such Lot. Holders of future interest not entitled to present possession (excepting Owners of Lots which are rented or leased to others) shall not be considered as Owners for the purpose of voting hereunder.

Notwithstanding the above, an Owner of two (2) or more adjoining Lots may elect to combine all such Lots into one "Lot" (herein sometimes called a "Combined Lot") for the purpose of voting rights and assessments under this Declaration. Election shall be made by written request to the Association, with proof of ownership to each adjoining Lot in the same of Owner. Once accepted by the Association, the Combined Lot thereafter shall be limited to one vote and shall be subject only to assessment as if the Combined Lot was only one (1) Lot.

Thereafter, should one or more Lots comprising such Combined Lot be transferred to another Owner, the status of the transferred Lots (s) and other Lots(s) for voting and assessment thereafter will cease to be a Combined Lot. If a Combined Lot is created, the change in voting rights and assessment obligations to a Combined Lot basis shall not become effective until January 1 of the calendar year following acceptance by the Association.

ARTICLE IV

ASSESSMENTS AND CHARGES

SECTION 1. Creation of the Lien and Personal obligation of Assessments: Each present Owner hereby covenants and agrees (and each subsequent Owner by acceptance of a deed to a Lot, whether or not expressed in such deed, shall be deemed to covenant and agree) to pay the Association: (1) Regular Assessments; and (2) Special Assessments for capital improvements. Such Assessments shall be established and collected as hereinafter provided. All sums assessed as provided for in this Declaration that remains unpaid, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien and charge upon the Lot against which each such Assessment is made, which shall bind and be a continuing charge upon such Lot. Each such Assessment, together with interest, cost of collection and reasonable attorneys' fees shall also be the personal obligation and debt of the person who was the Owner of the Lot at the time when the Assessment fell due.

SECTION 2. Purpose of Assessments: The Assessments, and all funds derived there from, shall be used exclusively for (i) the maintenance, repair and care of the Common Area (including recreational areas and private streets), and improvements to or on the Common Area and Lots for which the Association is herein given responsibility: (ii) the furtherance and fulfillment of the purposes of this Declaration and other herein provided responsibilities of the Association; (iii) the promotion of the recreation, health, safety and welfare of the Owners; and (iv) administrative costs and other costs and expenses of the Association, which costs and expenses may include fidelity insurance for acts of directors, managers, officers and employees of the Association responsible for the handling of Association funds; liability insurance covering the Common Area and all damage and injury caused by the negligence of the Association, its employees and agents; mowing grass, caring for the grounds and for any swimming pool, recreational

building and equipment that may be placed upon the Common Area; landscaping; garbage pickup; sewer service that may be furnished to, by or through the Association; maintenance and improvement of the Common Area; discharge of any liens on the Common Area; payment of fees to managing agents, accountants, attorney and other parties providing professional and/or other services to the Association in connection with the performance of the Association's duties and responsibilities; and other charges required by this Declaration or as to which the Association is authorized to incur which the Association shall determine to be necessary or desirable to benefit the Owners, including the establishment and maintenance of a reserve for repair, maintenance, replacement and other charges as specified herein (herein collectively called "Association Expenses").

All assessments paid to the Association and any other income to the Association for fees for use of any Common Area shall be used only for the purposes herein provided.

SECTION 3: Regular Assessments: Regular Assessments include both yearly Assessment and the Transfer Fee Assessment set forth herein.

- A. Yearly Assessment. Until changed in accordance herewith by the Association, the amount of the Assessment for each Lot shall be Sixty and NO/100 dollars (\$60.00) (including a Combined Lot established under Article III, Section 2) per year and shall not exceed an amount of one hundred and NO/100 dollars (\$100.00) (including a Combined Lot established under Article III, Section 2) per year.
- B. Transfer Fee Assessment. In addition to the above monthly assessments each Owner shall pay to the Association a Transfer Fee Assessment of \$50.00 upon conveyance of a Lot or Combined Lot.

Uniform rate of Assessment. Both Regular and special Assessments shall be fixed at a uniform rate (on a Lot basis or a Combined Lot basis) and shall commence and be due in accordance with the provisions hereof.

SECTION 4: Collection of Regular Assessments: The Assessments shall be payable on the first day of each and every fiscal year unless the Association shall by a majority vote determines that the Assessment shall be payable on a quarterly basis on such dates as the Association shall designate. The fiscal year shall begin June 1.

The Board of Directors may change the Regular Assessments from time to time.

The Association shall be entitled to assess a one-time late fee charge in the amount of ten percent (10%) of the Assessment on any assessment that is fifteen (15) or more days past due.

In fixing the amount of the Yearly Assessments, the Board of Directors of the Association may, but shall not be required to, add reasonable anticipated depreciation and necessary replacement and repair of capital assets and improvements and may from time to time establish one or more funds or accounts to accumulate amounts deemed necessary therefore.

SECTION 5: Special Assessments for Capital Improvements: Notwithstanding anything to the contrary herein contained, and in addition to the Regular Assessments authorized above, the Association may levy in any calendar year one or more Special Assessments 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 upon the Common Area, including fixtures and personal property related thereto.

Special Assessments not to exceed \$250.00 per Lot (or per Combined Lot) per year may be approved and levied by the Board Directors of the Association. Any Special Assessment in excess of \$250.00 per Lot (o Combined Lot) per year shall require the assent of two-thirds (2/3rds) of the votes of the members of the Association either in person at a regular or special meeting called for the purpose, or by proxy executed in writing by the member of by his duly authorized attorney-in face, as permitted by Article 1396-2.13 of the Texas Non-Profit Corporation Act.

SECTION 6: Date of commencement of Regular Assessments: due Dates: the yearly Assessments provided for herein shall commence on the date of the sale, transfer or other conveyance of a Lot to another Owner.

The Association shall fix the amount of the Regular Assessments for 2005 and subsequent years at least thirty (30) days in advance of each such calendar year. Failure of the Association to meet or to fix the amount of the Regular Assessments as herein provided shall be deemed to constitute a setting of the amounts at the levels fixed for the previous Calendar year. Written notice of any change in the Regular Assessments shall be mailed (by U.S. first class mail) to every Owner subject thereto. The Association shall, upon demand, and for

reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.

SECTION 7: Effect of Nonpayment of Assessments: Remedies of the Association: All payments shall be made to the Association at its place of business in Uvalde County, Texas or at such other place as the Association may direct. Any Assessment not paid within fifteen (15) days of its due date shall be subject to a one-time late fee of ten percent (10%) of the past due assessment amount. Any assessment not paid within thirty (30) days after the due date shall bear interest from such thirtieth date until paid at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the assessment, or foreclose the lien against the Lot involved; and interest costs and attorney fees of any such action shall be added to the amount of the assessment. In no event shall the Association be liable to any Owner or other person or entity for failure or inability to enforce or attempt to enforce collection. No Owner may waive or otherwise escape liability for the assessments of his Lot. Further, the powers and enforcement granted to the Association in this paragraph shall be cumulative of, and shall be in addition to, all other remedies and powers of the Association.

SECTION 8: Foreclosure: Upon compliance with the notice provisions set forth herein below, the Association may foreclose the assessment lien against any Lot. Each undersigned Owner, and each subsequent Owner by his acceptance of a conveyance instrument as to a Lot, expressly grants and vests in the Association and its agents the right and power to bring all actions against such owner personally or the collection of such charges as a debt and to enforce the aforesaid lien, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property as provided in section 51.002 of the Property Code of the State of Texas, and each undersigned Owner (and each subsequent Owner by acceptance of a conveyance instrument as to a Lot) expressly grants to the Association a power of sale in connection with said lien. The lien herein provided for shall be in favor of the Association for the benefit of all Owners. The Association acting on behalf of the Owners shall have the power to bid upon an interest foreclosed at foreclosure

sale and to acquire and hold, lease, mortgage and convey the same and to treat the proceeds of any such lease, mortgage or conveyance in the same manner as assessments hereunder.

Notice of Lien: No action shall be brought to foreclosure said assessment lien or to proceed under the power of sale herein provided less than thirty (30) days after the date of notice of claim of lien is deposited with the postal authority, certified or registered, postage prepaid, to the owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Clerk of Uvalde County. Said notice of claim must recite a good and sufficient legal description of any such Lot, the record owner or reputed owner option, include any late charge and interest on the unpaid assessment as herein provided, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

Foreclosure Sale: Any such sale provided for above is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002 of the Property Code of the State of Texas, as the same may be amended from time to time, or in any other manner permitted by law. The Association, through duly authorized agents and on behalf of the Owners, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, mortgage and convey same hereinabove provided.

SECTION 9: Subordination of Lien to Mortgages: The lien for the Assessment provided herein shall be superior to all other liens and charges against said Lot except only for tax liens, liens for purchase money and/or development costs and all first deed of trust liens of record (which shall include a deed of trust that secures a debt secured by a first deed of trust lien, including "wraparound" and "all inclusive" financing), which liens for such purposes shall be superior to the assessment liens herein provided with the understanding that assessments subsequent to a foreclosure of such a superior lien shall continue to bind the mortgaged property and be secured by an assessment lien as herein provided. The Association shall have the power to subordinate the assessment lien to any other lien, and to extinguish such lien and the underling debt, such powers being entirely within the discretion of the Association and exercisable in a writing duly adopted by the Board of Directors. Except as otherwise provided herein, no sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien therefore, but such lien shall exist as, and constitute, a separate and distinct charge and lien on each Lot.

SECTION 10: Insurance. The Association, or its duly authorized agent, shall have the authority to obtain a broad form public liability policy covering all the Common Area, and all damage or injury caused by the negligence of the Association or any of its employees or agents. The Association also may obtain and maintain fidelity insurance for the acts of its director, officers, manager, volunteers and employees responsible for the handling of funds collected by the Association as provided herein.

Premiums for all such insurance shall be common expenses payable out of assessments. All such insurance coverage shall be written in the name of the Association as the insured for the benefit of the Owners in accordance with the terms of this Declaration, and the Owners will cooperate with the Associations by doing any and all such acts and things as may be necessary to effect such insurance.

SECTION 11: Board of Directors: The affairs of the Association shall be managed by the Board of Directors, as provided in the By-Laws of the Association. Such initial Board of Directors shall serve until their terms expire according to the By-Laws of the Association, at which time the members of the Association shall elect a new Board of Directors, all as more particularly set forth in the By-Laws of the Association.

SECTION 12: Meeting and Voting: The manner of meeting and voting of the association shall be governed by the By-laws thereof.

ARTICLE V

GENERAL PROVISIONS

SECTION 1: Enforcement: The Association, the Committee, any Owner, and the Commissioner's Court of Uvalde County, Texas shall have the right but not the obligation to enforce, by any proceeding at law or its equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2: Severability:Invalidation of any one or more of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.

SECTION 3: Member's Easement of Enjoyment: Every member of the Association shall have a right and easement of enjoyment in and to any Common Area, which shall be appurtenance to and shall pass with the title to every Lot. All such rights and easements shall be subject to the following provisions:

- (a) The automatic suspension of voting rights of an owner for any period during which any assessment against his Lot remains unpaid.
- (b) The right of the Association to suspend the right to use any recreational facility or common Area by an Owner for any period during which any assessment against his Lot remains unpaid: and for a period not to exceed one hundred and twenty (120) days for each infraction of its published rules and regulations which rules and regulations may be adopted by resolution of the Association from time to time.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposed and subject to such conditions as may be agreed to by the members as herein provided. No such dedication or transfer shall be effective unless an instrument signed by the Owners of more than seventy-five percent (75%) of the Lots agreeing to such dedication or transfer has been filed of record in the Uvalde Property Records of Uvalde county, Texas, and unless written notice of the proposed action is sent to every member not less than ten (10) days nor more than fifty (50) days in advance of any action taken.
- (d) The right of the Association to make rules and regulations concerning the use by members of the Common Area, all on such terms as the Board of Directors may determine, including without limitation the right of the Association to institute regulations and rules with respect to construction of any storage facilities.
- (e) The right of the Association to collect and disburse funds as set forth in Article IV.
- (f) The right of the Association to borrow money as necessary or desirable to perform its functions hereunder, and to mortgage and/or pledge the Common Area and improvements thereon, accounts receivable and

assessment liens as security for such loans upon the approval thereof by the Owners of more than seventy-five percent (75%) of the Lots; provided, however, that the rights of any such mortgage in said properties shall be subordinate to the right of the Owners hereunder.

- (g) The right (but not the obligation) of the Association to adopt, implement and maintain for the Property a private security system, a garbage collection system and/or an exterior lighting system for all private streets, consistent with applicable laws.
- (h) The right of the Association to establish rules and regulations governing traffic and parking on the private streets and parking areas within the Common Area, and to establish sanctions for any violation or violations of such rules and regulations.
- (i) The right of the Association to regulate noise within the Property, including, without limitation, the right of the Association to require mufflers on engines or to prohibit the use of devices producing excessive noise.
- (j) The right of the Association to control the visual attractiveness of the Property.

SECTION 4: Delegation of Use: Subject to the By-laws of the Association, any Owner may delegate his or her right of enjoyment of the common Area and facilities only to invited family and guests and only subject to the following rules:

- a) Overnight Use: For any and all overnight use and camping within the Common Area, the Owner MUST accompany his or her guests at the campsite, or be present at his or her dwelling within the Subdivision, for the entire length of stay.
- b) A MAXIMUM of eight (8) persons, including the Owner, will be permitted at one time at any campsite.
- c) A maximum of 15 campsites, to include 10 RV hookups and 5 tent sites, will be specifically designated for overnight use in the Common Area. This will allow a maximum of 120 persons to occupy the Common Area at any one time. Campsites are available on a first come-first served basis. The Association makes no guarantee of campsite availability. No "pre-selection" or "reserve" of campsites is allowed at this time.
- d) Use of the Common Area is subject to the rules of conduct adopted by the board of Directors and posted at the Pavilion.

SECTION 5: Amendment: The covenants and restrictions of this Declaration shall run with and bind the Property, for a term of thirty-five (35) years from the date this Declaration becomes effective, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty-five (35) year period by an instrument signed by the Owners of not less than 2/3 of the Lots. No person shall be charged with notice of or inquiry with respect to any amendment hereto until such amendment has been filed of record in Uvalde Property Records of Uvalde County, Texas.

SECTION 6: Annexation: Additional property and Common Area may be annexed to the Property with the consent of two-thirds (2/3rds) of the total votes of each class of membership of the Association.

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

SECTION 8: Omissions: If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

SECTION 9: Validity: If any one or more of the provisions of this Declaration are declared unenforceable in whole or in part, the remainder of this Declaration shall not be affected thereby and shall remain in full force and effect.

ARTICLE VI

DISPUTE RESOLUTION

In the Event there is any dispute by and between two (2) or more Lot Owners, or by and between any Lot Owner and the Association, or by and between any Lot Owner and the Committee, such dispute shall be settled by the specific provisions hereof; otherwise, any and all such disputes shall be settled by the Association.

Prior to instituting any court proceeding to enforce or interpret this Declaration and as a condition precedent thereto, the parties to such dispute must submit and issue to mediation on the following terms and conditions:

- (a) Meeting of the Parties. A meeting shall be held promptly between the parties (and in any event within 20 days after the dispute arises) attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- (b) Selection of Mediator. If, within ten (10) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they shall jointly appoint a mutually acceptable neutral person not affiliated with either of the parties (the "neutral"). If within such 10-day period the parties do not agree upon the appointment of the neutral, each party will select a neutral mediator and the two selected neutrals will select a third neutral, and all three shall serve as the "neutral" as used herein. The fees of the neutral(s) shall be shared equally by the parties.
- (c) ADR. In consultation with the neutral, the parties will select or devise and alternative dispute resolution procedure (ADR) with which they will attempt to resolve the dispute, and time and place for the ADR to be held, with the neutral(s) making the decision as to the procedure, and/or place and time (but unless circumstances require otherwise, not later than 10 days after selection of the neutrals).
- (d) Process. The parties agree to participate in good faith in the ADR to its conclusion as designated by the neutral(s). All meetings, ADR mediation and conferences and other proceedings shall be in Uvalde County, Texas.

This Declaration shall be effective when the same is filed of record in the Uvalde Property of Records of Uvalde County, Texas.

EXECUTED effective as of the _____ day of _____ 20____.

FRIO CANYON ESTATES ASSOCIATION

By: The Board of directors of Frio
Canyon Estates Association:
