

RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
RIM ROCK RANCH, UNITS 1, 2, 3 and 4

COMAL COUNTY, TEXAS
(Superseding all previously recorded restrictions)

This Restated Declaration is made on the date hereinafter set forth by RIM ROCK RANCH PROPERTY OWNERS ASSOCIATION, INC., a Texas Non-Profit Corporation and "property owners association" as defined in Texas Property Code § 202.001(b) ("Association"), to restate and replace the Declaration of Covenants, Conditions and Restrictions Rim Rock Ranch, Unit 1, recorded in Document #9706008922, amended in Document # 9706013763, the Declaration of Covenants, Conditions and Restrictions Rim Rock Ranch, Unit 2, recorded in Document #9706019036, amended in Document #9806007236, the Adoption of Declarations Rim Rock Ranch, Unit 3, recorded in Document #9806010148, and the Declaration of Covenants, Conditions and Restrictions Rim Rock Ranch, Unit 4, recorded in Document #9806029214, Official Public Records of Real Property of Comal County, Texas ("Declarations") by SUMMERLIN PROPERTIES, INC. ("Developer").

RECITALS

WHEREAS, Developer no longer is the owner of that certain tract of land known as RIM ROCK RANCH, UNITS 1, 2, 3 and 4, being a subdivision out of 1,203.65 Acres of land situated in Comal County, Texas ("Property" or the "Subdivision"). The plat of RIM ROCK RANCH, UNIT 1, is recorded in Book 12, Page(s) 116-120, RIM ROCK RANCH, UNIT 2, is recorded in Book 12, Page 173, RIM ROCK RANCH, UNIT 3, is recorded in Book 12, Pages 253-255 and amended in Volume 12, Page 264-266, and RIM ROCK RANCH, UNIT 4, is recorded in Book 12, Pages 349-350, Map and Plat Records of Comal County, Texas ("Plats"). The Common Area, as shown on the Plats and defined below, has been conveyed by Developer to the Association, the individual Tracts in the Subdivision have been conveyed to individual Owners, and the "Development Period" has expired pursuant to Article VI of the Declarations; and

WHEREAS, it is the desire of the Association to amend certain restrictions, easements, covenants, conditions, stipulations and reservations contained in the Declarations upon and against the Subdivision in order to establish a uniform plan for its development and improvement, and to insure the preservation of such uniform plan for the benefit of both the present and future Owners of Tracts in the Subdivision; and

WHEREAS, Article ~~IX~~ VIII, Section ~~9.02~~ 8.02 of the Declarations provides that the restrictions contained therein may be amended with the approval of two-thirds (2/3rds) of the Owners in the Subdivision; and

WHEREAS, this Restated Declaration of Covenants, Conditions and Restrictions has been adopted and approved by the requisite number of the Owners of Tracts in the Subdivision at a duly called meeting on July 17, 2008 or within 365 days of the date that the first Owner executes an instrument indicating approval of this Restated Declaration; and

NOW THEREFORE, the Association hereby adopts, establishes and imposes upon RIM ROCK RANCH, UNITS 1, 2, 3 and 4 the following reservations, easements, restrictions, assessments, liens, covenants and conditions, which shall run with the land and title or interest therein, or any part thereof, and shall inure to the benefit of each owner in the Subdivision and the Association as a whole:

ARTICLE I

DEFINITIONS

Section 1.01. "Association" refers to RIM ROCK RANCH PROPERTY OWNERS ASSOCIATION, INC., and its successors and assigns.

Section 1.02. "Board of Directors" refers to the Board of Directors of the Association.

Section 1.03. "Common Area" refers to all real property (including improvements) within the Subdivision owned by the Association for the common use and enjoyment of the Owners. Common Area is shown on the Plats as Common Area or Equestrian and Nature Reserves (*e.g., park, tennis courts, basketball courts, volleyball courts, playground, nature trails, pavilion, rest rooms, mailboxes, and entrance area.*)

Section 1.04. "Contractor" refers to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Tract.

Section 1.05. "Declaration" refers to this Restated Declaration of Covenants, Conditions and Restrictions for Rim Rock Ranch, Units 1, 2, 3 and 4.

Section 1.06. "Tract" refers to any plot of land identified as a tract or home site on the Plats of Rim Rock Ranch. For purposes of this instrument, "Tract" shall not be deemed to include any portion of the Common Area regardless of the use made of such area.

Section 1.07. "Member" refers to every Owner or entity which holds membership in the Association.

Section 1.08. "Owner" shall mean and refer to the recorded owner, whether one or more persons or entities, of fee simple title to any Tract which is a part of the Subdivision, including contract buyers (a buyer under a Contract-for-Deed), but excluding those having such interest merely a security for the performance of an obligation (*i.e.* holders of mortgages and home equity loans).

Section 1.09. "Renter" refers to anyone who rents or leases property from a recorded owner and such renter shall have an obligation to abide by all covenants.

Section 1.10. "Reserve" shall mean or refer to equestrian, nature reserve and nature trails.

Section 1.11. "Committee" shall mean or refer to the Rim Rock Ranch Architectural Control Committee.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01. The Plats subject the Property to the limitations as set forth therein, and the roads, streets, equestrian trails and easements shown thereon. The Plats further establish certain restrictions applicable to the Subdivision. All dedications, restrictions and reservations created in this Declaration or shown on the Plat, re-plats or amendments of the Subdivision recorded or hereafter recorded shall be construed as being included in each contract, deed or conveyance executed or to be executed, whether specifically referred to therein or not.

Section 2.02. The Developer has reserved for public use the utility easements hereafter referred to as "general easements" shown on the Plats or that have been or hereafter may be created by separate instrument recorded in the Official Public Records of Comal County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, storm surface drainage, cable television, or any other utility installed in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Area and/or Tracts. Should any utility company furnishing a service covered by the general easement herein provided for request a specific easement by some recordable document, the Association, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision shall have the right to enter upon any utility easement for the purpose ~~of~~ of installation, repair and maintenance of their respective facilities. Neither the Association nor any utility company, political subdivision or other authorized entity using easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the Property covered by said easements.

Section 2.03. Title Subject to Easements. It is expressly agreed and understood that the title conveyed to any of the Tracts by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, electric lighting, electric power, telegraph or telephone purposes, and other easements hereafter granted affecting the Tracts. The Owners of the respective Tracts shall not be deemed to own pipes, wires, conduits or other service lines running through their Tracts which are utilized for service to other Tracts, but each Owner shall have an easement over and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Tract. The Association may convey title to said easements to the public or a public utility company.

Section 2.04. Utility Easements.

- (a) Utility ground and aerial easements have been dedicated in accordance with the Plats and by separate recorded easement documents.
- (b) No building shall be located over, under, upon or across any portion of any utility

easement. The Owner of each Tract shall have the right to construct, keep and maintain concrete drives, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Tracts; provided, however, any concrete drive, fence or similar improvement placed upon such utility easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Tract subject to said utility easements shall be responsible for; (i) any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such utility easements; and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the utility easements.

Section 2.05. Equestrian, ~~and~~ Nature Reserves and Trails. An easement on, over and across all Equestrian and Nature Reserves and trails shown on the Plats, and any amendment thereto, is hereby reserved for use and enjoyment of all owners, their families, guests and invitees. No Owner or other person whomsoever shall be permitted to fence or obstruct any portion of any Reserve, and no building or other structure whatsoever shall be constructed or maintained on any part of any Reserve. The Reserves shall be maintained in as natural state as possible consistent with use as an equestrian and nature reserve, and no cutting of any tree, clearing of any underbrush, or landscaping shall be done thereon except as may from time to time be designated by the Association. No motorized vehicle of any type, including without limitation, any motorcycle, go-cart, tractor, automobile, All-Terrain Vehicle or other motorized vehicle, shall be permitted on any Reserve, except only equipment necessary for the construction, maintenance, and repair of the Reserve. Non-motorized bicycles will be permitted on the Reserves.

ARTICLE III

RESTRICTIONS

Section 3.01 Single Family Residential Construction. Except as provided below, no building shall be erected, altered, placed or permitted to remain on any Tract other than one dwelling unit per each Tract to be used for single family residential purposes. One guest/servants house may be built provided said guest/servants house contains a minimum of 500 square feet and a maximum of not more than 50% of living area of the main dwelling and is built after or while the main dwelling is being built and shall be approved by the Architectural Control Committee.

Any guest/servants house shall not be closer to the front property line than the main dwelling on the property and shall be constructed of the same general construction material and color as the main dwelling. Any carport or garage constructed on the property shall also be of the same general construction material and color as the main dwelling. Detached garages and work shops may not be constructed on the Tract prior to the main dwelling being built. ~~Barns and/or storage buildings may be constructed on the Tract prior to the main dwelling being built, provided they are built with new construction material, approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the Tract and placed in the rear half of the Tract behind the intended dwelling site. The term "dwelling" does not include double wide mobile or manufactured home, or single wide mobile homes, regardless, of whether the same are placed upon permanent foundation, and said homes~~

~~are not permitted within the Subdivision.~~ All main dwellings must have at least 1800 square feet of living area for one-story homes and 2000 square feet of living area for two story homes, with at least 1000 square feet on the ground floor, excluding garages and porches, and be built with new construction material. Any building, structure or improvement commenced on any tract shall be completed as to exterior finish and appearance within six (6) months from the commencement date. All dwellings, carports and garages ~~must be will be of the same general construction as the main dwelling, and~~ located on the tract according to the building site plan approved by the Committee.

Section 3.01A Barns and Storage Buildings. Barns and/or storage buildings may be constructed on the tract provided they are built with new construction material, approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the tract and placed in the rear portion of the tract behind the intended dwelling site. The term "dwelling" does not include double wide mobile or manufactured home, or single wide mobile homes, regardless of whether the same are placed upon permanent foundation, and said homes are not permitted within the Subdivision.

Section 3.02. Composite Building Site. Any Owner of one or more adjoining Tracts (or portions thereof) may, with the prior written approval of the Architectural Control Committee, and with approval of the Comal County Commissioner's Court, if required, consolidate such Tracts or portions into one building site, with the privilege of placing or constructing improvements on such resulting site, in which case the side set-back lines shall be measured from the resulting side property lines rather than the Tract lines as indicated on the Plat.

Section 3.03. Location of the Improvements upon Tracts. No building of any kind shall be located on any five (5) acre or larger tract nearer than twenty-five (25) feet to the side property line or nearer than one hundred (100) feet to any public road or nearer than fifty (50) feet to the rear property line; ~~on~~On tracts less than five (5) acres, no building of any kind shall be located on any tract nearer than ~~ten~~ twelve (10) (12) feet to the side property lines; or nearer than fifty (50) feet to any public road or rear property line; provided however, as to any tract, the Architectural Control Committee may waive or alter any such setback line, if the Architectural Control Committee in the exercise of the Architectural Control Committee's sole discretion. If such waiver, or alteration is necessary to permit effective utilization of a tract, ~~Any~~any such waiver or alteration must be in writing and recorded in the Official Public Records of Real Property of Comal County, Texas. All dwellings placed on the Tract must be equipped with septic tank or other sewage disposal system meeting all applicable laws, rules, standards and specifications, and all such dwellings must be served with electricity.

Section 3.04. Use of Temporary Structures. No structure of a temporary or permanent character, whether trailer, motor home, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Tract at any time as a residence, either temporarily or permanently. No Tract shall be used as a camping ground; however, an RV, camper, or motor home will be allowed to be used as a temporary residence up to six (6) months during construction provided an approved septic system has been installed and the RV, camper, or motor home is placed behind the construction site. After the dwelling is complete, an RV, camper, or motor home may be stored on the tract provided it is stored behind the main dwelling and not within 25 feet of any side property line or 75 feet of any rear property line. The Committee shall have the right to have any RV or manufactured home or temporary structure found to be in violation of this Declaration, removed and stored at the expense of the Owner; and, for these purposes, the representative of the **Committee Board of Directors** is granted express written consent to enter upon Owner's property and remove the same without penalty or offense.

Section 3.05. Walls, Fences and Mail Boxes. Walls and fences must be approved prior to construction by the Architectural Control Committee and shall not be closer to front street property lines than the Tract boundary line and no closer than the Tract boundary line or side street lines. Smooth wire, barbed wire, and chain link fencing shall be permitted on side and rear boundary lines, but not on front (road side) Property lines. In the case of corner Tracts, smooth wire, barbed wire and chain link fencing **components** shall not be permitted on street boundary lines. Front fences must be constructed of **welded** metal pipe, wood, masonry, wrought iron or a combination thereof. ~~_-~~ All individual mailboxes (if approved by the postal department) must be of masonry construction and approved by the Architectural Control Committee.

Section 3.06. Antennas, Towers and Satellite Dishes. Antennas, towers or satellite dishes of any kind shall not exceed ten feet above the roof of the dwelling or any accessory building, whichever is higher. Any antenna, tower, or satellite dish must be located to the side or rear of the dwelling or accessory building and not within 25 feet of any side property line or 50 feet of any rear property line.

Section 3.07. Prohibition of Offensive Activities. No activity, whether for profit or not, shall be conducted on any Tract which is not related to single family residential purposes, unless said activity meets the following criteria: (a) no additional exterior sign of activity is present, (b) it is the type of action that usually happens in a home, (c) no additional traffic, that would not be there normally, is created, and (d) nothing dangerous is present that shouldn't be there. The discharge or use of firearms is expressly prohibited. **No noise or other nuisance shall be permitted to exist or operate upon any portion of the Tract so as to be offensive or detrimental to any other Tracts or its occupants.** The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance. Hunting is prohibited.

Section 3.08. Garbage and Trash Disposal. ~~Garbage and trash or other refuse shall not be permitted to be dumped at any place upon the Subdivision or adjoining land. No Tract shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be~~

~~disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Tract and no odors shall be permitted to arise therefrom so as to render such Tract or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Tract or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. All refuse, garbage and trash shall be collected at the expense of the Owner. Receptacles for trash collection shall not be placed at the street before 5 PM on the day preceding the scheduled pickup and retrieved by noon on the day following pickup.~~

Section 3.09. Inoperable (*or unregistered*) or Junked Vehicles Prohibited. No Tract shall be used as a depository for abandoned or junked motor vehicles. No junk of any kind or character, or dilapidated structure or building of any kind or character, shall be kept on any Tract. *Outside storage of trailers and watercraft shall be behind the main dwelling.*

Section 3.10. Signs. No signs, advertisement, billboards or advertising structure of any kind may be erected or maintained on any Tract without the consent in writing of the Architectural Control Committee, except one (1) professionally made sign not more than twenty-four inches (24") wide by thirty inches (30") long advertising an Owner's Tract for sale or rent, and one (1) professionally made sign not more than twelve inches (12") wide by twenty-four inches (24") long identifying the Tract Owner's name. *Advertising of personal property of any kind for sale on any tract is prohibited except that a lot owner may conduct a garage or yard sale on the property no more than twice in a calendar year.* Any member of the ~~Committee~~Board of Directors shall have the right to enter upon an Owner's property and remove any such sign, advertisement, billboard or structure which is placed on any Tract in violation of these restrictions, and, in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal. Signs which are removed can be picked up from the Association.

Section 3.11. Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Tract except that one (1) horse per acre may be kept if it does not become a nuisance or threat to other Owners. Provided, however, animals being raised for 4-H school sponsored programs will be permitted. No pigs or hogs will be permitted under any circumstances or programs. All horses and 4-H animals raised by individual tract Owners must be kept in a fenced area on the Owner's tract. Dogs, cats, or other common household pets may be kept on a Tract. Dogs must be kept in a kennel, dog run, or fenced in area that confines said dog(s) to that area. Dogs will not be permitted to run loose in the Subdivision and must be vaccinated for rabies according to State law and registered with Comal County, Texas once a year. *No animal shall be allowed to make an unreasonable amount of noise and no domestic pets will be allowed on the Tract of anyone other than its owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the property, and no kennels or breeding operation will be allowed.* No animal of any kind shall be permitted within a radius of 50 feet of any water well site.

Section 3.12. Mineral Development. No commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Tract. No derrick or other structures designated for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Tract.

Section 3.13. Drainage. Natural established drainage patterns of streets, tracts or roadway ditches will not be impaired by any person or persons. Driveway culverts must be installed and will be of sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow. Drainage culvert installation is subject ~~to the inspection and approval of the Architectural Control Committee and~~ to Comal County requirements.

Section 3.14. Resubdivision. No tract shall be resubdivided or split, unless permitted in the restrictions on the Tract.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 4.01. Basic Control

- (1) No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced or changes made in the design or exterior appearance thereof (excluding, without limitation, painting, staining or siding) or any addition or exterior alteration made thereto after original construction or demolition or destruction by voluntary action made thereto after original constructed, on any Tract in the Subdivision until obtaining the necessary approval (as hereinafter provided) from the Committee of the construction plans and specification for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument.
- (2) Each application made to the Committee shall be accompanied by two sets of plans and specifications for all proposed construction (initial or alteration) to be done on such Tract, including plot plans showing location on the Tract.

Section 4.02. Architectural Control Committee. The authority to grant or withhold architectural control approval, as referred to above, is in the Architectural Control Committee composed of at least five ~~(3)~~(5) Members of the Association in good standing, who shall be elected annually and shall be known as the Rim Rock Ranch Architectural Control Committee. Each member of the Committee must be an Owner of Property in the Subdivision.

Section 4.03. Effect of Inaction. Approval or disapproval as to architectural control matters as set forth in the preceding provisions of this Declaration shall be in writing. In the event ~~the~~

Committee fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within thirty (30) days ~~following~~ such following confirmation of such submissions, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof.

Section 4.04. Effect of Approval. The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reasons of the good faith exercise thereof.

Section 4.05. Variance. The Committee may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Committee, when circumstances such as topography, natural obstructions, Tract configuration, Tract size, hardship, aesthetic or environmental considerations require a variance. The Committee reserves the right to grant variances as to building set-back lines. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat. The Committee shall keep a log of all variances approved or disapproved.

ARTICLE V

RIM ROCK RANCH PROPERTY OWNERS ASSOCIATION

Section 5.01. Membership. Every person or entity who is a record owner of any Tract which is subject to the Maintenance Charge and other assessments provided herein shall be a "Member" of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Tract owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Tracts. Regardless of the number of persons who may own a Tract (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Tract.

Additionally, the Directors of the Association must be Members of the Association (as more particularly described in the Bylaws). Ownership of the Tracts shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association. However, this Declaration will not be construed as to assess the Veterans Land Board of the State of Texas. Any assessments are the personal obligation of the Veteran purchaser, his successors, heirs and assigns. Any lien imposed by this Declaration does not affect the Veterans Land Board's interest in the Property.

Section 5.02. Non-Profit Corporation. Rim Rock Ranch Property Owners Association, a non-profit corporation, has been organized and it shall be governed by the Texas Non-profit Corporation Act, the Articles of Incorporation and Bylaws of the Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 5.03. Bylaws. The Association has adopted Bylaws to govern the organization or operation of the Subdivision and the use and enjoyment of the Tracts and Common Area; provided that the same are not in conflict with the terms and provisions hereof.

Section 5.04. Owner's Right of Enjoyment. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every Tract, subject to the following provisions:

1. The right of the Association, with respect to the Common Areas, to limit the number of guests of Owners;

2. There shall be no activity on any association common area, except the mail facility, after 11 PM, unless it is an Association approved or sponsored event.

2.3. ~~1~~The right of the Association, in accordance with its Articles and Bylaws, to (i) borrow money for the purpose of improving and maintaining the Common Areas and facilities, and (ii) mortgage said property; however, the rights of such mortgagee of said property shall be subordinate to the rights of the Owners hereunder;

3.4 ~~1~~The right ~~of~~ of the Association to suspend the Member's voting rights and the Member's and Related User's right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Tract remains unpaid;

4.5 ~~1~~The right ~~of~~ of the Association to suspend the Member's voting rights and the Member's and Related User's right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Tract remains unpaid;

5.6 ~~1~~The right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Area, after

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notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration or the Rules and Regulations, which suspension shall continue for the duration of such infraction or violation.

ARTICLE VI

MAINTENANCE FUND

Section 6.01. Maintenance Fund Obligation. Each Owner of a Tract, by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association an annual Maintenance Charge ("Maintenance Charge") *mailed to such address as may be designated in writing by the Board of Directors,* and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Tracts and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and other assessments are made.

Section 6.02. Maintenance Charge.

(1) The Maintenance Charge shall be used to create a fund to be known as the "Maintenance Fund", which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Tract to the Association. The Maintenance Charge for the year of purchase shall be prorated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year. Provided, however, if such Owner owns more than one Tract in the Subdivision; such Owner shall pay only twice the assessment of one (1) Tract no matter how many Tracts are owned or in the event Owner obtains consent from the Committee for a Composite Building Site pursuant to Section 3.02 hereof, such Composite Building Site shall be considered for the Maintenance Charge of one Tract beginning upon the completion of the improvements thereon.

(2) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. *In addition to interest, a \$15 late fee may be assessed after February 1 of the year for which the maintenance fee is due.* The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Tract. No Owner may waive or otherwise escape liability for the Maintenance Charge by the non-use of any Common Areas or by the abandonment of his Tract.

(3) The initial amount of the Maintenance Charge applicable to each Tract will be \$120.00 per year due in advance, payable on January 1st of each year. All

other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Board of Directors of the Association, subject to the provisions hereof.

(4) The Association shall have the right at any time, with a majority vote of all Association Members, to adjust or alter said Maintenance Charge from year to year as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

Section 6.03. Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner of a Tract in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Tract which may be foreclosed by non-judicial foreclosure, pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee or Agent to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee or Agent may be changed at any time and from time to time by the Association by means of written instrument executed by the President or any Vice-president of the Association and filed for record in the Official Public Records of Comal County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association, or the Association's Agent, shall give notice of foreclosure sale as provided by the Texas Property Code, as then amended, upon request by Association. The Trustee or Agent shall give any further notice of foreclosure sale as may be required by the Texas Property Code as then amended, and shall convey such Tract to the highest bidder for cash by Assessment Lien Foreclosure Deed.

Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable Trustee's or Agent's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default, and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Tract foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of possession thereunder.

In the event of non-payment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such non-paying Owner, exercise all other rights and remedies available at law or in Equity.

It is the intent of the provisions of this Section 6.03 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to nonjudicial sales (foreclosure of contractual liens) by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice-president of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Comal County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

Section 6.04. Notice. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim of lien against the Tract of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Tract against which the lien is claimed and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amount secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice of satisfaction of the delinquent assessment upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such instrument.

Section 6.05. Assessment Lien Subordinate to Mortgages. The lien described in this Article VI shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or any other third party lender, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Tract and renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Tract who obtains title to such Tract pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Tract free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Tract which accrued prior to the time such holder acquired title to such Tract. No such sale or transfer shall relieve such holder from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Tract shall not affect the Association's lien for Maintenance Charges or other charges or assessments.

Section 6.06 Purpose of the Maintenance Charges. The Maintenance Charge levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Charge shall be used for any improvements or services in furtherance of these purposes and the performance of the Association's duties described in Article VII, including the maintenance of any Common Areas, any Drainage Easements and the establishment and maintenance of a reserve fund for

maintenance of any Common Areas. The Maintenance Fund may be expended by the Association for any purposes which, in the judgment of the Association, will tend to maintain the Property and the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area as may from time to time be authorized by the Association. Except for the Association's use of the Maintenance Charge to perform its duties described in this Declaration and in the Bylaws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood that the judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

ARTICLE VII

DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION

Section 7.01. General Duties and Powers of the Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration.

Section 7.02. Duty to Manage and Care for the Common Area. The Association shall manage, operate, care for, maintain and repair all Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Common Areas shall include, but not be limited to the management, maintenance, repair and upkeep of the Subdivision entrances and other Common Areas.

Section 7.03. Other Insurance. The Association shall obtain such insurance as may be required by law, including Worker's Compensation and Liability Insurance, as the Association shall deem necessary or desirable.

Section 7.04. Duty to Prepare Annual Budget. The Association shall prepare annual budgets for the Association, which shall include a reserve fund for the maintenance of the Common Areas.

Section 7.05. Duty to Levy and Collect the Maintenance Charge. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.

Section 7.06. Duty to Provide Annual Review. The Association shall provide for an annual un-audited independent review of the accounts of the Association. Copies of the review shall be

made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying.

Section 7.07. Duties with Respect to Architectural Approvals. The Association shall perform functions to assist the Committee as elsewhere provided in Article IV of this Declaration.

Section 7.08. Power to Acquire Property and Construct Improvements. The Association may acquire property or an interest in the property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on such property and may demolish existing improvements.

Section 7.09. Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations ("Rules and Regulations") and enforcement provisions and policies ("Enforcement Policies"), and levy fines, as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Areas, and the use of any other property, facilities or improvements owned or operated by the Association.

Section 7.10. Power to Enforce Restrictions and Rules and Regulations. The Association or ~~their~~ its designated agent shall have the power to enforce the provisions of this Declaration, and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce both the provisions of this Declaration, the Rules and Regulations and Enforcement Policies of the Association by any one or more of the following means: (a) by entry upon any Tract within the Subdivision, after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without written or oral notice to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability in trespass or otherwise by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations, (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (c) by exclusion, after notice and hearing, of any Member or Related User from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach by such Member or a Related User of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (d) by suspension, after notice and hearing, of the voting rights of a Member during any such breach by Member or a Related User of a provision of this Declaration or such Rules and Regulations, for so long as such breach continues; (e) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or a Related User to reimburse the Association for the costs incurred by the Association (including, but not limited to pre-litigation attorney's fees) in connection with the remedy of such breach; (f) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties established in advance in the Rules and Regulations of the

Association, from any Member or Related User for breach of the Declaration or such Rules and Regulations by such Member or Related User: and (g) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Member, plus attorney's fees incurred by the Association with respect to exercising such remedy. Any payment due hereunder to the Association shall be payable the first day of the next calendar month.

Before the Board may invoke the remedies provided above, it shall give notice of such alleged violation to Owner, by Certified Mail, Return Receipt Requested, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

Section 7.11. Enforcement by Owners. Notwithstanding the enforcement powers and remedies of the Association as provided in Section 7.10, any Owner may enforce the use restrictions contained in this Declaration, by its lawful remedies, at the Owner's expense, with no liability or obligation to the Association whatsoever.

Section 7.12. Power to Grant Easements. In addition to any general easements described in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01. Term. The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, approved by at least two-thirds (2/3rds) of the Owners, and certified by the President of the Association as to the requisite number of votes, has been recorded agreeing to amend or change, in whole or in part, this Declaration.

Section 8.02. Amendment. This Declaration may be amended or changed, in whole or in part, at any time within a given 365-day period by the written agreement or by signed ballots voting for such amendment, of not less than two-thirds (2/3ds) of all of the Owners of the Subdivision. There shall be one vote per Tract. Anyone owning more than one Tract shall have one vote for each Tract owned. Such amendment must be approved by said Owners within three hundred and sixty-five (365) days of the date the first Owner executes such amendment. Otherwise, such amendment shall fail. If the amendment is adopted it shall bind and affect the respective tracts whose Owners shall approve such amendment from the time after the date such amendment is approved by each Owner. The date an Owner's signature is acknowledged shall constitute *prima facie* evidence of the date of execution and adoption of said amendment by such Owner. Those

Members entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Notwithstanding any provision contained in the Bylaws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Official Public Records of Real Property of Comal County, Texas, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of Members voted in favor of the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for three (3) years after the date of filing of the amendment.

Section 8.03. Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity of unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 8.04. Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose and intent of this Declaration,

Section 8.05. Successors and Assigns. The provisions hereof shall be binding upon and inure to the benefit of the Owners and the Association, and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 8.06. Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

Section 8.07. Terminology. All personal pronouns used in this Declaration and exhibits attached, if any, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural and vice versa. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself. The terms "herein", "hereof" and similar terms, as used in this instrument refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear.

VETERAN PURCHASER PARTIAL RELEASE

Notwithstanding anything contained in this Declaration to the contrary, a Veteran Purchaser shall be entitled to have a 1.00 acre tract released from the Veterans Land Board for a home site and same shall not be construed as a violation of this Declaration.