

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ROSEHEART SUBDIVISION UNIT 4  
PLANNED UNIT DEVELOPMENT**

**AND ANNEXATION TO  
ROSEHEART HOMEOWNERS ASSOCIATION**

THE STATE OF TEXAS     §  
                                   §     KNOW ALL BY THESE PRESENTS:  
COUNTY OF BEXAR       §

THIS DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS FOR ROSEHEART SUBDIVISION, UNIT 4 (PLANNED UNIT DEVELOPMENT) is made on the date hereinafter set forth by THE SITTERLE CORPORATION ("Declarant"), as follows:

WITNESSETH:

WHEREAS, Declarant is the Owner of the below described real property commonly known as Roseheart Subdivision, Unit 4 (Planned Unit Development), San Antonio, Bexar County, Texas (hereinafter called "the Subdivision"), to wit:

Lots 1 and 2, Lots 74 through 104, Block 2; Lots 1 through 20, Block 5, all in New City Block 17728, ROSEHEART SUBDIVISION, UNIT 4, (PLANNED UNIT DEVELOPMENT), City of San Antonio, Bexar County, Texas, according to a plat recorded at Volume 9574, Pages 11-12, Deed and Plat Records, Bexar County, Texas;

WHEREAS, the Subdivision is a part of the master plan area and project known as Roseheart, Planned Unit Development (the "Project");

WHEREAS, Declarant has heretofore filed of record that certain instrument styled Declaration of Covenants, Conditions and Restrictions for Roseheart Subdivision, Unit 1 (Planned Unit Development) in Volume 9943, Page 2083, Real Property Records of Bexar County, Texas ("Prior Declaration"), which imposes upon the property therein described certain restrictions and which provides for the provides for the jurisdiction, assessments, and liens of Roseheart Homeowners Association with respect to said property and all other property annexed thereto;

Whereas, Declarant is the owner of the Subdivision and Declarant desires that all of the lots within the Subdivision be subject to the covenants, conditions, and restrictions herein set forth as part of the common scheme of development of the Project;

WHEREAS, the Subdivision lies within the area described in Article III, Section 2(a) of the Prior Declaration;

Whereas, Article III, Section 2(a) of the Prior Declaration permits Declarant to annex to the Project and to the jurisdiction, assessments, and liens of the Association any of the real property lying within the area therein described and Declarant desires to exercise such annexation powers with respect to the Subdivision;

NOW, THEREFORE, Declarant hereby annexes the above-described Subdivision to the jurisdiction and assessments of Roseheart Homeowners Association and declares that the real property above-described, and such additions thereto as may hereafter be made pursuant to the terms hereof, is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth and adopted to run with the land.

If any present or future Owner of any lot hereby restricted shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or persons owning any real property situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing and/or to recover damages for such violation or attempted violation.

## ARTICLE I DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

- (a) "Association" shall mean and refer to the Roseheart Homeowners Association, its successors and assigns as provided for herein.
- (b) "Properties" shall mean and refer to the above described properties and additions thereto, as are subject to this Declaration or any Amended or Supplementary Declaration under the provisions of Article III Section 2 hereof.
- (c) "Common Facilities" and "Common Area" shall mean and refer to all property leased, owned, or maintained by the Association for the use and benefit of the members of the Association. By way of illustration, Common Facilities may include, but not necessarily be limited to the following: private streets, community clubhouse, signs, street medians, entry gates, tennis courts, swimming pool and other recreational facilities, buildings and landscaping, walls, entry monuments, bridges, trails, green belts, and other similar or appurtenant improvements.
- (d) "Lot" shall mean and refer to each individually numbered plot of land shown upon any recorded Subdivision map of the Properties with the exception of the Common Facilities.
- (e) "Subdivision Plat" shall mean and refer to the map or plat of Roseheart Subdivision, Unit 4 (Planned Unit Development) filed for record in Volume 9574, Pages 11-12, Deed and Plat Records of Bexar County, Texas;
- (f) "Living Unit" shall mean and refer to a single-family residence and its attached or detached garage situated upon a Lot. This includes Zero Lot Line garden homes.
- (g) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot, within the Properties, including contract sellers but excluding those having interest merely as security for the performance of an obligation.
- (h) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section 1, hereof.
- (i) "Declarant" shall mean and refer to The Sitterle Corporation, and its successors or assigns in writing, provided any such writing shall reflect the intention to assign all or a portion of Declarant's rights.
- (j) "Architectural Control Committee" shall mean, and refer to the committee created hereafter, subject to the provision of Article VII hereof, by the Declarant. Architectural Control Committee may be sometimes herein called the "ACC" or the "Committee".
- (k) "Board of Directors" shall mean and refer to the governing body of the Association; the

election and procedures of which shall be as set forth in the Articles of Incorporation and By-Laws of the Association.

- (l) "Improved Lot" shall mean and refer to a Lot on which construction of a Living Unit is completed, and the Living Unit is either occupied as a residence or closing of the sale of said Lot has taken place, whichever shall first occur.
- (m) "Eligible Mortgage Holder" shall mean and refer to an entity that (i) holds a first and superior mortgage on any Living Unit and (ii) has registered its name, address, telephone number and person to contact with the Homeowners Association.
- (n) "Zero Lot Line" and "zero setback line" shall mean and refer to the side Lot line on which a garden home is required to abut as shown on the Subdivision Plat or as designated by the Architectural Control Committee.

## ARTICLE II

### RESERVATIONS, EXCEPTIONS, DEDICATIONS, SIDEWALKS, ZONING CHANGES

Section 1. Matters Shown on Plat. The Subdivision Plat dedicates for use as such, subject to the limitations set forth herein and therein, certain easements shown thereon, and such Subdivision Plat further establishes certain private streets, dedications, limitations, reservations and restrictions applicable to the Properties. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said property or any part thereof. No such dedications shall be deemed or inferred to be public dedications except as specifically therein or herein stated. Within the platted easements, if any, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or in the case of drainage easements, which may change or impede the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all improvements in such area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements herein or referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

Section 2. Maintenance and Access Easements. There is hereby created in favor of all easement Owners, Declarant, the Association, and their assigns, a right of ingress or egress across, over, and under the Properties for the purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, electricity, gas, and appurtenances thereto, and to repair, correct, replace, or maintain any wall, fixture, light, or other structure or item constituting part of the Common Facilities or required or permitted to be maintained under the terms hereof or to correct or remove any condition prohibited under the terms hereof. Neither the Declarant, the Association nor any member of the Architectural Control Committee shall be liable for any damage done by any utility company or their assigns, agents, employees or servants, using any easements now or hereafter in existence, whether located on, in, under or through the Properties, to fences, shrubbery, trees or flowers or other property now or hereinafter situated on, in, under, or through the Properties. No provision hereof related to placement or nature of structures or conditions on a Lot, nor the approval thereof, express or implied, by the Declarant or the Committee shall affect the rights of easement Owners nor enlarge the rights of Lot Owners with regard to the construction or maintenance of improvements or conditions within an easement area.

Section 3. Wall and Landscaping Easement. Any fence constructed by Declarant pursuant to the rights herein retained shall be transferred and conveyed to the Association following completion of the fence construction which shall maintain said fence at all times in its original condition, with materials matching its original construction, and shall ensure that the exterior thereof is kept clean and free of all defacing, blemishes, mars, and markings thereon. In the event the Association shall ever fail to promptly make any needed repair, maintenance or cleaning to the fence, or shall fail to properly and neatly maintain the vegetation and landscaping between the fence and right of way, Declarant, its successors and assigns, shall have the right of entry onto said Lots and right to perform such functions at the expense of the Association.

Section 4. Zero Lot Line Easements. An eight (8) inch wide Masonry Wall and Lug Easement is hereby reserved on each side of each Zero Lot Line. There is also hereby reserved and established a five foot (5') Ingress-Egress and Maintenance Easement on all Lots having a common boundary with the Zero Lot Line of an adjacent Lot. This easement shall be contiguous with and parallel to the Zero Lot Line and be for the purpose of maintenance and/or repair of residences along such Zero Lot Line.

All Lots adjacent to Lots with improvements (including the garage) situated on or within one foot (1') of the zero setback line (which is herein provided to allow for errors in the actual placement of dwellings on the Lots), as permitted by the Plats, Board or Architectural Control Committee, as applicable, shall be subject to a five foot (5') access easement for the construction, repair and maintenance of improvements located upon any adjacent Lot where said improvements are located on the zero setback line of such adjacent Lot. The zero setback line Owner must replace fencing, landscaping or other items on the adjoining Lot that he may disturb as a result of such construction, repair or maintenance. Additionally, this easement when used, must be left clean and unobstructed unless the easement is actively being utilized and any items removed must be replaced. The zero setback line Owner must notify the Owner of the adjacent Lot of his intent to do any construction or maintenance upon the zero setback line wall at least twenty-four (24) hours before any work is started, with the hours that such access easement may be utilized being restricted to between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturdays, (except in the case of an emergency, in which no notice need be given and maintenance can be performed at any necessary time).

Section 5. Drainage Easements and Grading. Easements for drainage throughout the Subdivision are reserved as shown on the Subdivision Plat, such easements being depicted thereon as "drainage easements." No Owner of any Lot in the Subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such easements. More specifically and without limitation, no Owner or resident of a Living Unit may:

- (a) Alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements;
- (b) Alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without the prior written approval of the Architectural Control Committee;
- (c) Construct, erect or install a fence or other structure of any type or nature within or upon such drainage easements that would change the course, divert, increase, accelerate or impede the natural flow of water over and across such easements;
- (d) Permit storage, either temporary or permanent, of any type upon or within such drainage easements; or
- (e) Place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

Section 6. Sidewalks. Should a sidewalk be required across a Lot as designated by the ACC, the Owner of the individual lot shall construct or cause to be constructed the sidewalk at his or their own expense. The design and width of the sidewalk shall be according to the plan for sidewalks, which shall be approved by the Architectural Control Committee. The Owner or Owners of each Lot shall also be the Owner of the portion of the sidewalk, which traverses his Lot, by acceptance of a deed to his Lot, each Owner shall be deemed to have granted an easement to the members and their invitees for the use of the sidewalk.

Section 7. Zoning Changes. No change in the zoning of the Properties will be applied for nor in any way is effective with respect to the Properties without the prior written approval of the Architectural Control Committee.

Section 8. Damages and Entry by Declarant and the Association. Neither Declarant, the Association, the Architectural Control Committee nor any member of the Architectural Control Committee shall be liable for any damages done by any utility company or their assigns, their agents, employees or servants, using any easements, whether now or hereafter in existence (located on, in, under or through the Properties), to fences, shrubbery, trees or flowers or other property now or hereinafter situated on, in, under, or through the Properties. In the event that any Owner fails to maintain his Lot as required herein or in the event of emergency, the Declarant, the Association, and their contractors shall have the right, but not the obligation, to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Declarant shall not be liable for any damage so created unless such damage is caused by the Declarant's willful misconduct or gross negligence. Notwithstanding the foregoing, neither the Declarant nor the Association shall be charged with any affirmative duty to police, control or enforce the above stated provisions.

ARTICLE III  
PROPERTIES SUBJECT TO THIS DECLARATION;  
ADDITIONS OR MODIFICATIONS THERETO; AMENDMENTS

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is all of that certain real property depicted on the Subdivision Plat for Roseheart Subdivision, Unit 4 (Planned Unit Development) recorded in Volume 9574, Pages 11-12, of the Deed and Plat Records of Bexar County, Texas, or any subsequently recorded replat of said Subdivision, all of which real property is sometimes hereinafter referred to as the "Existing Property".

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

- (a) Additions by Declarant. For a period of 20 years from date of recording hereof, the Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration and without the consent of members additional properties in future stages of the development and lying within the area described as follows:

Those certain tracts of land totaling 167 acres, more or less, as more fully described or depicted in Exhibit "A" to Memorandum of Agreement recorded in Volume 9183 Page 2085, Real Property Records of Bexar County, Texas, and two deeds recorded

in Volume 9183, Page 2008, and Volume 9183, Page 2018, Real Property of Bexar County, Texas.

Any additions authorized under this and the succeeding subsections shall be made by filing of record a Declaration or an Amended or Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property, and the execution thereof by the Declarant shall constitute all requisite evidence of the required approval thereof. Such instrument may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands and are consistent with the overall Subdivision concept. In no event, however, shall any such Declaration revoke, modify or add to the covenants established by this Declaration, as they are applicable to the Existing Property.

- (b) Other Additions. Upon the approval of the Association by a two-thirds (2/3) vote of each class of its members, any property not within the area above described may be added to the scheme of this Declaration and made subject to the jurisdiction of the Association upon the recording of Supplementary Declaration of Covenants and Restrictions. The Owner of any such property desiring such action shall submit such documents as the Association may require, including the following:

The proposed property shall be described by size, location, proposed land use, and general nature of proposed private improvements; the proponent shall describe the nature and extent of Common Facilities to be located on the proposed property; the proponent shall state that the proposed additions, if made, will be subject to all Association assessments.

Section 3. Amendment. This Declaration may be amended until December 31, 2024, by written instrument executed by Owners of ninety percent (90%), or more, of the Lots and thereafter, by written instrument executed by Owners of seventy-five (75%), or more, of the Lots. No amendment shall be effective until approved and filed of record in the Official Public Records of Real Property, Bexar County, Texas. Notwithstanding the foregoing, Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by any other Owner of Lots, or any interest therein, for the limited purposes of correcting a clerical error, clarifying an ambiguity, or removing any contradiction in the terms hereof. In addition, material amendments to this Declaration must be approved by Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Living Units that are subject to mortgages held by Eligible Mortgage Holders. For the purpose hereof, the term "material amendments" shall be considered to include any amendment, which changes:

- a. Voting rights;
- b. Assessments, assessment liens, or subordination of assessment liens;
- c. Reserves for maintenance, repair and replacement of ;
- d. Responsibility for maintenance and repairs;
- e. Reallocation of interests in the , or rights to their use;
- f. Conversion of Lots or Living Units into or vice versa;
- g. Expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
- h. Insurance or fidelity bonds;
- i. Leasing of Living Units;
- j. Imposition of any restrictions on an Owner's right to sell or transfer his or her Living Unit;
- k. A decision by the Association to establish self-management when professional

- management had been required previously by an Eligible Mortgage Holder;
- l. Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents; or
  - m. Any provisions that expressly benefit mortgage holders, insurers or guarantors.

ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided interest in any Lot which is subject to the jurisdiction of and to assessment by the Association shall be a member of the Association, provided, however, that any person or entity holding an interest in any obligation, shall not be a member. Membership shall be appurtenant to and may not be separated from Ownership of a Lot, which is subject to assessment.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Declarant or any builder entity designated by the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B Member shall be the Declarant, and/or any builder entity as designated by the Declarant. The Class B Member shall be entitled to three votes for each Lot in which it holds the interest required by Section 1, until the happening of one of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On December 31, 2023.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot in which it holds the interest required for membership under Section 1; provided, however, that upon annexation of additional properties by Declarant as above provided, Class B memberships shall be reestablished for Declarant as to Lots owned by Declarant.

Notwithstanding anything to the contrary contained herein, the Declarant shall transfer control of the Association to the Owners no later than four (4) months after seventy-five percent (75%) of the Lots subject to the jurisdiction of the Association have been conveyed to Owners other than the Declarant, unless within such period Declarant has exercised its rights herein reserved to annex additional properties to this Declaration and the Association.

ARTICLE V  
PROPERTY RIGHTS IN THE COMMON FACILITIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article

V, every member shall have a common right and easement of enjoyment in and to the Common Facilities and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Facilities. The initial Common Facilities for this Subdivision to be owned by the Association, free of lien, upon conveyance thereof by Declarant, is as follows:

Lot 1, Block 2, New City Block 17728 – Private Streets; and  
Lot 2, Block 2, New City Block 17728 – Greenbelt and Drainage Easement.

The Declarant may retain legal title or leasehold to the Common Facilities until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same, but notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns that it shall convey all Common Facilities to the Association, not later than December 31, 2022, or within four months following the sale of the last Lot by Declarant. In any conveyance of Common Facilities to the Association, the Declarant may reserve the right of entry, repair, renovation or improvement and may reserve additional rights as it determines needed for development, including the installation of roads, utilities, or other improvements.

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

The rights and easements existing or hereafter created in favor of others as provided for in the Subdivision Plat and/or in Article II hereof are subject to rules and regulations as may be adopted from time to time by the Board of Directors of the Association. The Association, once it has obtained legal title to the Common Facilities, as provided in Section 2, above, may do the following:

- (a) Borrow money for the purpose of constructing, maintaining or improving the Common Facilities and, in aid thereof, to mortgage said properties and facilities, in accordance with the Articles of Incorporation and By-laws of the Association;
- (b) Take such steps as are reasonably necessary to protect the above described properties and facilities against foreclosure;
- (c) Suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of the *published rules and regulations*;
- (d) Assess and collect the assessments as set forth in Article VI, and to charge reasonable admission and other fees for the use of the Common Facilities; and,
- (e) Dedicate or transfer all or any part of the Common Facilities under its Ownership to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by a two-thirds (2/3) vote of the members.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## ARTICLE VI COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be

deemed to covenant and agree, to pay to the Association: (1) monthly assessment charges and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The monthly and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the obligation accrued. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, security, convenience and welfare of the members, and in particular, for the improvement, maintenance and operation of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Properties by the members. For the convenience of Lot Owners, the Association will collect and disburse certain municipal charges and such other fees essential to the health and safety of residents. These fees may include, but not be limited to; yard maintenance, refuse collection and street lighting. Pro-rated shares of these expenses will be collected with assessments. The Association shall maintain the Common Facilities and members' yards as directed by the Board of Directors of the Homeowners Association.

Section 3. Basis and Maximum of Annual Assessments. The annual assessment for both improved and unimproved Lots shall be due and payable in advance quarter-annually, or otherwise as determined by the Board of Directors in the manner provided for herein after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made, but until January 1, 2008, the assessment for improved Lots shall not exceed \$260.00 per month. The annual assessment for unimproved Lots shall be one-tenth (1/10) the annual assessment for improved Lots. On and after January 1, 2008, the maximum annual assessment for improved Lots and maximum annual assessment for unimproved Lots may be increased by ten percent (10%) by the Board of Directors without the vote of the members as provided in Article VI, Section 5 hereof. The Board of Directors may fix the annual assessment at any amount not in excess of maximum set by membership vote.

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

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum assessments fixed by Section 3 hereof for any period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows: At the first meeting called, as

provided in Sections 4 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Section 4 and 5, and the required Quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on such date as the Board of Directors may determine, and, in any event, on or before the first day of the calendar month following conveyance of a Lot by Declarant, and shall be due and payable quarterly on the first day of January, April, July and October of each year. The first quarter annual installment of the annual assessments shall be due and payable on such date as may be determined by the Board. The Board of Directors shall fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. When a Lot becomes an improved Lot after the annual assessment for it as an unimproved Lot has been paid) there shall be payable as of the first day of the month following the date it becomes an improved Lot, a sum equal to the difference between the annual assessment for unimproved Lots and the annual assessment for improved Lots pro-rated over the balance of the quarter remaining. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Effect of Non-Payment of Assessments; The Lien; Remedies of the Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof) then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of fifteen percent (15%) per annum, plus a \$50.00 administrative/collection fee, and the Association may bring an action at law against the Owner to collect the same and/or to foreclose its lien against the Lot, and there shall be added to the amount of such assessment all reasonable expenses of collection including the costs of preparing and filing the complaint, reasonable attorney's fees and costs of suit. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of any first mortgage or any proceeding or conveyance in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Working Capital Fund. In order to provide for unforeseen expenditures, or to purchase any additional equipment or services, the Association shall establish a working capital fund equal to one (1) month's estimated monthly assessment charges for each improved Lot. Any such amounts paid into the working capital fund shall be in addition to the regular monthly assessment charges and shall not be considered as advance payments of regular assessments. Each Owner's share of the working capital fund shall be collected at the time of closing of the sale of each improved Lot.

Section 11. Special Maintenance Areas. Declarant and the Association shall have a general right of access upon such Lots for the purpose of Association yard maintenance.

Section 12. Limitations on Use of Common Facilities. No permanent or temporary structure may be erected, placed and maintained in the Common Areas except those facilities approved by Declarant, in its sole discretion, or by Roseheart Homeowners Association. Except as herein provided, no motorized vehicles of any nature whatsoever to include, but not limited to, trucks, automobiles, motorized bikes and motorized hobby or vehicle equipment, will be permitted on the Common Facilities or land owned by Declarant except in those areas that the Declarant or the Association has designated to accommodate this activity. The foregoing prohibition is subject, however, to the rights of Declarant, the Association, and utility providers to ingress and egress access over, and under, the properties for the purpose of installing, replacing, repairing and maintaining all Common Facilities and utilities as provided in Article II, Section 2.

Section 13. Declarant Option of Regular Assessments. So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant may annually elect either to pay regular assessments on its unsold Units or to pay to the Association the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board of Directors in writing at least sixty (60) days before the beginning of each year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of service or material, or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contributions of services or material or a combination of services and materials with Declarant or other entities for the payment of some portion of Common Expenses.

## ARTICLE VII ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose. In that the Project is designed as a single family residential community, the Declarant has established an Architectural Control Committee for the purposes of (1) preventing unusual, radical, uncommon, bizarre, or incompatible home designs, (2) maintaining a harmony of external design, and (3) to establish standards of home construction, location, and compatibility.

Section 2. Committee Members. The Committee shall be comprised of at least three members, who shall be appointed by the Declarant so long as Declarant owns any Lot. The initial committee members shall be Frank J. Sitterle, Jr., Richard Markee, and Louis M. Norrell and the address for each of them is 2015 Evans Road, Suite 100, San Antonio, Texas 78258, any two of whom are authorized to approve plans or grant variances. The Declarant may, from time to time, at its sole discretion, appoint additional members or change existing committee members. In the event a vacancy occurs and the Declarant fails to fill such vacancy within thirty (30) days by appointment of a member, the Board of Directors of the Association may fill such vacancy by appointing an Owner of its choice; providing however, it shall first give thirty (30) days written notice to Declarant of its intent to do so and the Declarant fails to make said appointment during said thirty (30) day period. At such time as control of the Association has transitioned from Declarant to Owners, the right of removal and appointment of members to the Committee shall vest in the Board of Directors of the Association.

Section 3. Approvals. The Committee shall be the sole authority for determining whether proposed structures (or modifications/additions thereto) comply with applicable covenants and restrictions, and are in harmony of external design with existing structures within the Properties, and is in keeping with the overall plan for the development of the Properties. On all matters before the Committee, majority

vote shall constitute approval. Said approvals shall be in writing.

The Committee may impose Architectural Design Guidelines for the Subdivision, which may create additional obligations, and requirements for the construction of improvements on the Lots. Each Owner, prospective Owner and builder is advised to consult with the Declarant's offices before finalizing construction plans. There shall be no review of any action of the Committee, except by procedures for injunctive relief when such action is patently arbitrary and capricious; and under no circumstances shall the Committee or its members, collectively or individually, be subject to suit by any entity for damages. The Committee shall have the right to require that sidewalks be built upon some of the Lots and the location, size, composition and finish for sidewalks and shall have the right to designate the Zero Lot Line for all Lots on which a garden home is permitted or required.

Section 4. Termination of Committee. The powers and duties of the Committee and of its designated representative(s), as well as the requirements of this Covenant pertaining thereto shall cease on or after December 31, 2024; provided, however, the powers of the Committee may be extended beyond said date, or after expiration may be revived, upon filing of a duly recorded instrument electing such extension and signed by a majority of the Lot Owners then of record.

Section 5. Entitlements. No Committee Member or a representative designated by said Committee shall be entitled to any compensation for services performed pursuant to this Covenant, other than reasonable out-of-pocket expenses.

Section 6. Other Matters. All matters requiring approval of the Architectural Control Committee whether or not specifically addressed herein shall require that such approval be in writing; however, in the event the Committee fails to approve or disapprove any of such matters within thirty (30) days after written submission thereof to the Committee, approval will not be required, and the requirement that such approval be obtained shall be deemed to have been fully complied with.

ARTICLE VIII  
DESIGN APPROVAL, CONSTRUCTION AND USE COVENANTS

Section 1. Design Approval Requirements. No building, structure, fence, wall, landscaping, recreational facilities of any kind, or other improvement shall be commenced, erected or maintained upon the Properties; nor shall any exterior addition to or change or alteration thereto be made, including exterior painting or color changes, until the detailed plans and specifications therefore shall have been submitted to the Architectural Control Committee and said Committee has approved in writing its compliance with minimum standards in relation to property liens, easements, grades, surrounding structures, walks, topography and all other matters related thereto. The submitted plans and specifications shall specify, in such form as the Committee may reasonably require, materials, elevations, landscaping detail, and the nature, kind, shape, heights, exterior color scheme, and location of the proposed improvements or alterations thereto. In the event said Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with. The Committee is not required to police or enforce compliance with such considerations as minimum size, setbacks, or other specific, objective construction requirements.

Section 2. Property Use.

Section 2.1. Use Restrictions. The Properties shall be used only for the development of

single-family detached homes, all of which are to be used exclusively as private single-family residences, and Common Facilities serving the Owners and residents thereof. The terms "residential purposes" as used herein shall be held and construed to exclude any business, commercial, industrial, apartment house, hospital, clinic and/or professional uses, and such excluded uses are hereby expressly prohibited. This restriction shall not, however, prevent the inclusion of permanent living quarters for domestic servants or to allow domestic servants to be domiciled with an Owner or resident.

Section 2.2. Lot Consolidation. Any Owner owning two or more adjoining Lots, or portions of two or more such Lots, may with the prior approval of the Architectural Control Committee, consolidate such Lots or portions thereof into a single building site for the purpose of constructing one residence and such other improvements as are permitted herein. Any consolidated Lot shall comply with all lawful requirements of any applicable statute, ordinance or regulation. On application by an Owner, the Board of Directors may adjust the assessments on a consolidated Lot to an amount not less than the full assessment rate for a single Lot. Absent such adjustment, a consolidated Lot shall bear the full assessment rate theretofore applicable to all Lots, which are consolidated.

Section 2.3. Signs and Flags. No signs or banners of any kind shall be displayed to public view on any single-family residential Lot or from any home or be attached to any home except one (1) professional sign of not more than nine (9) square feet advertising the property for sale unless specific approval is obtained by the Architectural Control Committee. For rent, for lease, distressed, foreclosures and bankruptcy references are specifically prohibited. Signs used by the developer to advertise the property during the construction and sales period shall be permitted, irrespective of the foregoing. Signs advertising subcontractors or suppliers are specifically prohibited. The sign may state only the name and phone number of the seller and/or their agent. The Architectural Control Committee shall have control over all verbiage on all signs. Flags on Lots may be flown from ACC approved flag pole standards attached to the main structure. No free standing flag poles are allowed.

Section 2.4. Animals and Pets. No animals, livestock, poultry, swine, exotic or dangerous pets of any type (i.e. pit bulls, boa constrictors, ferrets, etc.) that may pose a safety or health threat to the community shall be raised, bred or kept on any Lot except for cats, dogs, or other generally recognized household pets of a reasonable number provided that they are not kept, or maintained for any commercial purposes and provided further that no more than a total of three (3) adult animals may be kept on a single Lot. Adult animals for the purpose of these covenants shall mean and refer to animals one (1) year or older. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws), and in accordance with all rules established by the Association. It shall be the responsibility of the Owners of such household pets to prevent the animals from running loose, creating noise or becoming a nuisance to the other residents.

Section 2.5. Accumulation of Trash and Rubbish. Except as provided in Section 2.10 of this Article, no trash, rubbish, garbage, manure, putrescible matter or debris of any kind shall be dumped or permitted to accumulate on any portion of the Properties. All rubbish, trash, or garbage shall be kept in sanitary refuse containers with tightly fitting lids, and, except as necessary for purposes of affecting garbage pickup, said containers shall be kept in an area of the Lot adequately screened by planting or fencing. Reasonable amounts of construction materials and equipment may be stored upon a Lot by the Owner thereof for reasonable periods of time during the construction of improvements thereon.

Section 2.6. Vehicles. No trailer, motor home, tent, boat, recreational vehicle, travel trailer, any truck larger than a one (1) ton pick-up, or wrecked, junked or wholly inoperable vehicle shall be kept, parked, stored or maintained on any portion of the front yard area of a Lot nor shall be kept, parked, stored or maintained on other portions of the Lot, unless in an enclosed structure or in a screened area which prevents the view thereof from any Lot, dwelling, public area or streets. No dismantling or assembling of an auto, trailer, any truck or any other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. The ACC, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by said ACC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph.

Off street parking shall be provided by the Owner of each Living Unit for all such vehicles in a location screened (in an approved manner) from view from the street and from the other Lots. On street parking, except by visitors, is prohibited. No vehicles will be parked in a driveway for a period in excess of 24 hours.

No vehicles, trailers, implements or apparatus may be driven or parked on any easement owned by Declarant or the Association or on land owned by Declarant or the Association.

Notwithstanding the other provisions of this Article, Declarant reserves unto itself and Builder Members acting as such the exclusive right to park in or on streets as may be required for construction purposes and the sale of new homes.

Section 2.7. No Extraction of Natural Resources. No oil or natural gas drilling, oil or natural gas development or oil refining or quarrying, or mining operations of any kind shall be permitted upon any portion of the Properties, nor shall oil, natural gas, or water wells, tanks, tunnels, mineral excavations or shafts be permitted upon, in or within any portion of the Properties. No derricks or other structures for use in the boring or drilling for oil, natural gas, minerals or water shall be erected, maintained or permitted upon, in or within any portion of the Properties.

Section 2.8. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

No Owner or occupant shall perform any work that will impair the structural soundness or integrity of another Living Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist, which will adversely affect the other Living Units or the Owners or residents.

No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property (except reasonable security or landscape lighting that has approval of the Architectural Control Committee).

No exterior speakers, horns, whistles, bells or other sound devices that exceed the City of San Antonio noise ordinance levels (except security devices used exclusively to protect the Lot and improvements situated thereon) shall be placed or used upon any Lot.

The discharge of any firearm, including BB guns and pellet guns, and the hunting or killing of any animal within any part of the Subdivision is prohibited. Additionally, it is prohibited within the Subdivision and on any adjacent land owned in whole or in part by Declarant the use of any bow and arrow, slingshot, or other launching or catapulting device.

Section 2.9. Landscaping, Etc. In connection with the initial construction of a residence, each Owner, builder or his landscape contractor other than the Declarant will furnish the Architectural Control Committee two copies, at minimum 1"=10' scale, of a detailed landscaping plan which shall comply with the requirements hereof and those from time to time promulgated by the

Architectural Control Committee. Any landscaping shown on the plan approved by the Architectural Control Committee must be fully installed on a Lot within thirty (30) days from the first occupancy of the dwelling situated on such Lot in accordance with the landscape plan approved by the Committee. Such plans shall be drawn to scale and shall include delineation of existing or proposed structures, pavement and other site features, and shall designate by name, size and location the plant material to be installed. The approximate location, size and type of all existing trees, eight (8") in diameter or greater shall also be clearly shown. After a landscaping plan has been installed, each Owner is required to submit to the Architectural Control Committee a written request for any change in the plan, each such Owner shall at all times maintain the minimum required vegetation, trees, and each Owner shall be charged with the responsibility of replacing any vegetation which shall thereafter die or is destroyed or removed. Each Owner shall make every effort to preserve significant natural trees. Appropriate procedures consistent with sound nursery practices shall be employed in all cases.

In view of the major emphasis placed by Declarant and the Architectural Control Committee on landscaping, such Committee expressly reserves the right to require the landscape plan for each residence to include the planting of trees by Owner if in the opinion of such Committee such trees are necessary to preserve the general landscaping goals and criteria for the Subdivision as a whole. At a minimum, landscaping requirements will include: at least two (2) live oaks, cedar, elm, bald cypress, wild persimmon, pecan, or other approved trees, to remain or be planted in the front yard of each Lot; any planted trees in the front yard shall be two inches (2") or greater in diameter; sodding in front yard and, for corner Lots, along the side yard adjacent to a street; and basic foundational planting of a minimum container size of five (5) gallons spaced in a pattern approved by the ACC. Foundation plants will be included in ground cover beds configured in shape and size that compliment the shape of the residences, flatwork, and trees. Full foundation planting is required along side elevation adjacent to side street on corner Lots.

An automatic irrigation system is required to cover all of the front and side yard areas on every Lot.

In addition to the variance powers of the Architectural Control Committee hereinafter set forth, the Committee shall have the right to grant a variance or waiver of the requirements of this section of the landscaping standards from time to time promulgated in such instances as it shall determine that such waiver is advisable in order to accommodate a unique, attractive or advanced landscaping concept, design or material and the resulting appearance, in the opinion of the Committee, will not detract from the general appearance of the neighborhood. No such variance or waiver shall be presumed and any such grant of variance or waiver shall be in writing.

**Section 2.10. Necessary Temporary Facilities.** Notwithstanding the other provisions of this Article, Declarant reserves unto itself and Builder Members acting as such the exclusive right to erect, place, and maintain such facilities in or upon any portions of the Properties as Declarant in its sole discretion may determine to be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Each Builder Member may not, however, utilize more than two mobile trailers or similar vehicles as such a temporary facility, and may use such as a sales or construction office only in support of sales and construction activities within the Subdivision, and each such mobile trailer or similar vehicle shall be parked within a Lot owned by such Member, the location of which shall have been approved in advance by Declarant. In addition, each Lot Owner shall have the right to erect, place, and maintain on his Lot such temporary facilities as may be necessary or convenient for the construction or modification of a residence thereon, provided that such right shall in no event extend beyond six months after start of construction or a renovation project.

Section 2.11. No Cesspools. No privy, cesspool, or septic tank shall be placed or maintained upon any portion of the Properties. Portable toilets of a commercial character may be inconspicuously located during period of construction for the convenience of the workers performing such work.

Section 2.12. Exposed Antennas and Athletic and Sports Equipment.

Section 2.12.1. Exterior Antennas. No exterior antenna shall be permitted on any dwelling or Lot. This prohibition shall include any derricks or antennas of any nature mounted on, in or around the dwelling or the Lot upon which the dwelling rests.

Section 2.12.2. Athletic and Sports Equipment. No basketball backboard, goal, posts, net standards, etc., shall be affixed to the front or side of any Living Unit or placed on any Lot where visible from the street in front of the dwelling nor may they be placed on the Lot between the dwelling and the street.

Section 2.12.3. Satellite Dishes, Antennas, Solar Apparatus, Etc. No radio, citizen band or otherwise, or television aerial wires or antennas shall be maintained on any portion of any Lot, except those which are fully enclosed within the structure of the Living Unit. No satellite, radio or television dishes or discs (or similar signal receiving devices employed for the purpose of collection and magnifying radio-electronic waves from space satellite facilities which emanate or reflect television or radio programming), antennas, receivers, transmitters, or solar apparatus shall be placed on any Lot without having received the advance written permission of the Architectural Control Committee. Each application for permission to the Architectural Control Committee shall include a detailed plan depicting pertinent dimensions of the device and its proposed location. No Owner may operate on his Lot any broadcasting or electronic device which interferes with the radio or television reception or operation of electronic or remote controlled equipment of other Owners.

Section 2.13. Maintenance of Yards, Etc. The Owners of all improved Lots shall keep grass and vegetation well mowed and trimmed, shall promptly control all weeds as they grow and all trees, shrubs, vines and plants which die.. All yard areas shall be kept in a sanitary, healthful, and attractive manner. No tree measuring four inches (4) or more in diameter, measured twelve inches (12) above the ground, shall be removed or cut without the written approval of the Architectural Control Committee. Lawns, front and back, must be mowed at regular intervals (maintained at less than four inches (4") in height), and fences must be repaired and maintained in an attractive manner. No objectionable or unsightly usage of Lots, or condition on any Lot, will be permitted which is visible to the public view. Building materials shall not be stored on any Lot except when being employed in construction upon such Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from such Lot. The drying of clothes in full public view is prohibited and the Owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Lot is visible to public view from a street or Common Area shall construct and maintain an inner fence or other improvements to adequately screen from view of streets and Common Area any of the following: the drying of clothes, yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family. Trash, garbage or other waste materials shall be kept in a clean and sanitary condition. Lot Owners shall also be required to provide and allow safe and adequate drainage within and across their Lot to include appropriate and adequate provisions when building, maintaining or constructing fences, walks, landscaping, swimming pools, decks, patio additions or extensions

or any other potential obstruction, which would divert, impede, or cause to back up run off water.

All Owners are advised to secure from the Texas Forest Service, local county agent, Texas Extension Forester at Texas A&M University, or elsewhere, information on oak wilt and other diseases which may infect their trees and may spread to trees on other Lots.

Each Resident Owner is responsible for taking such action as may be necessary on his property to ensure that oak wilt and other diseases are not spread to the trees of other Owners. Because there is no known cure for oak wilt and oak wilt almost always will spread from a diseased tree to its neighboring oaks, at a minimum, each Owner shall:

- (1) Destroy and replace all infected oaks.
- (2) Avoid unneeded pruning of trees, especially during the period February 1 - June 1, and immediately apply dressing to all wounds on oaks.
- (3) Where oak wilt is detected, trench three feet deep in advance of infection front (100 feet is recommended) to stop the spread through connecting roots.
- (4) Avoid infected oak firewood. As a precaution, do not keep any oak firewood for more than one heating season and cut firewood only in the summer.
- (5) Use fungicide propiconazole to treat uninfected oaks when one becomes aware of oak wilt nearby.

The foregoing information regarding oak wilt is provided to alert Owners and neither Declarant nor the Association shall be liable to any Owner in connection with the existence or spread of oak wilt on any Lot.

Until a Living Unit is built on a Lot, Declarant or the Association may, at its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed therefrom. Declarant may also, at its option, after ten (10) days written notice, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The Owner of such Lot shall be obligated to reimburse Declarant for the cost of any such maintenance or removal upon demand. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due, and may be enforced in accordance with the provisions of hereof or otherwise as provided by law.

Each Owner and Builder Member shall provide sanitary bathroom facilities to accommodate all contractors and subcontractors during the construction period. Construction trash and debris will be contained to preclude unsightly conditions. It is the goal of the Declarant and the Association to maintain the Subdivision in a clean and respectable manner. If Owner violates this objective, it is Declarant's and/or the Association's option to initiate the cleanup or place facilities on the Lot necessary to maintain the referenced goal at the sole cost and expense of Owner.

The Homeowners Association will be allowed to contract for the basic maintenance and cleaning of green belts as needed and shall have an easement upon and across all adjacent Lots to perform such services.

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, Declarant, the Association, or their agents may enter upon said Lot without liability to the Owner or any occupants, in trespass or otherwise, and take such action as may be reasonably necessary to correct such defect or cure such default to secure compliance with this Declaration and/or place said Lot in a more neat, attractive, healthful and sanitary condition. In such event, the Owner or occupant of such Lot shall be subject to a reasonable administrative charge of a minimum of \$250.00, actual costs of any work performed, and reasonable attorney's

fees. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement and charges immediately upon receipt thereof. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due, and may be enforced in accordance with the other provisions of this Declaration or otherwise provided by law.

Section 2.14. Fences. No fence or wall shall be built or maintained forward of the front wall line of the main structure, except for decorative walls or fences which are part of the architectural design of the main structure. However they are not to be built or maintained nearer the building setback line than the home built on that Lot unless otherwise approved in writing by the ACC.

All fences extending from the residence building to the side Lot line shall be wrought iron with a wrought iron gate.

All fences or walls located on a Lot are to be maintained at the expense of the Lot Owner. All wrought iron shall be painted black. Privacy and screen type fences or walls may be permitted by the ACC at its sole discretion where they are determined to be compatible with surrounding construction but shall in every case and without exception require written permission from the ACC. Any such exception, if granted, shall be on an individual basis and will not be considered as setting a precedent for granting wall or fence variances.

The ACC will have full authority to grant or deny individual applications for approval without regard to its having previously approved or denied similar applications.

The ACC has full authority to grant approval for fence heights and/or fence types that deviate from the general requirements of section 2.14 "Fences" for privacy consideration or for ease of maintenance or in order to accommodate a unique, attractive or advanced building concept, design or material when it deems that granting these variances would be appropriate. The ACC will grant or deny individual applications without regard to its having previously approved or denied similar applications.

Wherever masonry or masonry columns are required or approved for use in the construction of a fence or wall on a Lot, the masonry shall match the primary masonry used on the main residence building on that Lot and all masonry columns wherever used shall be spaced no further than 25 feet apart. All fencing materials other than wrought iron must be approved in writing by the ACC prior to installation.

Fences along a side Lot line adjoining another Lot shall be six-foot (6') or eight-foot (8') wrought iron fence. Fences on corner Lots, along the side Lot line adjacent to a street shall be all wrought iron or masonry and wrought iron, with masonry columns six-foot (6') or eight-foot (8') tall, spaced no further than twenty-five feet (25') apart. The ACC retains the right to approve alternate fencing types should in the sole opinion of the committee there be sufficient reason for them to do so.

No fence, wall or hedge or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner Lot within the triangular area as formed by the extension of curb property lines and a line connecting them at points twenty-five feet (25') from the intersection of the curb lines into the street, or in the case of a rounded property corner, from the intersection of the street line extended. No structure or landscape material over three and one-half feet (3 ½) tall shall be allowed in this inscribed triangle.

Section 2.15. House Numbering. House numbers identifying the address of each house must be placed as close as possible to the front entry and shall be illuminated so that the numbers can be easily read from the street at night. Size, color and material of the numbers must be compatible with the design and color of the house.

Section 3. Construction Covenants.

Section 3.1. New Construction Only. Any and all structures, fences, walls, recreational facilities or other improvements erected, altered or placed on any portion of the Properties shall be of new construction and shall be built in place, and except as provided in Section 2.10 of this Article, no structure of a temporary character (sales structure, trailer, tent, shack, garage, barn or other outbuildings) shall be used on any Lot at any time for storage or as a residence, either temporarily or permanently. No prefabricated dwelling or building previously constructed elsewhere may be placed or maintained on any Lot. No modular or mobile home, whether or not the wheels have been removed, may be placed or maintained on any Lot. The Architectural Control Committee must approve all structures of a temporary character in advance.

Section 3.2. Dwelling Size. The main residence building of each residence constructed on a Lot shall contain the minimum, contiguous square feet of living space set forth below, such square feet being exclusive of open or screened porches, terraces, patios, driveways, carports, garages and living quarters for domestic servant separated or detached from the primary living area; to wit:

- (1) Single Story – One Thousand, Four Hundred (1,400) square feet;
- (2) Two Story – One Thousand, Nine Hundred (1,900) square feet.

Section 3.3. Maximum Height. No building or structure erected, altered or placed on, within or in the Properties shall exceed thirty-five feet (35') in height (measured from the top of the foundation to the utmost part of the roof) nor be more than two and one-half (2 ½) stories in height without the written consent of the Architectural Control Committee; provided, however, that all applicable ordinances, regulations, and statutes with respect to the maximum height or building and structures shall, at all times, be complied with.

Section 3.4. Fire Walls. Regardless of any approvals granted to the contrary, any building or other structure located on a Lot line must be provided with a suitable rated fire wall as required by all applicable codes, ordinances, regulations and/or statutes, including, but not limited to, the codes and ordinances of the City of San Antonio, Texas.

Section 3.5. Placement of Structures on Lots. Each garage, living unit, and other improvements constructed on a Lot shall comply with the following setback requirements set forth in this Section 3.5. A roof overhang or other architectural projection extending beyond a Lot line shall not be deemed a part of the structure for the purposes of this Section but porches and steps shall be considered a part of the structure. In any event, the location of all structures shall comply with all applicable government codes. Stated setbacks may be varied by the ACC to preserve trees or resolve issues not contemplated in the Subdivision's master plan, these covenants, conditions, and restrictions. In no event may any structure be constructed or maintained upon any utility or other easement.

Section 3.5.1. Minimum Front Setback Line. Minimum front setback shall be ten feet (10') from the front property line for houses with swing loading garages and twenty feet (20') back from the front property line to garage doors for houses with front loading garages. However, no portion of the house may be closer than 10' to the front property line.

Section 3.5.2. Minimum Side Setback Lines. The combined side yards for adjacent Lots shall be not less than ten feet (10'). No structure shall be built on a

Lot nearer than ten feet (10') to an existing structure on an adjacent Lot or nearer than five feet (5') to the Zero Lot Line of an adjacent Lot.

Section 3.5.3. Minimum Rear Setback Line. Rear setbacks shall be a minimum of ten feet (10') from the rear property line of each Lot for all structures. Lots on which there is a rear easement exceeding ten feet (10') shall have a setback equal to such easement width.

Section 3.6. Masonry. For all purposes of these Restrictive Covenants, masonry includes stucco and all materials found by the Committee to be commonly referred to as masonry in the San Antonio, Texas, building industry. As used here, the term Masonry shall exclude any product, regardless of composition, which is manufactured to have a wood or non-masonry appearance and shall exclude fiber-cement composite siding material, comparable to "Hardiplank" siding by James Hardie Building Products. The exterior walls of all residential buildings shall be constructed with masonry or masonry veneer for at least 75% of the total exterior wall area and the side of any residential building constructed on a Zero Lot Line shall be 100% masonry or masonry veneer. Window and door openings shall be included as masonry. In order to perpetuate visual harmony and continuity within the project, all brick, rock, stucco and exterior colors will be in the rust and earth tone range and are subject to approval by the ACC. Rockwork shall be limited to a uniform color range of white to cream, tan to gray, or gray to rust. Cut, smooth-finish stone, or cast stone can be used for architectural details such as lintels, window hoods, sills, copings, base courses, string courses, belt courses, window and door frames, cornices, standing gable end and other details as approved by the Architectural Control Committee.

The Committee may waive or vary the foregoing masonry percentage requirement for split-level or multi-level construction, and be deemed to have done so when the plans and specifications so indicate and are approved by the Committee as submitted without conditions attached.

All stucco shall be Lace or Sand finished, with the jointing, color and textural specifications submitted to the Committee, as part of the initial plan approval process.

Those portions of the chimneys exposed to the elements, being all exterior portions of the chimneys, shall be one hundred percent (100%) masonry composed of masonry matching the primary masonry and mortar used on the residence.

The builder of each residence and building shall, to the extent possible, minimize the amount of exposed foundation below the brick lug, and in any event, no more than 18 inches of the foundation along the front of the residence and along the front one-half of the sides of the residence shall be exposed to view from any street. No more than 36 inches of the foundation along the rear and along the rear one-half of the sides of the residence shall be exposed to view. Any excess shall be concealed by an approved masonry or masonry veneer of a permitted type and color and complementary to the masonry used on the residence.

Notwithstanding the requirements of this Section, and in addition to variance power granted to the Architectural Control Committee hereinafter, the Committee is empowered to waive one or more requirements of this Section if in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and in the opinion of the Committee, the resulting structure or appearance will not detract from the general appearance of the neighborhood.

Section 3.7. Roofing and Gutters. Roofing shall be Laminated composition of 240 pounds or greater, as approved by the Architectural Control Committee within the gray/brown, weathered wood, color range as approved by the ACC. No flat roofs are permitted. All roofs shall have a traditional style with hips and gables and a pitch of 4:12 or greater. Rain gutters are required on

the Zero Lot Line side of structures. Discharge of water from these gutters, must be directed onto the Lot which the structure occupies.

Section 3.8. Windows and Glass. Windows shall be wood, vinyl, or factory job-finished painted metal windows in a color approved by the Architectural Control Committee. The design of windows may be double or single hung, casements or projecting. All glass in exterior windows shall be of a color and type approved by the Committee. No reflective glass is permitted. No clerestory windows or glass-covered openings are allowed on a Zero Lot Line, except fire rated glass block limited to no more than eight (8) pieces or in compliance with the City of San Antonio Building Codes.

Section 3.9. Insulation. All ceilings, except garages, shall have no less than R-19 rated batt insulation or comparable rated insulation. All exterior walls, except garages, shall have no less than R-11 rated batt insulation or comparably rated insulation.

Section 3.10. Siding and Exterior Paint and Stain. Subject to the limitations imposed by Section 3.6 above, wood siding may be used. The Architectural Control Committee must approve all other siding materials, and all siding colors. All exterior colors shall be light, natural-weathered wood hue or earth tone and shall be harmonious with the masonry color of the living unit.

Section 3.11. Exterior Lighting. The Architectural Control Committee must approve all exterior lights and light fixtures of each residence. No exterior lighting shall be erected or maintained in such a manner as to unduly interfere with or affect the enjoyment of adjoining property.

Section 3.12. Driveways and Front Yards. Each driveway must accommodate two vehicles in front of the garage for off-street parking requirements. Driveways on all Lots must be constructed of pebble finish concrete or a material and a design approved by the Architectural Control Committee. The driveway turnout shall be constructed in such manner as to provide an attractive transitional radius from the curb and gutter into the driveway entrance and shall prevent escape of drainage water from the street onto any Lots. Driveways and sidewalks must be shown on the site plan submitted for approval by the ACC. At the time of construction of a residence on a Lot, if required by subdivision plat, the Owner shall also construct a concrete sidewalk, of aggregate finish, with the design and width in accordance with the subdivision plan for sidewalk, which shall be approved by the Architectural Control Committee. Front yard areas between the Lot line adjacent to the "fronting" street and the front of the main structure, shall have no more than ten percent (10%) concrete (excluding driveways) without the written approval of the Architectural Control Committee.

Section 3.13. Garage Requirement. Each Living Unit shall at all times maintain an enclosed garage large enough to accommodate under roof a minimum of two (2) full-sized automobiles, which conforms in design and materials with the main structure. No garage shall be permanently enclosed for conversion to any other use unless and until a garage meeting the requirements of this section shall have been completed on the same building site. Open carports are not permitted, unless special design circumstances warrant their use, in which case permission must be obtained in writing from the ACC. Rear detached garages shall be permitted provided they are constructed in compliance with the requirements of these covenants.

Garage Doors visible from any street shall be kept in the closed position except that an Owner or occupant may have the door open while actively performing special functions that reasonably require the door to be open for convenience or safety reasons.

Section 3.14. Variances and ACC Approvals. The approval of the Architectural Control Committee granted from time to time under terms of this Declaration for variances or waivers to this Declaration or as special permission for otherwise non-permitted facilities, shall be on a case-by-case basis, and the granting in any one or more cases shall not be deemed to establish a precedent for granting subsequent approvals on what may seem to be a similar situation. All decisions of the Architectural Control Committee shall be considered final. All matters set forth in this Article requiring approval shall require the express, advance, written approval of the ACC.

Section 3.15. Outbuildings. Except with the prior, approval of the ACC, every outbuilding except a greenhouse shall correspond in style and architecture to the dwelling on which it is appurtenant, and shall be of the same exterior materials, both walls and roof. No outbuilding shall exceed the height or number of stories of the dwelling to which it is appurtenant. Every outbuilding, inclusive of such structures as a storage building, pool house, servants' quarters, greenhouse or children's playhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. In no instance shall an outbuilding exceed one (1) story in height other than a detached garage, nor shall the total floor area of any outbuilding other than a detached garage exceed ten percent (10%), individually or in the aggregate, of the floor area of the main dwelling. The design, materials and location of all such buildings shall be subject to the prior written approval of the Committee.

Section 4. Special Matters Affecting Specific Lots; Streetlights and Streetlight Lots. Streetlights for the Subdivision are owned and maintained by the Association and will be located on all or any of the following Lots ("Streetlight Lots"):

Lot 80, Block 2	326 Grassmarket;
Lot 92, Block 2	311 Roseheart; and,
Lot 101, Block 2	219 Roseheart.

The streetlights will not be separately metered and electrical charges related to the streetlights will be billed to the Owners of the Streetlight Lots. The Association shall periodically estimate the additional cost which the streetlights add to the electrical bills of the owners of the Streetlight Lots and shall credit such Streetlight Lot Owners which an amount equal to or greater than as determined by the Association, such credit being against assessments and other fees due the Association. For 2007 and continuing until adjusted by the Association, the credit to be given to each of the Streetlight Lot Owners will be \$35.00 per quarter, unless the Association has made an adjustment for Unit 3, in which case for 2007, the credit for the above described lots in Unit 4 will be the amount previously determined by the Association for Unit 3. The Association is empowered to withhold such credit to a Streetlight Light Owner for any period of time during which the Association determines a streetlight was inoperable or was not operated due to lack of electricity. No Streetlight Lot Owner or other person shall do any act or thing to disable or interfere with the operation of any streetlight within the Subdivision.

#### ARTICLE IX EDWARDS RECHARGE ZONE AND GOVERNMENTAL REQUIREMENTS

Section 1. Owner's Responsibility. The Subdivision is classified by the State of Texas as being on the Edwards Recharge Zone and is accordingly subject to restrictions and regulations, which are summarized in part below. By acceptance of a deed to a Lot, each Owner accepts the responsibility for determining all governmental laws and regulations applicable to his Lot and all improvements thereon and ensuring compliance therewith.

Section 2. Additional Obligations of Builders and Contractors. By acceptance of a deed to a Lot, or initiating construction of a residence or improvements to a Lot, each Builder Member and contractor assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable governmental rules, regulations, and permits, including, but not limited to those promulgated or issued by the Environmental Protection Agency and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 et seq.), and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Commission on Environmental Quality (TCEQ), related to each Lot, including, without limitation, the provisions of chapters 325 and 331, Texas Administrative Code, and any specific rulings made pursuant to the terms thereof. The foregoing references are made for the benefit of builders and contractors and do not in way limit the terms and requirements of this covenant and the requirement that all Builder Members and contractors comply with all governmental regulations, and any plan required by such regulations such as a Storm Water Pollution Plan, affecting each Lot and construction site with which they are associated, including delivery to Declarant of a certification of understanding relating to any applicable NPDES permit prior to the start of construction. Each Builder Member and contractor, by acceptance of a deed to a Lot or undertaking the making of improvements to a Lot, holds harmless and indemnifies Declarant cost, loss, or damage occasioned by the failure to abide by any applicable governmental statute, rule, regulation or permit related to the Properties.

Section 3. Specific Provisions. Certain specific provisions applicable to all Lots and to current and future Owners are notified as follows:

- (a) Septic tanks are prohibited.
- (b) All developed Lots shall be provided with a minimum of six (6) inches of soil for turf or lawn areas.
- (c) A street-sweeping program is to be maintained so long as required by the State of Texas. For reasons of perpetuity, this function is assigned to the Homeowners Association.
- (d) Highly soluble nitrate fertilizers will not be used. All property Owners are duly cautioned as to use of lawn fertilizers.
- (e) No underground storage of hydrocarbon products, chemicals, or other industrial liquids and/or liquid wastes shall be permitted.
- (f) No right-of-way easements for transporting liquid petroleum will be permitted.
- (g) No final disposal of solid waste in the Subdivision will be permitted.
- (h) Existing wells, except monitoring wells, shall be plugged, as required, upon abandonment within thirty (30) days.
- (i) The U.S.G.S. carries out the functions of monitoring surface runoff. The records are available as required by the TCEQ regulations.

## ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. If the Owner or occupant of any Lot shall violate or attempt to violate any of the restrictions or covenants set forth in this Declaration or any supplemental or amended Declarations, it shall be lawful for the Association, Declarant, or any Owner to prosecute any proceedings against the person or persons violating or attempting to violate any such restrictions and covenants. The failure of any Owner or tenant to comply with any restriction or covenant will result in irreparable damage to Declarant and other Owners of Lots in the Subdivision; thus the breach of any provision of this Declaration may not only give rise to an action for damages at law, but also may be

made the subject of an action for injunctive relief and/or specific performance in equity in any court of competent jurisdiction. In the event enforcement actions are instituted and the enforcing party recovers, then in addition to the remedies specified above, court costs and reasonable attorney's fees shall be assessed against the violator.

In addition to the remedies for enforcement provided for elsewhere in this Declaration, the violation or attempted violation of the provisions of the governing documents or Rule and Regulations by an Owner, his family, guests, lessees or licensees shall authorize the Board (in the case of all the following remedies) or any Owner (in case of the remedies provided in (d), below) to avail itself of any one or more of the following remedies:

- (a) The imposition of a special charge not less than Fifty (\$50.00) Dollars per violation; and/or
- (b) The suspension of Owner's rights to use any Association property for a period not to exceed thirty (30) days per violation, plus attorney's fees incurred by the Association with respect to the exercise of such remedy; and/or
- (c) The right to cure or abate such violation and to charge the expense thereof, in any, to such Owner, plus attorney's fees incurred by the association with respect to the exercise of such remedy; and/or
- (d) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court cost.

Before the Board may invoke the remedies provided above, it shall give written notice of such alleged violation to Owner, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the 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, the Declarant, or of any Owner to take any action upon any breach 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 2. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the properties designed to make the properties safer than they otherwise might be. Neither the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties (including, without limitation, within any Common Area), however, and neither the Association, the Declarant, nor any successor Declarant shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness or security measures undertaken.

Section 3. Release of Liability Related to Use of Common Facilities. Notice is given to all Owners and Tenants that the Association is authorized to operate all Common Facilities, including the swimming pool, without supervisory, security, or safety personnel. The Association may require each Owner and Tenant to sign a release in such form as the Association shall determine as a condition of use of the pool and other Common Facilities by the Owner or Tenant and their minor children and guests. By acceptance of a deed to any Lot and by use of any of the Common Facilities and/or permitting use of the Common Facilities by a guest or invitee, each Owner, Tenant, and Owner's or Tenant's guest is deemed to have agreed to the following:

- (a) Owners and Tenants are advised that the Association may operate the Association pool without a lifeguard, fitness trainer, or other supervising person and will operate the other Common Facilities without security or supervisory personnel. Accordingly, each parent,

guardian, or other adult responsible for the care or safekeeping of a child or other person unable to properly care for himself cannot rely upon the Association or its agents to protect such child or other person unable to properly care for himself/herself or to regulate the conduct of those who use the pool or other Common Facilities. Owners and Tenants must assume personal responsibility for the safety and supervision of all minors and others under their care in connection with the use of the pool or other Common Facilities.

- (b) All Owners and Tenants are strongly encouraged to prohibit their minor children and guests from use of the swimming pool at all times when not supervised by a responsible adult. All Owners and Tenants are further strongly encouraged not to enter the pool except when another responsible adult is present.
- (c) Owners, Tenants, and guests shall be deemed to release and hold harmless the Association and its directors, officers, employees, and agents from all claims and liability for property loss or personal injury, including wrongful death, due to acts of negligence of Association and its directors, officers, employees and agents related to the condition or operation of the swimming pool and other Common Facilities. Such release and hold harmless expressly covers the decision by the Association to operate the swimming pool without a lifeguard or other supervising or security personnel and expressly includes any action based upon the unsafe, improper, or illegal conduct of another Owner, Tenant or guest or that of a trespasser. In addition, Owners and Tenants shall be deemed to indemnify the Association, its officers, directors, and employees, from and against all claims of personal injury or property damage filed by or on behalf of guests of such Owner or Tenant and related to the use or operation of the swimming pool or other Common Facilities.
- (d) The provisions of this Section 3 shall be given effect to the fullest extent permitted by Texas law. To the extent, if any, that Texas law may limit the above waiver of liability to exclude acts of gross negligence or otherwise limit the effect of such waiver, the provisions of this Section 3 shall still be deemed effective as to all such other situations AND (1) Owners, Tenants and their guests, by use of the pool and other Common Facilities, shall be deemed to have agreed to limit their recovery for any occurrence to the limits and levels of insurance carried by the Association and in effect at the time of the loss and (b) Owners, Tenants, and their guests shall be deemed to hold harmless and claim against the Association's officers, directors, agents, and employees, hereby stipulating that the right of recovery against the Association and its insurance provide an adequate remedy.
- (e) Owners, Tenants and/or their guests may be required to acknowledge the foregoing or similar provisions as determined appropriate by the Board of Directors of the Association and may be required to sign a release of liability in favor of the Association and its officers, directors, and employees.

As used in this Section 3, the term "Tenant" shall mean and apply to every adult resident or occupant of a Lot who is not an Owner.

Section 4. Duration. This Declaration shall remain in force and effect until December 31, 2024, at which time, and each tenth anniversary thereafter, this Declaration shall be renewed for a period of ten years unless seventy-five percent (75%) of the Owners of Lots shall file a written agreement to abandon it.

Section 5. Availability of Project Documents. Copies of the Declaration, By-Laws, Articles of Incorporation and other rules concerning the Association, and the books, records and financial statements of the Association shall be available for inspection by Owners and by the holders, insurers

and guarantors of first mortgages that are secured by Living Units at the principal office of the Association located at 1600 N.E. Loop 410, Suite 202, San Antonio, Texas 78209, during normal business hours. In addition, the Association shall provide a statement for any preceding fiscal year if the holder, insurer or guarantors of any first mortgage that is secured by a Living Unit submits a written request for it.

Section 6 Termination of Legal Status of the Project. The Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the mortgaged Living Units must approve the termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Properties.

Section 7 Management Contracts. The Declarant shall have the right to enter into any and all professional management contracts prior to the date that control of the project is transferred to the Association, so long as such contracts do not exceed one year in duration. Such contracts shall provide to the Association a right to terminate, without cause, any time after the transfer of control without payment of any penalty or advance notice of more than thirty (30) days.

Section 8 Leasing Requirements. Any lease or rental agreement concerning the leasing of a Living Unit must be in writing and shall be subject to the requirements of this Declaration, the Bylaws and any other document promulgated by the Association. No Living Unit, Lot, or portion thereof shall be leased or rented for less than thirty (30) days.

Section 9. Rights of Mortgage Holders, Insurers or Guarantors. The holder, insurer or guarantor of the mortgage on any Living Unit shall be entitled to timely written notice of:

- (a) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Living Unit on which it holds the mortgage;
- (b) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (c) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

To obtain this information, the mortgage holder, insurer or guarantor should send a written request to the Association, stating both its name and address and the unit's number or address of the Living Unit on which it holds the mortgage. The responsibility of the Association to notify or seek approvals from any holder, insurer or guarantor of a mortgage on any Living Unit is expressly contingent upon any such mortgage holder, insurer or guarantor having registered its name, address, telephone number, person to contact and type and extent of its interest in the Living Unit with the Association.

Section 10. VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Veterans Administration:

- (a) Annexation of properties outside the areas described in Article III, Section 2 (a);
- (b) Dedication of Common Areas; and
- (c) Amendment of this Declaration of Covenants, Conditions and Restrictions except for clerical corrections by Declarant as provided by Article III, Section 3, above.

## ARTICLE XI

## INSURANCE

Section 1. The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant and the agents and employees of each and the Owners and respective family members, guests and invitees of the Owners against any liability incident to the Ownership or use of the Common Facilities, commercial spaces, if any, and public ways, and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured, and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners or the Association. The scope of the coverage must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction) location and use. Coverage shall be in the amount not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. The Association shall at the discretion of the Board of Directors purchase director's liability and errors and omissions insurance, and the Association shall purchase fidelity coverage against dishonest acts by any directors, managers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity bond insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half (1-1/2) times the Association's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The insurance policies required under this Article XI shall be acquired from carriers meeting the qualifications of the Federal National Mortgage Association. All insurance premiums shall be considered common expense to be included in determining the level of assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right of any Owner to obtain additional individual insurance.

## ARTICLE XII TITLES

The titles, headings and captions that have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

## ARTICLE XIII 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 objectives of this Declaration, shall govern.

## ARTICLE XIV 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 herefrom, 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.

EXECUTED this 15<sup>th</sup> day of March 2007.

THE SITTERLE CORPORATION

By: *Louis M. Norrell*

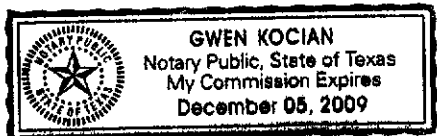
Louis M. Norrell  
Printed Name & Title

STATE OF TEXAS

COUNTY OF BEXAR

§  
§  
§

The foregoing instrument was acknowledged before me on the 15<sup>th</sup> day of Mar., 2007, by Louis M. Norrell, Vice-President of The Sitterle Corporation, a Texas corporation, on behalf of said corporation.



*Gwen Kocian*

Notary Public, State of Texas  
Printed Name & Commission Expiry:

**LIENHOLDER'S CONSENT**

The undersigned, being the Owner and holder of existing mortgages and liens upon and against the real property known above described and commonly known Roseheart Subdivision, Unit 4 (Planned Unit Development), Bexar County, Texas, (the "Properties"), as more fully described above, and acting solely as mortgagee and lienholder and at the specific request of the above-named Declarant, does hereby consent to and join in the foregoing Declaration for the limited purposes herein stated.

The Undersigned hereby joins in the execution of this instrument for the sole purpose of subordinating the liens held by the undersigned to all of the provisions of the foregoing Declaration of Covenants, Conditions and Restrictions (with the exception of that portion of Article VI, Section 9 of the Declaration entitled "Subordination of the Lien to Mortgage".) Any Owner who accepts title to any of the Properties subject to this Declaration specifically acknowledges that lienholder is not a party to this Declaration except for the sole purpose of subordinating its Liens as set out above, and each Owner who accepts title to any of the Lots hereby specifically and unconditionally releases and discharges said lienholder from any claims or liability with respect to, or arising out of, this instrument except as to actions which may hereafter be taken by lienholder as a successor to the interest of Declarant.

SIGNED this 15<sup>th</sup> day of March, 2007.

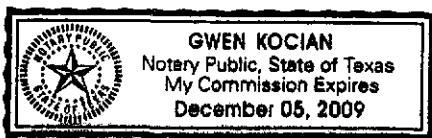
SECURITY STATE BANK AND TRUST

By: *Martell Adams*

Martell Adams Sr. V.P.  
Printed Name & Title

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

The foregoing instrument was acknowledged before me on the 15<sup>th</sup> day of Mar, 2007, by Martell Adams, Sr. Vice-President of Security State Bank and Trust, a Texas banking corporation, on behalf of said banking corporation.



*Gwen Kocian*  
Notary Public, State of Texas  
Printed Name & Commission Expiry:

AFTER RECORDING RETURN TO:

The Sitterle Corporation  
2015 Evans Road, Suite 100  
San Antonio, Texas 78258-7428

Doc# 20070074656  
# Pages 30  
03/30/2007 15:58:13 PM  
e-Filed & e-Recorded in the  
Official Public Records of  
BEXAR COUNTY  
GERRY RICKHOFF COUNTY CLERK

Fees 128.00

STATE OF TEXAS  
COUNTY OF BEXAR  
This is to Certify that this document  
was e-FILED and e-RECORDED in the Official  
Public Records of Bexar County, Texas  
on this date and time stamped thereon.  
03/30/2007 15:58:13 PM  
COUNTY CLERK, BEXAR COUNTY TEXAS



*Gerry Rickhoff*