

New Braunfels Title Co.
G.# 81372

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DECLARATION OF ANNEXATION AND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

TRAILSIDE AT FAIR OAKS RANCH

35132

WHEREAS, by DECLARATION OF ANNEXATION AND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TRAILSIDE AT FAIR OAKS RANCH, recorded in Document #201306019416, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Trailside at Fair Oaks Ranch, recorded in Document # 201406045307 in the Real Property Records of Comal County, Texas, reference to which record is here made for all purposes (as amended, the "Declaration") MERITAGE HOMES OF TEXAS, LLC, an Arizona limited liability company ("Declarant"), subjected certain real property described in the Declaration to certain covenants, conditions and restrictions; and

WHEREAS, Declarant retained the right to annex and bring within the purview of the Declaration additional property as designated by Declarant;

WHEREAS, the Declaration provides for the jurisdiction, assessments, and liens of Trailside at Fair Oaks Ranch Homeowners Association, a Texas nonprofit corporation (the "Association"), on all Lots subject to the Declaration and for membership in the Association by the Owners of all such Lots;

WHEREAS, Declarant now desires to designate and annex certain additional property described in Exhibit "A", attached hereto and made a part hereof (the "Annexed Property"); and

WHEREAS, Declarant wishes to make certain amendments to the Declaration as more specifically set forth herein.

NOW, THEREFORE, it is hereby agreed as follows:

1. Declarant hereby declares that Annexed Property, is hereby annexed, effective immediately, and shall be held, sold and conveyed subject to all easements, restrictions, covenants, terms and conditions which are set forth in the Declaration, and any amendments thereto, and to the jurisdiction and powers of assessment of the Association and all Lots within the Annexed Property shall hereafter be held, transferred, sold, conveyed, occupied, used, and enjoyed subject to all of the terms of the covenants, conditions, restrictions, easements and terms set forth in the Declaration.
2. Section 7.4(b) of the Declaration is amended to provide that perimeter fence along the rear of Lots 35, 36, 37, 38, 39, 40, 41 (backing up to the Greenbelt); and the perimeter fence along the rear of 42, 43, 44, 45; the side yards of 48, and 49 (backing up to Keeneland) as depicted on Exhibit "B", attached hereto, shall be wrought iron, as provided in the Declaration.
3. Section 7.33 of the Declaration is amended to provide that the side yard of Lot 35 (on Battle Intense), Lots 49, 50, 51, 52, and 53 (backing up to Battle Intense) as depicted on Exhibit "B", attached hereto, shall have perimeter fencing (backing up to Battle Intense) as depicted on the landscape plan as depicted on Exhibit "C", attached hereto, and shall have 100% masonry on the elevation facing Battle Intense and shall be one (1) story or one and one-half (1 1/2) stories and Lots 42, 43, 44, 45, 48, and 49 (backing up to Keeneland) shall be one (1) story or one and one-half (1 1/2) stories.



EXECUTED effective as of the 23rd day of September, 2013.

MERITAGE HOMES OF TEXAS, LLC,
an Arizona limited liability company

By: Tony Wyman

Name: Tony Wyman

Title: V. P. Land

Date: 9/23/13

THE STATE OF TEXAS §
 §
COUNTY OF Travis §

This document was acknowledged before me this 23rd day of September, 2013, by Tony Wyman, VP Land Acquisition of MERITAGE HOMES OF TEXAS, LLC, an Arizona limited liability company, on behalf of said company.



Nga Tu Nguyen
Notary Public, State of Texas

After recording, please return to:

~~Meritage Homes Corporation
17851 North 85th Street, Suite 300
Scottsdale, Arizona 85255
Attention: Jennifer S. Lee, Esq.~~

Kendall County Abstract Company
103 N. Saunders Street
Boerne, Texas 78008
830 - 816-2131
830 - 249-3341 Fax

CONSENT OF RALPH E. FAIR, INC.

The undersigned, Ralph E. Fair Inc., a Delaware Corporation, hereby approves the foregoing Declaration of Covenants, Conditions and Restrictions for Unit 13 of Trailside at Fair Oaks Ranch.

Ralph E. Fair Inc., a Delaware Corporation

By: Robert J. Weiss, Jr.

Name: ROBERT J. WEISS, JR.

Title: PRESIDENT

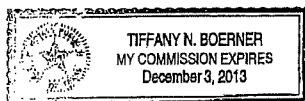
Date: 9-23-13

STATE OF TEXAS }

}

COUNTY OF Henderson }

The foregoing instrument was acknowledged before me on this the 23 day of September, 2013, by Robert J. Weiss Jr., the President of Ralph E. Fair Inc., a Delaware Corporation, on behalf of such corporation.



Tiffany N. Boerner

Notary Public, State of Texas

EXHIBIT "A"

FIELD NOTES FOR 12.62 ACRES

BEING 12.62 acres of land out of the Maria De La Luz Guerra Survey No. 172, Abstract 173, Comal County, Texas and Abstract 178, Kendall County, Texas and out of a 4883.27 acre tract recorded in Vol. 2883, Pg. 27 of the Bexar County Deed Records and being more particularly described by metes and bounds as follows:

BEGINNING at a found ½" iron rod with "ACES" cap with "ACES" cap in the west right of way of Battle Intense and the north line of Comal County Unit 12 recorded Document Number 201306019416 of the Comal Deed Records for the southeast corner of this tract;

THENCE with the north line of said Unit 12 the following courses:

North 68° 32' 37" West for a distance of 211.07 feet to a found ½" iron rod with "ACES" cap for an angle point;
North 62° 28' 47" West for a distance of 347.20 feet to a found ½" iron rod with "ACES" cap for a point of curvature;
Curving to the left with a radius of 176.00 feet, a central angle of 37° 38' 51", an arc length of 115.65 feet, and a chord bearing and distance of North 81° 18' 12" West 113.85 feet to a found ½" iron rod with "ACES" cap for a point of tangency;
North 71° 09' 29" West for a distance of 193.36 feet to a found ½" iron rod with "ACES" cap for an angle point;
South 85° 12' 18" West for a distance of 106.47 feet to a found ½" iron rod with "ACES" cap for an angle point on the Comal and Kendall County Line;
With said County Line, South 46° 20' 51" West for a distance of 250.95 feet a found ½" iron rod with "ACES" cap for the southwest corner of this tract and a corner of the Homeowner's Association Plat as recorded in Volume 6, Page 344, of the Plat Records of Kendall County, Texas;

THENCE with said Homeowner's Association boundary the following courses:

North 28° 19' 31" East for a distance of 182.51 feet to a found ½" iron rod with "ACES" cap for an angle point;
North 32° 47' 27" East for a distance of 129.93 feet to a found ½" iron rod with "ACES" cap for an angle point;
North 37° 20' 29" East for a distance of 271.90 feet to a found ½" iron rod with "ACES" cap for an angle point;
North 72° 35' 30" East for a distance of 63.30 feet to a found ½" iron rod with "ACES" cap for an angle point;
North 25° 37' 00" East for a distance of 136.23 feet to a found ½" iron rod with "ACES" cap for an angle point;
North 30° 35' 30" East for a distance of 73.84 to a found ½" iron rod with "ACES" cap for a point on the south right of way of Keeneland Drive a 60' ROW as recorded in Vol. 3 Pg. 216 Kendall County Plat Record, and Vol. 13 Pg. 121 of Comal County Plat Records for the northwest corner of this tract;

EXHIBIT "A"

12.62 ACRES
PAGE 2

THENCE South 59° 24' 30" East for a distance of 55.79 feet with said ROW to a found ½" iron rod with "ACES" cap;

THENCE South 53° 28' 15" East for a distance of 48.33 feet with said ROW to a found ½" iron rod with "ACES" cap for a point of curvature;

THENCE curving to the left with a radius of 630.00 feet, a central angle of 42° 37' 42" an arc length of 468.72 feet, and a chord bearing and distance of South 80° 43' 21" East 457.99 feet to a found ½" iron rod with "ACES" cap for a point of tangency;

THENCE North 77° 57' 48" East for a distance of 221.60 feet with said ROW to a found ½" iron rod with "ACES" cap, for a point of curvature;

THENCE curving to the right with a radius of 25.00 feet, a central angle of 106° 33' 40", an arc length of 46.50 feet and a chord bearing and distance of South 48° 45' 22" East 40.08 feet to a found ½" iron rod with "ACES" cap in the west right of way of Battle Intensea 50' ROW as recorded in Vol. 14 Pg. 371 Plat Records, Comal County TX for the northeast corner of this tract;

THENCE South 00° 51' 06" East for a distance of 50.25 feet with said right of way to a found ½" iron rod with "ACES" cap for an angle point;

THENCE South 04° 51' 31" West for a distance of 160.35 feet with said right of way to a found ½" iron rod with "ACES" cap for a point of curvature;

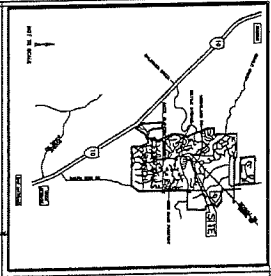
THENCE curving to the right with a radius of 775.00 feet, a central angle of 16° 35' 14", an arc length of 224.37 feet and a chord bearing and distance of South 13° 09' 09" West 223.85 feet with said ROW to a found ½" iron rod with "ACES" cap for a point of tangency;

THENCE South 21° 26' 46" West for a distance of 309.27 feet with said right of way to the POINT OF BEGINNING and containing 12.62 acres of land, more or less, in Comal and Kendall Counties, Texas.

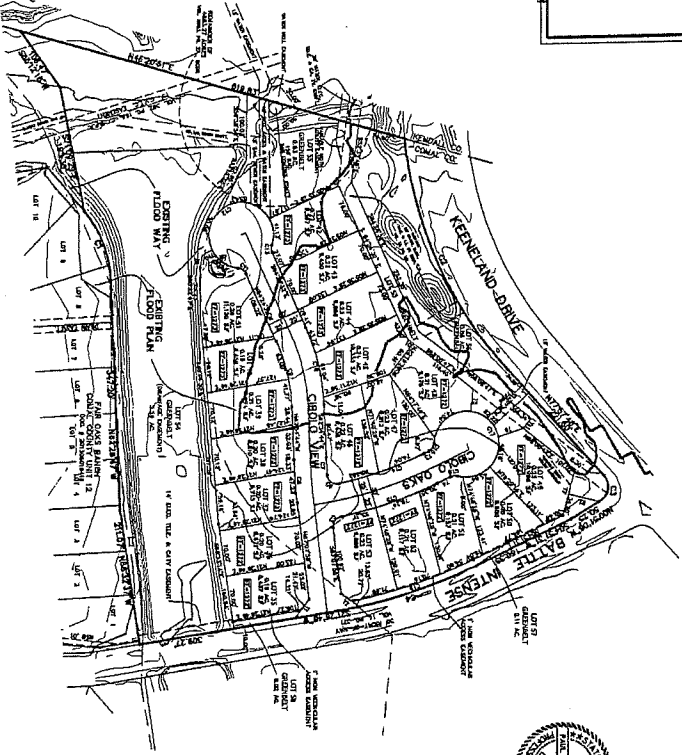
EXHIBIT "A"
Page 2 of 2

EXHIBIT "B"

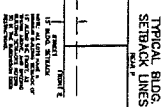
ADDED TO EFFECT SCANNING
PER COMAL COUNTY CLERK



UNIT E - VARIOUS PORTIONS OF THE PROJECT ARE LOCATED IN THE UNINCORPORATED AREA OF THE COUNTY OF MOBILE, ALABAMA. THE PROJECT IS LOCATED IN THE UNINCORPORATED AREA OF THE COUNTY OF MOBILE, ALABAMA. THE PROJECT IS LOCATED IN THE UNINCORPORATED AREA OF THE COUNTY OF MOBILE, ALABAMA.



CLEAR VISION NOTE: CLEAR VISION AREAS SHALL BE MAINTAINED AND NOT OBSCURED BY ANY STRUCTURES OR OBSTACLES. CLEAR VISION AREAS SHALL BE MAINTAINED AND NOT OBSCURED BY ANY STRUCTURES OR OBSTACLES. CLEAR VISION AREAS SHALL BE MAINTAINED AND NOT OBSCURED BY ANY STRUCTURES OR OBSTACLES.



TYPE OF SETBACK	MINIMUM SETBACK
FRONT	10 FT.
REAR	5 FT.
SIDE	5 FT.
ADJACENT TO CORNER	10 FT.
ADJACENT TO STREET	10 FT.
ADJACENT TO LOT LINE	5 FT.
ADJACENT TO DRIVE	10 FT.
ADJACENT TO ALLEY	5 FT.
ADJACENT TO RAILROAD	10 FT.
ADJACENT TO CANAL	10 FT.
ADJACENT TO WATERWAY	10 FT.
ADJACENT TO AIRPORT	10 FT.
ADJACENT TO SCHOOL	10 FT.
ADJACENT TO CHURCH	10 FT.
ADJACENT TO PARK	10 FT.
ADJACENT TO PUBLIC SQUARE	10 FT.
ADJACENT TO HISTORIC DISTRICT	10 FT.
ADJACENT TO ENVIRONMENTAL SENSITIVE AREA	10 FT.
ADJACENT TO FLOOD HAZARD AREA	10 FT.
ADJACENT TO SEISMIC HAZARD AREA	10 FT.
ADJACENT TO AIR QUALITY SENSITIVE AREA	10 FT.
ADJACENT TO NOISE SENSITIVE AREA	10 FT.
ADJACENT TO CULTURAL RESOURCE	10 FT.
ADJACENT TO ARCHAEOLOGICAL RESOURCE	10 FT.
ADJACENT TO HISTORIC LANDMARK	10 FT.
ADJACENT TO HISTORIC DISTRICT	10 FT.
ADJACENT TO HISTORIC SITE	10 FT.
ADJACENT TO HISTORIC STRUCTURE	10 FT.
ADJACENT TO HISTORIC LANDSCAPE	10 FT.
ADJACENT TO HISTORIC DISTRICT	10 FT.
ADJACENT TO HISTORIC SITE	10 FT.
ADJACENT TO HISTORIC STRUCTURE	10 FT.
ADJACENT TO HISTORIC LANDSCAPE	10 FT.

NOTES: 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED. 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED. 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

ADDS ALABAMA DEVELOPMENT DESIGN SERVICES, INC. 1000 W. UNIVERSITY BLVD., SUITE 100, MOBILE, AL 36688. TEL: 850-875-1234. FAX: 850-875-5678. WWW.ADDES.COM



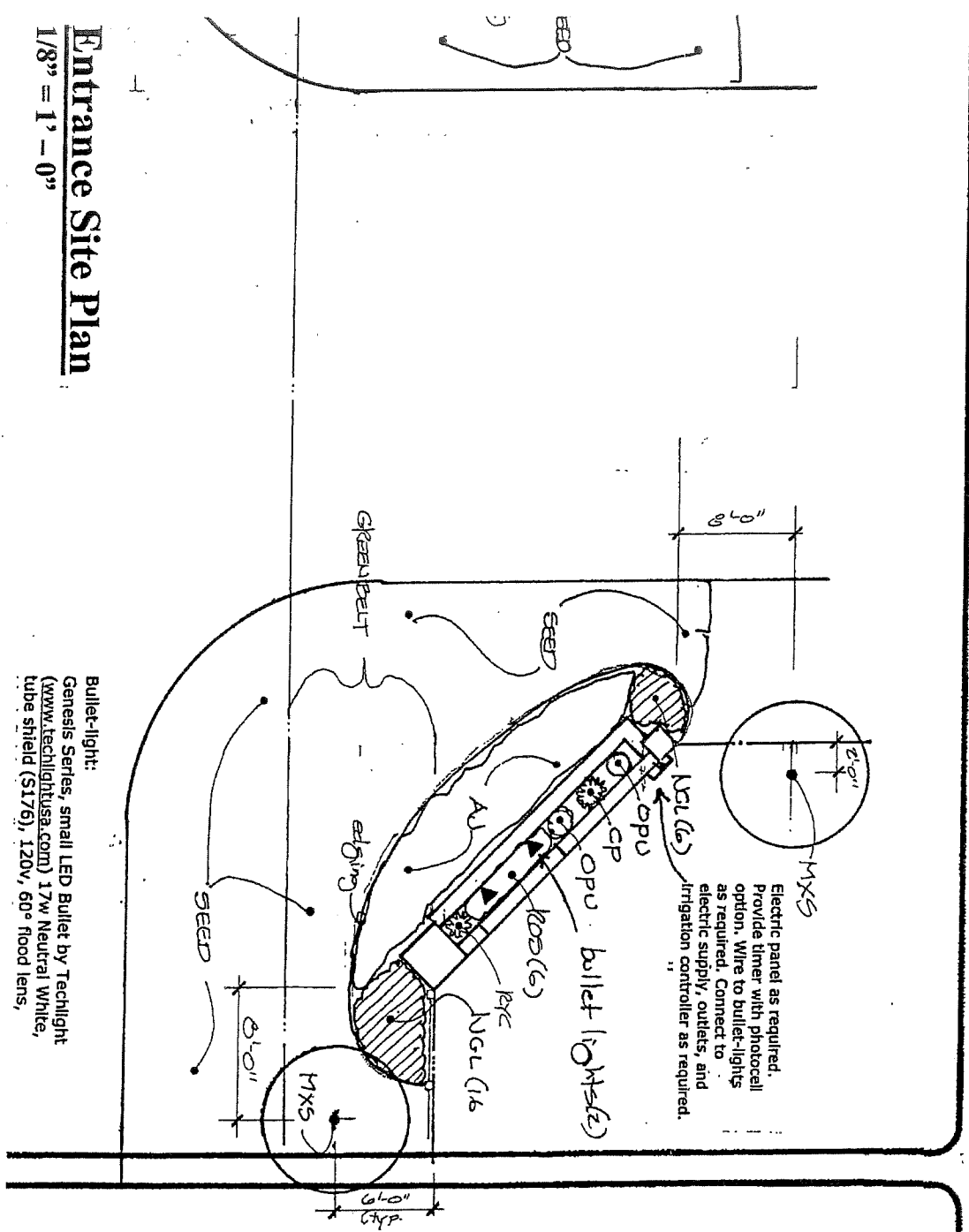
SCALE: 1" = 100'
SUBMISSION PLAT
OF
FAIR OAKS RANCH
COMAL COUNTY UNIT 13

STATE OF ALABAMA
COUNTY OF MOBILE
PLAT NO. _____
BOOK NO. _____
DATE OF RECORDATION _____
RECORDED BY _____
INDEXED BY _____
FILED BY _____
OFFICE OF THE CLERK OF THE CIRCUIT COURT
MOBILE, ALABAMA

STATE OF ALABAMA
COUNTY OF MOBILE
PLAT NO. _____
BOOK NO. _____
DATE OF RECORDATION _____
RECORDED BY _____
INDEXED BY _____
FILED BY _____
OFFICE OF THE CLERK OF THE CIRCUIT COURT
MOBILE, ALABAMA

STATE OF ALABAMA
COUNTY OF MOBILE
PLAT NO. _____
BOOK NO. _____
DATE OF RECORDATION _____
RECORDED BY _____
INDEXED BY _____
FILED BY _____
OFFICE OF THE CLERK OF THE CIRCUIT COURT
MOBILE, ALABAMA

Entrance Site Plan
 1/8" = 1' - 0"



Bullet-light:
 Genesis Series, small LED Bullet by Techlight
 (www.techlightusa.com) 17w Neutral White,
 tube shield (S176), 120V, 60° flood lens.

Plan at Fair Oaks Ranch, Phase II

Recorder's Memorandum

This document was of poor quality at the time of recording and may not reproduce.

FILED AND RECORDED

Instrument Number: 201506001835

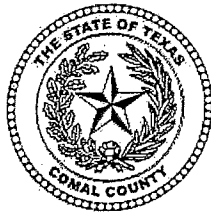
Recording Fee: 54.00

Number Of Pages: 9

Filing and Recording Date: 01/15/2015 2:37PM

Deputy: LAURA JENDRUSCH

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Comal County, Texas.



Bobbie Koepf

Bobbie Koepf, County Clerk
Comal County, Texas

NOTICE: It is a crime to intentionally or knowingly file a fraudulent court record or Instrument with the clerk.

DO NOT DESTROY - *Warning, this document is part of the Official Public Record.*

4/m



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AFTER RECORDING RETURN TO:

✦ Meritage Homes Corporation
Attention: Jennifer S. Lee
17851 N. 85th Street, Suite 300
Scottsdale, Arizona 85255

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

FOR TRAILSIDE AT FAIR OAKS RANCH

Cross reference to Declaration of Covenants, Conditions and Restrictions for Trailside at Fair Oaks Ranch, recorded in Document No. 201306019416 in the Official Public Records of Comal County, Texas.

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TRAILSIDE AT FAIR OAKS RANCH

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Trailside at Fair Oaks Ranch (this "Amendment") is made by **MERITAGE HOMES OF TEXAS, LLC**, an Arizona limited liability company ("Meritage") and is as follows:

RECITALS:

- A. Meritage is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Trailside at Fair Oaks Ranch, recorded in Document No. 201306019416 in the Official Public Records of Comal County, Texas (the "Declaration").
- B. Pursuant to *Section 13.2.a* of the Declaration, the Declaration may be amended by the Declarant acting alone during the Development Period.
- C. The Development Period has not terminated.
- D. Meritage wishes to amend the Declaration as set forth hereinbelow.

NOW THEREFORE, Declarant hereby amends and modifies the Declaration as follows:

- 1. **Property Defined.** Exhibit "A" attached to the Declaration is hereby deleted and the attached Exhibit "A" substituted in place thereof.
- 2. **Miscellaneous.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Declaration. Unless expressly amended by this Amendment, all other terms and provisions of the Declaration remain in full force and effect as written, and are hereby ratified and confirmed.

EXECUTED to be effective on the date this Amendment is recorded in the Official Public Records of Comal County, Texas.

MERITAGE:

MERITAGE HOMES OF TEXAS, LLC, an
Arizona limited liability company

By:
Name: JEREMY FITCH
Title: VP

STATE OF TEXAS §
COUNTY OF Comal §

BEFORE ME, the undersigned and duly commissioned Notary Public in and for the State of Texas, on this day personally appeared Jeremy Flach, who is known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 11 day of September 2013.

Jessica LaRaine Warren
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires:

Feb. 25, 2017

Jessica LaRaine Warren
Printed Name of Notary

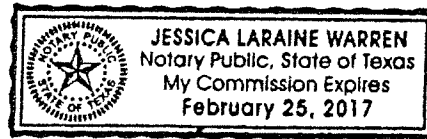


EXHIBIT "A"

The Property

LOTS 1-34, inclusive, comprising TRAILSIDE AT FAIR OAKS RANCH, in Comal County, Texas, according to the Subdivision Plat of Fair Oaks Ranch Comal County Unit 12 establishing TRAILSIDE AT FAIR OAKS RANCH, recorded in Document No. 201306019416, Deed and Plat Records of Comal County, Texas.

Filed and Recorded
Official Public Records
Joy Streater, County Clerk
Comal County, Texas
09/23/2013 11:40:33 AM
LAURA 4 Page(s)
201306040681



Joy Streater

51/m



201306036901 08/29/2013 11:47:43 AM 1/51

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TRAILSIDE AT FAIR OAKS RANCH

This Declaration of Covenants, Conditions and Restrictions for Trailside at Fair Oaks Ranch is made on the date hereinafter set forth by Declarant (as hereinafter defined).

Declarant is the owner of the Property (as herein defined). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. The Declaration is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Property. In furtherance of such plan, Declarant has caused or intends to cause the Trailside at Fair Oaks Ranch Homeowners Association to be formed as a Texas nonprofit corporation to own, operate, and maintain the Common Areas and Common Maintenance Areas (as defined herein) and to administer and enforce the provisions of this Declaration.

In addition, all Owners shall become and continue to be members of the Fair Oaks Ranch Homeowners' Association, Inc. ("FORHA") and shall comply with its articles of incorporation, bylaws and resolutions, the purposes of which are to provide various services and facilities for the use and benefit of all property owners in Fair Oaks Ranch. Lot Owners agree to accept such membership and to perform and be bound by the obligations, terms and conditions of membership in FORHA in accordance with its governing documents and this Declaration, including, without limitation, the obligation to pay fees, dues and assessments.

Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration and FORHA, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any portion of the Property.

ARTICLE I

DEFINITIONS

1.1 "**ACA**" or "**Architectural Control Authority**" shall have the meaning provided such terms in Section 6.2 herein.

1.2 "**ACA Standards**" means standards adopted by the ACA regarding architectural and related matters, including, without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which may be either recommended or required by the ACA for use within the Property.

1.3 "**Association**" means Trailside at Fair Oaks Ranch Homeowners Association, a Texas nonprofit corporation established, or to be established, for the purposes set forth herein, or such other Texas nonprofit corporation as the Board shall determine to operate as the Association under this Declaration, provided that only one such nonprofit corporation shall be in existence as the Association at any one time.

1.4 "**Association Easement**" means an easement intended for the construction, installation, operation, location or repair of any subdivision improvement, including, without

limitation, the Association Maintenance Screening Wall, any subdivision sign, screening wall, monument or entry feature, retaining, screening or perimeter wall, drainage facility or other improvement owned by or otherwise for the benefit of the Association.

1.5 "**Association Maintenance Screening Wall**" means the fence or screening wall installed, or that may be installed, by Declarant along the Property adjacent to Battle Intense, or any other fence or screening wall installed by Declarant or the Association.

1.6 "**Board**" means the Board of Directors of the Association.

1.7 "**Builder**" means any person or entity who purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business.

1.8 "**By-laws**" means the by-laws of the Association as amended from time to time.

1.9 "**Certificate**" means the Certificate of Formation of the Association.

1.10 "**City**" means the City of Fair Oaks Ranch.

1.11 "**Common Area**" and "**Common Areas**" means all areas (including the improvements thereon) within the Property owned or to be owned by the Association for the common use and enjoyment of the Members.

1.12 "**Common Expenses**" means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas.

1.13 "**Common Maintenance Areas**" means the Common Areas, if any, and any areas within public rights-of-way, easements (public and private), portion of a Lot, public parks, private streets, landscaping, entry features, fences, vehicular access gate(s), pedestrian access gate(s) or similar areas that either the Board deems necessary or appropriate to maintain for the common benefit of the Members or that is shown on the Plat or any subsequent Recorded plat of the Property or portion thereof as being maintained by the Association.

1.14 "**County**" means the County of Comal, Texas.

1.15 "**Declarant**" means Meritage Homes of Texas, LLC, an Arizona limited liability company, or its successors and assigns as provided in Section 13.12 herein.

1.16 "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association by appointing at least a majority of the directors of the Association, pursuant to the rights and reservations contained in ARTICLE XII herein and otherwise in this Declaration, to the full extent and for the maximum duration permitted by Applicable Law.

1.17 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for Trailside at Fair Oaks Ranch and in the Governing Documents for FORHA, and any amendments and supplements thereto made in accordance with its terms.

1.18 "**Designated Interest Rate**" means the interest rate designated by the Board from time to time, subject to any interest limitations under Texas law. If the Board fails to designate an interest rate, then the interest rate shall be the lesser of twelve percent (12%) per

annum or the highest rate permitted by Texas law. The Designated Interest Rate is also subject to the limitations in Section 13.6 herein.

1.19 "**Development Period**" means the period during which Declarant reserves the right to facilitate the development, construction, and marketing of the Subdivision, and the right to direct the size, shape, and composition of the Subdivision, pursuant to the rights and reservations contained in ARTICLE XII herein and otherwise in this Declaration, to the full extent and for the maximum duration permitted by Applicable Law.

1.20 "**Dwelling**" means any residential dwelling situated upon any Lot.

1.21 "**Entry Signs**" means the entry feature signs for the subdivision that are or may be placed by the Declarant or its agents on the Common Area or Common Maintenance Areas.

1.22 "**FORHA**" means Fair Oaks Ranch Homeowners' Association, Inc., a Texas non-profit corporation, its successors and assigns.

1.23 "**Grading Plan**" means the Lot Grading Plan for the Subdivision prepared in connection with Declarant's initial construction within the Property and as set forth on Exhibit "D" attached hereto and incorporated herein.

1.24 "**Lot**" means any separate residential building parcel shown on the Plat or any subsequent Recorded subdivision plat of the Property, but only if such parcel has in place the infrastructure (including utilities and streets) necessary to allow construction of a single-family home thereon. Common Areas, Right-of-Ways, Greenbelts, and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot. To satisfy a requirement of Applicable Law that the Declaration state the maximum number of Lots that may be created and made subject to this Declaration, Declarant hereby states that the initial maximum number of Lots subject to this Declaration is sixty (60) Lots, and reserves the unilateral right to increase or reduce that number by amendment of this Declaration.

1.25 "**Member**" means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in Article III herein.

1.26 "**Owner**" means the record owner, whether one (1) or more persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract for deed, then the purchaser (rather than the fee Owner) will be considered the Owner.

1.27 "**Plat**" means the Record Plat (or replat) of Trailside at Fair Oaks Ranch as filed or to be filed in the Official Public Records of Comal County, Texas, and which will be the plat of the Trailside at Fair Oaks Ranch community.

1.28 "**Property**" means the real property described on Exhibit "A" attached hereto (other than areas dedicated to the City or County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.

1.29 "**Record,**" "**Recording**" or "**Recorded**" means the filing of a legal instrument in the Public Records of Comal County, State of Texas, or such other place as may be designated as the official location for filing deeds, plats, and similar documents affecting title to real property.

1.30 "Variable Width Grading Control Easement" means that portion of Lots ten (10), eleven (11), and twelve (12) shown on the Plat, which shall have grading or excavation restrictions (as defined herein).

ARTICLE II PROPERTY RIGHTS

2.1 **Owners' Easements of Use and Enjoyment.** Every Owner will have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, subject to any limitations set forth herein, including, without limitation, the following:

a. **Rules.** The right of the Association to establish and publish rules and regulations governing the use of the Common Areas and/or the Lots.

b. **Suspension of Voting Rights.** The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner, subject to Section 5.9(b) below, for any period during which any assessment against such Owner's Lot remains unpaid.

c. **Conveyance of Common Area.** The right of the Association, subject to the provisions hereof, to dedicate, sell or transfer all or any part of the Common Areas. However, no such dedication, sale or transfer will be effective unless there is an affirmative vote of sixty-seven percent (67%) or greater of all outstanding votes entitled to be cast.

d. **Mortgage Common Area.** The right of the Association, subject to the provisions hereof, to mortgage or lien all or any part of the Common Areas. However, the Common Areas cannot be mortgaged or liened without an affirmative vote of sixty-seven percent (67%) or greater of all outstanding votes entitled to be cast.

2.2 **Prohibitions on Easement of Use and Enjoyment.** Each Owner's right and easement of use and enjoyment in and to the Common Area is further limited as follows:

a. **No Transfer without Lot.** An Owner's right and easement of use and enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot.

b. **No Partition.** Except as provided in Section 2.1.c herein, the Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

2.3 **Right to Delegate Use and Enjoyment of Common Area.** Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the By-laws and any reasonable rules of the Board. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

ARTICLE III MEMBERSHIP AND VOTING

3.1 **Membership - Owners.** Every Owner by virtue of ownership of a Lot will be a member of the Association. Membership will be appurtenant to and will not be separated from

ownership of any Lot.

3.2 **Voting Rights.** The voting rights in the Association shall be as follows:

a. **Members other than Declarant.** Except as provided in Section 3.2(b) below, Members shall be entitled to one (1) vote for each Lot owned. However, when more than one (1) person or Member holds an interest in any Lot, only one (1) vote in total may be cast per Lot as the Owners of such Lot determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Member is the person designated to cast the Lot's vote. If the Members fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one (1) person or entity seeks to exercise it.

b. **Declarant.** Declarant shall be entitled to ten (10) votes for each Lot owned by Declarant, regardless if the period is within or after the Development Period; provided, however, to the extent required by Applicable Law, on or before the one hundred twentieth (120th) day after the date that seventy-five percent (75%) of the Lots are conveyed to Owners other than Declarant, at least one-third (1/3) of the Board must be elected by Owners other than Declarant.

ARTICLE IV ASSESSMENTS

4.1 **Obligation to Pay Assessments.** Subject to and except as provided in this Article IV, each Owner of any Lot by acceptance of a deed therefor, whether or not it will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges as provided in Section 4.3 herein, (ii) special assessments as provided in Section 4.6 herein, (iii) specific assessments as provided in Section 4.7 herein, and (iv) assessments and fees owed to FORHA.

4.2 **Rate of Assessments.** Both annual assessments and special assessments shall be fixed at a uniform rate for all Lots, regardless of a Lot's location or size or the value of the Dwelling; provided, however, vacant Lots shall be subject to a lower rate as provided herein.

a. **Improved Lot.** A Lot that has thereon a Dwelling that has been occupied at any time (past or current) for residential purposes shall be assessed at the full rate.

b. **Vacant Lot.** A Lot that does not have thereon a Dwelling that has been occupied at any time (past or current) for residential purposes shall be assessed at the rate of fifty percent (50%) of the full rate.

c. **Lots Owned by Declarant – Exempt.** Notwithstanding any provision herein, during the Development Period all Lots owned by Declarant shall be exempt from all assessments (annual assessments, special assessments and/or specific assessments) and Declarant shall not be obligated to pay any assessments for the Lots except assessments and fees owed to FORHA.

4.3 **Annual Assessment – Increases.** The amount of the initial annual assessment shall be an amount as determined by the Board including any assessments and fees owing to FORHA. The annual assessment may be increased at any time by the Board, provided that the Board gives written notice to the Members of the increase. The effective date of the increase

shall not be sooner than sixty (60) days from the date of the notice. No vote or other approval shall be required for the increase to be effective, unless the increase is more than ten percent (10%) of the prior annual assessment. If the increase is more than ten percent (10%), then the increase may be disapproved by a sixty-seven percent (67%) or greater vote of the votes cast, provided that the vote occurs within sixty (60) days of the date of the increase notice.

4.4 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to a Builder or an entity that assumes the Declarant status as provided herein), unless the Board elects to commence the annual assessment earlier. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each assessment period. Written notice of the annual assessment shall be sent to an Owner of every Lot subject thereto. The due dates shall be established by the Board. The Board shall also establish whether the annual assessment shall be paid annually, quarterly or monthly.

4.5 Declarant's Obligation to Pay Budget Deficits. During the Development Period, subject to the limitations set forth below in this Section 4.5, Declarant is responsible to pay to the Association the difference between the Association's operating expenses and the assessments received by the Association (the "**Budget Deficit**"); provided that if the Budget Deficit is the result of the failure or refusal of an Owner or Owners to pay their annual assessment or special assessments, the Association will diligently pursue (the Declarant may also pursue at its option) all available remedies against such defaulting Owners and will promptly reimburse the Declarant the amounts, if any, so collected. Notwithstanding the foregoing, in no circumstance shall Declarant have any obligation to pay any portion of a Budget Deficit that exceeds the total amount during any fiscal year of the Association that Declarant would have paid if Declarant were paying full assessments for the Lots owned by Declarant during the subject fiscal year. If Declarant elects, in Declarant's sole and absolute discretion, to fund Budget Deficits that exceed the total amount during any fiscal year of the Association that Declarant would have paid if Declarant were paying full assessments for the Lots owned by Declarant during the subject fiscal year, such amounts shall be treated as a loan to the Association, which loan shall bear interest at the lesser of the maximum rate of interest permitted under applicable law or a rate of eighteen percent (18%) per annum until repaid (a "**Deficit Loan**"). Deficit Loans shall be repaid by the Association to Declarant as non-reserve funds become available or, at Declarant's sole option and discretion, may be offset against all past, current or future assessments payable by the Declarant under this Declaration. Upon termination of the Development Period, Declarant's obligation to pay a Budget Deficit attributable to the period of time after the Development Period shall cease.

4.6 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to cover expenses which the Board determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget, provided, that any such special assessment must have an affirmative vote of sixty-seven percent (67%) or greater of all outstanding votes entitled to be cast.

4.7 Specific Assessments. The Association shall have the power to levy specific assessments against a particular Lot to (i) cover costs incurred in bringing a Lot into compliance with this Declaration, (ii) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests, and/or (iii) collect any sums due by the Owner to the Association (other than annual

assessments or special assessments or interest or late charges related thereto), including, without limitation, fines.

4.8 Purpose of Annual and Special Assessments - Reserve. Annual assessments and special assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, inspection, repair and replacement of improvements to the Common Maintenance Areas.

4.9 Personal Obligation to Pay Assessments. Each assessment provided herein, together with interest at the Designated Interest Rate, late charges, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded first purchase money mortgage or beneficiary of a Recorded first deed of trust (meaning any Recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust), shall be liable for unpaid assessments which accrued prior to mortgagee's acquisition of title. In addition, no mortgagee shall be required to collect assessments.

4.10 Capitalization of Association - Payment. Upon acquisition of record title to a Lot by the first Owner thereof (other than Declarant or a Builder), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to two months of the full annual assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-laws.

4.11 Failure to Pay Assessments; Remedies of the Association. With respect to any assessment or other sum due herein not paid within ten (10) days after the due date, and subject to Section 4.12 below, the Association shall have the right to: (i) charge a late fee, in an amount determined by the Board; (ii) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; and/or (iii) charge costs and fees related to the collection of the sum due. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Areas or abandonment of his or her Lot. The failure to pay assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

4.12 Payment Plans. If an Owner is unable to pay any assessment or other sum due herein, then upon written notice to the Association delivered no later than two (2) business days following the due date of such payment, the Association shall extend to such Owner a payment plan on the following terms (a "Payment Plan"):

- a. The amount due herein may be paid in three equal partial payments, due one (1) month, two (2) months and three (3) months following the original due date of such payment.
- b. Such amounts shall be subject to (i) interest at the Designated Interest Rate from the due date until the date the sum is paid; and/or (ii) reasonable costs related to the collection of the sum due.

The Association is not obligated to extend a Payment Plan to an Owner who failed to honor the terms of a previous Payment Plan during the two (2) years following such Owner's default under the previous Payment Plan.

4.13 Lien.

a. **Creation of Lien.** The Association shall hereby have a continuing lien against each Lot to secure payment of delinquent assessments (annual assessments, special assessments and specific assessments), as well as interest at the Designated Interest Rate, late charges, and costs of collection, including, without limitation, court costs and reasonable attorneys' fees, and any other fees or charges that are authorized under or pursuant to this Declaration. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot, the amount of delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

b. **Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial or, if an Owner agrees in writing at the time the foreclosure is sought to waive judicial foreclosure pursuant to Section 209.0092 of the Texas Property Code, by nonjudicial foreclosure. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale. The Board may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board's meeting. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code, as amended. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, as amended, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the By-laws and applicable law, such as Chapter 209 of the Texas Property Code, as amended. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

c. **Subordination of Lien.** The lien of the assessments provided for herein is subordinate to the lien of any Recorded first purchase money mortgage or deed of trust against a Lot.

d. **Effect of Conveyance.** An Owner that conveys title to a Lot shall not be liable for assessments that are attributable to the period after the conveyance of the Lot, except as provided in Section 4.13(e) herein. However, a conveyance of title to a Lot shall not affect the assessment lien or relieve the Owner that conveys the Lot from personal liability for any assessments attributable to the period prior to the date of the conveyance, except as provided in Section 4.13(e) herein.

e. **Effect of Foreclosure.** The foreclosure of a first purchase money

mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will extinguish the lien of such assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first purchase money mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof shall not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term first in connection with a mortgage or deed of trust shall refer to the lien priority as compared to other mortgages or deeds of trust.

**ARTICLE V
THE ASSOCIATION**

5.1 **The Association - Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Certificate, By-laws, and this Declaration. The Association shall continue to exist until the Association is dissolved, regardless if the corporate status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Certificate and the By-laws.

5.2 **Board of Directors.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Certificate and the By-laws. The Board shall have the powers granted in this Declaration, the Certificate, the By-laws, and all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein.

5.3 **Limitation on Liability.** Neither the Declarant nor any officer, director, employee or agent of the Association, nor any member of the ACA shall be liable to any person or entity, including any Owner, for any act or omission in the performance of the duties of the Declarant or such officer, director or agent, or member of the ACA, unless such act or omission is finally determined to constitute fraud or intentional willful misconduct. The liability of an officer, director or committee member of the Association shall be further limited as provided in the Certificate.

5.4 **Indemnification.** Subject to the limitations and requirements of the Texas Business Organizations Code, as amended, and in the By-laws, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including, without limitation, attorneys' fees, reasonably incurred in connection with any threatened, initiated or filed action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which a director's, officer's or committee member's liability is limited under the Certificate. Additionally, subject to the limitations and requirements of the Texas Business Organizations Code, as amended, and in the By-laws, the Association may voluntarily indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against such person in that capacity and arising out of that capacity.

5.5 Insurance.

a. **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, the following insurance coverage, if reasonably available:

(i) **Property Insurance – Common Area.** Blanket property insurance covering loss or damage on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership.

(ii) **General Liability Insurance.** Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf.

b. **Additional Insurance.** The Board may obtain additional insurance as the Board determines advisable, including, without limitation, directors and officers liability insurance, fidelity insurance and any insurance to comply with any applicable insurance requirements of any federal agency or secondary mortgage market entity, including, without limitation, the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the U. S. Department of Veterans Affairs ("VA"), and the U.S. Department of Housing and Urban Development ("HUD"), to the extent applicable. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary, the Board shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

c. **Review of Policies.** The Board shall periodically review the types and amounts of insurance coverage for sufficiency.

5.6 **Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational, or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board. The Board may employ for the Association a management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority.

5.7 **Books and Records.** The books and records of the Association shall be made available to the Members for inspection as provided in the By-laws. In addition, Members may obtain copies, at a reasonable cost, of the books and records of the Association as provided in the By-laws.

5.8 **Dissolution of Association; Conveyance of Assets.** If the Association is dissolved other than incident to a merger or consolidation, the assets both real and personal of the Association, shall be conveyed as provided in the Certificate.

5.9 **Enforcement – Notice.** The Association may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with and subject to the applicable procedures set forth in this Declaration, the By-laws and applicable law, including Chapter 209 of the Texas Property Code, as amended. Specifically, written notice and opportunity for a hearing must be given prior to the Association exercising its remedies if such notice and hearing is required by this Declaration, the By-laws and applicable law, including Chapter 209 of the Texas Property Code, as amended. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

a. **Fines.** The Association may impose reasonable monetary fines which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest, or invitee of the Owner of such Lot.

b. **Suspension of Voting Rights.** The Association may suspend an Owner's right to vote, except with respect to any election (i) of members of the Board or (ii) concerning such Owner's rights and responsibilities.

c. **Suspension of Rights to Use Common Area.** The Association may suspend any person's or entity's right to use any Common Area; provided, however, nothing herein shall authorize the Association to limit ingress or egress to or from a Lot.

d. **Right of Self-Help.** The Association may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration.

e. **Right to Require Removal.** The Association may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Association or its designee shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed, without such action being deemed a trespass.

f. **Levy Specific Assessment.** The Association may levy a specific assessment to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration.

g. **Lawsuit; Injunction or Damages.** The Association has the right, but not the obligation, to bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

h. **Perform Maintenance.** In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Association may record a notice of violation in the Records and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific assessment.

The decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Association's sole and absolute discretion, except that the Association shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Association may determine that, under the circumstances of a particular case: (i) the

Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

ARTICLE VI ARCHITECTURAL CONTROLS

6.1 No Improvements Unless Approved by Architectural Control Authority - Except Improvements by Declarant. No building, fence, wall, outbuilding, landscaping, pool, detached building, athletic or play equipment or facility, structure or improvement will be erected, altered, added onto or repaired upon any portion of any Lot without the prior written consent of the ACA. However, ACA plan approval is not required for (i) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant to be exempt from the ACA plan approval requirements; (ii) any improvements to the interior of a Dwelling, except as provided herein; (iii) the painting or re-bricking of the exterior of any Dwelling in accordance with the same color or design as originally constructed by Declarant or in accordance with the approved color and design scheme approved by the ACA; (iv) improvements for which the Declaration expressly states that the ACA's prior approval is not required; or (v) repair or replacement of worn out or damaged improvements if such repair or replacement is with substantially similar materials. Any improvements pursuant to this Section 6.1 must be in compliance with any applicable ACA Standards.

6.2 Architectural Control Authority. The ACA shall have the sole and exclusive authority to perform the functions contemplated by the ACA in this Declaration. The purpose of the ACA is to enforce the architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The ACA will have the authority to delegate its duties or to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The "**ACA**" or "**Architectural Control Authority**" shall be the following entity:

a. **Declarant - During Development Period.** The Declarant shall be the ACA during the Development Period, unless the Declarant in writing has terminated its rights as the ACA.

b. **Architectural Committee - After the Development Period.** The Architectural Committee shall be the ACA after the Declarant's right to act as the ACA has either expired or voluntarily been terminated.

6.3 Architectural Committee. A committee to be known as the "Architectural Committee" consisting of a minimum of three (3) members will be established after the Declarant's right to act as the ACA has either expired or voluntarily been terminated. The members of the Architectural Committee will be appointed, terminated and/or replaced by the Board. The Architectural Committee will act by simple majority vote.

6.4 Submission of Plans. Prior to the initiation of construction of any work required to be approved by the ACA as provided in Section 6.1 above, the Owner (excluding Declarant and any Builder designated in writing to be exempt from the ACA plan approval requirements as provided herein) will first submit to the ACA a complete set of plans and specifications for the proposed improvements, including site plans, landscape plans, swimming pool plans, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACA for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates.

6.5 Plan Review.

a. **Timing of Review and Response.** Upon receipt by the ACA of all of the information required by this Article VI, the ACA will have thirty (30) days in which to review said plans and other documents and materials submitted pursuant to Section 6.4 herein. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACA in form satisfactory to the ACA. If the ACA requests additional information and the applicant fails to provide such information prior to the date stated in the ACA's notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACA consider the request. If the ACA fails to issue its written approval within 30 days after the ACA's receipt of all materials requested by the ACA to complete the submission, then such failure by the ACA to issue its written approval shall be deemed disapproved. The ACA may charge a reasonable fee for reviewing requests for approval.

b. **Approval Considerations - Aesthetics.** The proposed improvements will be approved if, in the sole opinion of the ACA: (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements within the Property; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not have an adverse impact on the Property. Decisions of the ACA may be based on purely aesthetic considerations. The ACA shall have the authority to make final, conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and its members change over time.

6.6 Timing of Completion of Approved Items. All work approved by the ACA shall be completed within one (1) year after the approval by the ACA or such shorter period that the ACA may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACA. All work and related improvements shall be in compliance with the items approved by the ACA.

6.7 Improvements Impact on Drainage. With respect to any improvements performed on a Lot and/or any alterations to the grade of a yard, the Owner shall take proper precautions to insure that such improvements, conform to the Grading Plan, and do not cause the surface water drainage on the Lot to (i) drain onto an adjoining Lot in an amount more than the drainage amount prior to the improvement or alteration, or (ii) collect near the foundation of the Dwelling. Although the ACA may comment on and/or deny the approval of plans because of the impact of the proposed improvements or alterations on surface water drainage, the ACA's

comments or approval shall not constitute or be construed as a representation, warranty or guaranty that adverse surface water drainage problems will not occur and shall not be relied upon as such. The Owner is responsible for taking the necessary actions in order to avoid any surface water drainage problems, including, without limitation, engaging the services of a qualified consultant.

All work done on any Lot affecting or pertaining to the Lot grade, the flow of surface water drainage, the alteration or removal of any drainage or environmental berm or swale or any storm berm or swale, must be in accordance with the Grading Plan and the site grading and drainage plans prepared by an engineer selected by Declarant or the ACA to prepare such plan or plans and also in accordance with all applicable laws, codes and regulations of Governmental Authority.

The Grading Plan has been prepared for the Subdivision and is maintained by Declarant at its offices. By acceptance of a deed to any Lot, each Owner covenants and agrees to ensure that its Lot is graded and maintained in accordance with such Grading Plan and that the drainage of such Lot is maintained in accordance with such Grading Plan upon construction of any Improvements on the Lot. Each Owner shall maintain safe and adequate drainage within and across his Lot and no Owner shall construct or maintain any Improvements or permit any condition which diverts, impedes, backs up, or otherwise prevents or impedes the drainage and flow of surface water on, over or across such Lot. All storm water from any Lot shall drain into or onto contiguous or adjacent street rights-of-way, drainage easements, or retention areas, or as determined by a qualified engineer.

6.8 No Waiver. The approval by the ACA of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACA under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

6.9 Variances. The ACA may authorize variances from strict compliance with the requirements herein, in any ACA Standards or any required procedures: (i) in narrow circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence; or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. For purposes of this Section 6.9, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing as the sole or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance shall be contrary to the terms of this Declaration and no variance shall be effective unless in writing or estop the ACA from denying a variance in other circumstances.

6.10 Architectural Control Authority Standards. The ACA may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, ACA Standards, except Article VI "Architectural Controls" & Article VII "Use Restrictions And Covenants", which may be amended only with approval of Ralph E. Fair Inc., a Delaware Corporation or its assigns, successors, or heirs ("**Fair, Inc.**") by written notification; however, if Fair, Inc., within thirty (30) days after receipt of said notification, fails to provide Declarant with written notice of its decision within the thirty (30) day period it shall be conclusively presumed that Fair Inc. has approved the amendment. The ACA Standards may not conflict with the terms of this Declaration.

6.11 Enforcement; Non-Conforming and Unapproved Improvements. If there are any significant or material deviations from the approved plans in the completed improvements,

as determined by the ACA, in their sole and absolute discretion, such improvements will be in violation of this Article VI to the same extent as if made without prior approval of the ACA. In addition to the Association's rights in Section 5.9 herein, the Association or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alteration to any improvement on any Lot that is not approved by the ACA.

6.12 Limitation of Liability. Neither the Declarant, the Association, the Board, nor the ACA or any member of the ACA, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Review and approval of any submission or application is made on the basis of aesthetic considerations only and not for engineering, structural design or quality of materials. No approval of any plans by either the ACA or the Declarant shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation. Neither Declarant, the Association, the Board, the ACA nor any member of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling and/or Lot. Declarant and members of the ACA shall have no liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious. The ACA and its members shall be defended and indemnified by the Association as provided in Section 5.4 herein.

6.13 Governmental Requirements.

a. **Compliance.** All Improvements located, erected, constructed and installed upon any Lots and all activities of the Owners, their tenants, invitees, agents, employees and contractors on or about the Subdivision, shall conform to and comply with all applicable Governmental Regulations, including, without limitation, all building code, subdivision and zoning requirements of the City.

b. **Precedence Over Less Stringent Governmental Regulations.** If the covenants, conditions and restrictions set forth in this Declaration set or establish minimum standards or limitations or restrictions on use in excess of any Governmental Regulations, the covenants, conditions and restrictions set forth in this Declaration shall take precedence and prevail over any less stringent Governmental Regulations. Similarly, when any Governmental Regulations are more stringent than those set forth in this Declaration, the more stringent Governmental Regulations shall control.

c. **Remedies of the Declarant, the Association and the ACA.** By acceptance of a deed to a Lot, each Owner agrees that Declarant, the Association and the ACA shall each have the right to enter upon any Lot on which one (1) or more conditions or activities prohibited by Governmental Authority is maintained, or on which there has been a failure to perform any act required by Governmental Authority, for the purpose of curing any such violation, provided that the Owner has been given five (5) days prior written notice and has failed to remedy the violation within such time. EACH OWNER INDEMNIFIES AND HOLDS HARMLESS DECLARANT, THE ASSOCIATION AND THE ACA FROM ALL COST AND EXPENSE OF ANY SUCH CURATIVE ACTION AND ANY COST OR EXPENSE OR PENALTIES OR FINES LEVIED BY ANY GOVERNMENTAL AUTHORITY AS A RESULT OF THE ACT OR FAILURE TO ACT OF THE OWNER WITH RESPECT TO ITS LOT(S) OR THE SUBDIVISION. THE FOREGOING REMEDY SHALL BE CUMULATIVE OF ALL OTHER REMEDIES FOR

VIOLATIONS OF PROVISIONS OF THIS DECLARATION.

d. **Additional Obligations.** By acceptance of a deed to a Lot, or by initiating construction of Improvements to a Lot, each Owner assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable Governmental Regulations, 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. Each Owner is further advised that the Subdivision and Lots lie within the area classified as the Edwards Aquifer Recharge Zone and as such are subject to the rules and regulations of agencies of the State of Texas, including TCEQ, in addition to the ordinances of the City and statutes, or regulations affecting the Subdivision enacted by other Governmental Authority. Owners are advised that such requirements and prohibitions may relate to the types of pesticides and fertilizers, which may be used, minimum topsoil requirements, inspection of sewer laterals prior to covering, and criteria standards for sewer pipe, among other matters. In addition to the foregoing, each Owner is required to abide by and comply with all of the terms of that certain Edwards Aquifer Protection Plan (EAPP) recorded in Document Number 200006010139, Real Property Records of Comal County, Texas; and any other Edwards Aquifer Protection Plan or water pollution abatement plan, which may be filed pertaining to the Property from time to time. A copy of the EAPP may be obtained from Declarant or the Association, **OWNERS ARE ALERTED THAT THE EAPP CONTAINS RESTRICTIONS APPLICABLE TO THE LOTS.** The foregoing references are made for the benefit of Owner and do not in any way limit the terms and requirements of this covenant and the requirement that all Owners and contractors comply with all Governmental Regulations, and any plan required by such Governmental 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 TPDES permit prior to the start of construction. **EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT AND EACH BUILDER AND CONTRACTOR, BY UNDERTAKING THE MAKING OF IMPROVEMENTS TO A LOT, AGREES TO HOLD HARMLESS, DEFEND AND INDEMNIFY DECLARANT FROM AND AGAINST ALL COST (INCLUDING REASONABLE ATTORNEYS FEES AND COURT AND OTHER COSTS), LOSS, LIABILITIES, FINES, PENALTIES OR DAMAGE OCCASIONED BY THE FAILURE TO ABIDE BY ANY APPLICABLE GOVERNMENTAL REGULATIONS RELATED TO THE LOT AND/OR THE SUBDIVISION.**

6.14 **Variable Width Grading Control Easement.** Portions of Lots ten (10), eleven (11), and twelve (12) shown on the Plat contain a Variable Width Grading Control Easement. To assure the integrity of drainage facilities for the subdivision, the area shown on the Plat as a Variable Width Grading Control Easement shall be protected by the Owner from grading, excavation, landscaping, or any other activities that would lower or effect the ground elevation. The Owner of the Lot that has a Variable Width Grading Control Easement has the right of exclusive use of the entire area, subject to the provisions of this Declaration, and the Association's rights of access and repair. The Association has a right of access, from time to time, through any Lot containing a Variable Width Grading Control Easement for the purpose of maintaining, repairing, improving, or replacing the Easement, provided access is requested in

advance for the limited permitted purposes, and further provided the Association restores any portion of the Variable Width Grading Control Easement that is damaged by the access or work performed by or at the direction of the Association. The Owner of the Lot may not unreasonably deny a request for access by the Association for a proper purpose.

6.15 Compliance Inspection. The ACA, its agents, and/or professional consultants may, but are not required, to enter any Lot or the Improvements thereon to determine compliance with the requirements of this Declaration, or any other documents or approvals by the ACA. The ACA's agent may inspect those items reviewed by the ACA, including inspection for conformance to the site plan, the Grading Plan (grading and drainage), building plan, landscaping plan, and exterior design, colors and materials. Neither the ACA, Association nor their members or agents shall be subject to any liability for trespass, other tort or damages, or claims in connection with or arising from such entry. If the ACA determines that significant field discrepancies exist, the ACA may notify the Owner of the nature and extent of the discrepancy. Written clarification must be supplied by Owner to the ACA within ten (10) working days of receipt of such notification. If clarification by the Owner is not forthcoming or is determined to be inadequate by the ACA, the ACA may at its sole discretion retain a private consultant for the purpose of obtaining an outside opinion. All reasonable professional fees and expenses associated with this procedure may be assessed by the ACA against and collected from the Owner.

6.16 Decisions Final. All decisions of the ACA shall be final and binding, and there shall be no revisions of any action of the ACA except by procedure for injunctive relief when such action is patently arbitrary and capricious. In the event of construction of Improvements or threatened construction of Improvements in violation of this Declaration, any Owner, the Association, or Declarant may seek to enjoin such construction or seek other relief against the Owner or builder responsible therefore, provided that Owner shall first be given written notice of the perceived violation and the opportunity to remedy the violation within thirty (30) days of receipt of notice (or such longer period of time as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be remedied within thirty (30) days) prior to the filing of suit as provided herein.

ARTICLE VII USE RESTRICTIONS AND COVENANTS

7.1 Single Family Residential Use. All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees; and (iv) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threatens the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (i) through (iv) above in this Section 7.1 shall be made by the Board in their sole and absolute discretion. The business activity prohibition will not apply to the use by Declarant or any Builder (i) of any Dwelling as a model home, construction office and/or sales office, or (ii) of any Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot; any of which uses may be for the benefit of real property owned by Declarant or any Builder located within or outside of the Property.

7.2 Parking of Motor Vehicles. No vehicles or similar equipment will be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such vehicle (i) has less than one (1) ton carrying capacity; (ii) has less than three (3) axles; (iii) is in operating condition; and (iv) is generally in daily use as a motor vehicle on the streets and highways of the State of Texas. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement, provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board as intended for such vehicular use. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot or a street within the Property, except within an enclosed garage. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or portions of any Lot that are visible from any street within the Property.

7.3 Trailers, Boats, Commercial and Recreational Vehicles. No campers, boats, trailers, motor homes, travel trailers, camper bodies, golf carts, recreational vehicles, non-passenger vehicles, vehicles with three (3) or more axles or greater than one (1) ton carrying capacity, and/or equipment or accessories related thereto may be kept on any Lot, unless such item is operable and such item is (i) kept fully enclosed within a garage located on such Lot; (ii) kept fully screened from view by a screening structure or fencing approved by the ACA; (iii) temporarily parked on any street within the Property or on a Lot for the purpose of loading or unloading; or (iv) a commercial vehicle that is in use for the construction, maintenance or repair of a Dwelling or Lot in the immediate vicinity. The Board will have the absolute authority to determine from time to time whether an item is in operable condition and complies with the requirements in clauses (i) through (iv) above in this Section 7.3. Upon an adverse determination by the Board, the Owner will cause the item to be removed and/or otherwise brought into compliance with this Section 7.3. Notwithstanding any provision herein, no trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time.

7.4 Fences.

a. **Required Fencing.** To the extent Declarant or a Builder constructs a fence which fully or partially encloses a rear or side yard, then the Owner of that Lot must at all times maintain such fence in accordance with the terms of this Declaration, unless that Owner obtains the ACA's written approval to modify, replace, relocate or remove such fence in accordance with the provisions of this Declaration.

b. **Type of Fencing.** All wing-wall fencing between residences that face the front street shall be wrought iron. Rear fencing on interior lots is mandatory, and interior side fencing between lots are optional, and both fences, if installed, shall be 1x4 or 1x6 vertical cedar planks, without gaps between planks; stone; brick; ornamental iron; and/or masonry as approved by the ACA with the fence posts and bracing boards on such front, side and rear fences shall face the interior of the fenced yard. The perimeter fence along the rear of Lots 1-12 & 21 is mandatory and shall be wrought iron, and the sides of Lots 21 & 22 that adjoin the Greenbelt (Lot 34), is mandatory and shall be wrought iron as shown in Exhibit "B" attached hereto, unless otherwise approved by the ACA. Chain link or any other types of fencing not defined in Section 7.4(b) shall not be permitted. No fence shall exceed six feet (6') in height unless specifically approved by the ACA and applicable Governmental Authority. All fencing shall comply in all respects (including size

and location) with applicable City requirements. Unless approved by the ACA, fences may not be stained or painted, except that fences may be stained with a clear stain or with the same color stain as originally applied by the Declarant. The street side fence on Lots 15 & 30, which lot perimeter or side faces the side street adjoining such Owner's Lot shall have the smooth surface of the fence materials facing the applicable street and framing facing the interior of the lot, and shall be 1x4 or 1x6 vertical cedar planks, without gaps between planks; stone; brick; ornamental iron; and/or masonry as approved by the ACA.

c. **Location of Fence.** Unless approved by the City and the ACA, no fence or wall will be placed (i) on any Lot in a location nearer the street than the front building setback line for such Lot, or (ii) on those certain corner Lots whose rear boundary line adjoins any portion of the front yard of a Lot behind the corner Lot, in a location nearer to the front building setback line for the street that is in front of the adjoining Lot. The foregoing shall not limit or restrict fences erected in conjunction with model homes or sales offices. In addition to the foregoing, easements may also restrict the placement of fences. Fences shall not be constructed in any manner that would change or impede drainage onto or from a Lot. All fences crossing or within a drainage area or easement shall conform to the Grading Plan and the City or Governmental requirements.

d. **Maintenance of Fencing.** Except with respect to the Association Maintenance Screening Wall, each Owner shall maintain both sides of the portion of fencing on or along the boundary of such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto (as deemed necessary by the Board, in its sole and absolute discretion), except that Owners adjoining a Common Fence (as provided in Section 7.4.f) herein shall share in the cost of such maintenance as provided in Section 7.4.f herein. The Association shall be responsible to maintain the Association Maintenance Screening Wall.

e. **No Changes / Repairs.** All repairs and replacements to the perimeter fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new appearance of the repaired or replaced materials. Except as provided in this Section 7.4.e, no fencing may be changed or modified without the prior written consent of the ACA. This includes the prohibition against changing the height of the fencing and the fencing materials.

f. **Common Fencing.** Except for the Association Maintenance Screening Wall, side and rear yard fences that are installed by Declarant or the builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "**Common Fence**") shall be maintained jointly by the Owners whose Lot adjoins such Common Fence and the costs associated therewith shall be shared equally by said Owners. An Owner is not released from the joint maintenance obligation even if an Owner constructs a second fence along or near the Common Fence, unless the other Owner agrees in writing otherwise and the ACA's approval is obtained. All fencing shall be approved by the ACA before installation. If the Owners disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of one-half (1/2) of the cost of repair or replacement at Arbitration (as defined herein); or (ii) seek payment of one-half (1/2) of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term "**Arbitration**" shall mean binding arbitration

pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners.

7.5 **Common Retaining Wall.**

a. Maintenance of Common Retaining Wall. If a retaining wall, or a portion of a continuous retaining wall (in either case, a "**Common Retaining Wall**"), is installed on a common boundary of two Lots or is located on a Lot, but adjacent to (generally within not more than three (3) feet) and generally parallel with the boundary of another Lot, the Common Retaining Wall shall be maintained as provided in this Section 7.5. As the Owner of the Lot at the higher elevation (the "**Higher Lot**") has more control over the conditions that affect the stability and structural integrity of the Common Retaining Wall, the Owner of the Higher Lot is solely responsible for all maintenance, repair and reconstruction of the Common Retaining Wall (unless due to the negligence or willful act or misconduct of the Owner of the Lot at the lower elevation (the "**Lower Lot**"), in which case such costs shall be paid by the Owner of the Lower Lot). A retaining wall that is entirely within the boundaries of a Lot and not on or near a dividing line between two Lots is solely the responsibility of the Lot Owner. The Common Retaining Wall shall be maintained in the same location, size, style and design and with the same materials, as originally installed, unless the ACA's approval is obtained. In the case of a dispute between Owners of Lots as to which Lot is the Lower Lot and which lot is the Higher Lot, the decision of the ACA shall be final and binding upon the Owners.

b. Easements for Common Retaining Wall. Common Retaining Walls may not be located exactly on the common boundary line between two Lots. Therefore, there is hereby created an easement in and on the Lot where the Common Retaining Wall is actually located. The easement area shall be limited to the area that is within five (5) feet of the common boundary line. The easement shall be for the benefit of the Owner of the Lot that is responsible for maintenance of the Common Retaining Wall so that such Owner can maintain the Common Retaining Wall as provided in Section 7.5.a.

The Owner of the Lower Lot is granted a non-exclusive and perpetual right and easement of enjoyment and use over the exterior surface of the Common Retaining Wall for use as a perimeter wall or fence of the Lower Lot. The Owner of the Lower Lot is responsible for maintaining the Lower Lot up to the Common Retaining Wall, even if the Common Retaining Wall is inside the boundaries of the Higher Lot.

7.6 **Outbuildings, Sheds and Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, and sheds shall be erected, placed or constructed upon any Lot, unless (i) the building is approved by the ACA prior to the installation or construction of the building; (ii) such building is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition; (iii) the exterior paint and roofing materials of such building shall be consistent with the existing paint and roofing materials of the Dwelling; (iv) the building is located within a backyard that has a fence that completely encloses the backyard; (v) the height of the walls (excluding the roof) is not greater than eight feet (8'); (vi) the total height of the building (including walls and roof) is not greater than ten feet (10'); and (vii) the building is less than two hundred (200) square feet of floor space. In addition, the Owner is required to comply with any applicable City requirements, including, without limitation, any necessary permits.

7.7 **Animals.** No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that a reasonable number of cats, dogs or other generally recognized

household pets may be permitted on any Lot; however, those pets which are permitted to roam free, or in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board. If the animal owner fails to remove the animal from the Lot after the Board's request, the Board may remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the By-laws. All animals will be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal.

7.8 Signs. Except for Entry Signs, no sign or emblem of any kind, including "for rent" signs, may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following: (i) an Owner may erect one (1) sign on a Lot advertising the Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size; (ii) an Owner may temporarily place one (1) sign on a Lot advertising the "open house" of a Dwelling for sale, provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during actual open house hours; (iii) an Owner may place one (1) sign on the inside of a window advertising a Dwelling "for rent", provided that the sign does not exceed one and one-half (1 1/2) feet by one and one-half (1 1/2) feet in size; (iv) signs or billboards may be erected by the Declarant or any Builder designated in writing by the Declarant as having the right to erect such signs or billboards; (v) an Owner may temporarily place one (1) sign on a Lot advertising a "garage sale", provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during the garage sale hours; or (vi) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one (1) or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than sixty (60) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election. The ACA may in the ACA Standards permit additional signs and/or place additional restrictions or limitations on the signs permitted in this Declaration, provided that such additional restrictions or limitations do not conflict with the terms herein. The Association will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing. Removal shall not subject the Association to any liability in connection with such removal. All signs shall conform to any and all Governmental regulations including but not limited to any City Ordinance.

7.9 Trash; Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept, placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except solely on a day designated for removal of garbage, then such containers may be placed in the designated location for pick-up of such garbage and the container will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any Builder designated by Declarant.

7.10 Nuisances. No noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics, will be carried on upon any Lot, nor will anything be done thereon which the Board determines, in its sole and absolute discretion, is or may become an unreasonable source of annoyance or nuisance to the Property.

7.11 Antennae and Satellite Dishes. Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes, or other apparatus for the

transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of the Lot outside the Dwelling, except that (i) antennas, satellite dishes or other apparatuses that are one (1) meter or less in diameter and that are designed to receive transmissions other than television broadcast signals shall be permitted; and (ii) antennas or satellite dishes designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACA (a "**Permitted Device**"), must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained. The ACA in the ACA Standards may include rules or provisions regarding the type of additional Permitted Devices and/or the placement of Permitted Devices, provided that such ACA Standards do not conflict with the terms of this Section 7.11 and do not unreasonably increase the cost of installation, maintenance or use of the Permitted Device. A Permitted Device that complies with the provisions of this Section 7.11 and the ACA Standards shall not require the ACA's approval prior to installation. However, the ACA shall be the sole and exclusive authority for purposes of determining if the item or device complies with the provisions of this Section 7.11 and the ACA Standards.

7.12 Air-Conditioning Units. Air-conditioning apparatuses must be installed on the ground behind the rear of the Dwelling, on the ground on the side of the Dwelling or such other location as may be approved by the ACA. No air-conditioning apparatus or evaporative cooler may be located in or on the front of any Dwelling or attached to any roof, wall or any window of any Dwelling.

7.13 No Temporary Structures as a Residence. No structure of a temporary character, including, without limiting the generality thereof, any tent, shack, garage or barn will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent, that is erected in the back yard behind a fully screened fence, is permitted provided that such activity is on a temporary basis and does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

7.14 Sidewalks. The Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot to the extent required by the City.

7.15 Landscaping; Maintenance. Installation of grass and ground cover must be installed within 15 days of the initial closing of a Lot with a residential purchaser; and shrubs, trees, and other landscaping and irrigation systems must be completed within 45 days of first occupancy of the residence on a Lot in accordance with the landscape plan approved by the ACA. Decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front and side yard may not exceed ten percent (10%) of the total area of the front and side yard. All trees, grass and other landscaping located on any Lot (or located adjacent to such Lot within the right-of-way of a street, alley or other right-of-way, including, for example, the area adjacent to a Lot between the sidewalk and the curb of the street) must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and

other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flower beds and planter areas. No hardscape, including, without limitation, edging may include any symbols, characters, numbers or letters, unless approved by the ACA. Notwithstanding anything to the contrary in this Section 7.15 or this Declaration, the ACA, without obligation to do so, may elect to approve a yard or portion of a Lot as a "xeriscape" landscape, with such rules and requirements for installation and maintenance as the ACA may determine to be appropriate.

Landscape plans showing the type and location of trees, grass and plants must be submitted to the ACA for approval. All landscaping of lots will include a minimum of three (3) trees. Tree types are limited to the following species: Bur Oak, Monterey Oak, Live Oak, Cedar Elm, Blue Pyramid Cypress, and Mexican Sycamore trees are permitted at the rear of Lots 22-29 and at the side areas of Lots 1 & 31 which abut Battle Intense. Each tree must be at least three (3) inches in diameter and at least ten (10) feet tall. Two (2) trees are to be located in the area of the lot between the front wall of the residential structure and the front property line. One (1) tree is to be located in the area between the back wall of the structure and the rear property line. Only the following grasses will be permitted on all lots: Floratam, Bermuda, Buffalo, and Zoysia, however the ACA reserves the right to approve any other grasses it deems as appropriate for a drought tolerant installation. Decorative ground cover rock in the front and side yards may be used in lieu of grass, but may not exceed ten percent (10%) of the total plantable area of the front and side yards. Complete landscaping in front yard and, for corner Lots, along the side yard adjacent to a street is required. Owners are also required to landscape the area between the street curb and the Lot line and maintain the same in good condition as approved by the ACA. The ACA will require consistency in the choice of material and maintenance of this area. Owners are encouraged to use xeriscaping and plants, trees, and grasses that require minimum water usage and to use water efficient watering systems to minimize the amount of water applied to the Lots.

7.16 Exterior Improvement Maintenance. All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board, in its sole and absolute discretion.

7.17 Tree Protection. Maintenance of the trees within the Subdivision is strongly encouraged. Prudence, care, and discretion should be used in the positioning of all Improvements in order to preserve as many trees as possible within the Subdivision. Replacement of trees that are removed or die is encouraged. All pruning of trees shall be consistent with the City of Fair Oaks Ranch tree pruning ordinance, as may be amended or modified from time to time. All precautions shall be taken in connection with the pruning and trimming of trees, in order to prevent the spread of oak wilt and oak decline within the Subdivision. Such precautions shall include, but not be limited to minimal trimming and pruning of oak trees, trimming and pruning during dormant months only (normally January and February), and painting all fresh cuts with appropriate dressing or paint.

7.18 Garages. Each Dwelling must have a garage that will accommodate a minimum of two (2) automobiles. All garages must comply with City requirements. Garages may be used as Declarant's or a Builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant or Builder as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot.

7.19 **Clothes Hanging Devices.** No clothes hanging devices exterior to a Dwelling are to be constructed or placed on the Lot, except within the Dwelling.

7.20 **Window Treatment.** No aluminum foil, newspaper, reflective film, bed sheets or similar linens, or similar treatment will be placed on windows or glass doors of a Dwelling.

7.21 **Oil and Gas Drilling or Mining.** No drilling, refining, quarrying or mining operation of oil, gas or other minerals of any kind will be permitted upon or from the surface of any Lot, nor will any oil derrick, well, tank, storage facility or other related equipment be permitted on any Lot. This section shall not prohibit subsurface drilling activities that begin upon and are conducted from the surface of real property not subject to these restrictions, provided, however, in no event shall the directional drilling or sub-surface activities be at depths less than two hundred feet (200') below the overlying surface of the Property and no closer than two hundred feet (200') from the boundary line of the Property, and no such drilling shall interfere with or result in damage to or subsidence of the surface of the Property, the structures located at any time thereon, or the support of any such structures.

7.22 **Mail Boxes.** Mailboxes shall be of similar type as originally installed, unless the ACA approves additional types of mailboxes. The Owner of each lot on which a house has been constructed is required to construct a mailbox of a size, design, shape, and location approved by the ACA, which shall conform to the general appearance and requirements shown on **Exhibit "C"** attached hereto.

7.23 **Athletic and Recreational Facilities.** No outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts may be placed on a Lot unless (i) such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed twelve feet (12') in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACA may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling.

7.24 **Lighting; Exterior Holiday Decorations.** Lighting and/or decorations on a Lot may not be used or placed in a manner, which, in the Board's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Landscape lighting is only allowed when approved by the ACA and when the submittal indicates the lighting scheme is limited in area and in intensity. The purpose of landscape lighting is to provide for safety and diffused mood lighting only, not for decoration. Step lights, pole and pilaster mounted fixtures may be allowed when placed appropriately. Filters and shields are required to hide the light source and are required to be "full cutoff light fixtures". Fluorescent, metal halide, or low-pressure sodium lamps are not allowed.

The Property is within the "Camp Bullis Dark Skies Zone". Comal County has adopted an Order to help preserve our dark skies in a portion of Comal County. The Texas Legislature has authorized counties to regulate outdoor lighting in areas adjacent to military installations. Article III, Section 1 of the order states "Decorative holiday lighting from November 15 through the next January 15 is exempt." A copy of the Order can be found at:

http://www.cceo.org/cbdsz/documents/Order_199_Camp_Bullis_Lighting_9_4_08.pdf.

Exterior lighting is required at the front door of each residence; provided, however, that no light fixture or lantern of any type shall be placed in the front yard, or in the back yard if same

is visible from any other portion of the Subdivision or any streets, of any Lot until the same has been approved by the ACA. 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.

Holiday decorations, including wreaths, and other similar decorations, may be placed on the exterior of the residence and/or the yard area of a Lot, provided that such decorations shall not be displayed more than thirty (30) days in advance of the holiday to which they pertain and shall be removed within fifteen (15) days after such holiday. No lighted decorations shall be permitted to shine into any neighboring residence or yard area, and no sound-emitting decorations shall be permitted. The ACA shall have the right to establish (and thereafter to amend) standards and guidelines for holiday decorations from time to time and to amend standards and guidelines to conform to the "Camp Bullis Dark Skies Zone" Order, as may be amended.

7.25 Flags, Flagpoles, Lawn Decorations and Sculptures. The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags, flagpoles and similar items on any portion of such Owner's Lot except the interior of the Dwelling, unless (i) such item is placed within a backyard completely enclosed by a fence which blocks the view of the item at ground level; and (ii) such item is no taller than the fence. To maintain the overall aesthetic character of the community, the following restrictions shall govern the display of flags within the community. Each Homeowner is authorized to mount two temporary or permanent flagstuffs on the front, rear or side of their residence by wall bracket. Homeowners may not locate a flag or flagpole on the Common Area or any portion of the Property owned by Declarant. Additionally:

- a. With respect to the flag of the United States of America, the flag of the State of Texas and flags of any branch of the United States armed forces: Flagpoles must not exceed twenty (20) feet in height, and only one (1) such flagpole may be erected on each Owner's Lot. Such flags may contain no more than twenty-four (24) square feet of material. Flags and flagpoles must be maintained in good condition, and the ACA may require any deteriorated flag or flagpole to be repaired, replaced or removed.
- b. With respect to all other flags: Permanent in-ground flagpoles are not permitted. Flagstuffs should not exceed six (6) feet in length. The suggested location for bracket mounting is on the garage doorframe or near the garage door. No roof-mounted flagstaff is allowed. Multiple flag configurations and any flagstaff in excess of six (6) feet must be approved by the ACA prior to installation or display. Such flags may contain no more than twenty-four (24) square feet of material and must be of good taste and presentation.

Notwithstanding anything in this section to the contrary, an Owner may display religious objects on the front door or doorframe of the Owner's Dwelling, unless such objects contain patently offensive language or symbols or the object is more than twenty-five (25) square inches in size.

7.26 No Lot Consolidation or Division. No Owner, other than Declarant, may divide any Lot and/or consolidate any adjoining Lots and/or any portion thereof.

7.27 Drainage Alteration Prohibited. Unless approved by the ACA, no Owner will:
(i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling; or (ii) install landscaping or other improvements that may

interfere with, obstruct or divert drainage flows established by the Declarant or any Builder. The foregoing shall not prevent or limit the Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot. All grading by any party must be in compliance with the Grading Plan. All storm or surface water from any Lot shall drain into or onto contiguous or adjacent street rights-of-way, drainage easements, drainage overflow areas, or retention areas, or as determined by a qualified engineer. All work done on any Lot affecting or pertaining to the Lot grade, the flow of surface water drainage, the alteration or removal of any drainage or environmental berm or swale or any storm berm or swale, must be in accordance with the Grading Plan and the site grading and drainage plans prepared by an engineer selected by Declarant or the ACA to prepare such plan or plans and also in accordance with all applicable laws, codes and regulations of Governmental Authority.

7.28 Construction Activities. This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board in its sole good faith judgment, the Board will have the authority to obtain an injunction to stop such construction. Each Owner and Builder shall provide sufficient means for temporary collection of and removal of all construction debris. In particular, all refuse or waste material generated from such Builder's construction shall be collected in a container or otherwise secured within a contained area on the Lot and picked up for disposal on a regular basis. Additionally, the Owner and Builder of a residence undergoing construction shall be responsible for providing sanitary bathroom facilities to accommodate all contractors and subcontractors during the construction period, which toilets will be serviced regularly and removed promptly once plumbing in the residence on such Lot becomes operational. These requirements are intended to facilitate the goal of the Declarant and the Association to maintain the Subdivision in a clean and respectable manner. If an Owner or Builder unreasonably violates this objective, Declarant and/or the Association shall have the option to initiate cleanup of the Lot, and/or place facilities on the Lot necessary to maintain the referenced goal. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris, including, but not limited to, wash and sedimentation onto streets, neighboring properties, lots, and Greenbelt areas of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith. All builders and owners shall be responsible for collecting or removing trash or debris from common area including green belts and flood areas and adjacent streets and property.

7.29 Declarant and Builder Development and Construction. Notwithstanding any other provision herein, Declarant, and its successors and assigns, and any Builders, will be entitled to conduct on the Property all activities normally associated with, and convenient to, the development of the Property and the construction and sale of Dwellings on the Lots within the Property.

7.30 Roofing. The surface of roofs of principal and secondary structures, including garages and domestic living quarters, shall be of slate, stone, concrete tile, clay tile, or other tile of a ceramic nature; or metal, left natural, tarnished, or alloy coated such as "Galvalume"); or dimensional composition (thirty (30) years or greater) shingle; and shall be of a color approved

by the ACA. The ACA shall have the authority to approve other roof treatments and materials if the form utilized will, in its sole discretion, be harmonious with the surrounding homes and Subdivision as a whole. All roofs shall have a pitch of 4:12 or greater. The ACA may restrict the installation of roofing shingles that are primarily designed to be wind and hail resistant, provide heating and cooling efficiencies or provide solar generation capabilities ("**Specialized Shingles**") on any Dwelling if such Specialized Shingles do not resemble shingles used on other Dwellings, are less durable than shingles used on other Dwellings or do not match the aesthetics of the property surrounding the Lot on which such Dwelling is located.

7.31 Solar Collectors; Roofing. No solar collector panels or similar devices ("**Solar Devices**") may be placed on or around any Dwelling during the Development Period. Following the Development Period, except with the written permission of the ACA, no Solar Devices may be placed on or around any Dwelling. The ACA may deny permission to place Solar Devices on or around any Dwelling if (1) the Solar Device does not comply with applicable laws; (2) the Solar Device is to be placed on any Common Area or any portion of the Property owned by the Declarant; (3) the Solar Device is to be placed anywhere other than an Owner's roof, patio or within such Owner's fenced yard; (4) the Solar Device is to extend beyond the roofline of any Dwelling; or (5) the Solar Device is to be taller than the Owner's fence. The ACA may restrict the installation of roofing shingles that are primarily designed to be wind and hail resistant, provide heating and cooling efficiencies or provide solar generation capabilities ("**Specialized Shingles**") on any Dwelling if such Specialized Shingles do not resemble shingles used on other Dwellings, are less durable than shingles used on other Dwellings or do not match the aesthetics of the property surrounding the Lot on which such Dwelling is located.

7.32 Driveways and Curbs. Driveways on each residential Lot and visible from a street must be constructed of salt or broom finished concrete, stamped concrete, or brick pavers, provided that the first ten feet (10') of the driveway entry adjacent to the street shall be salt or broom-finished concrete. All curb cuts must be professionally machine cut. No more than one (1) curb cut per Lot shall be permitted without approval of the ACA. Driveway locations shall be only as approved by the ACA.

7.33 Size. Each one (1) story or one and one-half (1-1/2) story building or structure shall contain not less than eighteen hundred (1,800) contiguous square feet of living area, and each two (2) story or two and one-half story (2-1/2) building or structure shall contain not less than two thousand (2,000) contiguous square feet of living area, exclusive of open or screened porches, terraces, patios, driveways, carports, and garages. Residences on Lots 1, 23, 24, 25, 26, 27, 28, 29, and 31 shall be one (1) story or one and one-half (1-1/2) story if no upper portion of the one-half (1-1/2) story residence faces Battle Intense. Lots 22 and Lot 30 may be two (2) story or two and one-half story (2-1/2) residences.

7.34 Setbacks. All buildings or other structures, permanent or temporary, habitable or not, must be constructed, placed and maintained in conformity with the setback lines hereby established and those shown on the Subdivision Plat, if any. All main residential units or other buildings constructed in this subdivision shall be set back at least twenty feet (20') from the front property line of each lot in this subdivision however a fifteen foot (15') front setback will be allowed if approved by the ACA to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood. All main residential units or other buildings constructed in this subdivision shall be set back at least five feet (5') from the side and five feet (5') from the rear lot lines. All residential units on any lot in this subdivision must face on the street upon which the lot fronts, subject however to any changes thereto as may be granted in writing by the ACA. Eaves of buildings shall not be deemed to be a part of a building or structure, but porches shall be

deemed to be a part of a building or structure for the purpose of this Section. The ACA shall have the right to grant Variances to the setbacks established in this Section to accommodate topography, cul-de-sac or odd-shaped lots, or the architectural design of the proposed Improvements. In no event may any structure be constructed or maintained upon any utility easement or other easement. All Variances to setbacks must be approved in writing by the ACA and may also require approval by a Board of Adjustments or other applicable department of the City or applicable Governmental Authority.

7.35 Finishes and Colors. The exterior walls of all residential units shall be constructed with rock, stucco or brick, for eighty-five percent (85%) or more of the total exterior wall area. Window and door openings shall be included as masonry. All residences on Lots 1, 23, 24, 25, 26, 27, 28, 29, and 31 shall have one hundred percent (100%) masonry on the sides of the residences that face or abut Battle Intense. Notwithstanding the foregoing, except the one hundred percent (100%) masonry requirements on Lots 1, 23, 24, 25, 26, 27, 28, 29, and 31, the ACA is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood. Exterior wall materials and exterior colors used on any building on all Lots shall be restricted to those types approved by the ACA.

7.36 Siding. All siding on residential units must be approved by the ACA. Subject to the limitations imposed by Section 7.34 above, wood and fiber cement siding may be used. All other siding materials, and all siding colors, must be approved by the ACA. Absent the express written consent of the ACA, vinyl siding and aluminum siding shall not be allowed. The sidewall of each house on a corner Lot that faces a side street will be designed and constructed to create an attractive appearance that is comparable to its front elevation in terms of building materials, use of architectural trim and decor, windows, doors and other relief areas. Four-foot by eight-foot (4' x 8') wood, Masonite or similar panel siding will not be allowed.

7.37 Chimneys. The exterior of all chimneys of residential units shall be one hundred percent (100%) rock, brick or stucco masonry of a type and color matching that of the exterior walls of the house.

7.38 Windows. All windows shall be wood, vinyl, or factory or job-finished painted metal windows, or as otherwise approved in writing by the ACA, and shall be white, beige or stained or painted in a color compatible with the exterior color of the residence and approved by the ACA. All glass in exterior windows, except fixed glass, shall be double pane, and all glass in exterior windows shall be of a color and type approved by the ACA. No colored, reflective, or mirror type glass is permitted.

7.39 Exterior Glass and Mirrors. No reflective or mirrored glass shall be used on, in or for the windows or doors of any buildings or other Improvements constructed within the Subdivision.

7.40 Corner Lot Residences. Residences constructed upon corner lots shall be oriented so that the front of the residence shall face the street as approved by the ACA.

7.41 Swimming Pools/Spas. Any swimming pool/spa constructed on a Lot must be enclosed with a fence or other device completely surrounding the swimming pool/spa, which, at a minimum, satisfies the City Code and all other applicable Governmental Regulations. Pool/spa fencing shall be installed prior to the completion of the construction of the pool/spa. Nothing in this Section 7.41 is intended or shall be construed to limit or affect an Owner's obligation to

comply with any applicable Governmental Regulations concerning swimming pool/spa enclosure requirements. All plans for swimming pools/spa, and all related fencing, construction and access must be submitted to the ACA for approval prior to the start of construction. When swimming pool/spa construction accompanies the initial construction of a residence, such plans (include clear site plans) shall accompany the submission of plans for the residence. Above ground pools are not permitted. Swimming pool filter tanks shall be fully screened from view of all streets and other Lots or buried in conformity with applicable Governmental Regulations.

7.42 Numbering. House numbers identifying the address of each Living Unit must be placed as close as possible to the front entry 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 Living Unit. The ACA may establish a consistent style, size and location of house numbers and/or address markers.

7.43 Fireworks, Firearms, and Other Devices. The discharge of any fireworks or firearm, including BB guns, paint ball guns and pellet guns, within the Subdivision or on adjacent lands owned in whole or in part by Declarant or the Association is strictly prohibited. Each Owner shall ensure family members and Occupants do not violate such prohibition. Additionally, there is prohibited the use of any bow and arrow, slingshot, paintball, or other launching or catapulting device except strictly within the confines of a Lot and not involving the hunting or killing of any animal. No hunting shall be done with any type of weapon within this subdivision.

7.44 Hazardous Activities. No activities shall be conducted on the Lots or within the Subdivision and no Improvements shall be constructed on the Lots or within the Subdivision, which are or might be unsafe or hazardous to any Person or the Subdivision.

7.45 Fuel Storage and Open Fires. No butane, propane or other combustible fuel tank or container shall be installed or kept on any Lot except for (1) portable, small sized tanks used solely to fuel barbecue units or fire pits or portable tools, (2) underground fuel tanks no larger than two hundred fifty (250) gallons used solely to fuel barbecue units or fire pits or outdoor cooking areas that comply with the City of Fair Oaks Ranch ordinances, (3) fuel tanks installed in vehicles, boats or equipment, or (4) a reasonable number of portable cans/tanks used to refuel equipment or vehicles. No open fires shall be permitted on any Lot except those within an interior or exterior fireplace designed and built according to industry standards and all applicable laws, codes and statutes, or those within a contained barbecue unit which is attended by a responsible adult while in use for cooking purposes only. No fireplace, fire pit or barbecue unit shall be permitted to be placed or operated in any front yard or driveway on any Lot. The burning of any materials will not be allowed, including, but not limited to, brush and building materials on any Lots, Common Areas, or greenbelts within the Subdivision, or on adjacent lands owned in whole or in part by Declarant or the Association.

7.46 Noise and Nuisances. No exterior speakers, horns, whistles, bells or other sound devices (other than alarm devices used exclusively for security purposes) shall be located, used or placed on any of the Lots or within the Subdivision without the express written approval of the ACA as to such system, including, without limitation, speaker placement, permissible sound levels, and other specifications. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Lots or within the Subdivision so as to be offensive or detrimental to any other portion of the Lots or the Subdivision or to the Occupants of any Lot. 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 its Owners or residents.

7.47 **Water Wells.** The drilling of water wells on any lot is prohibited, except at designated easement locations owned by the City of Fair Oaks Ranch. No individual water supply system shall be permitted on any Lot, including but not limited to, water wells.

7.48 **Septic Systems.** No privy, cesspool, or septic tank or system shall be placed or maintained upon any portion of the Subdivision.

7.49 **Compliance.** Each Owner shall comply strictly with the provisions of these restrictions as the same may be amended from time to time. Failure to comply with any of this Declaration shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by an aggrieved Owner or Declarant. Declarant makes no warranty or representation as to the present or future validity or enforceability of this Declaration, its terms or provisions. Any Owner acquiring a Lot in reliance on this Declaration, its terms and provisions shall assume all risks of the possible amendment, validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless from any damages resulting from any amendment to or invalidity or unenforceability of the Declaration.

ARTICLE VIII COMMON AREAS

8.1 **Association to Hold and Maintain.** The Association will own all Common Areas in fee simple title. The Association shall maintain, at the Association's cost, the Common Area and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas, at the Association's cost, to the extent the Board determines that such maintenance is desirable or is required by applicable law. The costs of such maintenance for the Common Areas and Common Maintenance Areas shall be the Association's responsibility, regardless if such cost was incurred during the Development Period.

The Owner of a Lot may not use the Common Areas in a manner that damages the Common Area, alters the appearance of the Common Area, or interferes with the Association's maintenance of the Common Area on the Owner's Lot. The Association has a right of access, from time to time, through the Lot for the purpose of maintaining, repairing, improving, or replacing the improvements in the Common Area, provided access is requested in advance for the limited permitted purposes, and further provided the Association restores any portion of the Common Area that is damaged by the access or work performed by or at the direction of the Association. The Owner of the Lot may not unreasonably deny a request for access by the Association for a proper purpose. An Owner may not erect or alter any Improvements on, or clear, landscape, or disturb, any Common Areas except as approved by the Board.

Common Areas are intended to retain a "natural" appearance, as compared to a "manicured" appearance. Accordingly, Common Areas may be seeded with vegetation, which is indigenous to South and Central Texas, and are to be maintained in accordance with the natural cycle of such indigenous vegetation. Common Areas are intended to be "Open Space" and shall comply with all regulations, rules, rulings, impervious cover restrictions, and determinations of the Texas Commission on Environmental Quality (TCEQ), related to the Common Area, including, without limitation, the provisions of Chapters 325 and 331, Texas Administrative

Code, and any specific rulings made pursuant to the terms thereof.

8.2 Use of Common Areas at Own Risk. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board and committees, Declarant, and any Builder are not insurers of personal safety and that each person using the Common Area assumes all risks of personal injury and loss or damage to property, resulting from the use and enjoyment of any portion of the Common Area.

8.3 Condemnation of Common Area. In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board determines, in its business judgment, including, without limitation, (i) to purchase additional Common Areas to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Area any improvements that were on condemned Common Area, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

8.4 Damage to Common Area. If the Common Area or improvements on the Common Maintenance Areas are damaged and if there are insurance proceeds sufficient to repair such damage to its prior condition, then the Association shall cause such damage to be repaired or reconstructed unless there is a sixty-seven percent (67%) or greater vote of all outstanding votes entitled to be cast within ninety (90) days after the loss not to repair or reconstruct. If said sixty-seven percent (67%) vote is cast not to repair or reconstruct such damage and no alternative improvements are authorized, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

8.5 Conveyance of Common Areas by Declarant to Association. Declarant shall have the right to convey title to any portion of the Property owned by Declarant, or any easement interest therein, to the Association as Common Area, and the Association shall be required to accept such conveyance. Property conveyed by Declarant to the Association as Common Area shall be conveyed free and clear of monetary liens and encumbrances other than taxes and assessments imposed by governmental entities or districts authorized by Texas law. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the Records.

8.6 Annual Inspection of Common Area - Budget. From the period commencing at the expiration of the Development Period until ten (10) years thereafter, the Association shall at least annually examine the condition of the Common Area to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one (1) or more experts hired by the Association for this purpose, such as a professional property manager, an engineer, or professional contractors such as landscapers and brick masons. Within fifteen (15) days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair, and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. An expert's report is a record of the Association that is

available to Owners for inspection and copying.

ARTICLE IX EASEMENTS

9.1 **Easement for Utilities on Common Area.** During the Development Period, the Declarant, on behalf of itself, reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for the construction, installation, use and maintenance for utilities, including, without limitation, water, sewer, electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements. The Association will also have the right to grant the easements described in this Section 9.1. Protection of the Common Areas or Flood Open Space from damage shall be maintained from any contractor, including the construction of any roads. Any damage shall be the builder or contractor's responsibility to repair.

9.2 **Easement to Correct Drainage on Property.** For a period of five (5) years after the Development Period, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where the Dwelling is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. With notice provided to an Owner before commencing repairs or replacement, any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.3 **Easement for Right to Enter Lot.** If the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association will have the right 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 will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

9.4. **Easement for Right to Enter and Inspect Common Area.** For a period of ten (10) years after the date of the expiration of the Development Period, Declarant shall have the right, but not the obligation, to enter upon the Common Area for purposes of inspecting and repairing the Common Area and/or any improvements thereon at Declarant's expense; provided; however, nothing contained herein shall obligate Declarant to make any inspections or repairs.

9.5 **Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Dwellings and landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot, 24 months after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.6 **Association Easement.** Declarant hereby reserves the Association Easement over, upon and across each Lot for the benefit of the Declarant and the Association for the purpose of placing, constructing and maintaining the Entry Signs, the Association Maintenance Screening Wall, and landscaping owned and/or maintained by the Association in a Common Area.

ARTICLE X ANNEXATION AND WITHDRAWAL

10.1 **Annexation by Declarant.** While Declarant owns any real property subject to this Declaration, Declarant may, at its sole option, amend and expand the definition of Property by annexing real property into the Association and subjecting such real property to the terms hereof; provided; however, Declarant shall not have the right to annex real property that is located more than 1 mile from the Property (as such term may be amended), without a vote as provided in Section 10.2 below.

10.2 **Annexation by Association.** The Association may annex any real property into the Association and subject such real property to the terms hereof by an affirmative vote of sixty-seven percent (67%) or greater of all outstanding votes that are entitled to be cast.

10.3 **Recording of Annexation.** The annexation of such real property shall be evidenced by a written Recorded document.

10.4 **No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any real property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

10.5 **Withdrawal of Property.** While Declarant owns any real property subject to this Declaration, Declarant may amend this Declaration to withdraw any real property that does not have a Recorded plat from the definition of the Property and from the coverage of this Declaration, provided that the owner of real property to be withdrawn consents to such withdrawal.

ARTICLE XI DISPUTE RESOLUTION

11.1 **Introduction & Definitions.** The Association, the Owners, Declarant, and all persons subject to this Declaration (individually a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Association and/or the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

a. "**Claim**" means any claim, grievance, or dispute between the Parties arising from or related to this Declaration, the By-laws or the Certificate for the Property or related to the Common Areas or any improvements of any kind to the Common Areas, except Exempt Claims as defined below. Claims include, without limitation: (i) Claims arising out of or relating to the interpretation, application or enforcement of the Documents; (ii) Claims relating to the rights and/or duties of Declarant as Declarant

under the Documents; and (iii) Claims relating to the design, construction or maintenance of the Common Maintenance Areas and/or the Property.

b. **"Claimant"** means any Party having a Claim against any other Party.

c. **"Exempt Claims"** means the following claims or actions, which are exempt from this Article: (i) the Association's claim for assessments, and any action by the Association to collect assessments; (ii) an action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration; (iii) enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration; (iv) a suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article; and (v) a dispute that is subject to alternate dispute resolution - such as mediation or arbitration - by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

d. **"Respondent"** means the Party against whom the Claimant has a Claim.

11.2 **Mandatory Procedures.** It is intended that all Claims will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, Declarant, the Association, the Board, and all Owners shall be bound by the following dispute resolution procedures of this Article XI.

11.3 **Notice.** Claimant must notify Respondent in writing of a Claim (the **"Notice"**), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision(s) of the Declaration, By-laws, Certificate or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section 11.3.

11.4 **Right to Cure.** If the Notice sets forth a Claim regarding an alleged defect or defects (whether one or more, the **"Alleged Defects"**) in any improvements on any portion of the Common Area or the Property, Respondent shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

a. **Notice of Alleged Defect.** If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof Claimant shall give written notice of the Alleged Defect (**"Notice of Alleged Defect"**) to the other Party who constructed the improvement with respect to which the Alleged Defect relates.

b. **Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time after the receipt by a Party of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Party, such Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, areas of Association responsibility, or any other portion of the Property for the purposes of inspecting and/or conducting testing and, if deemed necessary by such Party at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Party

shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

c. No Additional Obligations; Irrevocability and Waiver of Right.

Nothing set forth in this Article shall be construed to impose any obligation on a Party to inspect, test, repair, or replace any item or Alleged Defect for which such Party is not otherwise obligated under applicable law or any warranty provided by such Party. The right reserved to a Party to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to such Party except by a Recorded, written document executed by such Party.

11.5 Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to this Article XI. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, mediation, or arbitration alleging (1) damages for costs of repairing an Alleged Defect ("**Alleged Defect Costs**"), (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid in to the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Owners prior to initiation of any legal action, regulatory action, cause of action, proceeding, mediation or arbitration which notice shall include at a minimum (1) a description of the Alleged Defect; (2) a description of the attempts of the other Party to correct such Alleged Defect and the opportunities provided to the other Party to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Texas that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the Claim; and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

11.6 Alternative Dispute Resolution.

a. Negotiation. Each Party to a Claim shall make every reasonable effort to meet in person and confer for the purpose of resolving a Claim by good faith negotiation. Each Party to the Claim shall bear their own attorneys' fees and costs in connection with such negotiation.

b. Mediation. If the Parties cannot resolve their Claim within such time period as may be agreed upon by such Parties (the "**Termination of Negotiations**"), the Party instituting the Claim (the "**Disputing Party**") shall have thirty (30) days after the Termination of Negotiations within which to submit the Claim to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon

which the Parties to the Claim may mutually agree. No person shall serve as a mediator in any Claim in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all Parties to the Claim. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Claim to mediation within thirty days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Claim and all other Parties to the Claim shall be released and discharged from any and all liability to the Disputing Party on account of such Claim; provided, nothing herein shall release or discharge such Party or Parties from any liability to persons or entities not a Party to the foregoing proceedings.

c. **Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each Party to the Claim shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all Parties to the Claim shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the Parties to the Claim mutually agree to extend the mediation period. The mediation shall be held in the County where the Property is located or such other place as is mutually acceptable by the Parties to the Claim.

d. **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the Parties to the Claim and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties to the Claim agree to obtain and assume the expenses of obtaining such advice as provided in Section 11.6 g. below. The mediator does not have the authority to impose a settlement on any Party to the Claim.

e. **Exclusion Agreement.** Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

f. **Parties Permitted at Sessions.** Persons other than the Parties to the Claim may attend mediation sessions only with the permission of all Parties to the Claim and the consent of the mediator. Confidential information disclosed to a mediator by the Parties to the Claim or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic record of the mediation process.

g. **Expenses of Mediation.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any expert advice produced at the direct request of the mediator, shall be borne equally by the Parties to the Claim unless agreed to otherwise. Each Party to the Claim shall bear their own attorneys' fees and costs in connection with such mediation.

11.7 Final and Binding Arbitration. If the Parties cannot resolve their Claim pursuant

to the procedures described in Section 11.6 above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Claim to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 11.7. If the Disputing Party does not submit the Claim to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Claim and all other Parties to the Claim shall be released and discharged from any and all liability to the Disputing Party on account of such Claim; provided, nothing herein shall release or discharge such Party or Parties from any liability to a person or entity not a Party to the foregoing proceedings.

The existing Parties to the Claim shall cooperate in good faith to ensure that all necessary and appropriate Parties are included in the arbitration proceeding. Subject to the limitations imposed in this Section 11.7, the arbitrator shall have the authority to try all issues, whether of fact or law.

a. **Place.** The arbitration proceedings shall be heard in the County where the Property is located or such other place as is mutually acceptable by the Parties to the Claim.

b. **Arbitration.** A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the American Arbitration Association with experience in relevant matters which are the subject of the Claim. The arbitrator shall not have any relationship to the Parties or interest in the Property. The Parties to the Claim shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

c. **Commencement and Timing of Proceeding.** The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

d. **Pre-hearing Conferences.** The arbitrator may require one (1) or more pre-hearing conferences.

e. **Discovery.** The Parties to the Claim shall be entitled to limited discovery only, consisting of the exchange between the Parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Claim, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the Parties to the Claim. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

f. **Limitation on Remedies/Prohibition on the Award of Punitive Damages.** Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Texas Arbitration Act, Tex. Civ. Prac. & Rem. Code § 171.001 et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

g. **Motions.** The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

h. **Expenses of Arbitration.** Each Party to the Claim shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such Party. Each Party to the Claim shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the Parties.

11.8 Statute of Limitations. Nothing in this Article shall be considered to toll, stay, or extend any applicable statute of limitations.

11.9 Enforcement of Resolution. If the Parties to a Claim resolve such Claim through negotiation or mediation in accordance with Section 11.6 above, and any Party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Section 11.7 and any Party to the Claim thereafter fails to comply with such resolution or award, then the other Party to the Claim may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Article. In such event, the Party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys' fees and court costs.

11.10 General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not a party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

11.11 Litigation Approval and Settlement. In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial, arbitration or administrative proceeding without the prior approval of Owners of at least seventy five percent (75%) of the Lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceeding instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. Also, the Association may not initiate any judicial, arbitration or administrative proceeding against Declarant without the approval of Owners of at least seventy five percent (75%) of the Lots. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims. This Section 11.11 may not be amended without the approval of Owners of at least seventy five percent (75%) of the Lots.

11.12 Other Dispute Resolutions. Notwithstanding Declarant's intent to submit any controversy or Claim (as defined above) arising out of or relating to this Declaration or the

Property to arbitration as provided in this Article XI, in the event that a court of competent jurisdiction shall determine or a relevant law shall provide that a particular dispute is not subject to the arbitration provisions in this Article XI, then the Parties agree to the following provisions:

Waiver of Trial by Jury. EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION AND ANY CLAIM (AS DEFINED IN ARTICLE XI OF THIS DECLARATION) ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY SUCH CLAIM, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

ARTICLE XII DECLARANT'S RESERVED RIGHTS

12.1 Declarant Control Period. Declarant hereby reserves for itself the Declarant Control Period, with each and every right, reservation, privilege, and exception available or permissible under Applicable Law for declarants and developers of residential subdivisions, if and to the full extent that such right, reservation, privilege, or exception is beneficial to or protective of Declarant or Builders. The reserved rights of Declarant shall include, but are not limited to, the unilateral right to appoint, remove and replace all directors and officers of the Association during the Development Period; adopt and amend Governing Documents, except Article VI "Architectural Controls" & Article VII "Use Restrictions And Covenants", which may be amended only with approval of Fair, Inc. as provided in Section 6.10 above; adopt Association budgets; change the rate and time of payment of Assessments; levy Special Assessments; and, receive applications for review and to approve all solar energy devices installed in the Subdivision.

To the extent permitted by Applicable Law, the Declarant Control Period runs continuously from the date this Declaration is recorded until the date that is one (1) year following the date upon which Declarant no longer owns any Lots. No act, statement, or omission by the Association may effect termination of the Declarant Control Period earlier than the term stated in this Section. Declarant, however, may terminate the Declarant Control Period at any earlier time by publicly recording a notice of termination.

12.2 Development Period. Declarant hereby reserves for itself the Declarant Development Period, with each and every right, reservation, privilege, and exception available or permissible under Applicable Law for declarants and developers of residential subdivisions, if and to the full extent that such right, reservation, privilege, or exception is beneficial to or protective of Declarant or Builders. The reserved rights of Declarant shall include, but are not limited to, the unilateral right to appoint, remove and replace all directors and officers of the Association during the Development Period; adopt and amend Governing Documents, except Article VI "Architectural Controls" & Article VII "Use Restrictions And Covenants", which may be amended only with approval of Fair, Inc. as provided in Section 6.10 above; adopt Association budgets; change the rate and time of payment of Assessments; levy Special Assessments; and, receive applications for review and to approve all solar energy devices installed in the

Subdivision:

If Applicable Law requires a stated term, the Development Period runs continuously from the date this Declaration is recorded until the date that six (6) months following the date upon which the last Lot owned by Declarant has been improved with a Living Unit and conveyed to an Owner other than Declarant or Builders. No act, statement, or omission by the Association may effect termination of the Development Period earlier than the term stated in this Section. Declarant, however, may terminate the Development Period at any earlier time by recording a notice of termination.

12.3 Other Rights. Declarant hereby reserves for itself each and every right, reservation, privilege, and exception available or permissible under Applicable Law for declarants and developers of residential subdivisions, if and to the full extent that such right, privilege, or exception is beneficial to or protective of Declarant or Builders. If the benefit or protection of Applicable Law is predicated on an express provision being in this Declaration or other Governing Document, such provision is hereby incorporated by reference unless Declarant executes an instrument to disavow such benefit or protection. Notwithstanding Applicable Law that condition or link a declarant's control of real property development with its control of the governing body, Declarant and this Declaration recognize the independence of those functions. Declarant may terminate its reserved right to appoint officers and directors of the Association without affecting any of Declarant's other rights and reservations under this Declaration or Applicable Law. Further, Declarant may from time to time assign to the Association, on a permanent or temporary basis, one (1) or more of the rights, powers, obligations and duties of the Declarant under this Declaration.

12.4 Effect of Reserved Rights. This Declaration creates a number of periods of time for the exercise by Declarant of certain reserved rights, including, but not limited to, the Declarant Control Period and the Declarant Development Period. Each reservation period is independent of the others. Each reservation period is for a term of years or until a stated status is attained, and does not require that Declarant own a Lot or any other land in the Subdivision or the Annexation Area. No act, statement, or omission by the Association, a Builder, or any other party may effect a change or termination of any Declarant reservation period. Declarant, however, may unilaterally change any Declarant reservation period by amending this Declaration. To document the end of a Declarant reservation period, Declarant may (but is not required to) execute and publicly record a notice of termination of the period.

ARTICLE XIII MISCELLANEOUS

13.1 Declaration Term - Perpetual. Unless ninety percent (90%) of all outstanding votes that are entitled to be cast approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the Property and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless Recorded.

13.2 Amendments to Declaration.

a. **Amendment by Declarant.** This Declaration may be amended, except Article VI "Architectural Controls" & Article VII "Use Restrictions And Covenants", which may be amended only with approval of Fair, Inc. as provided in Section 6.10 above; or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone during the Development Period; or (ii) by the president and

secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast by members of the Association. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. Specifically, and not by way of limitation, during the Development Period Declarant may unilaterally amend this Declaration for the following purposes: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

b. **Amendment by Association.** The Association, after the Development Period, may amend this Declaration by an affirmative vote of sixty seven percent (67%) or greater of all outstanding votes entitled to be cast.

13.3 Enforcement by Association and/or Owner. The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

13.4 Remedies; Cumulative. In the event any Lot does not comply with the terms herein or any Owner fails to comply with the terms herein, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the By-laws and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

13.5 Notice to Association of Sale or Transfer. Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice of the name and address of the purchaser or transferee, within 30 days after the date of such transfer of title, and such other information as the Board may reasonably require. With the Board's approval, and subject to applicable laws, a number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of this Declaration, the By-laws, and/or Certificate, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; transfer to, from, or by the Association; voluntary transfer by an Owner to one (1) or more co-Owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the

Association's assessment lien, and are not payable by the Association. This Section 13.5 does not obligate the board or the manager to levy transfer-related fees.

13.6 Limitation on Interest. All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected, or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to Owner.

13.7 Construction and Interpretation. This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

13.8 Notices. Except as otherwise provided in the By-laws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given three (3) days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one (1) mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one (1) person or entity, then notice to one (1) co-Owner is deemed notice to all co-Owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice.

13.9 Not a Condominium. This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

13.10 Severability. Invalidation of any one (1) of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions which will remain, in full force and effect.

13.11 Rights and Obligations Run With Land. The provisions of this Declaration are covenants running with the Property and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed. Notwithstanding any provision herein, the rights of Declarant as provided herein shall not run with the land, but instead may only be transferred or assigned as provided in Section 13.12 herein.

13.12 Assignment of Declarant's Rights. Declarant may assign, in whole or in part, its rights as Declarant by executing and Recording a document assigning such rights. There may be more than one (1) Declarant, if Declarant makes a partial assignment of the Declarant

status. Upon designation of a successor Declarant, all rights, obligations and responsibilities of the former Declarant in and to such status as "Declarant" shall cease (but only to the extent assigned, in the case of a partial assignment); provided, however, the former Declarant shall continue to be afforded the protections granted herein to Declarant for actions performed by former Declarant during the time period that the former Declarant was Declarant.

13.13 Disclaimer Regarding Security. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees, and licensees that the Association, its Board and committees and the Declarant are not insurers and that each person using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

13.14 Adjacent Land Use. Although this Declaration may contain disclosures about the Property or its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective owner or resident must make his own inspection of the Property, its location and nearby land uses, and make inquiries of anything that concerns him. Declarant makes no representation of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what the Plat or any future plat shows as potential uses of adjoining land. Declarant and the Association cannot and do not guaranty scenic views, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air.

13.15 Attorneys' Fees and Court Costs. If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

13.16 Gender. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

13.17 Headings. The headings contained in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

13.18 Conflicts. In the event of conflict between this Declaration and any By-laws, rules, regulations or Certificate, this Declaration will control.

13.19 Exhibits. All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

Signatures continued on following page

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the day and year written below.

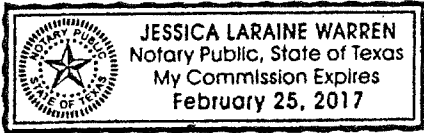
DECLARANT:

MERITAGE HOMES OF TEXAS, LLC,
an Arizona limited liability company

By: [Signature]
Name: JEREMY FLACH
Title: DIVISION VP
Date: 8-14-13

STATE OF TEXAS }
COUNTY OF Comal }

The foregoing instrument was acknowledged before me, on this the 19 day of August, 2013, by Jeremy Flach, the DIVISION VP of Meritage Homes of Texas, LLC, an Arizona limited liability company, on behalf of such company.



[Signature]
Notary Public, State of Texas

AFTER RECORDING RETURN TO:

18756 Stone Oak Pkwy
Ste 200
San Antonio, TX 78258

EXHIBIT "A"
LOTS

All properties comprising TRAILSIDE AT FAIR OAKS RANCH, in Comal County, Texas, according to the Subdivision Plat of Fair Oaks Ranch Comal County Unit 12 establishing TRAILSIDE AT FAIR OAKS RANCH, recorded in Volume _____, Page ____, Deed and Plat Records of Comal County, Texas.

EXHIBIT "B"
W.I. FENCE DETAIL

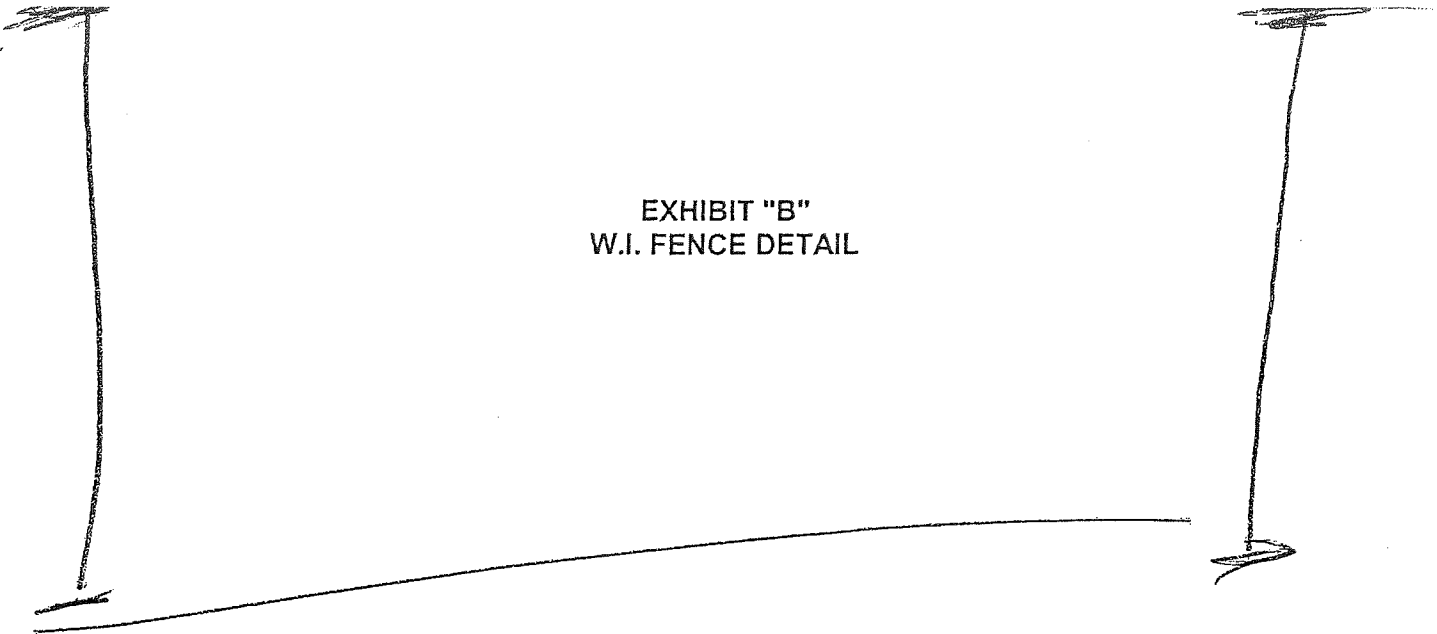


EXHIBIT "B"

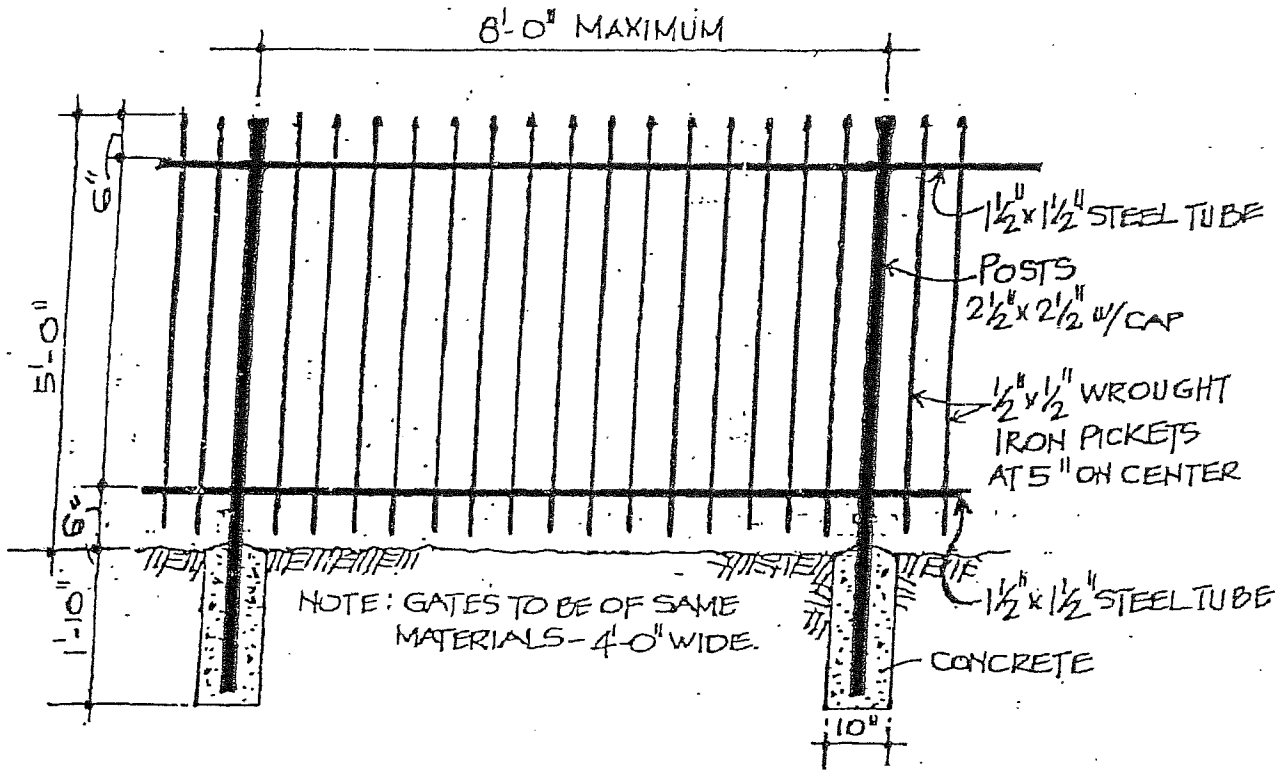
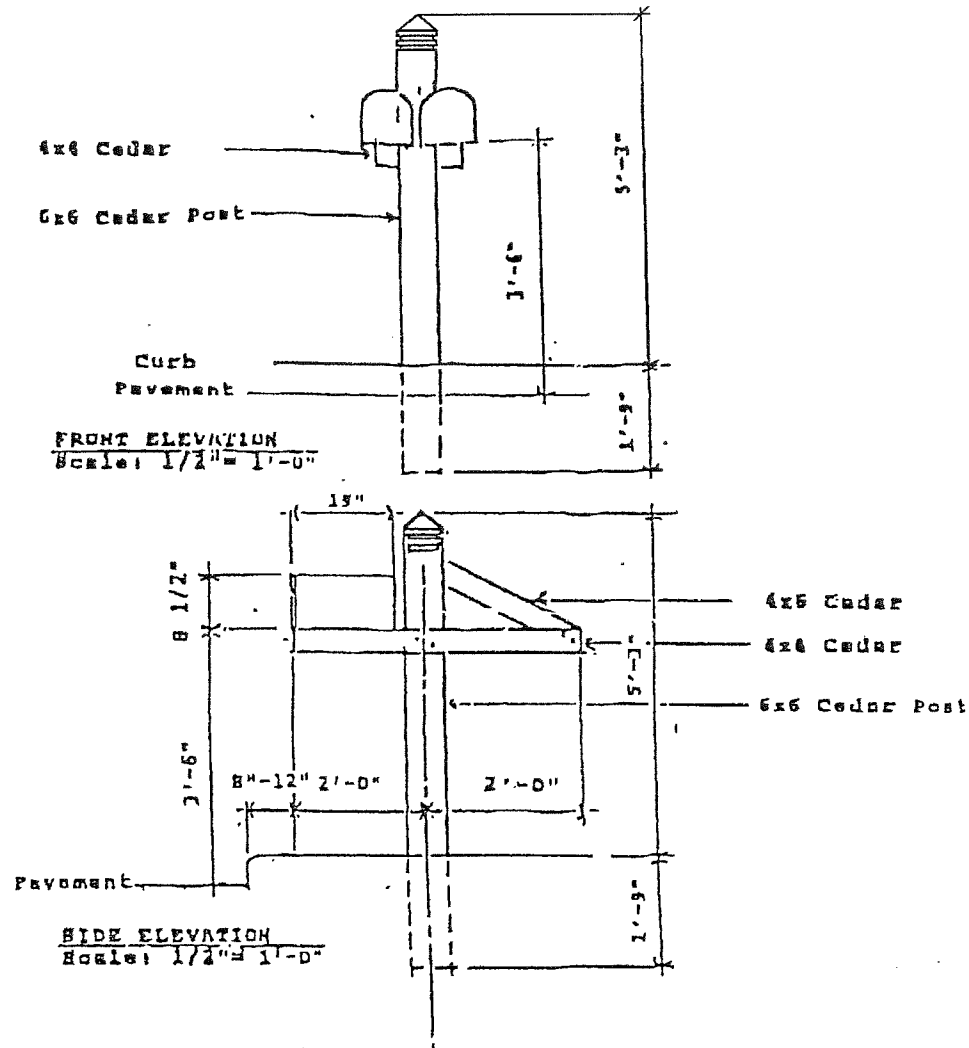


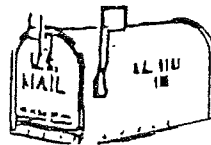
EXHIBIT "C"
MAILBOX DETAIL

EXHIBIT "C"



Notes:

1. All wood members should be cedar.
2. All connections should be made with bolts or screws.
3. Mailbox should be a U.S. Post Office approved, Traditional style, Size 1 box being 15" long, 8 1/2" wide, and 8 1/2" tall as shown in Exhibit B and black in color.
4. Mailbox should be installed with the bottom of the box 3 1/2" from the road surface.
5. Face of mailbox should be offset 8" to 12" behind the edge of pavement.
6. The top of the 6x6 post should be cut at 45 degree angles on all sides to form a point. A 1/2" routed decorative band is to be placed 1" below the intersection of the point slope plane and the vertical plane with the second band placed 1" below the first band.



Recorder's Memorandum- Comal County
 At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility

EXHIBIT "D"
GRADING PLAN

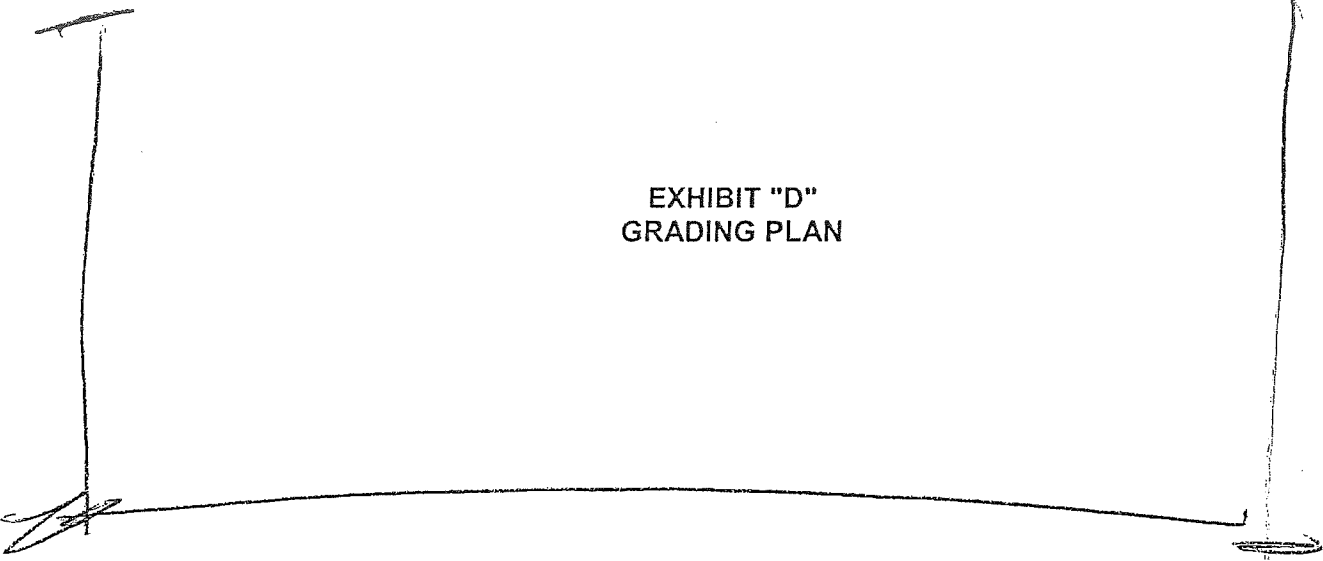


EXHIBIT "D" GRADING PLAN

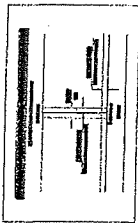


Filed and Recorded
 Official Public Records
 Joy Streater, County Clerk
 Comal County, Texas
 08/29/2013 11:47:43 AM
 LAURA 51 Page(s)
 201306036901



Joy Streater

NOTE: THE WALL SHALL NOT ALTER OR IMPED DRAINAGE
 BASED ON 100-YEAR FLOOD CALCULATIONS



JOB NO. 2013-01
 SCALE: 1" = 20'
 DATE: 08/29/13
 FILE: 201306036901

COMAL COUNTY UNIT 12
 CITY OF FAIR LAKE RAINBOW, COMAL COUNTY, TEXAS

GRADING PLAN
 INDIVIDUAL LOTS

AGBS ALAMO CONSULTING ENGINEERING & SURVEYING, INC.
 1345 JACOBO DRIVE, SAN ANTONIO, TX 78205
 (214) 343-8888 FAX: (214) 343-8888
 2156 ALBUQUERQUE AVENUE, SUITE 7000, DALLAS, TEXAS 75235



REVISIONS

NO.	DATE	DESCRIPTION	APPROVED

PLAT NO.

