



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ENCLAVE AT BULVERDE CREEK

This Declaration of Covenants, Conditions and Restrictions for Enclave at Bulverde Creek is made on the date hereinafter set forth by the Declarant, Centex Homes, a Nevada general partnership.

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 Summit at Bulverde Creek Homeowners Association, Inc. to be formed as a Texas nonprofit corporation to own, operate, and maintain the Common Maintenance Area (as defined herein) and to administer and enforce the provisions of this Declaration.

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, 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 "Annexable Property" means the real property described on Exhibit "B" attached hereto.
- 1.2 "ACA" or "Architectural Control Authority" shall have the meaning provided such terms in Section 6.2 herein.
- 1.3 "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.
- 1.4 "Association" means The Summit at Bulverde Creek Homeowners Association, Inc., a Texas nonprofit corporation established for the purposes set forth herein.
- 1.5 "Board of Directors" means the board of directors of the Association.
- 1.6 "Builder" means any person or entity who purchases one 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.
- 1.7 "City" means the City of San Antonio.

VOL 9692 PG 2311

1.8 **"Class B Control Period"** means the period commencing upon the date of this Declaration and expiring upon the earliest of: (i) 10 years after conveyance of the first Lot, (ii) a date that Declarant in writing elects to terminate the Class B Control Period, or (iii) when 75% of the residential building sites ("lots") proposed within the Development have been improved with a Dwelling thereon and conveyed to persons or entities other than a Builder. For purposes of determining the number of building sites within the Development, the final subdivision plats, when Recorded against the entire Development showing each residential building site, shall be the determining documentation.

1.9 **"Class Vote"** means a vote that is counted or tallied for each separate class of voting and requires the specific percentage from each class.

1.10 "Common Area" and "Common Areas" means all areas (including the improvements thereon) if any, within the Property owned or to be owned by the Association for the common use and enjoyment of the Members. The Common Area to be owned by the Association at the time of the conveyance of the first Lot (other than to an entity that may assume a Declarant status as provided herein) is described or depicted and designated on Exhibit "C" attached hereto.

1.11 **"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, but excluding any expenses incurred during the Class B Control Period for the initial or original construction of improvements.

1.12 "Common Maintenance Areas" means the Common Areas, if any, and any areas within public rights-of-way, easements (public and private), portions of a Lot, public parks, private streets, or landscaping, entry feature, fence or similar areas that the Board of Directors deems necessary or appropriate to maintain for the common benefit of the Members.

1.13 "County" means the County of Bexar.

1.14 **"Declarant"** means Centex Homes, a Nevada general partnership and its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign. There may be more than one Declarant, if Declarant makes a partial assignment of the Declarant status.

1.15 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Enclave at Bulverde Creek, and any amendments and supplements thereto made in accordance with its terms.

1.16 **"Designated Interest Rate"** means the interest rate designated by the Board of Directors from time to time, subject to any interest limitations under Texas law. If the Board of Directors fails to designate an interest rate, then the interest rate shall be the lesser of 12% per annum or the highest rate permitted by Texas law. The Designated Interest Rate is also subject to the limitations in Section 11.7 herein.

1.17 **"Development"** means the Property and the Annexable Property.

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

Vol 9692 Pg 2312

1.19 **"Lot"** means any separate residential building parcel shown on a Recorded subdivision plat of the Property or any part thereof, 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 and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.

1.20 "**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.

1.21 **"Owner"** means the record owner, whether one 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 sale, then the purchaser (rather than the fee Owner) will be considered the Owner.

1.22 **"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.

1.23 **"Record", "Recording" or "Recorded"** means the filing of a legal instrument in the Public Records of Bexar County, 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.

1.24 **"Supplemental Declaration"** means a Recorded instrument which subjects additional property to this Declaration and/or imposes additional restrictions and obligations on the land described in the instrument.

1.25 **"Vacant Lot"** means a Lot that does not have thereon a Dwelling that has been occupied at any time (past or current) for residential purposes.

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, and such easement will be appurtenant to and will pass with the title to every Lot, 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 Voting Rights.** The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner 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 a 67% or greater vote, excluding Declarant, approving such action.

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 a 67% or greater vote, excluding Declarant, approving such action.

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 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 and such right and easement of use and enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

b. **No Partition.** Except as provided in Section 2.1c 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 Bylaws and any reasonable rules of the Board of Directors. 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 Association shall have the following two classes of voting membership:

a. **Class A.** Class A Members shall be all Owners, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot owned. However, when more than one person holds an interest in any Lot, all such persons shall be members, but only one vote in total may be cast per Lot as the Owners 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 Owner is the person designated to cast the Lot's vote. If the Owners' 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 person or entity seeks to exercise it.

b. **Class B.** The sole Class B Member shall be Declarant. The Class B Member is entitled to three (3) votes for each Lot owned by the Class B Member. The Class B membership shall cease and be converted to Class A membership upon expiration of the Class B Control Period.

ARTICLE IV ASSESSMENTS

4.1 **Obligation to Pay Assessments.** Subject to the terms of this Article IV, the Declarant, for each Lot it owns, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or

WEL 9692 PM 23 14

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, (ii) special assessments as provided in Section 4.5 herein, and (iii) specific assessments as provided in Section 4.9 herein.

4.2 Personal Obligation to Pay Assessments. Each such assessment, together with interest at the Designated Interest Rate, late charges, 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 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 such acquisition of title. In addition, no mortgagee shall be required to collect assessments.

4.3 Purpose of Annual and Special Assessments. 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, repair and replacement of improvements to the Common Maintenance Areas.

4.4 Maximum and Actual Annual Assessment. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$120.00 per Lot. The Board of Directors may fix the actual annual assessment at an amount not in excess of the maximum annual assessment. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased as follows:

a. **Maximum Increase Without Vote.** The maximum annual assessment may be increased by the Board of Directors without a vote of the membership each year by 10% above the maximum annual assessment for the previous year. The Board of Directors may increase the maximum annual assessment with or without increasing the actual annual assessment.

b. **Maximum Increase With Vote.** The maximum annual assessment may be increased more than 10% above the prior year's maximum annual assessment amount by a 67% or greater Class Vote approving such action.

4.5 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 of Directors determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget, provided, that any such special assessment must have a 67% or greater Class Vote approving such action.

4.6 Uniform Rate of Assessment - Reduced for Vacant Lots. Both annual assessments and special assessments shall be fixed at a uniform rate for all Lots, except that Vacant Lots shall be assessed at 25% of the regular full assessment rate.

4.7 Declarant's Payment of Full Assessments for Vacant Lots or Shortfall Amount. During the period that Declarant owns any Vacant Lot, if the Association's revenues are insufficient to pay the expenses of the Association, then Declarant shall pay to the Association the lesser of: (i) the difference between the revenues and the expenses, or (ii) the difference between the total amount of assessments paid by Declarant for Vacant Lots (assessed at the reduced assessment rate) and the total amount that Declarant would have paid for such Vacant Lots if such Vacant Lots were assessed as Lots at the full (100%) rate. Declarant shall pay

Vol 9692 Pg 2315

such amount within 30 days of receipt of request for payment thereof from the Association, 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.

4.8 **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 of Directors 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 of Directors shall fix the amount of the annual assessment against each Lot at least 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 of Directors. The Board of Directors shall also establish whether the annual assessment shall be paid annually, quarterly or monthly.

4.9 **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 and transfer fees.

4.10 Capitalization of Association. 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 Bylaws.

4.11 Certificate of Assessment Status. The Association will, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

4.12 Failure to Pay Assessments; Remedies of the Association. With respect to any assessment or other sum due herein not paid within 10 days after the due date, the Association shall have the right to: (i) charge a late charge, in an amount determined by the Board of Directors; (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 Area 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.

WM 9692 P02316

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 attorneys' fees. 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 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 to be exercised in accordance with Texas Property Code Ann. § 51.002 (Vernon 1984), as it may be amended. The Board of Directors 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 of Director's meeting.

c. **Subordination of Lien.** The lien of the assessments provided for herein is subordinate to the lien of any Recorded first mortgage or first 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 the following paragraph. 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 the following paragraph.

e. **Effect of Foreclosure.** The foreclosure of a first 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 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 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 Articles of

WML9692 M2317

Incorporation, Bylaws, 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 Articles of Incorporation and the Bylaws.

5.2 **Board of Directors.** The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws. The Board of Directors shall have the powers granted in this Declaration, the Articles of Incorporation, the Bylaws, 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.** The liability of an officer, director or committee member of the Association shall be limited as provided in the Articles of Incorporation.

5.4 **Indemnification.** Subject to the limitations and requirements of the Texas Nonprofit Corporation Act, as amended, and in the Bylaws, 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 of Directors) 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 Articles of Incorporation. Additionally, subject to the limitations and requirements of the Texas Nonprofit Corporation Act, as amended, and in the Bylaws, 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 **Limitations on Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless there is a 75% or greater vote approving such action. This Section 5.5 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions to enforce written contracts with the Association. Except as authorized by said vote, the Board of Directors shall not be liable for failing or refusing to commence litigation;

5.6 **Insurance.**

a. **Required Coverages.** The Association, acting through its Board of Directors or its duly authorized agent, shall obtain and continue in effect, at a minimum the following insurance coverage, if reasonably available or, if not, the most nearly equivalent coverages as are reasonably available:

(i) **Property Insurance.** 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 Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits and/or endorsement related thereto sufficient to cover the full replacement cost of the insured improvements. The Association shall obtain endorsements to the property insurance

VOL 9692 PG 2318

WL 9692 P02319

b. **Additional Insurance.** The Board of Directors may obtain additional insurance as the Board of Directors determines advisable, including, without limitation, the insurance set forth below. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary the Board of Directors 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.

(ii) **Fidelity Insurance.** Fidelity insurance covering all parties responsible for handling Association funds in an amount determined by the Board of Directors. If fidelity insurance coverage is obtained the policy should contain, if reasonably available, a waiver of all defenses based upon the exclusion of persons serving without compensation.

(iv) Workers Compensation Insurance. Workers compensation insurance and employers liability insurance.

c. **Policy Requirements.** All insurance coverage obtained by the Association shall: (i) be written in the name of the Association and shall provide for a certificate of insurance to be furnished to the Association; (ii) contain a reasonable deductible; (iii) contain an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation of insurance; (iv) contain a provision or endorsement excluding Owner's individual policies from consideration under any other insurance clause, if reasonably available; and (v) contain a waiver of subrogation as to any claims against the Board of Directors and the Association's officers, employees and manager, and the Owners and their tenants, servants, agents and guests, if reasonably available.

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

e. **Compliance with Federal Agencies and Secondary Mortgage Market Requirements.** In addition to the foregoing insurance in Section 5.6, the Board of Directors may obtain such insurance coverage that the Board of Directors determines desirable to satisfy 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.

5.7 **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 of Directors. The Board of Directors may employ for the Association a management agent or agents at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority.

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

5.9 **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 Articles of Incorporation.

5.10 **Enforcement.** The Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with the applicable procedures set forth in the Bylaws. The Bylaws do not provide for an absolute right under all circumstances to notice and/or hearing either prior to or after the imposition of sanctions. 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 Board of Directors 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 Board of Directors may suspend an Owner's right to vote.

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

Vol 9692 Pg 2320

d. **Right of Self-Help.** The Board of Directors 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 Board of Directors 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 Board of Directors or its designee shall have the right to enter the Lot, remove the violation, and restore the property to substantially the same condition as previously existed, without such action being deemed a trespass.

f. **Levy Specific Assessment.** The Board of Directors 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 Board of Directors 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 public records of the County 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 Board of Directors' sole and absolute discretion, except that the Board of Directors shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board of Directors 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; or (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 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 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 approval requirements; (ii) any improvements to the interior of a Dwelling, except as provided herein; (iii) the painting or replacement of the exterior of any Dwelling in accordance with the approved color and design scheme approved by the ACA; or (iv) improvements for which

YOL 9692 PG2321

the Declaration expressly states that the ACA's prior approval is not required. Any improvements pursuant to clauses (iii) and (iv) immediately preceding 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 Ownership of Development.** The Declarant shall be the ACA during the period that Declarant owns any real property within the Development, unless the Declarant in writing has terminated its rights as the ACA.

b. **Architectural Committee - After the Declarant's 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 3 members will be established after the Declarant's right as the ACA has terminated. The members of the Architectural Committee will be appointed, terminated and/or replaced by the Board of Directors. 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 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, 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. This approval process is separate and independent of any approval process required by a governmental entity.

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 30 days in which to review said plans. 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 approval. The ACA may charge a reasonable fee for reviewing requests for approval.

W019692 R02322

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 in the Development; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not result in the reduction in property value, use or enjoyment of any of 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 their members change over time.

6.6 **Timing of Completion of Approved Items.** All work approved by the ACA shall be completed within one 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 yard, the Owner shall take proper precautions to insure that such improvements do not alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling, or (i) drain onto an adjoining Lot in an amount more than the drainage amount prior to the improvement or alteration, or (ii) allow water to collect near the foundation of the Dwelling. Although the ACA may comment 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.

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, 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. 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 its sole and absolute discretion, such improvements will be in violation of this Article VI to the same extent as if made without the prior approval of the ACA. 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 of Directors, nor 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. Neither Declarant, the Association, the Board of Directors, 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 or modifications to any Dwelling and/or Lot. The ACA and its members shall be defended and indemnified by the Association as provided in Section 5.4 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 paragraph shall be made by the Board of Directors in their sole and absolute discretion. The business activity prohibition will not apply to the use of any Dwelling by Declarant or any Builder as a model home, construction office and/or sales office; or the use by Declarant or any Builder of any Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot by Declarant or any Builder.

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 1 ton carrying capacity; (ii) has less than 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 of Directors 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.

YOL 9692 PB2325

e. Common Fencing. 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. Owners are 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. 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 of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of one-half 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 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 item is approved by the ACA prior to the installation or construction of the item; (ii) such item 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 outbuilding is consistent with the existing paint and roofing materials of the Dwelling; (iv) the outbuilding is located within a backyard that has a fence that completely encloses the backyard; (v) the height of the structure walls shall not be greater than 8 feet; and (vi) the outbuilding shall not be greater than 100 square feet of floor space.

7.6 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 of Directors, make objectionable noise, or 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 of Directors. If the animal owner fails to remove the animal from the Lot after the Board of Director's request, the Board of Directors may remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the Bylaws. 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.

7.7 Signs.

a. Sign Restrictions. Except for Entry Signs as defined in Section 7.7b, no sign or emblem of any kind 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 or rent, provided that the sign does not exceed two (2) feet by 3 feet in size; (ii) an Owner may temporarily place one (1) sign on a Lot advertising the "open house" of the Dwelling, 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) 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; (iv) an Owner may temporary 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 (v) political signs may

FILE 9692 PD2326

be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 60 days in advance of the election to which they pertain and are removed within 15 days after the election. A permitted or authorized sign may not contain any language or symbols on the sign that are not directly related to the authorized purpose of the sign. 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.

b. **Entry Signs.** The term "Entry Signs" shall mean the entry feature signs for the Summit at Bulverde Creek subdivision that are placed by the Declarant or its agents on the real property depicted on Exhibit "E" attached hereto. The Association shall be responsible to maintain the Entry Signs.

7.8 **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.

7.9 **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 of Directors determines, in its sole and absolute discretion, is or may become an unreasonable source of annoyance or nuisance to the Property.

7.10 **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 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 7.10 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 paragraph 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 paragraph and the ACA Standards.

7.11 **Air-Conditioning Units.** Air-conditioning apparatuses must be installed on the ground behind the rear of the Dwelling or on the ground near the side of the Dwelling. No air-conditioning apparatus or evaporative cooler may be attached to any wall or any window of any Dwelling.

7.12 **No Solar Collectors.** Except with the written permission of the ACA, no solar collector panels or similar devices may be placed on or around 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 does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board of Directors 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.** All front yards must be sodded or grassed within a reasonable time period not to exceed seven (7) months after the initial conveyance of a Lot with a Dwelling thereon to an Owner other than a Builder. Decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front and side yard may not exceed 10% of the total area of the front and side yard. All landscaping located on any Lot, including grass lawns, 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 of Directors, 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.

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 of Directors, in its sole and absolute discretion.

7.17 **Garages.** Garages, if any, must comply with City requirements and be compatible with the existing dwelling as approved by the ACA. Garages may be used as a Builder's sales and/or construction offices prior to permanent occupancy of the main structure; however, sales and/or construction offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used as Declarant's or a Builder's sales and/or construction 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.

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

7.19 **Window Treatment.** Aluminum foil, newspaper, reflective film or similar treatment will not be placed on windows or glass doors of a Dwelling. Bed sheets and similar linens may only be used during the first ninety (90) days after such Owner acquires title to the Lot.

7.20 **Mining.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted upon or in any Lot, nor will oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas will be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

7.21 **Mail Boxes.** Mail boxes shall be cluster mail boxes as approved by the United States Post Office. No other mail boxes may be installed unless the United States Post Office and the ACA approve an additional type of mail box.

7.22 **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 ten (10) feet 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.

7.23 **Lighting; Exterior Holiday Decorations.** Lighting and/or decorations on a Lot may not be used or placed in a manner which, in the Board of Directors sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Dwelling that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than 6 weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

7.24 **Lawn Decorations and Sculptures.** The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags 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 that is completely enclosed by a fence which blocks the view of the item at ground level, and (ii) such item is not taller than the fence.

7.25 **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.

7.26 **Intentionally Omitted.**

7.27 **Intentionally Omitted.**

7.28 **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 flows on any Lot.

7.29 **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

FILE 9692 PG 2329

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 of Directors in its sole good faith judgment, the Board of Directors will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board of Directors 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.

7.30 **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 Property.

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 the Common Area and any improvements and landscaping thereon in good repair. The Association shall also maintain the Common Maintenance Areas to the extent the Board of Directors determines that such maintenance is desirable.

8.2 **Use of Common Areas at Own Risk.** Each Owner, by acceptance of a deed to a Lot, acknowledges that the use and enjoyment of any Common Area recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors 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 recreational facility or other portion of the Common Area. Each Owner agrees that neither the Association, the Board of Directors and any committees, any Builder, nor Declarant shall be liable to such Owner or any person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from, personal injury, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the use of any recreational facility or other portions of the Common Area, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant, or any Builder. THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.

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 of Directors 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 Area 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 67%

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 **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 24 months after the date such Lot is conveyed to an Owner other than a Builder, provided that such easement will terminate as to any Lot twenty-four (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.

ARTICLE X **ANNEXATION AND WITHDRAWAL**

10.1 **Annexation by Declarant.** Until ten (10) years after the recording of this Declaration in the public records, Declarant may, at its sole option, annex the Annexable Property or any portion thereof into the Association and subject such Annexable Property or portions thereof to the terms hereof and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. The annexation shall not require the approval of any person other than the owner of the property being annexed. In the annexation document, Declarant may amend the Declaration to cause the terms Common Area, Entry Signs, Entry Sign Easement Property and other terms necessary to appropriately address and describe the new applicable areas of land within the real property being annexed. The foregoing amendment shall not require the approvals set forth in Section 11.2 herein.

10.2 **Annexation by Association.** The Association may annex any portion of the Annexable Property by a 67% or greater Class Vote approving such action and the consent of the Owner of such portion of the Annexable Property.

10.3 **Recording of Annexation.** The annexation of any portion of the Annexable Property shall be evidenced by a written document recorded in the public land records of the County.

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 portion of the Annexable 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.** Declarant may amend this Declaration to withdraw real property without a Dwelling thereon from the definition of the Property and from the coverage of this Declaration, provided that (i) the withdrawal is not unequivocally contrary to the overall, uniform scheme of development of the Property, (ii) the owner of real property to be withdrawn must consent, and (iii) FHA or VA must consent to the withdrawal of the real property. Such amendment shall not require the consent of any person, Member or Owner (except as provided in this Section 10.5 (ii)), except a 67% or greater Class Vote approving such action is required if the real property to be withdrawn is Common Area.

WOL 9692 P02333

11.2 **Amendments to Declaration.** This Declaration may be amended by a 67% vote, except that Declarant, at its sole discretion and without a vote or the consent of any other party, may modify, amend or terminate this Declaration: (i) to add real property to the Property, (ii) to withdraw real property from the Property, (iii) to create Lots, easements, and Common Areas within the Property, (iv) to subdivide, combine, or reconfigure Lots, (v) to convert Lots into Common Areas, (vi) to modify the construction specifications of the Property, (vii) to merge the Association with another property owners association, (viii) to comply with the requirements of an underwriting lender, (ix) to resolve conflicts, clarify ambiguities, and to correct omissions, errors, or omissions in this Declaration, (x) to enable any reputable title insurance company to provide title insurance coverage on the Lots, (xi) to enable an institutional or governmental lender to make or originate mortgage loans on the Lots, (xii) to change the name or entity of Declarant, (xiii) to change the name of the Association, (xiv) for any other purpose, provided the amendment has no material adverse effect on any Owner. Any amendment to this Declaration shall be effective only upon Recording.

11.4 **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.

11.6 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 of Directors 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 of Directors may reasonably require. The Association may charge a transfer fee upon the conveyance of title to a Lot for purposes of covering the reasonable administrative costs to change the records.

or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees and licensees that the Association, its Board of Directors 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.

11.14 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.

11.15 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.

11.16 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.

11.17 Conflicts. In the event of conflict between this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration will control.

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

VOL 9692 PG 2335

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

DECLARANT:

CENTEX HOMES,
a Nevada general partnership

By: Centex Real Estate Corporation.
a Nevada corporation,
Its: managing general partner

By: Damon Lyles
Damon Lyles
Division President

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me on this the 26th day of November, 2002, by Damon Lyles, Division President of Centex Real Estate Corporation, a Nevada corporation, managing general partner of Centex Homes, a Nevada general partnership, on behalf of said corporation and partnership.



Barbaraann Kanute
Notary Public, State of Texas
Notary's Name Printed: Barbaraann Kanute
My Commission Expires: 9-6-03

Vol 9692 Pg 2336

AFTER RECORDING RETURN TO:
Centex Homes
Attn: Michelle Heineman
9441 LBJ Freeway #504
Dallas, Texas 75343

EXHIBIT "A"

The Property

The following lots in Enclave at Bulverde Creek, Phase I, a subdivision in Bexar County, Texas, according to the plat thereof recorded in Volume 9555, Pages 62-63 of the Deed and Plat Records of Bexar County, Texas.

<u>LOT</u>	<u>BLOCK</u>	<u>NCB</u>
41-52	8	34920
4-17	9	34920
1-12, 39-50	11	34920
1-12, 39-50	12	34920
1-12, 39-50	13	34920
1-12	14	34920
1-8	16	34920

VOL 9692 PG 2337

Exhibit "A"

EXHIBIT "B"

Annexable Property

A 57.017 acre tract of land located north and east of Enclave at Bulverde Creek, Phase I and bordered on the south and west property lines by Enclave at Bulverde Creek, Phase I, on the north property line by a 80.75-acre tract and a 24.834-acre tract, and on the east property line by a 1,010.800-acre tract (Vulcan Mining Lease).

VOL 9692 PG 2338

Exhibit "B"

EXHIBIT "C"

Common Areas

No Common Areas with respect to Enclave at Bulverde Creek, Phase I.

VOL 9692 PG 2339

EXHIBIT "C"

EXHIBIT "D"

FENCING

Side property lines of Lot 17 of Block 9, NCB 34920 and Lot 1 of Block 16, NCB 34920 adjacent to Bulverde Parkway.

Rear property lines of Lot 17 of Block 9, NCB 34920 and Lot 1 of Block 16, NCB 34920.

Vol 9692 Pg 2340

Exhibit "D"

EXHIBIT "E"

Location of Entry Signs

The entrance to the Property off of Bulverde Parkway.

VOL 9692 PG 2341

Doc# 20020474113
Pages 31
11/26/2002 02:19:57 PM
Filed & Recorded in
Official Records of
BEXAR COUNTY
BERRY RICKHOFF
COUNTY CLERK
Fees \$69.00

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the hour stamped herein by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

NOV 26 2002



Serg R. Rickhoff
COUNTY CLERK BEXAR COUNTY, TEXAS

EXHIBIT "E"