City of Garden Ridge

9400 Municipal Parkway
Garden Ridge, Texas 78266-2600
(210) 651-6632
Fax (210) 651-9638

AGENDA
PLANNING AND ZONING COMMISSION

PUBLIC HEARING AND VOTING SESSION
TUESDAY, FEBRUARY 12, 2013 -- 6:00 P.M.

The Garden Ridge Planning and Zoning Commission will meet for a public hearing and voting session at 6:00 p.m., Tuesday, February 12, 2013January 8, 2013 in the City Council Chambers, 9400 Municipal Parkway, Garden Ridge, Texas. This is an open meeting, open to the public, subject to the Open Meetings Law of the State of Texas, and as required by law, notice is hereby posted on February 8, 2013 before 5:00 p.m., providing time, place, date and agenda thereof. The meeting facility is wheelchair accessible and accessible parking spaces are provided. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting.

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1. Call to Order
2. Roll Call
3. Citizen Comments – limited to 3 minutes each

Rules for Citizen's Participation:

The Planning and Zoning Commission welcomes citizen participation and comments at all of their Commission Meetings. As a courtesy to your fellow citizens and out of respect to our elected officials, we must request that if you wish to speak, that you follow these guidelines.

a. Direct your comments to the entire Commission, not to an individual member, nor to the audience.
b. Show the Commission the same respect and courtesy that you expect to be shown to you.
c. Limit remarks to three (3) minutes.

NOTE: The Texas Open Meetings Act permits a member of the public or a member of the governmental body to raise a subject that has not been included in the notice for the meeting. However, any discussion of the subject ***must be limited*** *to a proposal to place the subject on the agenda for a future meeting and any response to a question posed to the Council is limited to either a statement of specific factual information or a recitation of existing policy.* TEX. GOV'T CODE § 551.042.

4. Business Items

The Commission may discuss, consider and/or make recommendations to Council to approve or disapprove the following items:

a. Request from KFW Engineers to formally change the name of Forest of Garden Ridge IV subdivision to The Woodlands of Garden Ridge with such name change to be acknowledged by the developer and City that all documents approved by the City of Garden Ridge prior to this request be known as The Woodlands of Garden Ridge formerly Forest of Garden Ridge IV (revised Master Development Plan, Drainage Easement Agreement, Easement Agreement, Groundwater Transfer Agreement and Construction Plans, Unit 1)

and The Woodlands of Garden Ridge be reflected as the subdivision name on the Final Plat for Unit 1 and future Units and Subdivision Deeds, Covenants and Restrictions with reference that said subdivision is formerly known as Forest of Garden Ridge IV subdivision

b. Entry monument sign and landscape design for The Woodlands of Garden Ridge (formerly known as Forest of Garden Ridge IV Subdivision) entrance located on the west side of Bat Cave Road northwest of its intersection with Schoenthal Road

c. Declaration of Covenants, Conditions and Restrictions for The Woodlands of Garden Ridge (formerly known as Forest of Garden Ridge IV Subdivision)

5. Administrative Items
The Commission may discuss, consider and/or take possible action on the following items:

a. Approve or disapprove the minutes of the January 8, 2013 meeting of the Planning and Zoning Commission.

b. Set date, time and location for next meeting.

6. Adjournment

AGENDA NOTICES:

Decorum Required:

Any disruptive behavior, including shouting or derogatory statements or comments may be ruled out of order by the Presiding Officer. Continuation of this type of behavior could result in a request by the Presiding Officer that the individual leave the meeting, and if refused, an order of removal.

Action by Council Authorized:

The Commission may vote and/or act upon any item within this Agenda. The Commission reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code Section 551.071, to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The City Attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

Executive Sessions Authorized:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

Attendance By Other Elected or Appointed Officials:

It is anticipated that members of the City Council, other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the City Council, other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action

will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

Shelley Goodwin, TRMC
City Secretary

This is to certify that I, Shelley Goodwin, posted this Agenda at 9:30 a.m. February 8, 2013 on the bulletin board located at the entrance to the Garden Ridge City Hall, 9400 Municipal Parkway, Garden Ridge, Texas.

Shelley Goodwin, TRMC
City Secretary

City of Garden Ridge
9400 Municipal Parkway
Garden Ridge, Texas 78266-2600
(210) 651-6632
Fax (210) 651-9638

MINUTES OF PLANNING & ZONING COMMISSION
REGULAR SESSION
TUESDAY, January 8, 2013

Commissioners present:
Nadine Knaus, Chairwoman
Frank Dansby
Walter Lamar @ 6:25pm
Sam Stocks, Vice Chair

Commissioners Absent:
Kay Bower
Harvey Bell
Kitty Owen

Also Present:
Nancy Cain, City Administrator
Shelley Goodwin, City Secretary

1. Call to Order

With a quorum of the Planning and Zoning Commission Members present, Nadine Knaus, Chairman called the Regular Meeting of the Garden Ridge Planning and Zoning Commission to order at 6:25p.m. on Tuesday, January 8, 2013 in the City Council Chambers of the Garden Ridge City Hall, 9400 Municipal Parkway, Garden Ridge, Texas 78266

2. Citizen Comments – limited to 3 minutes each

Rules for Citizen's Participation:

The Planning and Zoning Commission welcomes citizen participation and comments at all of their Commission Meetings. As a courtesy to your fellow citizens and out of respect to our elected officials, we must request that if you wish to speak, that you follow these guidelines.

a. Direct your comments to the entire Commission, not to an individual member, nor to the audience.
b. Show the Commission the same respect and courtesy that you expect to be shown to you.
c. Limit remarks to three (3) minutes.

NOTE: The Texas Open Meetings Act permits a member of the public or a member of the governmental body to raise a subject that has not been included in the notice for the meeting. However, any discussion of the subject ***must be limited*** *to a proposal to place the subject on the agenda for a future meeting and any response to a question posed to the Council is limited to either a statement of specific factual information or a recitation of existing policy.* TEX. GOV'T CODE § 551.042.

No one signed up to speak.

3. **Business Items**

The Commission may discuss, consider and/or make recommendations to Council to approve or disapprove the following items:

a. **A petition by Tony Overman for a variance to Ordinance 7-042006, Article V, Section 7, Paragraph C.1. Alleys, for the Tuscan Village Subdivision at the southeast corner of the intersection of FM 3009 and FM 2252. Ordinance 7 requires a 22' alley ROW in business areas which is in conflict with Ordinance 13 requiring a 15' alley ROW**

Nadine Knaus, Chair of Planning and Zoning Commission, reported on the previous conflicts the Commission had at their last meeting regarding the variance request and the discrepancies between the alley ROW requirements stipulated for businesses in Ordinances 7 and 13.

The Commission discussed the variance requested by Tony Overman for a 15' ROW and a 15'alley ROW for the Tuscan Village Subdivision. They felt that in previous plats, Ordinance 13 requirements were probably used and believe the 15' requirements are adequate for the subdivision.

Motion: Upon a motion made by Commissioner Lamar and a second by Commissioner Stocks, the Planning and Zoning Commission voted four (4) for and none (0) opposed, (with Chair voting), to recommend the City Council approval of a petition by Tony Overman for a variance to Ordinance 7-042006, Article V, Section 7, Paragraph C.1. Alleys, for the Tuscan Village Subdivision at the southeast corner of the intersection of FM 3009 and FM 2252 due to Ordinance 7 requiring a 22' alley ROW in business areas which is in conflict with Ordinance 13-122008 which requires a 15' alley ROW and to allow a 15' alley ROW for the Tuscan Village Subdivision. The motion carried unanimously.

b. **A petition by Tony Overman for a variance to Ordinance 7-042006, Section 7, Article B, Streets, Paragraph 7, for cul-de-sac diameter for Tuscan Village Subdivision at the southeast corner of the intersection of FM 3009 and FM 2252**

The Planning and Zoning Commission discussed the variance request to Ordinance 7 regarding cul-de-sac diameter for Tuscan Village Subdivision. They reviewed the proposed two lanes around the circle at the end of the cul-de-sac and the Fire Department not having any issues with the proposed cul-de-sac.

Motion: Upon a motion made by Commissioner Dansby and a second by Commissioner Lamar, the Planning and Zoning Commission voted four (4) for and none (0) opposed, (with Chair voting) to recommend to the City Council approval of the petition by Tony Overman for a variance to Ordinance 7-042006, Section 7, Article B, Streets, Paragraph 7, for cul-de-sac diameter for Tuscan Village Subdivision at the southeast corner of the intersection of FM 3009 and FM 2252. The motion carried unanimously.

c. **Preliminary Plat for the Tuscan Village Subdivision commercial lot subdivision consisting of 13.532 acres of land , situated in the City of Garden Ridge, Comal County, Texas being part of a called 13.532 acre remnant of a 116 acre tract out of the Geo. M. Dolson Survey Number 96, Abstract Number 120, and further located at the southeast corner of the intersection of FM 3009 and FM 2252**

Nadine Knaus, Chair of Planning and Zoning Commission, reported the previous concerns the Planning and Zoning Commission and the City Engineers had regarding the Preliminary Plat have been resolved.

The Commission discussed the previous resolved issues with the Preliminary Plat.

Motion: Upon a motion made by Commissioner Stocks and a second by Commissioner Dansby, the Planning and Zoning Commission voted four (4) for and none (0) opposed, (with Chair voting), to recommend to the City Council the approval of the Preliminary Plat for the Tuscan Village Subdivision commercial lot subdivision consisting of 13.532 acres of land , situated in the City of Garden Ridge, Comal County, Texas being part of a called 13.532 acre remnant of a 116 acre tract out of the Geo. M. Dolson Survey Number 96, Abstract Number 120, and further located at the southeast corner of the intersection of FM 3009 and FM 2252. The motion carried unanimously.

d. Entry monument sign and landscape design for the Forest of Garden Ridge IV Subdivision entrance located on the west side of Bat Cave Road northwest of its intersection with Schoenthal Road

Dan Kasal, Denton Commercial, reported he was retained by the property owner to help develop the properties of Forest of Garden Ridge IV Subdivision and currently at this time they are not ready to present the Entry monument sign and landscape design.

e. Declaration of Covenants, Conditions and Restrictions for Forest of Garden Ridge IV Subdivision

Dan Kasal, Denton Commercial, reported he was retained by the property owner to help develop the properties of Forest of Garden Ridge IV Subdivision. He also reported the lots will be in the range of $100,000 and with a residence about $500,000.

The Planning and Zoning Commission noted several items in the Declaration of Covenants, Conditions and Restrictions for Forest of Garden Ridge IV Subdivision that need to be corrected:

- Change ACC to Garden Ridge throughout the document
- Page 3 Art 2.1 add building permits
- Page 22 needs to include Garden Ridge ordinances
- Remove Ordinance numbers
- Add City of Garden Ridge in plan approval process

The Commission also agreed that the wording in several paragraphs needed to be reworked and needed to include Garden Ridge. The Commission also recommended that changing the name of the subdivision to The Woodlands of Garden Ridge needs to go before the City Council, since the subdivision was originally approved as Forest of Garden Ridge IV.

4. <u>Administrative Items</u>
The Commission may discuss, consider and/or take possible action on the following items:

a. Approve or disapprove the minutes of the December 11, 2012 meeting of the Planning and Zoning Commission.

Motion: Upon a motion made by Commissioner Dansby and a second by Commissioner Lamar, the Planning and Zoning Commission voted four (4) for and none (0) opposed, (with Chair Voting), for

the approval or disapprove the minutes of December 11, 2012 meeting of the Planning and Zoning Commission. The motion carried unanimously.

b. Set date, time and location for next meeting.

Nadine Knaus, Chair, reported the next meeting will be held on Tuesday, February 12, 2013 at 6:00p.m.

5. <u>Adjournment</u>

Motion: Upon a motion made by Commissioner Dansby and a second by Commissioner Stocks, the meeting was adjourned at 7:05p.m.

_____
Nadine Knaus, Chair

ATTEST:

_____
Shelley Goodwin, TRMC
City Secretary

February 4, 2013

City of Garden Ridge
Attn: Planning & Zoning Commission
9400 Municipal Pkwy
Garden Ridge, TX 78266

Re: The Forest of Garden Ridge IV Development - Name Change

Dear Planning & Zoning Commission Members,

This letter shall serve as our client's formal request to change the name of all subdivision documents pertaining to The Forest of Garden Ridge IV development to The Woodlands of Garden Ridge. The documents affected by the name change shall include the MDP, Final Plat of Forest of Garden Ridge IV, Unit 1, Construction plans and Subdivision Deeds, Covenants and Restrictions.

In addition, at the request of the City of Garden Ridge, we will place a note on the final plat of Unit 1 to state:

"A name change for the subdivision was approved by the City of Garden Ridge from Forest of Garden Ridge IV to The Woodlands of Garden Ridge on (date)"

Once approval of the name change is granted we will submit copies of all applicable documents to the City of Garden Ridge with the new name of the subdivision.

Please review this request to change the name of the subdivision and approve if found acceptable. We appreciate your time and consideration in this matter. Should additional information be required, please contact us.

Sincerely,
KFW Engineers,

Burt Wellmann, P.E.
Project Manager

14603 Huebner Bldg 40 San Antonio, TX 78230 • Phone: (210) 979-8444 • Fax: (210) 979-8441 • www.kfwengineers.com

January 2, 2013

To: Planning and Zoning Commission

From: City Administrator Cain

Plans for the entrance and landscape for The Woodlands of Garden Ridge have been submitted for the Planning and Zoning Commission's review and consideration. The plans that were submitted are large copies that we cannot electronically send to you so the plans are located in your individual boxes in the Administration Office in City Hall.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE WOODLANDS AT GARDEN RIDGE SUBDIVISION
COMAL COUNTY, TEXAS

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NOTICE: ADDITIONAL REQUIREMENTS, OBLIGATIONS AND GUIDELINES APPLICABLE TO THE WOODLANDS AT GARDEN RIDGE SUBDIVISION ARE CONTAINED IN SUPPLEMENTAL DECLARATIONS ("SUPPLEMENTAL DECLARATION(S)"); RESIDENTIAL DESIGN GUIDELINES ("RDG"); RULES AND REGULATIONS ("REGULATIONS"); AND THE CERTIFICATE OF FORMATION ("CERTIFICATE OF FORMATION") AND BYLAWS ("BYLAWS") OF THE WOODLANDS AT GARDEN RIDGE HOMEOWNERS ASSOCIATION, INC. ("ASSOCIATION") WHICH IS A MANDATORY ASSOCIATION. EACH OF THESE DOCUMENTS FORM AN INTEGRAL PART OF THIS DECLARATION. THE SUPPLEMENTAL DECLARATIONS, RDG, REGULATIONS, CERTIFICATE OF FORMATION AND BYLAWS MAY BE AMENDED AND MODIFIED, FROM TIME TO TIME, AND ALL OWNERS OF LOTS WITHIN THE WOODLANDS AT GARDEN RIDGE SUBDIVISION SHALL BE SUBJECT TO THE REQUIREMENTS OF SUCH DOCUMENTS, AS AMENDED. EACH OWNER OR PROSPECTIVE OWNER OF A LOT WITHIN THE WOODLANDS AT GARDEN RIDGE SUBDIVISION IS URGED TO CAREFULLY REVIEW AND ADHERE TO THE SUBMITTAL REQUIREMENTS CONTAINED WITHIN THIS DECLARATION, A SUPPLEMENTAL DECLARATION AND THE RDG RELATIVE TO THE PLANNING AND CONSTRUCTION OF ALL IMPROVEMENTS WITHIN THE WOODLANDS AT GARDEN RIDGE SUBDIVISION IN ORDER TO AVOID UNNECESSARY DELAY AND EXPENDITURES; ADHERENCE TO THE SUBMITTAL REQUIREMENTS AND APPROVAL PROCESS IS MANDATORY. ALL OF THE DOCUMENTS REFERENCED HEREIN AND ANY AMENDMENTS THERETO ARE AVAILABLE UPON REQUEST FROM THE ASSOCIATION. EACH OWNER OR PROSPECTIVE OWNER OF A LOT WITHIN THE WOODLANDS AT GARDEN RIDGE SUBDIVISION SHOULD CAREFULLY EXAMINE EACH OF THE REFERENCED DOCUMENTS, IN ADDITION TO THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

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NOTICE: THE WOODLANDS AT GARDEN RIDGE SUBDIVISION IS WITHIN THE CITY LIMITS OF THE CITY OF GARDEN RIDGE. EACH OWNER OR PROSPECTIVE OWNER OF A LOT WITHIN THE WOODLANDS AT GARDEN RIDGE SUBDIVISION IS URGED TO CAREFULLY REVIEW AND ADHERE TO THE ORDINANCES OF THE CITY OF GARDEN RIDGE WHICH MAY BE MORE RESTRICTIVE THAN THIS DECLARATION. EACH OWNER OR PROSPECTIVE OWNER OF A LOT WITHIN THE WOODLANDS AT GARDEN RIDGE SUBDIVISION SHALL SUBMIT ITS PLANS TO THE CITY OF GARDEN RIDGE FOR REVIEW.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE WOODLANDS AT GARDEN RIDGE SUBDIVISION

COMAL COUNTY, TEXAS

STATE OF TEXAS §
§
COUNTY OF COMAL §

THIS DECLARATION, is made on the date hereinafter set forth by Daphne Development, LLC, a Texas limited liability company, hereinafter referred to as "Declarant" for The Woodlands at Garden Ridge Subdivision as prescribed by instrument filed of record under Document No. _____, Map and Plat Records, Comal County, Texas.

W I T N E S S E T H:

Whereas, Declarant (as defined in Article 1, Division 1.1), on the date hereof is the owner of certain real property located in Comal County, Texas; and

Whereas, Declarant desires to create thereon a residential community with designated "Lots" (as that term is defined herein) for the benefit of the present and future Owners of said Lots; and

Whereas, Declarant desires to ensure the preservation of the values and amenities in said community and for the maintenance of said Common Facilities and Common Area, and to this end desires to further subject the above-described real property, together with such additions as may hereinafter be made thereto as herein provided, to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each of the owners thereof; and

Whereas, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the Common Facilities, Drainage Area(s) and Common Area, if any, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

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Whereas, Declarant covenants that The Woodlands at Garden Ridge Homeowners Association, Inc. will be incorporated under the laws of the State of Texas as a non-profit corporation for the purposes of exercising the functions aforesaid as to The Woodlands at Garden Ridge Subdivision and Declarant desires to conform the restrictions on the use of the herein described real property as necessary for the purpose of subjecting said property and the owners thereof to the jurisdiction of The Woodlands at Garden Ridge Homeowners Association, Inc.;

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Whereas, Declarant may desire to impose additional restrictions to protect and preserve the character of specific portions within the Properties and may adopt Supplemental Declarations containing additional covenants, conditions, restrictions, easements, charges and liens, each and all of which will be for the benefit of that portion of the Properties within such specific portions of the Properties and of the present and future owners of Lots (as hereinafter defined) within such portion of the Properties; and

Now, Therefore, Declarant declares that the real property above-described, and such additions thereto as may hereafter be made pursuant to the terms hereof, is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth as well as those previously filed of record to the extent the same are not abrogated or superseded herein.

Article I.
Administrative Provisions

Division 1.1 Definitions. The following words and terms when used in this Declaration shall have the following meanings:

"Annexation Area" shall mean and refer to the real property more particularly described on Exhibit "A" save and except the land described in Plat, attached hereto and incorporated for all purposes, which may be annexed and become a part of the Properties and subject to this Declaration as provided herein.

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Deleted: or Declarant's successor or assignee within three (3) miles of the land known as Forest of Garden Ridge IV Subdivision set forth in the Plat

"Annual Assessment" shall mean and refer to a charge against each Owner and his Lot made by the Association in accordance with and for the purposes set forth in Article 2, Division 2.4.

"Appointing Authority" shall mean Declarant or Declarant's successor or assignee during the Development Period or Declarant Control Period for as long as there are one or more Unimproved Lots or Undeveloped Acreage. Thereafter, it shall mean the Board. Declarant shall also have the right and authority at any time to assign to the Board the

obligations, authority and position of Appointing Authority. Any such assignment shall be effective upon the expiration of ninety (90) days after receipt by any member of the Board of written notice of such assignment.

"Architectural Control Committee" or "ACC" shall mean and refer to the committee created hereinafter, subject to the provisions of Article 3 hereof, by Declarant.

"Assessments" shall mean and refer to the Annual Assessment, Special Assessment, and Individual Assessment, either singularly or collectively.

"Association" shall mean and refer to The Woodlands at Garden Ridge Homeowners Association, Inc., its successors and assigns as provided herein.

"Board of Directors" or "Board" shall mean and refer to the governing body of the Association, the election and procedures of which shall be as set forth in the Certificate of Formation and Bylaws of the Association.

"Bylaws" shall mean and refer to the Bylaws of the Association as they may, from time to time, be amended.

"Certificate of Formation" shall mean and refer to the Certificate of Formation of the Association.

"Common Area" shall mean and refer to any real property acquired by or leased to the Association if such property is designated as "Common Area" in the instrument transferring such property.

"Common Facilities" shall mean and refer to all property leased, owned, or maintained by the Association for the use and benefit of the Members of the Association. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: signs, fountains, sculpture, landscaping, walls, bridges, play equipment, picnic tables, benches and other similar or appurtenant improvements.

"Declarant" shall mean and refer to Daphne Development, LLC, a Texas limited liability company and its successors and assigns. No Person purchasing one or more Lots in the ordinary course of business shall be considered as "Declarant" without a specific written assignment of Declarant's rights.

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of The Woodlands at Garden Ridge Subdivision and include the same as it may,

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from time to time, be amended, supplemented and additional properties added, subject to and in accordance with the terms hereof.

"Drainage Area(s)" shall mean and refer to one or more areas on or off the Properties primarily used to facilitate the movement of surface water or to detain or hold surface water emanating from the Properties.

"Development Period or Declarant Control Period" shall mean the time period commencing on the filing of this Declaration and ending on the tenth anniversary during which the Declarant shall have additional controls and rights as allowed in the Chapter 209 of the Texas Property Code.

"Governmental Authority" shall mean and refer to the Federal government of the United States of America, the State of Texas, including the Texas Commission on Environmental Quality, County of Comal, City of Garden Ridge, or any other governmental body, subdivision, agency, authority or property owners' association now or hereafter in existence that has jurisdiction over the Properties or any use or activity with respect to the Properties.

"Improvement" or "Improvements" shall mean and refer to any structure, whether preliminary, temporary or permanent, constructed or placed, or intended to be placed, upon any portion of any Lot by, or on behalf of any Owner (including the Association) and shall, where appropriate to the context, include clearing, grading, grubbing, landscaping and removing trees or other vegetation and/or any modification, expansion, demolition or removal of any existing structure.

"Improved Lot" shall mean and refer to any Lot within the Properties on which a Living Unit has been constructed. A Lot shall be deemed to be an "Improved Lot" when construction of a Living Unit thereon is completed, and closing of a sale thereof has taken place, or when the Living Unit is occupied by the Owner, whichever occurs first.

"Living Unit" shall mean and refer to a single family residence and its attached or detached garage situated upon a Lot.

"Lot" shall mean and refer to a designated parcel, tract, or area of land on the Properties established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon. Some portions of the Common Area may be platted as a "lot" on a recorded plat, however, these lots are expressly excluded from the definition of "Lot" as used herein.

"Member" shall mean and refer to all those Owners who are members of the Association as provided in Article 2, Section 2.2.1, hereof.

"Notice" shall mean and refer to delivery of any document by regular mail, with postage prepaid, to the last known address (according to the records of the Association) of the Person to whom such Notice is to be given. Notice to one (1) of two (2) or more co-Owners shall constitute Notice to all Owners. Notice shall be effective upon depositing such document in a depository maintained by the United States Postal Service for such purposes.

"Owner" shall mean and refer to every Person who is a record owner of a fee or undivided fee interest in any Lot, including contract sellers. If a Lot is owned in undivided interests by more than one Person, each owner shall be an Owner for purposes of this Declaration. A Person that owns only a lien or other similar interest in a Lot as security for performance of an obligation is not an Owner with respect to that Lot.

"Person" means any natural person, corporation, joint venture, partnership, association, trust or other legal entity.

"Plat" shall mean and refer to the plat filed of record under Document No. _____, Map and Plat Records, Comal County, Texas.

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"Plats" shall mean and refer to the Plat and other plats recorded in the Map and Plat Records, Comal County, Texas, regarding Additional Land annexed into this Declaration pursuant to Section 1.2.2.

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"Properties" shall mean and refer to the land known as The Woodlands at Garden Ridge Subdivision set forth in the Plat and such other real property as may be made subject to the terms of the Declaration in accordance with the provisions hereof.

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"Public Rights-of-Way" shall mean all dedicated public rights-of-way and public areas in or adjacent to the Properties that applicable Governmental Authorities have not accepted for maintenance or are not maintaining properly.

"Residential Design Guidelines" or "RDG" shall mean and refer to the architectural standards, guidelines, objectives and procedures for the design, placement and construction of residences and related improvements in the Properties. The Residential Design Guidelines shall be promulgated by the ACC, and shall serve to guide the ACC in its design review and approval process as described in Article 3, Section 3.4.8.

"Rules and Regulations" or "Regulations" shall mean and refer to the rules and regulations of the Association as set forth in Article 4 and as may, from time to time, be amended, modified, supplemented and revoked pursuant to the Bylaws.

"Setback Line" shall mean and refer to each line designated on the Plats as such or Supplemental Declaration, which, within the area from the Setback Line to the property line of the Lot, no Improvements shall be constructed without written approval of the ACC.

"Special Assessment" shall mean and refer to a charge against each Owner and such Owner's Lot made in accordance with and for the purposes set forth in Article 2, Section 2.4.4.

"Supplemental Declaration" shall mean and refer to an instrument which (i) subjects Additional Land to this Declaration and imposes additional restrictions; and/or (ii) imposes additional restrictions on a portion of the Properties already subject to this Declaration. The Supplemental Declaration may contain additions, deletions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additional Land.

"Undeveloped Acreage" shall mean and refer to any land owned by Declarant or Declarant's successor or assignee in fee simple within the Annexation Area that is not subject to a recorded plat, but that could be annexed into and made subject to this Declaration pursuant to Section 1.2.2.

"Unimproved Lot" shall mean and refer to any Lot within the Properties, except for Improved Lots.

Division 1.2 Declaration.

Section 1.2.1 Initial Properties. From and after the recording of this Declaration in the Official Public Records of Real Property, Comal County, Texas, the Properties shall be subject to this Declaration.

Section 1.2.2 Addition to Properties. Additional property within the Annexation Area may be annexed and become subject to this Declaration from time to time ("Additional Land"). Such addition may be accomplished by the recordation in the Official Public Records of Real Property, Comal County, Texas of a Supplemental Declaration, signed by Declarant, which shall extend the scheme of the Declaration to the Additional Land, automatically extending the jurisdiction, functions, rights, and duties of the Declarant and Association (including membership therein), to the Additional Land so added. If Declarant is not a

Member immediately prior to the recordation of such Supplemental Declaration, then upon the recordation of such Supplemental Declaration, Declarant shall become a Class B Member. No consent or approval of the Board of Directors or of any Owner shall be required in order to extend the scheme of this Declaration to the Additional Land. If the Additional Land is made subject to this Declaration, then, without the necessity of any further action, the Additional Land shall be included within the definition of the Properties, and all other terms of this Declaration shall be modified as necessary to extend the coverage of this Declaration to the Additional Land. Upon the subsequent platting of the Undeveloped Acreage into residential lots, the number of votes Declarant is entitled to cast with respect to the Undeveloped Acreage shall be determined with reference to the actual number of such Lots owned by Declarant.

Section 1.2.3 Merger. Upon a merger or consolidation of the Association with another association, the Association's property, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the properties of the association as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration.

Division 1.3 Easements.

Section 1.3.1 Appurtenant Easements. Declarant grants to all Owners (and their employees, guests, lessees and invitees) as an appurtenance to and as part of the interest held by such Owner, but subject to this Declaration, Certificate of Formation, Bylaws and Rules and Regulations, a perpetual non-exclusive easement for ingress and egress over, across and through and for the use and enjoyment of all Common Area, if any, which are an intrinsic and appurtenant part of the value of the Lots; such use and enjoyment to be shared in common with the other Owners, their guests, lessees and invitees as well as the guests, lessees and invitees of Declarant; provided, however, Declarant reserves the right (but not the obligation) to maintain and use all rights-of-way and easements associated therewith and to maintain and place Declarant's signs thereon.

Section 1.3.2 Utility Easements. Declarant reserves to itself without necessity of the joinder of any Owner, and notwithstanding the fact that it may not then own such affected portion of the Properties, the right to grant easements or licenses to any private company, public or private utility or Governmental Authorities providing utility and other similar services within the Properties upon, over, under and across the Properties or any portion thereof, subject to the limitation that no additional easement will be granted on any Lot

except that portion of a Lot between a Setback Line and the property line of the Lot. Such easements shall only be given for the purpose of maintaining, installing, repairing, altering and operating wastewater lines, irrigation lines, water lines, waterworks, water mains, water distribution systems, drainage systems, pipes, wires, power lines, telephone service, gas lines, siphons, valves, gates, pipelines, cable television service, alarm systems and all machinery, licenses, equipment and rights appurtenant thereto and which may be necessary or desirable for the installation and maintenance of utilities and providing such services to Owners, the Properties and Common Area, if any, or any portion thereof. All such easements shall be of a size, width and location so as to not unreasonably interfere with the use of any Improvements which are constructed or have been finally approved by the ACC for construction on the date of the grant of the easement.

Section 1.3.3 Declarant Easements. Declarant hereby reserves to itself and to such other Person as Declarant may, from time to time, designate in writing, a perpetual easement, privilege and right in and to, over, under on and across the Properties, for ingress, and egress as required by its employees, agents, independent contractors, invitees and designees; provided, however, that such access and use is not to unnecessarily interfere with the reasonable use and enjoyment of these Properties by the Owners. Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on any of the Properties including, but not limited to, easements for street lights and signage for the benefit of homebuilders constructing Living Units in the Properties. The easements granted by Declarant shall not unreasonably interfere with the enjoyment of the Properties.

Section 1.3.4 Service Easements. Declarant hereby grants to delivery, pick-up and fire protection services, police and Governmental Authorities, United States Postal Service mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by Declarant, the non-exclusive, perpetual right of ingress and egress over and across the Properties for the purpose of performing their authorized services and investigation.

Section 1.3.5 Platted Easements. The Plats dedicate for use as such, subject to the limitations set forth herein, certain easements shown thereon, and the Plats further establishes certain dedications, limitations, restrictions and reservations applicable to the Properties. All dedications, limitations, restrictions and reservations shown on the Plats are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said Lot or any part thereof.

Section 1.3.6 Landscape Easements. Declarant grants to the Association an ingress and egress easement not to exceed five feet (5') in width on the Lots that are adjacent to the entry ways. This easement is granted for the purpose of insuring that the entry ways into the

Properties are continuously maintained, well landscaped and have proper signage, at the sole discretion of the Board. The granting of this easement does not require the Board to maintain the improvements and areas on the Lots for the benefit of the Owners.

Section 1.3.7 Easement for Utility Providers. Declarant grants to utility providers, their successors and assigns (and their employees and contractors), a perpetual non-exclusive easement for ingress and egress over, across and through the private streets which are Common Area for the purpose to temporarily remove portions of the private streets which are Common Area, as reasonable and necessary for the installation, operation, maintenance and repair of the service line and/or conduits, providing services to the Owners. The utility providers shall not be required to compensate the Association for the use of the private streets as provided above except the utility provider shall repair the private street which it removes or disturbs in a good and workmanlike manner within a reasonable time and shall provide adequate safety measures to protect the safety of the Owners and their vehicles. The easement provided for in this Section 1.3.7 may not be changed or altered without the written consent of the Declarant.

Section 1.3.8 Universal Easement. Each Lot within the Properties and the Owner of such Lot are hereby declared to have an easement on adjoining Lots not to exceed two (2) feet in width from the common property line of such Lots for the purpose of maintaining, moving and repairing any Improvement, such as a fence, that encroaches over the boundary line of a Lot due to inadvertent surveying errors, inadvertent engineering errors, errors in original construction, settlement or shifting of the Improvement, or any other cause. Declarant hereby reserves the same two (2) feet in width easement over all Lots and over all Common Areas for the purpose of maintaining and repairing improvements constructed by it that encroach onto adjoining Lots or Common Areas. However, the benefits of the easements reserved or created in this Section 1.3.8 shall not be available with respect to an encroachment occurring due to willful misconduct of any Owner.

Section 1.3.9 Damages. Neither Declarant nor the Architectural Control Committee nor any member of the Architectural Control Committee nor any utility company shall be liable for any damages done by them or their assigns, their agents, employees or servants, using any easements, whether now or hereafter in existence, (located on, in, under or through the Properties) to fences, shrubbery, trees or flowers or driveways or other property now or hereinafter situated on a Lot located between the front, rear and side set back lines and the boundary line of the Lot.

Division 1.4 Common Facilities and Common Area.

Section 1.4.1 Members' Easements of Enjoyment. Subject to the provisions of Division 1.3 of this Article 1, every Member shall have a common right and easement of enjoyment in and to the Common Facilities and Common Area, if any, when completed, and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

Section 1.4.2 Title to Common Facilities, Drainage Area(s) and Common Area. Declarant may retain legal title to the Common Facilities, Drainage Area(s) and Common Area until such time as it has completed improvements thereon and until such time as, in the opinion of Declarant, the Association is able to maintain same.

Section 1.4.3 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

A. The rights and easements existing or hereafter created in favor of others as provided for in the Plats and/or in Article I, Division 1.3 hereof.

B. The rights of the Association, once it has obtained legal title to the Common Facilities and Common Area, to do the following.

(1) to borrow money for the purpose of constructing or improving the Common Facilities, Drainage Area(s) and Common Area and, in aid thereof, to mortgage said properties and facilities, in accordance with the Certificate of Formation and Bylaws of the Association; and

(2) to take such steps as are reasonably necessary to protect the Common Facilities and Common Area against foreclosure; and

(3) to suspend the enjoyment rights of any Member for non-payment of Assessments or infractions of the Declaration, Supplemental Declaration or Rules and Regulations; and

(4) to assess and collect the Assessments provided for herein or elsewhere; and

(5) to dedicate or transfer all or part of the Common Facilities, Common Area, and Drainage Area(s) to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by a two-thirds (2/3) vote of the Members.

Section 1.4.4 Rights of Declarant During Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, during the Development Period or Declarant Control Period, it shall be expressly permissible for Declarant and any Owner approved by Declarant to maintain and carry on, upon such portion of the Properties as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such Owner's development, construction, and sales activities, including, without limitation, the right of access, ingress and egress for pedestrian and vehicular traffic over, under, on or in the Properties; the right to tie into any portion of the Properties with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee to Declarant or such Owner, but with applicable tap-on and other fees to the Person providing utility services for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Properties; the right to carry on sales and promotional activities in the Properties; the right to place signs in the Common Area and in Public Rights-of-Way within the Properties; and the right to construct and operate business offices, construction trailers, model dwellings, information and sales offices.

Article II.
Homeowners Association

Division 2.1 Incorporation. Declarant shall charter a corporation under Chapter 22 of the Texas Business Organizations Code to be known as The Woodlands at Garden Ridge Homeowners Association, Inc., or by such other name as may be designated at the time of its incorporation, which incorporation may be subsequent to the conveyance of any Lot, for the purposes of assuring compliance with the terms of this Declaration. The Association, acting through its Board, shall have the power to enforce the covenants, conditions, restrictions, and all other terms contained in this Declaration, and subject to the provisions set forth herein, shall have the membership characteristics, powers, duties, and functions as set forth herein.

Division 2.2 Membership and Voting Rights.

Section 2.2.1 Membership. Each Owner of each Lot within the Properties shall be a Member of the Association.

Section 2.2.2 Allocation of Voting Rights. The Association shall have two classes of voting membership:

A. The Class A Members shall be all those Owners as defined in Section 2.2.1 with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one Person holds such interest or interests in any Lot, all such Persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot. If multiple Persons shall be an Owner and they cannot agree among themselves on a particular vote, then no vote shall be cast for that Lot. The Association shall not be required to inquire on the authority of a Person acting on behalf of multiple Owners of a Lot if such Person owns an interest in such Lot.

B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three votes for each Lot in which it holds the interest required by Section 2.2.1 above, provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

(1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(2) on December 31, 2016.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot in which it holds an interest, subject to the following rights of Declarant.

Pursuant to Section 1.2.2, additional land may be annexed into the Properties and upon every annexation of such additional land, the Association shall, (even if Class B membership has theretofore ceased pursuant to this Section), automatically have two classes of voting membership:

A. Class A Members shall be all Owners as defined in Section 2.2.1, with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot within the Association.

B. Class B Members shall be Declarant. The Class B Member shall be entitled to six votes for each Lot in which it holds the interest required by Section 2.2.1 above (including each Lot owned prior to the annexation of Additional Land), provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

(1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(2) on December 31, 2023.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot in which it holds an interest.

Section 2.2.3 Member Rights in Association. No Member shall have any direct interest in the funds and assets of the Association, but shall have only a membership interest therein which shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's interest in the Properties. **Membership in the Association shall be mandatory and shall continue so long as this Declaration is in effect.**

Section 2.2.4 Declarant Rights in the Association. With one (1) day's notice delivered to the President of the Association prior to each election of members to the Board, Declarant shall be entitled to appoint a maximum of two (2) members of the Board during the Development Period or Declarant Control Period. During the Development Period or Declarant Control Period, whether Declarant exercises that right of appointment or not, the Board and the Association shall have no authority to, and shall not, without the prior written consent of Declarant, undertake any action which shall:

A. Prohibit or restrict in any manner the sales, leasing and marketing programs of Declarant. Declarant, from time to time for promotional reasons, may engage the services of a company or individual to man the entry way into the Properties.

B. Decrease the level of maintenance services of the Association as specified in the Certificate of Formation, Bylaws and this Declaration.

C. Make any Special Assessment or Individual Assessments against Declarant's property within the Properties or upon Declarant.

D. Change the membership of the ACC or diminish its powers as stated herein.

E. Alter or amend this Declaration, Certificate of Formation or Bylaws of the Association.

F. Except as otherwise provided herein, terminate or cancel any contracts of the Association, except as may be permitted therein.

G. Terminate or waive any rights of the Association under this Declaration.

H. Convey, sell, lease, mortgage, alienate or pledge any easements, Common Facilities or Common Area of the Association.

I. Except as provided in Article 2, Sections 2.5.2, 2.5.3, and 2.5.4, accept the conveyance, lease, mortgage, alienation or pledge of any real or personal property to the Association.

J. Terminate or cancel any easements granted pursuant to this Declaration or by the Association.

K. Terminate or impair in any fashion any easements, powers or rights of Declarant hereunder.

L. Restrict Declarant's right of use, access and enjoyment of any of the Properties or any portion thereof.

M. Cause the Association to default on any obligation of it under any contract or this Declaration.

Division 2.3 Board of Directors. The Board shall be comprised of three (3) members. The number of members of the Board may be amended in accordance with the provisions of the Bylaws, subject, however to Section 2.2.4 of this Article. The Declarant reserves the right to replace members of the Board during the Development Period or Declarant Control Period as permitted by Section 209.00591 of the Texas Property Code or its successor provision.

Division 2.4 Assessments.

Section 2.4.1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner shall be deemed to covenant and agree to pay to the Association: 1) Annual Assessments for the Common Facilities, Drainage Area(s) and Common Area; 2) Special Assessments for capital improvements to the Common Area, Drainage Area(s) and Common Facilities; and 3) Individual Assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The Annual Assessment, Special Assessment and Individual

Assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of each Person who was an Owner of such Lot at the time when the obligation became due. The Board of Directors shall implement an alternate payment schedule by which an Owner may make partial payments of Assessments to the Association for delinquent Assessments without accruing additional monetary penalties as provided in Texas Property Code Section 209.0062.

Section 2.4.2.Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of enforcing the Declaration, promoting the values and amenities of the Properties, and in particular, for the improvement, replacement, maintenance and operation of the Public Rights-of-Way, Common Facilities, Drainage Area(s) and Common Area, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Facilities and Common Area by the Members. The Board of Directors may set aside part of the Annual Assessments as a reserve for the replacement or maintenance of Common Area, Common Facilities, and Drainage Area(s).

Section 2.4.3.Basis of Annual Assessments. The Annual Assessment for both Improved and Unimproved Lots shall be determined by the Board of Directors in the manner provided for herein after determination of current maintenance costs and anticipated needs of the Association during the year for which the Annual Assessment is being made. The Annual Assessment for Unimproved Lots shall be one-half (1/2) the Annual Assessment for Improved Lots. The Annual Assessment for Unimproved Lots owned by Declarant shall be one-tenth (1/10) the Annual Assessment for Improved Lots. In order to maintain the Common Area and sustain the services contemplated by Declarant, Declarant anticipates that during the period of time prior to the date that all Lots become an Improved Lot, it may, in its discretion, provide amounts in excess of the funds raised by the Annual Assessments in order to maintain the Common Area within reasonable standards. If Declarant advances funds for maintenance (but not for any costs of initial construction or installation of any Common Facilities, the costs of constructing or installing streets, utilities, street signs, landscaping, fencing, or any other improvements or infrastructure) in excess of the Annual Assessments, such excess shall be a debt of the Association to Declarant payable out of any Annual Assessments, Special Assessments or Origination Fee received by the Association. The Board may evidence such debt with a promissory note from the Association payable to Declarant on such terms as the Board shall determine.

Section 2.4.4.Special Assessments for Capital Improvements. The Association may levy, in any calendar year, a Special Assessment for the purpose of defraying, in whole or in

part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement on or which is a part of the Common Facilities, Drainage Area(s) or Common Area, provided that any such Special Assessments shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 2.4.5. Change in Annual Assessments. The Annual Assessment may be adjusted by majority vote of the Board of Directors but shall not be increased by more than ten percent (10%) above that of the previous year without a vote of the membership. Any increase in the Annual Assessment of more than ten percent (10%) above that of the previous year shall require approval of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for that purpose.

Section 2.4.6. Quorum for Any Action Authorized Under Sections 2.4.4 and 2.4.5. The quorum required for any action authorized by Sections 2.4.4 and 2.4.5 hereof shall be as follows: At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 2.4.7. Date of Commencement of Annual Assessments. The Annual Assessments provided for herein shall commence on a date set by the Board of Directors and if the Board does not set the date of the Annual Assessment then the Annual Assessment shall commence on the date the first Living Unit constructed in the Properties is occupied. The Annual Assessments for each calendar year shall become due and payable and shall be collected as the Board of Directors of the Association shall determine. The amount of the Annual Assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the Annual Assessment provided for in Section 2.4.3 hereof as the remaining number of months in that year bears to twelve. When a Lot becomes an Improved Lot after the Annual Assessment for it as an Unimproved Lot has been paid, there shall be payable as of the first day of the month following the month when it becomes an Improved Lot, a sum equal to the difference between the Annual Assessment for Unimproved Lots and the Annual Assessment for Improved Lots prorated over the balance of the year then remaining. The due date of any Special Assessment under Section 2.4.4 hereof shall be fixed in the resolution authorizing such assessment.

Section 2.4.8. Individual Assessment. Upon an affirmative vote of a majority of the members of the Board of Directors of the Association, the Association may levy Individual Assessments against any Owner for reimbursement for maintenance or repairs, for other than ordinary wear and tear, occasioned by the willful or negligent acts of such individual Owner or such Owner's family, pets, tenants or other occupants of such Owner's Lot, for maintenance or repair to the Owner's Lot or improvements thereon in accordance with Section 2.5.1 and Section 4.6.5 hereof, and for any other cost incurred by the Association in performing the obligations of the Owner under this Declaration.

Section 2.4.9. Duties of the Board of Directors. Prior to the beginning of each fiscal year for the Association, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under this Declaration, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. If in any year the Board fails to set an Annual Assessment for such year, the Annual Assessment shall be deemed to be the same as the Annual Assessment for the preceding year. Assessments sufficient to pay such estimated net expenses shall then be levied by the Association as herein provided, and the amount of such Assessments as determined by the Board shall be final and binding so long as such determination is made in good faith. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year for the Association for which such Assessments are payable, or during such fiscal year in equal quarterly installments on or before the first day of each quarter, or in such other manner as the Board may designate in its sole and absolute discretion. Written notice of the Assessment shall thereupon be sent to every Member subject thereto. The Association shall upon demand at any time furnish to any Member liable for said Assessment a certificate that shall be conclusive evidence of payment of any Assessment therein stated to have been paid conditioned on the payment by Owner of a reasonable fee to the Association.

Section 2.4.10. Effect of Non-Payment of Assessments; The Lien; Remedies of the Association. If the Assessments are not paid on the date when due (being the dates specified in Section 2.4.7 hereof) then such Assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof provided, thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. If the Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at the highest rate of interest permitted by law, and the Association may bring an action at law against the Owner to pay the same or to foreclose the lien against the Lot, or foreclose on the Lot as provided in Section 2.4.11 and there shall be added to the amount of such Assessment all reasonable expenses of collection including the costs of preparing and filing the complaint, reasonable attorney's fees (as limited by the Texas Property Code) and

costs of suit. Notice of the lien referred to in this Section may be given by the recordation in the office of the county clerk of Comal County, Texas, of an affidavit, duly executed, acknowledged by an officer of the Association, setting forth the amount owed, the name of the Owner or Owners of the affected Lot, according to the books and records of the Association, and a legal description of such Lot.

Section 2.4.11. Nonjudicial Foreclosure.

A. To secure the payment of Assessments and to ensure compliance with the applicable covenants, conditions, restrictions and easements set forth herein, each Owner, upon acceptance of his or her deed to a Lot governed by this Declaration conveys the Lot to the Trustee hereinafter named, in trust for so long as these covenants, conditions, restrictions and easements shall remain in effect, such conveyance operating as a Special Deed of Trust. If an Owner fails to tender payment of any Assessments when due and such failure continues after the Association gives the Owner notice of the failure and the time within which it must be cured, as may be required by law or by written agreement, then the Association, as the Beneficiary of this Special Deed of Trust may:

(1) Request the Trustee appointed herein, or his successor, to foreclose the liens created herein, in which case the Association shall give notice of the foreclosure sale as provided by Section 51.002 et seq of the Texas Property Code then in effect or any successor statute thereto; and

(2) Purchase the Lot at any foreclosure sale by offering the highest bid and then have the bid credited to the reimbursement or satisfaction of the outstanding indebtedness owed to the Association.

B. If requested by the Association to foreclose this lien, the Trustee shall:

(1) Either personally or by agent give notice of the foreclosure sale as required by Section 51.002 et seq of the Texas Property Code then in effect or any successor statute thereto;

(2) Sell and convey the Lot to the highest bidder for cash with a general warranty binding the Owner, subject to prior liens and to other exceptions to conveyance and warranty; and

C. From the proceeds of the sale, pay, in this order:

(1) expenses of foreclosure, including a commission to Trustee of five percent (5%) of the successful bid;

(2) to the Association, the full amount advanced, attorney's fees, and other charges due and unpaid;

(3) any amounts required by law to be paid before payment to the Owner; and

(4) to the Owner, any remaining balance.

D. Ronald W. Hagauer, Attorney at Law, is appointed Trustee for the purpose of enforcing the covenants, conditions and restrictions imposed by this Declaration, and also for the collection of Assessments. The Association, as Beneficiary, may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of the Trustee appointed herein.

E. From and after any such foreclosure, the occupants of such Lot shall be required to pay a reasonable rent for the use of such Lot and such occupancy shall constitute a tenancy-at-sufferance. The purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice.

F. The Association shall send written notice to the Owner of the Lot subject to the foreclosure as required by Texas Property Code Section 209.010, comply with the redemption rights as required by Texas Property Code Section 209.011, shall send written notice and allow for an opportunity to cure for certain lien holders as required by Texas Property Code Section 209.0091 and adhere to the procedures in Texas Property Code Section 209.0092.

G. It is the intent of the provision of this section to comply with the provisions of Texas Property Code Section 51.002, relating to nonjudicial sales by power of sale and Texas Property Code Chapter 209, relating to residential subdivisions and, in the event of the amendment of Section 51.002 and Chapter 209 hereafter, which amendment is applicable hereto, the President of the Association, acting without joinder of any Owner or mortgagee of any Owner, and by amendment to this Declaration filed in the office of the County Clerk of Comal County, Texas, may amend the provisions hereof so as to comply with the amendments to Section 51.002 or Chapter 209.

H. Any liens created by this Declaration shall be superior to all other liens and charges against any Lot covered hereby, save and except ad valorem tax liens and all sums secured by an enforceable purchase-money mortgage or enforceable home-improvement mortgage.

Section 2.4.12. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon the Lots subject to assessment, provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 2.4.13. Exempt Property. The charges and liens created herein shall apply only to the Lots, and the remainder of the Properties shall not be subject thereto.

Section 2.4.14. Origination Fee. Declarant, for each Lot owned by it within the Properties, hereby covenants, and each prospective Owner shall be deemed to covenant and agree to pay to the Association an origination fee in the sum of $500.00 for each newly constructed Living Unit ("Origination Fee"). The Origination Fee shall become due and payable and collected on the date of the transfer of the Lot with the newly constructed Living Unit to the new occupant. The Origination Fee shall be used by the Association to cover shortfalls in the budget, future maintenance of the Common Property or repay loans from the Declarant.

Division 2.5 Functions of the Association.

Section 2.5.1 Functions. The Association shall have all of the powers of a Texas non-profit corporation, as such powers may exist from time to time, subject only to such limitations upon the exercise of such powers as may be expressly set forth in this Declaration, and the Certificate of Formation and Bylaws. It shall further have the power to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration, Certificate of Formation or Bylaws. Without in any way limiting the generality of the two (2) preceding sentences, the Association and the Board acting on behalf of the Association, shall have the power and authority to perform the following functions:

A. The Association shall provide maintenance for the Common Area, Common Facilities, Drainage Area(s) and Public Right-of-Ways. The Association shall have the power, but not the obligation, to provide maintenance for any property

located within the Properties with respect to which the Association has accepted an easement. The Association shall also have the power, but not the obligation, to supplement the services provided by any Governmental Authorities or to provide special maintenance or services for particular areas in the Properties that it deems desirable. The Association reserves a perpetual right of access on and across all or any part of the Properties in order to provide any maintenance or services required or authorized to be performed or undertaken by the Association.

B. The Association shall have the power to take any and all actions necessary to enforce all covenants, conditions and restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Properties, Certificate of Formation, Bylaws or Rules and Regulations, including, without limitation, those contained within this Declaration and as set forth in any amendment.

C. The Association shall conduct the business of the Association, including, but not limited to, administrative services such as legal, accounting, financial and communication services. The Association shall have the right to enter into management agreements with companies in order to provide its services and perform its functions and to retain professionals necessary or proper in the operation of the Association. Such management or other companies may be affiliated with Declarant, so long as the fees paid by the Association to such management companies do not exceed the amount that would be charged for such services by non-affiliated companies.

D. The Association shall purchase and maintain in effect general liability, flood and hazard insurance covering Improvements and activities on the Common Area and shall have the power, but not the obligation to purchase and maintain such other insurance and in such amounts as the Board deems necessary. The Association shall cause all officers or employees having fiscal responsibility to be bonded in such amounts as the Board deems necessary.

E. The Association shall operate the ACC in accordance with the terms of this Declaration.

F. The Association shall adopt, publish and enforce the Rules and Regulations.

G. The Association shall have the power, but not the obligation, to provide lighting on the Common Area.

H. The Association may construct improvements on the Common Area. Any construction of improvements by the Association shall be subject to the same approval process and procedures as are provided for in Article 3.

I. The Association may provide exterior maintenance upon any Improvement or Lot located within the Properties that, in the Association's opinion requires such maintenance because such Improvement or Lot is being maintained in violation of this Declaration, any Supplemental Declaration, the RDG, or the Rules and Regulations. The Association shall notify the Owner of any such Lot in writing, specifying the nature of the condition to be corrected, and if the Owner has not corrected such condition within fifteen (15) days after the date of such Notice, the Association may correct such condition. The cost of such maintenance shall be assessed against the Lot and Owner as an Individual Assessments or the Board may offer to pay a portion of the repair if the Board determines that the repair or maintenance would enhance the beauty and value of the Properties (*i.e.*, rear or side fence along public street or entry way). For the purpose of performing the exterior maintenance authorized by this section, the Association, through its duly authorized agents or employees, shall have the right to enter upon any Lot or Improvement.

J. The Association may carry out any of the functions and services specified in this Article 2 to the extent such maintenance and services can be provided with the proceeds first from Annual Assessments and then, if necessary and appropriate, from Special Assessments or Individual Assessments. The functions and services allowed in Section 2.5.1 of this Article 2 to be carried out or offered by the Association at any particular time shall be determined by the Board taking into consideration proceeds of Assessments and the needs of the Association. The functions and services that the Association is authorized to carry out or to provide may be added to or reduced at any time upon the affirmative vote of a majority of the Board. The Association may additionally carry out all other powers and duties set forth in the Certificate of Formation, Bylaws and Rules and Regulations.

K. The Association may adopt, amend, enforce and revoke Rules and Regulations governing the use, operation and maintenance of the Common Area and Common Facilities including, without limitation, the authority to assess fines against Owners violating such Rules and Regulations. The Association is further authorized and empowered to prohibit the use, or to limit the manner and extent of use of the Common Area and Common Facilities by Owners owing unpaid fines or violating Rules and Regulations of the Association. The Association shall send an Owner the written notice required by Texas Property Code Section 209.006 before the

Association may suspend an Owner's right to use the Common Area or Common Facilities or take other legal action as set forth in Section 209.006. The Association shall hold and conduct a hearing as required by Texas Property Code Section 209.007.

Section 2.5.2 Mortgage and Sale. Subject to Article 2, Section 2.2.4, the Board shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its functions; provided, however, that the Board shall not mortgage, sell nor otherwise transfer all or any part of the Common Area unless such action shall be authorized by a majority of the total eligible votes of the Members of the Association, cast at a duly called meeting of the Association, and unless Notice of the meeting and of the proposed agreement and action thereunder is sent at least thirty (30) days, but no more than sixty (60) days, prior to such meeting to every Member entitled hereunder to vote. A true copy of such resolution together with a written statement certifying the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such statement or certificate shall be annexed to any instrument of dedication, transfer or encumbrance affecting the particular Common Area, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the Members.

Section 2.5.3 Conveyance to Association. The Association shall be obligated to accept any and all conveyances to it by Declarant of fee simple title, easements or leases to Common Facilities, Drainage Area(s) or Common Area. A majority of the Board shall determine whether the Association shall accept any other conveyances.

Section 2.5.4 Conveyance by Association. Subject to the provisions of this Article 2, the Association shall be empowered to delegate or convey any of its functions or properties to any Governmental Authorities or public utility for public purposes consistent with the intended use of such property to the extent such entity shall assume and discharge all obligations relative thereto.

Section 2.5.5 Initial Improvement and Maintenance of the Common Area. Initially, all improvement of the Common Area shall be the responsibility of the Declarant and shall be undertaken by Declarant at its sole cost and expense with no right to reimbursement from the Association. The exact nature of improvement to the Common Area shall be within the sole discretion of the Declarant. Following the conveyance of the Common Area to the Association, the responsibility for maintenance of the Common Area shall automatically be assumed by the Association, and Declarant's responsibility therefrom shall be limited to the payment of Assessments.

Division 2.6 Amenities. Declarant does not intend to construct or provide any amenities on the Properties except for signage at the entry way or entry ways, landscaping adjacent to the entry way or entry ways and minimal park improvements.

Deleted: ????????? Any other improvements

Division 2.7 Liability, Insurance and Release. Each Owner, Member and resident of the Properties expressly understands, covenants and agrees with Declarant and the Association as follows:

Section 2.7.1 No Liability. The Association does not have any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner, Member and resident of the Properties.

Section 2.7.2 Maintain Insurance. Each Owner, Member and resident of the Properties shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Member's and resident's own selection to select, purchase, obtain, and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner, Member and resident covering his or her real and personal property.

Section 2.7.3 Release of Claims. Each Owner, Member and resident of the Properties releases the Association and its agents, attorneys, employees, officers, Directors, and partners from any liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all aspects of the Properties.

Article III.
Architectural Control Committee

Division 3.1 Establishment of Architectural Control Committee. Declarant hereby establishes an Architectural Control Committee for the Properties, which shall be operated and maintained in accordance with this Declaration. Declarant may establish additional architectural control committees for the Additional Land as set forth in Supplemental Declarations. The City of Garden Ridge has its own ordinance regarding issuance of a building permit that is separate and distinct from the process set forth in this Article III.

Division 3.2 Composition and Designation of Committee.

Section 3.2.1. Composition. The ACC shall consist of three (3) regular members: the chairman of the ACC ("Chairman") and two (2) regular members to be appointed by the Chairman within ten (10) days following his appointment. A majority of the Committee may designate a member to act for it. The ACC may also include up to two (2) alternate members,

each of whom shall be appointed by the Chairman and may be authorized by the Chairman to attend any meeting of the ACC in the absence of any regular member and to vote on all matters that come before the ACC at such meeting. The ACC also may include up to two (2) associate members, which will be appointed by the Chairman, any and all of whom may be authorized to attend such meetings as the Chairman shall specify and to participate in any discussion at such meetings, but not to vote on any matters. In the event one (1) of the members of the ACC other than the Chairman is removed, resigns or is no longer able to serve as a member, the Chairman shall appoint a new member of the ACC so that there will continue to be three (3) regular members of the ACC. A record of the members of the ACC shall at all times be kept at the offices of the Association or Declarant and such information shall be provided to any Owner or prospective purchaser of any Lot upon request. Members of the ACC need not be officers, directors nor members of the Association. Members of the ACC shall be reimbursed for reasonable, actual and necessary out-of-pocket costs incurred in their capacity as members of the ACC.

Section 3.2.2. Chairman. The Appointing Authority hereby appoints Dan Kossl to be the first Chairman. The Appointing Authority shall have the right to remove the Chairman and any and all other members from the ACC at any time for any reason, with or without cause. Any successor Chairman of the ACC shall be appointed by Appointing Authority. As of January 31 of each year, the Appointing Authority shall review the composition of the members of the ACC and shall either re-appoint the Chairman or shall appoint a new Chairman.

Section 3.2.3. Term of Office. Each member of the ACC, regular, associate or alternate, shall hold office from the date of his appointment until January 31 of the succeeding calendar year, and thereafter until such time as a successor has been appointed, unless such member sooner resigns or is removed.

Section 3.2.4. Staff and Consultants. The Appointing Authority may also appoint staff and consultants to the ACC, including, but not limited to architects, landscape architects, planners, engineers, attorneys and other individuals whose knowledge or skills will assist the ACC in carrying out its functions.

Division 3.3 Approvals Required. No Improvements shall be constructed, erected, removed, planted or maintained nor shall any addition to or any change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and the location of same shall have been submitted to and approved in writing by the ACC in accordance with Division 3.10 of this Article 3 and issuance of a building permit from the City of Garden Ridge. Any change in the outward appearance of any Improvement, including, but not limited to, repainting the same in a different color,

adding decorative sculptures or art work, wrought iron grills, changing in any manner the exterior appearance or the like, shall also require approval in writing by the ACC before any work is commenced. No Owner shall do any act or any work that will impair the structural soundness or integrity of another residence or impair any easement or hereditament, or do any act or allow any condition to exist which will adversely affect other Lots, Improvements or Owners.

Division 3.4 Duties and Functions of ACC. The duties, powers and responsibilities of the ACC shall be as follows:

Section 3.4.1. Plan Approval. The ACC shall have the right of specific approval or veto of all architectural, engineering, platting, planning and landscaping aspects of any Improvement, as well as the general plan for development of any individual Lot within the Properties. All construction and development within the Properties is subject to local government control; provided, further, that the ACC may, in its sole discretion, impose standards of architectural and landscaping design, Setback Lines or a plan for development, which standards are greater or more stringent than standards prescribed in applicable building, zoning, planning or other governmental codes. Such approval may be subject to special conditions or requirements, including, without limitation, the date upon which all Improvements are to be completed. The Architectural Control Committee shall be the sole authority for determining whether proposed structures and modifications of proposed structures comply with applicable covenants, conditions, and restrictions and are in harmony of external design with existing structures and the overall plan of development of the Properties. All proposed plans and specifications for construction of Improvements by any builder constructing Living Units in the Subdivision shall be submitted to the ACC for initial approval. After receipt of such approval, the builder's plans and specifications may thereafter be used by the builder on one or more Lots within the Subdivision without the need for subsequent approval for construction on individual Lots. The City of Garden Ridge has its own ordinance regarding the approval of plans for the Living Unit that is separate and distinct from the process set forth in this Article III.

Section 3.4.2. Disapproval. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole opinion and absolute discretion, for aesthetic or any other reasons. In approving or disapproving such plans and applications, the ACC shall consider the suitability of the proposed Improvements and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring Lots. As examples, and not by way of limitation, the ACC may impose limits upon the location of window areas of a Living Unit which would overlook the enclosed patio area of an adjacent Living Unit, or the location and height of a proposed Improvement that

would materially interfere with the views of an adjacent Living Unit. Also, the ACC is permitted to consider technological advance in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted.

Section 3.4.3. Period for Construction. Unless specifically excepted in writing by the ACC, all Improvements (except for new home construction) shall be completed within a reasonable time from the date of commencement of such Improvements or within the time established by the ACC in the event that the approval is so conditioned.

Section 3.4.4. Setback Lines. The ACC shall in all cases have the right to determine and designate Setback Lines necessary to conform to the Plats and this Declaration in order to preserve the integrity of the Properties. The ACC's judgment and determination shall be final and binding with respect to the establishment of all Setback Lines.

Section 3.4.5. Inspection. There is specifically reserved unto the ACC the right of entry and inspection upon any Lot for the purpose of determination by the ACC whether there exists any construction of any Improvement which violates the terms of any approval by the ACC or the terms of this Declaration, Plats or any amendment thereto.

Section 3.4.6. Authority. A majority of the ACC may take any action for the ACC and may designate a representative to act for it. In the event of death, disability, removal or resignation of the Chairman of the ACC, the Appointing Authority shall designate a successor. The ACC is specifically empowered to enforce the provisions of this Declaration, the conditions of all ACC approvals and all amendments to the Declarations by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved Improvement, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees (as limited by the Texas Property Code) in connection therewith.

Section 3.4.7. Release. In each instance where Improvements have been erected, or the construction thereof is substantially advanced, in such manner that the same violates the restrictions contained in this Declaration, Supplemental Declaration, Plats, RDG, ACC approvals or any other covenants which the ACC has the power to enforce, or in such manner that the same encroaches on any easement, Common Area, or Setback Line, the ACC reserves the right (but shall not be obligated in any manner) to release such Lot from the restriction which it violated and to grant an exception to permit the encroachment or violation so long as the ACC, in the exercise of its good faith discretion, determines that the release or exception will not materially and adversely affect the health, safety and appearance of the Properties and does not detract from the appearance, marketability, or value of any adjacent Improved Lot and is not inconsistent with the appearance and architectural harmony of the

Properties. The ACC has the right, but not the obligation, to grant waivers for minor deviations and infractions of this Declaration.

Section 3.4.8. Residential Design Guidelines. The ACC may promulgate the guidelines by a majority vote, as it, in its sole discretion, deems proper to govern the submission of plans and specifications, including a requirement of design submission in phases, as well as format and content. All amendments, supplements, revocations and modifications shall also require a majority vote of the ACC. **Prior to acquiring any interest in a Lot, each prospective purchaser, transferee, mortgagee, and owner is strongly encouraged to contact the Architectural Control Committee to obtain and review the most recent Residential Design Guidelines which will control the development, construction and use of the Lot. The Residential Design Guidelines may contain standards, requirements, or limitations in addition to those expressly set forth or referred to in this Declaration and more stringent standards, requirements, or limitations than any specific standard, requirement or limitation set forth or referred to in this Declaration.**

Section 3.4.9. Variance. Subject to standards set forth in this Declaration, the ACC shall have the authority to grant variances from the provisions of this Declaration, any Supplemental Declaration, its promulgated Rules and Regulations, or the Residential Design Guidelines, when in the opinion of the ACC, such variance is justified due to functional, aesthetic, or unusual or unforeseen circumstances. All variances granted must be approved by the ACC and must be evidenced by written instrument, in recordable form, and attached to a copy of the plan(s) approved by the ACC. If a variance is granted, no violation of the Declaration, Supplemental Declaration, promulgated Rules and Regulations or Residential Design Guidelines, shall be deemed to have occurred with respect to the provision(s) for which the variance was granted, provided that the development of the Lot affected by the variance is in compliance with all details set forth on the approved plans and specifications.

Section 3.4.10. Nonconforming and Undeveloped Improvements. The Board of Directors may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvement) if such Improvements were commenced or constructed in violation of this Declaration, including the Residential Design Guidelines, and the covenants, conditions, and restrictions set forth in any applicable Supplemental Declaration.

Division 3.5 Submittal to ACC. The ACC shall have the authority to adopt, as part of the RDG, submittal requirements covering procedures to be followed by all Owners or prospective Owners in connection with obtaining ACC approval for constructing Improvements on a Lot. No construction of Improvements shall be commenced unless all

required approvals have been obtained from the ACC and all fees established shall have been paid.

Division 3.6 Basis for Approval. Among other matters, the ACC shall consider the proposed topography, finished grade elevation, and the general appearance of the proposed Improvements as may be determined from the front, rear, and side elevations on submitted plans. The ACC's objective is to prevent unusual, radical, uncommon, curious, odd, extraordinary, bizarre, peculiar, or irregular designs or appearances from being built on, in and/or within the Properties and, to the extent possible, ensure the harmonious development of the Properties in conformity with the common plan and design. The ACC is not required to police or enforce compliance with such considerations as minimum size, setbacks, or other specific, objective construction requirements. There shall be no review of any action of the Architectural Control Committee except by procedures for injunctive relief when such action is patently arbitrary and capricious; and under no circumstances shall the ACC, or any of its members, be subject to suit by anyone for damages.

Division 3.7 Failure to Act. In the event the Architectural Control Committee fails to approve or disapprove such plans and specifications and/or the primary contractor engaged to perform such construction, within thirty (30) days after the plans and specifications and the name of the contractor have been submitted to it, approval will not be required and the provisions of this Division will be deemed to have been fully complied with.

Division 3.8 Limitation of Liability. The ACC, shall not be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by the Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

Division 3.9 Approved Contractors. No construction of any building, fence, wall, recreational facilities, landscaping or other structure or Improvements shall be commenced on, in, or within the Properties until the primary contractor engaged to perform such construction shall have been approved in writing by the Architectural Control Committee. Any homebuilder purchasing Lots from Declarant shall be exempt from this requirement.

Division 3.10 Approvals in Writing. All matters requiring approval of the Architectural Control Committee whether or not specifically addressed hereinabove or hereinbelow shall require that such approval be in writing.

Division 3.11 Certificate of Compliance. Upon completion of any Improvement approved by the Architectural Control Committee and upon written request by the Owner of the Lot, the

Architectural Control Committee shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the plans and specifications on file with the Architectural Control Committee pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved plans and specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the Architectural Control Committee of the actual construction of the Improvements or of the workmanship or material thereof. The Owner is hereby notified that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the Architectural Control Committee of the construction workmanship, materials or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the Lot.

Division 3.12 No Liability. Neither the ACC, the Board of Directors, nor the officers, directors, members, employees or agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that the Person will not bring any action or suit against the ACC, the Board of Directors or the officers, directors, Members, employees or agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any actual or alleged mistake of judgment, negligence or nonfeasance. Approval of plans and specifications by the ACC is not approval thereof for engineering or structural design or adequacy of materials. By approving such plans and specifications, neither the ACC, the members of the ACC, nor the Board of Directors assumes liability or responsibility for safety or adequacy of design, nor for any defect to any structure constructed from such plans and specifications.

Article IV.
Protective Covenants

Division 4.1 General. The Properties and each Lot in this Declaration shall be used and occupied as follows:

Section 4.1.1 Compliance by Owners. Every Owner shall comply with the restrictions and covenants set forth herein and the Rules and Regulations promulgated by the Board.

Section 4.1.2 Insurance. Nothing shall be done or kept on any portion of the Properties which shall increase the rate of insurance on the Common Area without the approval of the

Board, nor shall anything be done or kept on any portion of the Properties which would result in the cancellation of insurance or which would be in violation of any law.

Section 4.1.3 Liability for Damage to Common Facilities, Drainage Area(s) and Common Area. Each Owner shall be legally liable to the Association for all damages to the Common Facilities, Drainage Area(s) and Common Area, or to any structures thereon, caused by such Owner, his licensees or any occupant of such Owner's Lot.

Section 4.1.4 Non-Waiver. No delay in enforcing these covenants and restrictions as to any breach or violation thereof shall impair, damage or waive the right of the Association to enforce the same, to obtain relief against or recovery for continuation or repetition of such breach or violation or of any similar breach or violation thereof at a later time or times.

Section 4.1.5 Time Shares. No Lot shall be owned or used in multiple or time share ownership.

Section 4.1.6 Leasing. Each Owner shall have the right to lease his property, provided that such lease is in writing and the lease provides that the tenant shall be bound by the provisions of this Declaration, any Supplemental Declaration, the Certificate of Formation, Bylaws and Rules and Regulations and that the failure to comply with the provisions of these documents shall be a default under the lease. With the exception of a lender in temporary possession of property following a default under a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall lease his property for transient purposes. Any lease which is for a period of less than thirty (30) days shall be deemed to be for transient purposes. Failure of an Owner to cure any violation by such Owner's lessee, or take legal action, including the institution of legal proceedings against his lessee who is in violation of this Declaration, Supplemental Declaration, Certificate of Formation, Bylaws or Rules and Regulations within ten (10) days after receipt of written demand to do so from the Board, shall entitle the Association, through the Board, to take any and all such action, including the institution of legal proceedings on behalf of such Owner against his lessee. Any expense incurred by the Association, including attorney's fees (as limited by the Texas Property Code) and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of written demand therefor shall entitle the Board to levy an Individual Assessment against such Owner and his property for all such expenses incurred by the Association.

Section 4.1.7 Cable Television. Declarant shall have the right to install a cable television system providing television entertainment, business and safety services.

Section 4.1.8 Lot Consolidation. Any Owner owning two or more adjoining Lots, or portions of two or more such Lots, may with prior approval of the Architectural Control Committee and the City of Garden Ridge, consolidate such Lots or portions thereof into a single building site for the purpose of constructing one residence and such other Improvements as are permitted herein. In the event of any such consolidation, the consolidated Lots shall be deemed to be a single Lot for purposes of applying the provisions of this Declaration; provided, however, such Owner shall continue to pay Assessments on such Lots as if such Lots had not been consolidated and shall be entitled to one vote for each Lot (determined prior to such consolidation) owned by such Owner.

Section 4.1.9 Drainage. After completion of a Living Unit, the Owner of such Lot shall cause such Lot to be graded so that surface water will flow to streets, drainage easements, or Common Areas across no more than one (1) other Lot. No Person shall obstruct or divert the natural drainage of the Properties.

Section 4.1.10 Supplemental Declaration. Any portions of the Properties may be subjected to further covenants, conditions, restrictions, easements, charges and liens pursuant to Supplemental Declarations filed in the Official Public Records of Real Property, Comal County, Texas, by Declarant, with respect to portions of the Properties, and by Declarant, with respect to portions of the Properties located within the Additional Land. The covenants, conditions, restrictions, easements, charges and liens of such Supplemental Declarations shall apply to the Additional Land annexed by such Supplemental Declarations and shall be enforceable against the property covered thereby in the same manner as the covenants and restrictions created by this Declaration.

Division 4.2 Use. All Lots in this Declaration shall be used for single family residential purpose only. Declarant and any Owner of a Lot who is a single-family builder shall be permitted to build and maintain sales models and offices until such time as the last Lot in the Properties is developed and sold by Declarant or any such builder. Uses which do not conform to the applicable Governmental Authorities will not be permitted.

Section 4.2.1 Permitted Uses. No Owner shall occupy or use his Lot or any Improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner, his family, guests and tenants which excludes use of the Lot or Improvements for manufacturing, trade, business, commerce, industry, or other occupation whatsoever other than a home office which does not accept invitees, clients, or customers. Only one such private single-family residence may be constructed, or otherwise placed upon, any one Lot.

Section 4.2.2 Animals. No animals, including pigs, pot bellied pigs, hogs, swine, pigeons, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Properties. In addition, no dangerous animal may be kept on the Properties in any manner that could pose a safety or health threat to the community. Domestic household pets shall be limited to three (3) adult animals. Adult animals for the purpose of this Paragraph shall mean and refer to animals one (1) year of age or older. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic household pets will be allowed on any portion of the Properties other than on the Lot of its Owner unless confined to a leash. No animals may be stabled, bred or boarded for hire or as a commercial venture on the Properties and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed or fenced areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed or fenced area shall be constructed in accordance with plans approved by the Architectural Control Committee and shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws), and in accordance with all Rules and Regulations established by the Board. It shall be the responsibility of the Owner of the Lot where household pets are kept to prevent the animals from running loose or becoming a nuisance to the other Owners.

Division 4.3 Site Planning and Development

Section 4.3.1 Design Precepts. Due to the variety of residential architectural styles which can be accommodated within the Properties, design standards are to remain flexible with respect to product type, architectural style and site arrangement. The ACC, through its review and approval process, shall promote the overall aesthetic character of the Properties.

Section 4.3.2 General Site Development Standards.

A. All residential land uses consistent with the design precepts of the Properties, and this Declaration, will be permitted. The ACC shall not approve any requested use which is offensive or a nuisance to other tracts due to factors such as odor, fumes, dust, smoke, heat, vibration, illumination, glare, noise, pollution, electrical or mechanical disturbance, radiation, drainage, excavation or other hazards or is otherwise inconsistent with the Rules and Regulations. No exterior speakers (unless installed with the Living Unit), horns, whistles, bells or other sound devices (except security devices installed exclusively to protect the Lot and Improvements situated thereon) shall be placed or used upon any Lot. The discharge or use of

firearms is expressly prohibited. Hunting is prohibited. Additionally, there is prohibited the use of any bow and arrow, sling shot or other launching or catapulting device.

B. Paving and Improvements are to be designed for reasonable preservation of the natural grade and vegetation.

C. Unless otherwise specified, no Improvements of any kind will be permitted within the Setback Lines. Subject to the approval of the ACC as required herein, the following Improvements are allowed in the Setback Line area:

(1) paved parking areas
(2) steps, walkways and driveway access to the Lot
(3) landscaping
(4) planters not exceeding two (2) feet in height or within vehicular sight lines at intersections

Section 4.3.3 Landscaping, Etc. All landscaping, foundations, sculpture, house numbers, sidewalks, driveways, lighting or other Improvements on any Lot which are not concealed from view from every other Lot, other portions of the Properties or from any street must be harmonious and in keeping with the overall character and aesthetics of the Properties. To this end, submittal of plans therefore may be required by the Architectural Control Committee for its approval, or disapproval prior to the construction, alteration and/or placement of such items.

Section 4.3.4 Mail Boxes. All mail boxes on the Properties shall conform to the requirements of, and be located as directed by the United States Postal Service. The mail boxes will be cluster mail boxes and not individual mail boxes.

Deleted: The ACC may, subject to the requirements, further specify the location, design and appearance of the mail boxes.

Section 4.3.5 Signs. No advertising signs or billboards of any kind, shall be placed, permitted or maintained on, in or within any Lot without the consent in writing of the ACC, except the following: (i) professionally made sign not more than twenty-four inches (24") wide by thirty inches (30") long, fastened only to a stake in the ground and extending not more than three feet (3') above the surface of the Lot, advertising an Owner's Lot for sale or rent, (ii) one (1) professionally made sign, not more than twelve inches (12") wide by twenty-four inches (24") long, fastened only to a stake in the ground and extending not more than three feet (3') above the surface of the Lot, identifying the Owner's name or names, (iii) political signs may 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 shall not be erected more than thirty (30) days in advance of the

election to which they pertain and shall be removed within ten (10) days after such election,(iv) signs containing information about one or more children residing in the Living Unit on a Lot and the school they attend shall be permitted so long as the sign is not more than 3' x 3' in size (there shall be no more than one sign for each child under the age of eighteen (18) years residing in such Living Unit and banners are not permitted) and (v) signs or stickers provided to an Owner by a commercial security or alarm company providing service to a Living Unit on a Lot shall be permitted so long as the sign is not more than 1' x 1' in size or the sticker is not more than 4" x 4" in size. There shall be no more than one sign per Lot and stickers on no more than half of the windows and one on the front door or front entry area. Declarant or any member of the ACC shall have the right to enter upon Owner's property and remove any such sign, advertisement or billboard or structure which is placed on any Lot in violation of these restrictions and, in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal. Signs which are removed can be picked up from the Association's office. Declarant and any homebuilder constructing Living Units in the Properties shall be exempt from the restrictions set forth in this Section. In addition to the foregoing requirements, an Owner is also responsible for complying with the sign ordinance promulgated by the City of Garden Ridge.

Section 4.3.6 Driveways. All driveways and sidewalks shall be surfaced with concrete or other similar hard surfaced material as approved by the ACC.

Section 4.3.7 Fences. If the RDG requires an Owner to provide information on the design, construction, materials and specifications of the initial fence to be constructed on a Lot, then the design, construction, materials and specifications of the initial fence shall be subject to the prior consent of the Architectural Control Committee. If not required in the RDG, then no submission is required for the initial fence unless Owner requests such approval from the ACC. The Architectural Control Committee may, in its discretion, prohibit the construction of any proposed fence, or specify the materials of which any proposed fence must be constructed, or require that any proposed fence be partially screened by vegetation. In the event the Architectural Control Committee fails to approve or disapprove such fence plan within ten (10) days after the plan has been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with. Fence maintenance shall be the responsibility of the Owner and all damage shall be repaired within thirty (30) days of written notification by the Association. It shall be a violation of this Declaration to maintain a fence in such a manner as to allow (i) any portion of a fence to lean so that the fence's axis is more than ten (10) degrees out of vertical alignment, (ii) missing, loose, or damaged stone or wood rails in the fence, (iii) symbols, writings, and other graffiti on the fence, and (iv) broken or loose wires. No fences are required. All fences adjacent to or visible from a street shall be constructed of cedar with a cap and all other fences shall be

cedar, spruce, masonry or wrought iron. All fences shall be 6' in height. Wooden fences shall (i) not be stained without ACC approval and (ii) be constructed with the slats touching each other. Wooden fences adjacent to streets shall be constructed with the smooth side facing away from the interior of the Lot. Chain link fences are specifically prohibited. No fences are allowed forward of the front side of the Living Unit. In addition to the foregoing requirements, an Owner is also responsible for complying with the fence ordinance promulgated by the City of Garden Ridge.

Section 4.3.8 Athletic Facilities. Any swimming pool, tennis court, basketball goal, backboard or sport court to be constructed on any Lot, and the screening or fencing of such, shall be subject to the approval and requirements of the ACC, which shall include but which shall not be limited to, the following: (1) the materials, design and construction shall meet standards generally accepted by the industry and shall comply with regulations of all applicable Governmental Authorities; and (2) the location shall be approved by the ACC. A basketball goal or backboard, of either permanent or temporary nature, shall not be placed on the street right-of-way or within fifteen feet (15') of the front property line and shall be subject to the prior approval of the ACC. In addition to the foregoing requirements, an Owner is also responsible for complying with athletic facility or pool placement ordinance promulgated by the City of Garden Ridge.

Section 4.3.9 Burial of Pipe and Tanks. No electric, water, wastewater, gas, telephone, cable television, utility or drainage lines or pipes of any sort or storage tanks shall be installed or maintained on a Lot above the surface of the ground, except temporary hoses and movable pipes use for irrigation purposes, except as approved in writing by the ACC. All such lines and tanks shall be buried in accordance with the requirements of the ACC. The ACC encourages the harvesting of rainwater and will consider allowing above ground tanks to collect the water.

Section 4.3.10 Yards and Ground Cover. No more than twenty-five percent (25%) of the front yard area of any Lot may be covered by rock or material other than mulch or vegetation except for such driveways and sidewalks as have been approved by the ACC.

Section 4.3.11 Building Location. If the RDG requires an Owner to provide information on the location of the Living Unit on each Lot prior to construction, then the location of the Living Unit on each Lot and the facing of the main elevation with respect to nearby streets shall be subject to the approval of the ACC. If not required in the RDG, the no submission is required for the location of the Living Unit on each Lot prior to construction unless Owner requests such approval from the ACC. In the event the Architectural Control Committee fails to approve or disapprove the location of the Living Unit site plan within ten

(10) days after the plan has been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with.

Division 4.4 Construction.

Section 4.4.1. Standards. Construction procedures, rules and standards shall be established by the ACC. The ACC may not enact any procedure, rule or standard that conflicts with this Declaration or any Supplemental Declaration.

Section 4.4.2. New Construction Only, Etc. Except for the use of recycled building material or except as approved by the Architectural Control Committee for buildings of historical merit, any and all structures, fences, walls, recreational facilities or other Improvements erected, altered or placed on any portion of a Lot shall be of new construction and shall be built in place, and, except as provided in Section 4.4.3 of this Article, no structure of a temporary character, including, but not limited to, trailers, mobile homes, tents, shacks, garages, barns, or other temporary outbuildings shall be used anywhere on, in or within a Lot at any time, except as specifically provided for herein.

Section 4.4.3. Temporary Structures. Notwithstanding the other provisions of this Article 4, Declarant reserves unto itself and its successors and assigns (including homebuilders) the exclusive right to erect, place, and maintain such structures or facilities in or upon any portions of the Properties, as it in its sole discretion, may determine to be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. In addition, each Owner shall have the right to erect, place, and maintain on his Lot such temporary structures or facilities as may be necessary or convenient for construction of a residence thereon and each Owner engaged in the construction of residences within the Properties for sale shall have the right to erect, place, and maintain temporary structures for offices, storage, and accumulation of reasonable amounts of construction debris while so engaged in the construction of residences within the Properties. However, an outbuilding of a temporary nature may be used for purposes of storage; provided, however, that same shall be placed or located in such manner that it is not visible from the Common Area or any part thereof, or any adjoining streets. Reasonable amounts of construction materials and equipment may be stored upon a Lot by the Owner thereof for reasonable periods of time during the construction of Improvements thereon.

Section 4.4.4. Insulation and Fire Walls. All ceilings, except garages, shall be no less than R-19 rated batt insulation or comparably rated insulation. All exterior walls, except garages, shall have no less than R-11 rated batt insulation or comparably rated insulation.

Section 4.4.5. Maximum Building Height. No building or structure erected, altered or placed upon, within or on a Lot shall exceed thirty-five feet (35') in height (measured from the top of the foundation to the topmost part of the roof) nor be more than two and one half (2 1/2) stories in height; provided, however, that all applicable ordinances, regulations, and statutes with respect to the maximum height of buildings and structures shall, at all times, be complied with. Detached garages or other outbuildings will not exceed the main Living Unit in height or number of stories.

Section 4.4.6. Exterior Lighting. Exterior light fixtures shall be provided 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 until same has been either (i) installed with the initial home construction, or (ii) approved by the ACC.

Section 4.4.7. Garages. An attached or detached garage which can accommodate at least two (2) standard size automobiles shall be constructed and maintained for each Living Unit. In addition to the foregoing requirements, an Owner is also responsible for complying with the garage standards ordinance promulgated by the City of Garden Ridge.

Deleted: Garages may open to the side or to the rear of the Lot. Garages will be allowed as a builder sales office prior to permanent occupancy of the primary structure.

Section 4.4.8. Outbuilding Requirements. Every outbuilding, inclusive of such structures as storage building, greenhouse or child's playhouse, shall be compatible in design and material with the Living Unit to which it is appurtenant. All such buildings shall be subject to approval of the ACC. The construction of guest houses or servant's quarters will be discouraged. In addition to the foregoing requirements, an Owner is also responsible for complying with the outbuilding ordinance promulgated by the City of Garden Ridge.

Section 4.4.9. Exterior Materials. Exterior wall, window and roof materials, colors, roof pitch and other design criteria shall be as required by the ACC. No exterior burglar bars will be permitted on any doors, windows or other openings of a Living Unit situated in the Properties. Burglar bars, if installed, must be situated within the interior of such Living Unit.

Division 4.5 Nuisances. No nuisance shall ever be erected, caused or suffered to remain upon any portion of the Properties nor shall an Owner's, resident's or other party's use of the Properties, or any portion thereof, whether same be a Lot, part of the Common Area or otherwise endanger the health or disturb the reasonable enjoyment of any other Owner or resident or visitor of or to the Properties. In the event of any questions as to what may be or become a nuisance, such questions shall be submitted to the Board for a decision in writing and its decisions shall be final.

Section 4.5.1 Garbage and Refuse Disposal. Except as provided in Section 4.4.3 of this Article, no garbage, trash, rubbish, manure, putrescible matter, debris or refuse of any

kind shall be dumped or permitted to accumulate on any portion of the Properties. All garbage, rubbish or trash shall be kept in sanitary refuse containers with tightly fitting lids, and, except as necessary for purposes of effecting garbage pickup, said containers shall be kept in an area of the Lot adequately screened from public view by landscaping or fencing. The ACC may require each Owner to use a certain type and color of trash receptacle to enhance the aesthetic character of the Properties.

Section 4.5.2 Lot and Lawns and Plantings. Lawns, front and back, must be mowed at regular intervals (maintained at less than six inches in height), and fences must be repaired and maintained in an attractive manner. No objectionable or unsightly usage of Lots, or condition on any Lot, will be permitted which is visible to the public view.

Section 4.5.3 Building Materials. Building materials shall not be stored on any Lot except when being employed in construction upon such Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from such Lot.

Section 4.5.4 Antennas. No radio or television aerial wires or antennae or other radio or television related apparatus or equipment shall be placed or maintained on any residence or on any other exterior portion of a Lot without the prior written approval of the Architectural Control Committee which shall have the authority to disapprove the installation of same. With the prior written consent of the Architectural Control Committee, a satellite disc or dish may be placed on a Lot where not visible from a street or Common Area and where such location does not adversely affect the view from an adjacent Lot. To the extent, if any, that applicable federal law or FCC regulations may affect the ability of this Declaration and the ACC to regulate the placement and required screening of satellite discs and dishes, this provision shall be given full force and effect to empower the ACC to exercise such powers with regard to such placement and/or screening as may be permissible under such conflicting federal law or FCC regulation.

Section 4.5.5 Oil and Mining Operations. No oil or natural gas drilling, oil or natural gas development or oil refining or quarrying, or mining operations of any kind shall be permitted upon any portion of the Properties, nor shall oil, natural gas, or water wells, tanks, tunnels, mineral excavations or shafts be permitted upon, in or within any portion of the Properties. No derricks or other structures for use in the boring or drilling for oil, natural gas, minerals or water shall be erected, maintained or permitted upon, in or within any portion of the Properties. No Lot shall be used for the purpose of boring, drilling, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, rock, sand or earth; provided, however, that nothing contained herein shall prohibit or restrict removal of fill or earth materials to construct or create approved drainage structures or landscaped berms.

Section 4.5.6 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind unless the area is fully screened, by fencing or landscaping, from view of adjacent Lots or streets, in a manner approved by the ACC.

Section 4.5.7 Water and Sewer. No individual water supply system shall be permitted on any Lot. Each Owner shall install a sewage disposal system on the Lot in accordance with the Governmental Authorities and the Residential Design Guidelines. Declarant greatly encourages the installation of a separate gray water septic system for landscape watering

Section 4.5.8 Parking and Storage of Vehicles. The Board may from time to time promulgate rules which restrict, limit or prohibit the use of any driveway or street which may be in front of, adjacent to or part of any Lot as a parking place for personal passenger vehicles, trailers, recreational vehicles, self-propelled motor homes, motorcycles and boats. No boat, trailer, tent, recreational vehicle, camping unit, truck larger than a three-quarter (3/4) ton pick-up, wrecked, junked, inoperable, self-propelled or towable vehicle, equipment or machinery of any sort shall be kept, parked, stored or maintained on any portion of the Lot or street, except in an enclosed structure or in a screened area behind the main residence which prevents the view thereof from adjacent Lots and streets.

Section 4.5.9 Window Coolers. No window or wall type air conditioners or water coolers shall be permitted to be used, erected, placed or maintained on any part of the Properties.

Section 4.5.10 Parking. On-street parking is restricted to approved deliveries, pick-up or short-term guests and short-term invitees and shall be subject to such reasonable Rules and Regulations as shall be adopted by the Board of Directors. Parking, but not storage, of automobiles in driveways is permitted. In addition to the foregoing requirements, an Owner is also responsible for complying with the parking and storage of vehicles ordinance promulgated by the City of Garden Ridge.

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Section 4.5.11 Minimum Size of Dwelling. The minimum total floor area of the primary structure of any Living Unit on a Lot shall not be less than Two Thousand (2,000) square feet, if one-story, and Two Thousand Four Hundred (2,400) square feet if more than one-story. Total floor area shall be exclusive of open porches, breezeways, carports, garages and other outbuildings. The minimum size of a Living Unit may be waived by the ACC on an individual case if in its opinion, such waiver is advisable in order to accommodate a unique building concept, and the resulting structure will not detract from the general appearance of the neighborhood. In addition to the foregoing requirements, an Owner is also responsible for complying with the minimum size of a residence ordinance promulgated by the City of Garden Ridge.

Section 4.5.12 Landscaping. For water conservations purposes, each Owner will minimize landscaping that requires irrigation. The use of drought tolerant ground cover and plants is encouraged. In addition to the foregoing requirements, an Owner is also responsible for complying with the landscaping ordinance promulgated by the City of Garden Ridge.

Section 4.5.13 Setback Requirements. All front, side, and rear setbacks from Lot lines, shall meet the requirements of all applicable codes and ordinances of the City of Garden Ridge and shall meet the following minimum requirements:

Side Yard	Front Yard	Rear Yard
15'	45'	25'

The side setback for corner lots shall be increased to 25' on the street side only. In addition to the foregoing requirements, an Owner is also responsible for complying with the set back requirements of a structure ordinance promulgated by the City of Garden Ridge.

Section 4.5.14 Construction Requirements. Ninety-five percent (95%) of the surface of the outer walls of the first floor (excluding gables, windows and doors) of each Living Unit shall be constructed of masonry, stucco, brick veneer, rock or stone. The remainder of the surface of the walls shall be constructed of a fiber cement product. No more than eighteen inches of exposed foundation may be visible from the street. Fireplace chimneys exterior to the Living Unit shall be constructed of the same masonry material as the Living Unit. In addition to the foregoing requirements, an Owner is also responsible for complying with the building material ordinance promulgated by the City of Garden Ridge.

Section 4.5.15 Roofing Material. The exposed roofing material shall be slate, tile, tarnished metal with standing seams, or dimensional composition shingles with at least a thirty-year warranty certified, in writing, by the manufacturer. In addition to the foregoing requirements, an Owner is also responsible for complying with the roof material ordinance promulgated by the City of Garden Ridge.

Division 4.6 Maintenance.

Section 4.6.1 Duty of Maintenance. Owners and occupants (including lessees) of a Lot shall jointly and severally have the duty and responsibility, at their sole cost and expenses, to keep the Lot so owned or occupied, including the Improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance shall include, but is not limited to, the following:

A. Prompt removal of all litter, trash, refuse, and wastes;
B. Lawn mowing;
C. Tree and shrub pruning;
D. Watering;
E. Keeping exterior lighting and mechanical facilities in working order;
F. Keeping lawn and garden areas alive, free of weeds, and attractive;
G. Keeping parking areas and driveways in good repair;
H. Complying with all government health and safety requirements; and
I. Repair of exterior damages to Improvements.

Section 4.6.2 Maintenance of Yards, Etc. Owners shall at all times keep weeds, grass, shrubbery and trees thereon cut in a sanitary, healthful, and attractive manner. Owners shall also be required to provide and allow safe and adequate drainage within their Lot including, but not limited to, with respect to building, maintaining or constructing fences, walks, landscaping, or any other obstruction which may divert, impede, or cause to back up runoff water coming not only from their respective Lot but also from other Lots.

Section 4.6.3 Oak Wilt. All Owners are advised to secure from the Texas Forest Service, the Texas Extension Forester at Texas A&M University or its local county agent information on oak wilt and other diseases which may infect their trees and possibly spread to trees on other Lots. Each Owner is responsible for taking such action as may be necessary on his property to ensure that oak wilt and other diseases are not spread to the trees of other Owners. Because there is no known cure for oak wilt and oak wilt almost always spreads from a diseased tree to its neighboring oak trees, each Owner shall properly destroy all infected oak trees, avoid unnecessary pruning, and shall immediately apply dressing to all wounds on all oak trees. If oak wilt is detected, a minimum of 100 feet of the area surrounding the infected oak tree shall be trenched at least three feet (3') deep so as to prevent the oak wilt from spreading through connecting roots. Oak trees are most susceptible to oak wilt from February 1 to June 1. As a precaution, Owners should (i) avoid using firewood from infected oak trees, (ii) dispose of unused oak firewood after one heating season, and (iii) cut firewood only in the summer. Owners should use fungicide propiconazale to treat uninfected oaks when first informed of oak wilt being present on nearby trees. The foregoing information regarding oak wilt is provided to alert Owners and neither Declarant or the Association shall be liable to any Owner in connection with the existence or spread of oak wilt on any Lot.

Section 4.6.4 Maintenance of Easements. By acceptance of a deed to any one or more Lots, the Owner thereof covenants and agrees to keep and maintain in a neat and clean condition any utility, pedestrian or other easement which may traverse any portion of said Lot

or Lots, including without limitation, by removing weeds, mowing grass and trimming shrubbery and trees, if any, within such area.

Section 4.6.5 Enforcement of Maintenance. If, in the reasonable opinion of the Board, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, the Board may give such Person written notice of such failure and such Person must within ten days after receiving such Notice, perform the care and maintenance required. Should any such Person fail to fulfill his duty and responsibility within such period, the Board shall have the right to authorize its agent or agents to enter on the Lot and perform such care and maintenance without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any Person. The Owners and occupants of the Lot on which such work performed shall be jointly and severally liable for the cost of such work and shall promptly reimburse the Association for such costs. Further, the cost of such work shall constitute an Individual Assessment against the specific Lot on which said work was performed with the approval of the Board. If such Owner or occupant shall fail to reimburse the Association within thirty days after receipt of a statement for such work, said indebtedness shall be a debt of all Person jointly and severally.

Section 4.6.6 Maintenance of Common Areas. The Association shall maintain the Common Area and Common Facilities.

Division 4.7 Light Poles. No light poles will be constructed in the Properties by Declarant or Association

Division 4.8 Governmental and Environmental Concerns.

Section 4.8.1. Responsibility. Each Owner is responsible for ascertaining all such requirements and prohibitions with respect to his Lot and, by acceptance of a deed to a Lot, agrees to abide by the same. No statement herein, nor action by Declarant, ACC, or the Association shall act to relieve an Owner from such duty of compliance. Each Owner shall comply with all ordinances, statutes, and regulation of all Governmental Authorities applicable to its Lot. To the extent that provisions in this Declaration create any lesser standard, duty or obligation than established by a Governmental Authority, the more restrictive shall prevail as the obligation of the Owner.

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Section 4.8.2. Storm Water Pollution Prevention Plan. Prior to beginning any phase of construction on any Lot, the Owner shall comply with the provisions of the Storm Water Pollution Prevention Plan established by the Environmental Protection Agency, if applicable.

Article V.

Miscellaneous Provisions

Division 5.1 General.

Section 5.1.1 Term. The covenants, conditions and restrictions of this Declaration and any Supplemental Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, Declarant and any Owner, their respective legal representatives, heirs, successors and assigns until January 1, 2043, at which time said covenants shall be automatically renewed and extended for successive periods of ten (10) years. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration and any Supplemental Declaration being automatically renewed and extended upon the expiration of each ten (10) year period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration and any Supplemental Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, a majority of the total eligible votes of the membership of the Association cast at a duly held meeting of the Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration and any Supplemental Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least thirty (30) days and no more than sixty (60) days in advance of such meeting. In the event that the Association votes to terminate this Declaration and any Supplemental Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that Notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes cast in favor of such resolution and the total number of votes cast against such resolution. The certificate shall be recorded in the Official Public Records of Real Property, Comal County, Texas, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration and any Supplemental Declaration.

Section 5.1.2 Assignment of Rights and Duties. Any and all of the rights, powers and reservations of the Association and Declarant may be assigned to any Person which will assume the duties of the Association or Declarant, as applicable, pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment, have the same rights and powers and be subject to the same obligations and duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Association or Declarant. Following an assignment by Declarant, Declarant shall have no further rights or duties hereunder with respect to those powers, rights and duties

so assigned and assumed. Further, the Association or Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

Section 5.1.3 Power of Attorney. The Association is hereby granted an irrevocable power of attorney to represent the Owners in any proceedings, negotiations, settlements or agreements relating to the damage, destruction or condemnation of the Common Facilities, Drainage Area(s), Common Area and dedicated rights-of-way.

Section 5.1.4 Incorporation of Other Documents. The Residential Design Guidelines, Certificate of Formation, Bylaws and Rules and Regulations as may, from time to time, be amended or modified are incorporated herein for all purposes.

Section 5.1.5 Authorized Action. All actions which the Association is permitted to take under this instrument shall be authorized actions of the Association as approved by the Board in the manner provided for in the Bylaws, unless the terms of this Declaration provide otherwise.

Section 5.1.6 Limitation of Liability. Declarant, as well as its agents, employees, officers, directors, partners and their respective officers, directors, agents and employees, shall not be liable to any Owner or lessee of a Lot or any portion thereof or to any other party for any loss, claim or demand in connection with a breach of any provision of these covenants by any party other than Declarant.

Section 5.1.7 Liberal Interpretation. The provisions of this Declaration and any Supplemental Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration and any Supplemental Declaration.

Section 5.1.8 Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provision herein contained.

Section 5.1.9 Terminology. All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limit nor amplify the provision of this Declaration itself. The terms "herein", "hereof" and similar terms, as used in this instrument

refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear.

Section 5.1.10 Disclaimer by Declarant. **EXCEPT AS SPECIFICALLY STATED HEREIN, DECLARANT HAS NOT MADE, DOES NOT MAKE AND DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATIONS, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, OR CONCERNING (I) THE NATURE AND CONDITION OF THE PROPERTIES, INCLUDING BUT NOT BY WAY OF LIMITATION, THE WATER, SOIL, GEOLOGY AND THE SUITABILITY THEREOF, AND OF THE PROPERTIES, FOR ANY AND ALL ACTIVITIES AND USES WHICH OWNER MAY ELECT TO CONDUCT THEREON OR ANY IMPROVEMENTS ANY OWNER MAY ELECT TO CONSTRUCT THEREON, EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ANY OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME; (II) THE MANNER OF CONSTRUCTION AND CONDITION OF ANY OF THE IMPROVEMENTS ON COMMON AREAS CONSTRUCTED BY DECLARANT, IF ANY; AND (III) THE DESIGNATION OR LOCATION OF GREENBELT OR COMMON AREAS OR THE TYPE OR NATURE OF ANY AMENITIES OR IMPROVEMENTS THAT COULD BE CONSTRUCTED THEREON OTHER THAN ANY AMENITIES OR IMPROVEMENTS SHOWN ON ANY RECORDED PLATS. DECLARANT DOES NOT WARRANT THAT ALL OF THE PROVISIONS OF THIS DECLARATION AND ANY SUPPLEMENTAL DECLARATION ARE ENFORCEABLE.**

Division 5.2 Amendment

Section 5.2.1 Amendment by Members. This Declaration and any Supplemental Declaration may be amended, at a regular or special meeting of the Members, by a vote of at least sixty-seven percent (67%) of the total eligible votes of the membership of the Association.

Section 5.2.2 Notice and Quorum. For any meeting called to amend the Declaration and any Supplemental Declaration, the following must be followed:

A. Written notice of any meeting called for the purpose of amending the Declaration and any Supplemental Declaration shall be sent to all Members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting.

B. At the first meeting called the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of

membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the Notice requirements set forth herein, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 5.2.3 Amendment by Declarant. During the Development Period or Declarant Control Period, Declarant specifically reserves for itself, its successors and assigns, the absolute and unconditional right to alter, modify, change, revoke, rescind or cancel any or all of the restrictive covenants contained in this Declaration and any Supplemental Declaration to correct a clerical error, clarify an ambiguity or inconsistency, inserting an omitted portion, or removing any contradiction of the terms hereof or for any reason whatsoever deemed necessary for the benefit of the overall development as determined by Declarant, in its sole discretion, by filing an amendment to this Declaration and any Supplemental Declaration in the Official Public Records of Real Property, Comal County, Texas. Declarant is not required to send out notices or conduct a meeting in order to amend this Declaration and any Supplemental Declaration under this Section.

Division 5.3 Rules of Construction

Section 5.3.1 Severability. Should any covenant, condition, or restriction herein contained, or any article, section, paragraph, sentence, clause, phrase or term of this Declaration and any Supplemental Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 5.3.2 Interpretation. The Board shall have the right except as limited by any other provisions of this Declaration, Certificate of Formation or Bylaws, to determine all questions arising in connection with this Declaration and any Supplemental Declaration and to construe and interpret its provisions, and its good faith determination, construction or interpretation shall be final and binding.

Section 5.3.3 Singular, Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

Section 5.3.4 Construction. The provisions of this Declaration and any Supplemental Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation and development of the Properties.

Section 5.3.5 Articles, Divisions and Sections. Article, division and section headings in this Declaration and any Supplemental Declaration are for the convenience of reference and shall not affect the construction or interpretation of these covenants. Unless the context otherwise requires, reference herein to articles, divisions and sections are to articles, divisions and sections of this declaration.

Division 5.4 Violations Defined. Any act of commission or omission contrary to the commands or directives of this Declaration and any Supplemental Declaration, or any breach of any duty imposed by this Declaration and any Supplemental Declaration shall constitute a violation hereof. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

Division 5.5 Penalties. Failure of an Owner to comply with this Declaration and any Supplemental Declaration, guidelines set by the ACC, Certificate of Formation, Bylaws or Rules and Regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief or any combination thereof, including costs and attorneys' fees (as limited by the Texas Property Code) incurred in bringing such actions, and if necessary, costs and attorney's fees (as limited by the Texas Property Code) for appellate review. The Association shall also have the right to amend the Rules and Regulations in order to provide for the imposition of fines for failure to comply with this Declaration, any Supplemental Declaration or Rules and Regulations.

Division 5.6 Remedies.

Section 5.6.1 Enforcement. Enforcement of the covenants, conditions and restrictions contained in this Declaration and any Supplemental Declaration shall be by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any Person violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or recover damages, and against the land, and to enforce any lien created by this Declaration and any Supplemental Declaration. Failure by Declarant, the Association or any Owner to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 5.6.2 Effect of Other Regulations. Wherever higher or more restrictive standards are established by the provisions of any other applicable statute, ordinance or regulation than are established by the provisions of this Declaration and any Supplemental Declaration, the provisions of such statute, ordinance or regulation shall govern.

Section 5.6.3 Hearing by the Board. In addition to other remedies provided for the enforcement of these covenants, the Board of Directors is authorized to hear and determine the facts in cases of alleged nuisances and where it finds that facts exist which constitute a nuisance, the Board may order the cessation and abatement of such nuisance.

Section 5.6.4 Disputes. Matters of dispute or disagreement between Owners (but excluding any disputes between any Owner(s) and Declarant) with respect to interpretation or application of the provisions of this Declaration, any Supplemental Declaration or the Bylaws or the RDG, shall be determined by the Declarant if at the time of the determination Declarant continues to have authority to appoint members to the ACC and shall be determined by the Board of Directors if at the time of determination the Board of Directors has the right to appoint the members of the ACC. The determination of Declarant or the Board of Directors, as the case may be, shall be final and binding upon all Owners.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Declarant has executed this Declaration on the ____ day of _____, 2013.

Deleted: _

DAPHNE DEVELOPMENT, LLC, a Texas limited liability company

By: _____
Name: Gordon V. Hartman
Title: President

STATE OF TEXAS §
§
COUNTY OF COMAL §

This instrument was acknowledged before me on the _____ day of _____, 2013, by **GORDON V. HARTMAN,** as President of DAPHNE DEVELOPMENT, LLC, a Texas limited liability company, on behalf of said limited liability company.

_____
Notary Public, State of Texas

After Recording Return To:
Mr. Ronald W. Hagauer
Attorney at Law
1602 N. Loop 1604 W., Suite LL-102
San Antonio TX 78258

Exhibit "A"

Annexation Area