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AMENDED DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS

FOR

WAGGENER RANCH

(September 23, 2020)

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AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WAGGENER RANCH

STATE OF TEXAS           §  
  §  
COUNTY OF COMAL       §

This Amended Declaration is made on September 23, 2020, by Waggener Ranch Property Owners Association, Inc.

WITNESSETH:

WHEREAS, Declarant (as defined below) was the developer of certain property ("Property") heretofore platted and subdivided into that certain subdivision known as Waggener Ranch, Unit One, a subdivision of 314.59 acres, being 133.84 acres out of the Heinrich Kraft Survey No. 669, Abstract No. 353, and 180.75 acres out of the H. E. & W. T. Railroad Company Survey No. 925, Abstract No. 788, in Comal County, Texas, according to the map or plat thereof recorded in Book Volume 13 on Pages 299-302 of the Records of Map and Plat of Comal County, Texas; Waggener Ranch, Unit Two, a subdivision of 289.747 acres, being 196.652 acres out of the H. E. & W. T. Railroad Company Survey No. 925, Abstract No. 788, and 93.095 acres out of the B.F. Smithson Survey No. 926, Abstract No. 849, in Comal County, Texas, according to the map or plat thereof recorded in Book Volume 15 on Pages 36-38 of the Records of Map and Plat of Comal County, Texas; and Waggener Ranch, Unit Three, a subdivision of 189.48 acres out of the B.F. Smithson Survey No. 926, Abstract No. 849, in Comal County, Texas, according to the map or plat thereof recorded in Document Number 200706022367 of the Records of Map and Plat of Comal County, Texas.

WHEREAS, Declarant desired and the Members (as defined below) desire that the Property be held, sold and/or conveyed subject to the following covenants, conditions, restrictions, reservations and easements, which are for the purpose of continuing a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both present and future Owners (as hereinafter defined) of Lots (as hereinafter defined) within the Property.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

The Members (as defined below) adopt the following covenants, conditions, restrictions, reservations and easements, which are for the purpose of continuing a uniform plan for the development, improvement and sale of the Property and enhancing and protecting the value, desirability and attractiveness of the Property and which shall be applicable to all land comprising the Property, run with the land, bind all parties possessing or acquiring any right, title or interest therein, or any part thereof, and inure to the benefit of each Owner thereof. This Amended Declaration (as defined below) is in complete substitution and replacement of the following restrictions previously imposed on the Property, to-wit: (a) Declaration of Covenants, Conditions and Restrictions for

Waggener Ranch, recorded as Document No. 200106024495, Official Public Records of Comal County, Texas; (b) Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions for Waggener Ranch, recorded as Document No. 200406046406, Official Public Records of Comal County, Texas; (c) Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions for Waggener Ranch, recorded as Document No. 201116035971, Official Public Records of Comal County, Texas; (d) Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions for Waggener Ranch, recorded as Document No. 200906014890, Official Public Records of Comal County, Texas; and (e) Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions for Waggener Ranch, recorded as Document No. 201206037851, Official Public Records of Comal County, Texas; (hereinafter collectively the "Prior Restrictions"), except as expressly stated herein.

## **ARTICLE 1. DEFINITIONS**

**Section 1.** "Amended Declaration" shall mean and refer collectively to the covenants, conditions, restrictions, reservations, easements, liens and charges imposed in this Amended Declaration.

**Section 2.** "Architectural Control Committee" shall mean and refer to the committee created pursuant to this Amended Declaration to review and approve Plans for the construction of improvements upon the Property.

**Section 3.** "Articles" shall mean and refer to the Articles of Incorporation of the Association, filed in the office of the Secretary of State of Texas.

**Section 4.** "Association" shall mean and refer to Waggener Ranch Property Owners Association Inc., a non-profit corporation incorporated under the laws of the State of Texas, and its successors and assigns.

**Section 5.** "Board of Directors" and "Board" shall mean and refer to the duly elected Board of Directors of the Association.

**Section 6.** "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties. Also, Common Facilities may consist of improvements for the use and benefit of Owners of the Lots within the Properties, which are constructed on portions of one or more lots or on acreage owned by the Association. By way of illustration and without warranting or requiring the construction of any of the following, Common Facilities may include, but are not necessarily limited to: structures for recreation, storage or protection of equipment; common driveways and streets; landscaping; walls; irrigation and drainage systems; water wells and pumping facilities; fences; entrance and security gates; mail boxes; and other similar and appurtenant improvements. References herein to "the Common Facilities (and Common Facility) in the Property" shall mean and refer to Common Facilities as defined respectively in this Amended Declaration and all Supplemental Declarations (as hereinafter defined).



**Section 7.** "Common Properties" shall mean and refer to all those areas of land within the Properties as shown on the Subdivision Plat, except the Lots and public streets shown thereon, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat, References herein to "the Common Properties in the Property" shall mean and refer to Common Properties as defined respectively in this Amended Declaration and all Supplemental Declarations.

**Section 8.** "Declarant" shall mean Waggener I, LP and Waggener II, LP (referred to together as "Declarant").

**Section 9.** "Easements" shall mean and refer to the various utility and other easements of record, those shown on the Subdivision Plat of the Properties and such other easements as are created by or referred to in this Amended Declaration.

**Section 10.** "Exotic Animals" shall mean and refer to non-indigenous or non-native mammals that have been or will be introduced in a free-ranging status onto the Subdivision Plat (as hereinafter defined).

**Section 11.** "Living Unit" shall mean and refer to the improvements on a Lot which are designated and intended for occupancy and use as a residence by one person, by a single family, or by persons maintaining a single-family household.

**Section 12.** "Lot" shall mean and refer to each plot of land delineated and enumerated upon the recorded Subdivision Plat of the Property upon which there has been or may be constructed a single-family residence but shall not mean or include any Common Properties. If building sites are created pursuant to Article 9, Section 7 herein, the term "Lot" shall also thereafter mean and refer to any building site so created, provided, however, that the covenants for maintenance assessments and charges (Article 3 hereof) shall apply and be assessed based upon one assessment for each originally platted Lot on the Subdivision Plat.

**Section 13.** "Masonry" or "Masonry Veneer" shall mean and refer to the following materials that may be used for the exterior finish of a building: stucco, clay, and all other materials commonly referred to in the San Antonio, Texas, area as masonry; but "Masonry" and "Masonry Veneer" shall not include brick or tile, except that tile roofs are permitted.

**Section 14.** "Members" shall mean and refer to every person or entity who holds membership in the Association.

**Section 15.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to the surface estate of any Lot or tract of land which is part of the Property, including contract sellers, but excluding Association and those having such interest merely as security for the performance of an obligation, such as mortgagees and other lienholders.

**Section 16.** "Plans" shall mean and refer to drawings and specifications for the construction of improvements upon the Property.



**Section 17. "Property" or "Properties"** shall mean and refer to the platted tracts of land hereinabove described as Waggener Ranch, Unit One, Two and Three.

**Section 18. "Subdivision Plat"** shall mean and refer to the plat of Waggener Ranch, Unit One, a subdivision of 314.59 acres, being 133.84 acres out of the Heinrich Kraft Survey No. 669, Abstract No. 353, and 180.75 acres out of the H. E. & W. T. Railroad Company Survey No. 925, Abstract No. 788, in Comal County, Texas, according to the map or plat thereof recorded in Book Volume 13 on Pages 299-302 of the Records of Map and Plat of Comal County, Texas; Waggener Ranch, Unit Two, a subdivision of 289.747 acres, being 196.652 acres out of the H. E. & W. T. Railroad Company Survey No. 925, Abstract No. 788, and 93.095 acres out of the B.F. Smithson Survey No. 926, Abstract No. 849, in Comal County, Texas, according to the map or plat thereof recorded in Book Volume 15 on Pages 36-38 of the Records of Map and Plat of Comal County, Texas; and Waggener Ranch, Unit Three, a subdivision of 189.48 acres out of the B.F. Smithson Survey No. 926, Abstract No. 849, in Comal County, Texas, according to the map or plat thereof recorded in Document Number 200706022367 of the Records of Map and Plat of Comal County, Texas, and to any other recorded subdivision map or plat of any other tracts or parcels of land as may hereafter be brought within the scheme of this Amended Declaration and within the jurisdiction of the Association by a Supplemental Declaration.

**Section 19. "Supplemental Declaration"** shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions bringing additional property within the scheme of this Amended Declaration under the authority provided in this Amended Declaration. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the respective properties covered by any such Supplemental Declaration.

## **ARTICLE 2. THE ASSOCIATION**

**Section 1. Duties and Powers.** In addition to the duties and powers granted to non-profit corporations under Texas law, enumerated in its Articles of Incorporation and By-Laws or elsewhere provided for herein, and without limiting the generality hereof, the Association shall also discharge those functions necessary to the general maintenance of the Common Properties. The Board of Directors shall be empowered to oversee the activities of the Association and may take whatever reasonable action they, in their sole discretion, deem necessary to provide for the upkeep and aesthetic appearance of the Properties for the common benefit of all Members of the Association.

**Section 2. Membership.** Every person or entity who is a record Owner of any of a fee or undivided fee interest in any Lot which is subject, by covenants of record to assessments and which are subject to jurisdiction of the Association, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, such as mortgagees and other lienholders. No person shall have more than one membership for each Lot owned. Membership shall be appurtenant to and may not be separate from ownership of the Lot, which shall be the sole qualification for membership. Any mortgagee or other lienholder who acquires title to a Lot through judicial or non-judicial foreclosure shall be a Member of the Association.



**Section 3. Voting Rights.** The Association shall have one class of voting membership, and each Lot shall be entitled to one vote per Lot. No partial votes shall be allocated to any tract that is less than one Lot.

**Section 4. Non-Profit Corporation.** The Association will be organized as a non-profit corporation, and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation immediately upon its organization.

**Section 5. By-Laws.** The Association may make whatever rules or by-laws it may choose to govern the organization of the Association and its membership, provided that same are not in conflict with the terms and provisions hereof.

**Section 6. Member's Right and Easement of Enjoyment.** Subject to the provisions of Article 2, Section 7 below, every Member shall have a common right and easement of enjoyment in the Common Properties, and such right and easement shall be appurtenant to and shall pass with the title to every Lot. Each Owner is deemed to covenant and agree to indemnify and hold harmless the Association from and against any and all claims, losses of any nature whatsoever incurred, suffered or sustained by the Association arising out of or in any way caused by, connected with or resulting from actions or activities pursued or conducted pursuant to such right and easement by such Owner, the occupants of such Owner's Lot or such Owner's agents, guests or invitees.

**Section 7. Extent of Member's Right and Easement of Enjoyment.** The right and easement of enjoyment in the Common Properties created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created or provided for in this Amended Declaration and shall also be subject to the following provisions:

a. The Association shall have the right to borrow money and, with the assent of two-thirds (2/3) of the votes in the Association, to mortgage the Common Properties or Common Facilities.

b. The Association shall have the right to take such steps as are reasonably necessary to protect the Common Properties and Common Facilities against foreclosure of any such mortgage.

c. The Association shall have the right to suspend the rights and easements of enjoyment in Common Properties of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid.

d. The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Common Properties and Common Facilities and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.



e. The Association shall have the right to assess and collect maintenance assessments and Charges (as hereinafter defined) provided for herein.

f. The Association shall have the right to dedicate or convey all or part of the Common Properties, or an interest therein, to any public authority for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or conveyance shall be effective unless an instrument agreeing to such dedication or conveyance, or separate ratifications of such dedication or conveyance, shall be signed by Members entitled to cast not less than two thirds (2/3) of the votes in the Association.

g. The Association shall have the right to rent or lease any part of the Common Properties and/or Common Facilities for the operation of any service activity intended to serve a substantial number of residents in the Properties, with the consent of not less than two-thirds (2/3) of the votes in the Association.

h. The Association shall have the right, but not the obligation, to erect and maintain a fence around any of the Common Properties and the perimeter boundaries of the Property.

**Section 8. Manager.** The Association shall be authorized to retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager, and the Members hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

**Section 9. Indemnification.** The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or contemplated proceeding, whether civil, criminal, administrative or investigative, by reason of fact that the person is or was a director, officer, committee, employee, servant or agent of the Association, against expenses, including attorneys' fees, reasonably incurred in connection with such action, suit or proceeding if it is found and determined by the Board or a court that the person proposed to be indemnified (a) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and (b) with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceedings by settlement, or upon a plea of nolo contendere or its equivalent, shall not itself create a presumption that the person did not act in good faith or in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Association, and with regard to any criminal action or proceeding, shall not itself create a presumption that the person had reasonable cause to believe that his or her conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association, against any liability asserted against or incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability hereunder or otherwise.



**ARTICLE 3.**  
**COVENANTS FOR MAINTENANCE ASSESSMENTS AND CHARGES**

**Section 1. Creation of the Lien and Personal Obligation of Assessments and Charges.**

Each Owner of any Lot is deemed to covenant and agree to pay to the Association as to each such Lot: (a) annual assessments, (b) special assessments for capital improvements and extraordinary expenses, such special assessments to be established and collected as hereinafter provided and (c) Charges as defined in Article 3, Section 9. Any and all such annual assessments, special assessments and Charges, together with any interest which may accrue thereon in accordance with this Amended Declaration, and any and all costs and attorneys' fees which may be incurred by the Association in the collection of such assessments or Charges, or in the enforcement of the covenants, conditions and restrictions of this Amended Declaration against any Lot or the Owner thereof, shall be a charge against and shall be secured by a continuing vendor's lien upon the Lot against which each such assessment or Charge is made or enforcement is sought, and shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or Charge fell due or the enforcement of the covenants, conditions and restrictions of this Amended Declaration was commenced. The lien for assessments in the Prior Restrictions is hereby adopted and extended to all Lots. The personal obligation for delinquent assessments and Charges shall not pass to the successor in title of any Owner unless expressly assumed by such successor in title but shall be secured by the continuing lien upon the Lot.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to improve, beautify, maintain, manage and operate the Common Properties and Common Facilities, to pay taxes and insurance premiums thereon, and to promote the recreation, health, safety, convenience and welfare of the Members, such benefits to include, by way of illustration, but not limited to, contracting with a municipal utility district or districts (or other parties or entities) for the purpose of providing and maintaining lighting, appurtenant mechanical and electrical fixtures, plumbing equipment, drainage systems, irrigation systems, fogging for insect control, and garbage and refuse service; maintaining any landscaping contained within or about any cul-de-sacs or public or private streets located within the Property, maintaining any landscaping, fencing, Exotic Animals and wildlife, and Property entrance gates (including security gates) and other improvements located on or about Common Properties and the perimeter boundaries of the Property; enforcing the provisions contained in this Amended Declaration; employing, at the request of the Architectural Control Committee, one or more architects, engineers, attorneys, or other consultants, for the purpose of advising such Committee in carrying out its duties and authorities set forth herein; and establishing reasonable reserves for contingencies and other expenses; the foregoing uses and purposes being permissive and not mandatory, and the decisions of the Board being final as long as made in good faith and in accordance with the By-Laws of the Association and the laws, ordinances, rules and regulations of any governmental authority or other entity with jurisdiction over the affairs of the Association, the Common Properties or the Common Facilities.

**Section 3. Annual Assessment.** Until January 1 of the year immediately following conveyance of fee simple title to the first Lot to any Owner, the maximum annual assessment shall be SEVEN HUNDRED TWENTY and no/00 DOLLARS (\$720.00) for each Lot, which shall be due and payable as provided hereafter. Anything contained herein to the contrary or seemingly to the contrary notwithstanding, the assessments provided for herein shall be payable by the Owners of each of the Lots originally platted in the Subdivision Plat and any additional Lots created.



a. From and after January 1 of the year immediately following the conveyance offer simple title to the first Lot to an Owner, the maximum annual assessment may be increased each year by the Board of Directors by not more than ten percent (10%) above the maximum assessment for the previous year, and may increase the annual assessment by more than ten percent (10%) above the maximum assessment for the previous year only if approved by not less than 2/3 of the votes in the Association.

b. The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum assessment amount.

**Section 4. Special Assessments for Capital Improvements and Extraordinary Expenses.** In addition to the annual assessments authorized by Article 3, Section 3, the Association may levy against the Lots in any calendar year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, purchase, acquisition, repair or replacement of a capital improvement of the Association (including, without limitation, private streets and entry and exit gates), including necessary fixtures and personal property related thereto, or an extraordinary expense of the Association, but any such assessment must be approved by not less than two-thirds (2/3) of the votes in the Association. The special assessment against every Lot shall be the same as the special assessment against every other Lot.

**Section 5. Assessments Levied on Uniform Basis.** The Association, by action of the Board, shall levy annual assessments against the Lots to obtain funds reasonably anticipated to be needed for purposes stated in Article 3, Section 2; provided, the annual assessments shall be levied on a uniform basis such that the same annual assessment will be due for each Lot in a calendar year.

**Section 6. Commencement of Annual Assessments; Due Dates.** Subject to the provisions of Article 3, Section 5, the annual assessments provided for herein shall commence on each Lot on the first day of the calendar month after the Owner takes title to said Lot. The amount of the annual assessment on each Lot for the balance remaining in the first year of assessment shall be an amount which bears the relationship to the annual assessment of such Lot provided for in Article 3, Section 3 as the remaining number of months in the year bears to twelve, and shall be due and payable on the day of conveyance of a Lot to the first Owner. After the first year, the annual assessment of such Lot for such calendar year shall be due and payable on the first day of January in said year. The due date of any special assessment under Article 3, Section 4 shall be fixed in the resolution of the Members of the Association authorizing or approving such assessment.

**Section 7. Duties of the Board of Directors.** The Board shall determine the amount to be levied as the annual assessment against each Lot for each calendar year, subject to the criteria and limitations set out in Article 3, Sections 3 and 5. The Board shall cause to be prepared a roster of Lots showing the amount of each assessment, which roster shall be kept by the Treasurer and shall be open to inspection by any Owner.

**Section 8. Certification of Assessments and/or Charges.** The Association shall upon demand at any time furnish to any Owner, or to any Purchaser who can reasonably prove they are engaged in a purchase, a certificate in writing signed by an officer or agent of the Association setting forth whether or not there are any unpaid assessments or charges against said Owner's Lot. Such



certificate shall be conclusive evidence of payment of any assessments or Charges therein stated having been paid, as to any third party who in good faith relies thereon to his or her economic detriment. The Association is authorized to charge a reasonable amount for issuance of a certificate.

**Section 9. Establishment of Charges.** Should any Owner or occupant of a Lot fail or refuse to comply with the terms and provisions of this Amended Declaration, the Association, or its successors and assigns, acting by and through its duly authorized officers, the Board or its duly authorized agent, without liability to the Owner or occupant in trespass or otherwise, may, after ten (10) days written notice to the Owner or occupant and failure of the Owner or occupant to comply with the terms of such notice, enter upon the Lot and do or cause to be done such action as shall be necessary to bring the Lot and the improvements thereon into compliance with this Amended Declaration. Likewise, the Association, any Owner, and their respective successors and assigns, shall have the right to enforce by a proceeding at law or in equity all easements, restrictions, conditions, covenants, reservations, liens and Charges now or hereafter imposed by the provisions of this Amended Declaration and in connection therewith shall be entitled to recover all reasonable costs and attorneys' fees incurred in pursuance of such enforcement rights. All costs ("Charges") incurred by the Association in carrying out such action to secure compliance with the terms and provisions of this Amended Declaration shall be billed to the Owner of the Lot by the Association. Any Charges which are not paid within thirty (30) days after the same is billed shall bear interest from the date each cost composing the Charges was incurred until paid at an interest rate which will not exceed the maximum lawful rate per annum allowed and will be secured by a continuing vendor's lien upon the Lot against which such Charges are made and shall also be the personal obligation of the person who is the Owner of such Lot at the time the action in enforcement of the terms of this Amended Declaration was commenced.

**Section 10. Effect of Non-Payment of Assessments and/or Charges; Remedies of the Association.** As with Charges, any assessment not paid within thirty (30) days after the same is billed shall bear interest, from the date due and payable until paid, at an interest rate which will not exceed the maximum lawful rate per annum allowed by applicable law. The Association may bring an action at law against the Owner personally obligated to pay any assessment or Charges or foreclose the lien against the Lot, regardless of whether or not the current Owner has personal liability for the payment of same, and all interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of such assessments or Charges. Each such Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such assessments or charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens against real property, including foreclosure by judicial action brought in the name of the Association and by non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code or other applicable statute, and such Owner hereby (a) expressly grants to the Association an extrajudicial power of sale in connection with the non-judicial foreclosure of said lien, and (b) in addition, expressly grants and vests in the Association the right, power and authority to exercise such power of sale through a trustee (or substitute or successor trustee, as may be the case from time to time) appointed in writing by the Association acting by and through its duly authorized officer. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting by and through its duly authorized officer or the trustee and on behalf of the Owners, shall have the power to bid for the interest foreclosed at any foreclosure sale conducted pursuant to the terms hereof and to acquire and hold,



lease, mortgage and convey such interest on behalf of the Owners. No Owner may waive or otherwise escape liability for the assessments or Charges provided for herein by non-use of the Common Properties or abandonment of his or her Lot.

If the trustee appointed and designated by the Association to exercise the power of sale and to conduct a foreclosure sale in accordance with the terms of this Amended Declaration shall die or become disqualified in the execution of the power of sale, or shall fail or refuse to exercise the same when requested by the Association, or if, for any reason, the Association shall prefer to appoint a substitute trustee to act instead of any appointed and designated trustee, the Association shall have full power to appoint, at any time by written instrument, a substitute trustee, and if necessary, several substitute trustees in succession, who shall succeed to all the estate, rights, powers and duties of the trustee under the terms of this Amended Declaration, and no notice of such appointment need be given to the Owner or to any other person or filed for record in any public office. Further, each Owner, by acceptance of a Deed to a Lot, hereby stipulates and agrees that the recitals contained in any trustee's or substitute trustee's deed or other instrument executed in a form by any trustee or substitute trustee, acting under the provisions of this Amended Declaration, shall be prima facie evidence of the facts recited therein, and that it shall not be necessary to prove in any court, other than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds or other instrument in the passing of title thereby, and all prerequisites and requirements of any sale or sales shall be conclusively presumed to have been performed, and all persons subsequently dealing with the interest purported to be conveyed by such deed or deeds or other instruments shall be fully protected in relying upon the truthfulness of such recitals.

**Section 11. Subordination of the Lien to Mortgages.** The lien securing any assessment or Charges provided for herein shall be subordinate to the lien of any mortgagee(s) now or hereafter placed upon the property subject to the assessment or Charges for the purpose of securing indebtedness incurred to purchase or improve the property, provided, however, that such subordination shall apply only to the assessments or Charges which have become due and payable prior to enforcement of such purchase money or improvement lien by a sale or transfer of such property pursuant to a decree of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessment or Charges thereafter becoming due, nor from the lien securing any such subsequent assessment or Charges. In addition to the automatic subordination provided for above, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment or Charges provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine.

#### **ARTICLE 4. ARCHITECTURAL CONTROL COMMITTEE**

**Section 1. Tenure.** The Board of the Association shall appoint an Architectural Control Committee consisting of not less than three (3) persons and shall make appointments to fill vacancies on the Architectural Control Committee. A majority of the Architectural Control Committee may designate someone serving on the Architectural Control Committee to act for it. No person serving on the Architectural Control Committee shall be entitled to compensation for services performed pursuant to this Amended Declaration. Any amendments to the Waggener Ranch Architectural Control – Rules and Regulations and Minimum Construction Standards, recorded under Comal County Clerk File



Number 201706034228, will be approved by the Board at an open Board meeting. The Architectural Control Committee, with Board of Directors consent, may employ one or more architects, engineers, attorneys, or other consultants to assist the Architectural Control Committee in carrying out its duties hereunder, and the Association shall pay such consultants for such services as they render to the Architectural Control Committee.

**Section 2. Approval of Plans.** No buildings or other external improvements, including, but not limited to, site preparation, swimming pools, streets, driveways, sidewalks, drainage facilities, landscaping, fences, walks, fountains, statuary, outdoor lighting and signs, shall be commenced, constructed, erected, placed or maintained in the Properties, nor shall any exterior addition to or alteration therein be made, unless and until a site Plan showing all uses and the location and dimensions of the proposed construction has been submitted to and approved in writing by the Architectural Control Committee.

a. A Schematic Plan shall be submitted to the Architectural Control Committee for its approval in writing. Said Schematic Plan shall specify, in such form as the Architectural Control Committee may reasonably require, structure, mechanical, electrical and plumbing details and the nature, kind, shape, height, exterior color, scheme and materials of the proposed improvements or alterations thereto. "Schematic Plan" shall mean that certain plan which has been submitted or is to be submitted by an Owner to the applicable governmental authority for approval in connection with the issuance of a building permit. The Architectural Control Committee shall have the right, free of charge, to retain one (1) copy each of the site plan and the Schematic Plan.

b. In the event the Architectural Control Committee fails to approve or disapprove the site Plan or the Schematic Plan within thirty (30) days after they have been submitted to it, approval thereof will not be required and the provisions of this Article 4, Section 2 will be deemed to have been fully complied with as long as the alterations, construction or renovations are completed within the guidelines provided by this Amended Declaration or any amendments thereto in accordance with the Plans submitted for review and approval.

c. Should an Owner or occupant proceed to place any improvement upon or proceed with any construction, alteration or exterior change on any improvements located on a Lot without first applying for written approval of the Architectural Control Committee, such Owner or occupant shall be in violation of this Amended Declaration and will be thereafter required to submit a site plan and Schematic Plan, together with such other documents as the Architectural Control Committee deems appropriate, even after construction has commenced. The Architectural Control Committee shall have forty-five (45) days from receipt of the last of any required documentation, submitted after commencement of construction, alteration or exterior changes without prior written approval, to respond by approval, disapproval or modification requirements.

d. The Architectural Control Committee shall have the right to inspect all work in progress to ensure compliance with approved Plans and request the Board to obtain restraining orders and/or temporary or permanent injunctions to terminate or halt construction, alterations or exterior changes which have not been reviewed and approved by the Architectural Control Committee in accordance herewith. The Architectural Control Committee shall have full and complete authority to



approve any construction of any improvement on any Lot and its judgment shall be final and conclusive subject to Article 4, Section 2, paragraph g.

e. All reasonable enforcement costs and attorneys' fees incurred by the Association in connection with the Association's exercise of the right to obtain restraining orders and/or temporary or permanent injunctions under this Article 4, Section 2 shall be recoverable against the Owner and/or occupant in violation of this Amended Declaration and the provisions hereof and shall constitute Charges.

f. Where an Owner has neglected to submit a site Plan and/or Schematic Plan for approval, failure of the Architectural Control Committee to exercise the powers granted by this Article 4 shall never be deemed a waiver of this right to do so either before or after the improvements, or any exterior addition to or alteration thereof, have been completed.

g. The Architectural Control Committee shall have full power and authority to reject any Plans that do not comply with the restrictions herein imposed or meet the minimum construction requirements as described in Article 4, Section 5 or architectural design requirements or that might not be compatible, in its judgment, with the overall character and aesthetics of the Property. An Owner may appeal the denial of Architectural Control Committee approval to the Association's Board of Directors.

**Section 3. Membership of Architectural Control Committee.** The Architectural Control Committee shall consist of not less than three (3) nor more than seven (7) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Association Board deems appropriate.

**Section 4. Actions of the Architectural Control Committee.** The vote of a majority of all the members of the Architectural Control Committee, taken during or without a meeting, shall constitute an act of the Architectural Control Committee.

**Section 5. Rules and Regulations; Minimum Construction Standards.** The Architectural Control Committee may, from time to time, with Board approval at an open Board meeting, adopt, amend and repeal rules and regulations interpreting and implementing the provisions hereof. Likewise, the Architectural Control Committee may from time to time promulgate an outline of minimum acceptable construction standards, provided, however, that such outline shall serve only as minimum guidelines and the Architectural Control Committee shall not be bound thereby or prohibited from proposing additional (even more stringent) requirements or adopting amendments to such minimum construction standards to relax, reduce or otherwise modify such standards from time to time.

**Section 6. Approval of General Contractors and Builders.** No construction of a building or other improvement shall be commenced on the Properties until the general contractor or builder proposed to perform such construction shall have been approved in writing by the Architectural Control Committee, which approval shall not be unreasonably withheld. In the event the Architectural Control Committee does not approve or disapprove a general contractor within ten (10) working days



after his or her name is submitted to it, approval will not be required, and the provisions of this Article 4, Section 6 will be deemed to have been fully satisfied. An Owner may appeal the denial of Architectural Control Committee approval to the Association's Board of Directors.

**Section 7. No Liability.** Neither the Association, the Board of Directors nor the Architectural Control Committee or the members thereof shall be liable in damages to anyone submitting Plans to them for approval, or to any Owner of property affected by these restrictions 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. Every person who submits Plans to the Architectural Control Committee for approval agrees, by submissions of such Plans, and every Owner agrees, that he or she will not bring any action or suit against the Association, Board of Directors, the Architectural Control Committee, or any members thereto to recover any such damages.

**Section 8. Variances.** The Architectural Control Committee, by the vote or written consent of a majority of the members thereof, may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Amended Declaration under the jurisdiction of such committee pursuant to this Article 4 on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the development, improvement and sale of the Property and shall not impair or detract from the high quality development of the Property. All variances must be evidenced by a written instrument in recordable form that is presented to and approved by at least two (2) members of the Board. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof.

**Section 9. Remodeling, Renovation and Redecorating of Exterior Walls.** No remodeling, renovation or redecoration of any exterior wall of any building on a Lot which in any manner changes the visual appearance of such exterior wall (including, but not limited to, changing the color, appearance, texture or reflective character of any exterior surface; or the addition or alteration of shutters, awnings or other window coverings or the addition of wall applications) shall be allowed until the Plans describing the work to be performed have been approved in writing by the Architectural Control Committee as provided herein. Such remodeling, renovation or redecorating shall, for purposes hereof, be deemed to constitute an alteration of a building or improvement subject to the provisions of Article 4, Section 2 above.

**Section 10. 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 may issue a certificate of compliance in a form suitable for recordation. The certificate shall identify the Lot and the improvements and the Plans 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. 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 the workmanship or material thereof.



Each 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, material and/or equipment of the improvements. Preparation and recordation of a certificate shall be at the expense of the Owner of the Lot, and the Association is authorized to charge a reasonable amount for issuance of a certificate.

## **ARTICLE 5. EASEMENTS**

**Section 1. General.** The rights and duties of the Owners with respect to water, electricity, telephone, cable television and other utility lines and drainage facilities shall be governed by the following:

a. Wherever connections for water, electricity, telephone, cable television and other utility lines or drainage facilities are installed within the Property, which connection lines or facilities or any portions thereof lie in or upon Lots owned by any party other than the Owner of a Lot served by said connections, lines or facilities, such Owners of Lots served shall have the right, and are hereby granted an easement to the full extent necessary, to enter upon the Lots in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections, lines or facilities when the same may be necessary.

b. Wherever utility connections, lines or facilities are installed within the Property and serve more than one Lot, the Owner of each Lot so served shall be entitled to the full use and enjoyment of such portions of said connections, lines or facilities which serve his or her Lot.

**Section 2. Reservation of Easements.** Easements over the Lots and Common Areas for the installation and maintenance of electric, telephone, cable television, water and other utility lines are hereby reserved by the Association in the locations indicated on the Subdivision Plat, together with the right to grant and transfer same. In addition, the Declarant reserved an easement thirty-five (35) feet wide and adjacent to the perimeter boundaries of the Property, along and adjacent to each boundary of each Lot that adjoins a perimeter boundary of the Property, for the installation, maintenance, and repair of a fence not to exceed ten (10) feet in height, to be located not more than fifteen (15) feet from the perimeter boundary of the Property. No other fences or improvements may be constructed or installed in the thirty-five (35) foot easement area. The perimeter fence is designated as part of the Common Properties and shall be maintained by the Association.

**Section 3. Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of improvements approved by the Architectural Control Committee thereon, require. There shall be no construction or improvements, temporary or permanent, in any drainage easement, except as approved by the Architectural Control Committee.

**Section 4. Common Properties.** Each Owner shall have a common right and easement of enjoyment in the Common Properties as described in Article 2, Sections 6 and 7.



**Section 5. Surface Areas of Utility Easements.** No building shall be located over, under, upon or across any portion of any utility easement, however, the Owner of each Lot shall have the right to construct, keep and maintain concrete driveways or walkways and similar improvements perpendicular to and crossing any utility easements on the Lot, subject to the prior approval of the Architectural Control Committee, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots. Any such improvements placed upon such utility easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot shall be responsible for (a) any and all repairs to the driveways, walkways, and steps which cross or are located upon such utility easements and (b) repairing any damage to said improvements caused by the public utility or other beneficiary of such easements in the course of installing, operating, maintaining, repairing, or removing its facilities located within the utility easements. Each Owner shall maintain the surface area of all easements located within his or her Lot and all improvements located therein, except for such improvements for which a public authority or utility company is responsible. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, the supplier of any utility or service using any easement shall not be liable to any Owner or to the Association for any damage done by them or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

**Section 6. Road and Street Easements.** The roads and streets in the Property are owned by the Association and operated as private streets by the Association, with each Owner having an easement for the use and benefit of such Owner of a Lot fronting thereon or adjacent thereto, which easements shall include rights of ingress, egress, and passage over and along said streets in favor of the Association, the Owners and their respective legal representatives, successors and assigns, guests, invitees, licensees, designees, and the successors-in-title to each Owner and in favor of the invitees and designees of each successor-in title to each Owner, but not in favor of the public.

Notwithstanding the Association's operation of the roads and streets in the Subdivision as private streets, the Association hereby grants to law enforcement agencies and officers of Comal County and the State of Texas, other governmental law enforcement bodies, fire department officials and fire protection personnel, vehicles and equipment, ambulances, school buses, Comal County officials and personnel and other governmental officials and personnel, rights of ingress and egress and passage over and along said private roads and streets of the Property in connection with the performance of their official functions.

**Section 7. Public Easement.** The Association hereby reserves an easement for public ingress and egress over all streets and roadways shown on the Subdivision Plat and over any public pedestrian pathways. This easement shall not imply any right of public use of the Common Properties or Common Facilities owned by the Association.

**Section 8. Audio and Video.** The company furnishing audio and video communication services and utilities made available to any said Lots by means of an underground cable system shall have a two (2) foot wide easement along and centered on the underground wire or cable as installed by said company from the utility easement nearest to the point of connection on the permanent improvement or structure constructed, or to be constructed upon said Lot, and in a direct line from said nearest utility easement to said point of connection.



**Section 9. Entry Easement.** The Association may enter upon any Lot at reasonable times to maintain the Common Properties, to remove refuse, to provide exterior maintenance, to tend to Exotic Animals and other wildlife, and to maintain the fence on the perimeter boundaries of the Property. Such right of entry shall include the right to use of the Owner's water, from an outside spigot in reasonable amounts, without compensation to the Owner, if used for maintenance on the Owner's Lot or on the Common Properties. This provision shall not be construed as authorizing entry into any improvement located on the Property unless a clear emergency exists.

**ARTICLE 6.  
UTILITY BILLS, TAXES AND INSURANCE**

**Section 1. Obligation of Owners.** Each Owner's utility bills, taxes and insurance shall be governed by the following:

a. Each Owner shall have separate utility meters and shall directly pay the cost and expense for all electricity, gas, water, on-site sewage facility, telephone service, cable television and other utilities used or consumed on the Lot. Notwithstanding the foregoing, each Owner acknowledges that it is intended that each Lot provides its own water well (if applicable), on-site sewage facility, propane tank (if applicable) and appurtenant equipment.

b. Each Owner shall directly render for taxation his or her own Lot and improvements thereon and shall at his or her own cost and expense directly pay all taxes levied or assessed against the Lot and improvements thereon.

c. Each Owner shall be responsible at his or her own cost and expense for insurance on the building and improvements on his or her Lot, including decorations, furnishings and personal property therein; and also for personal liability not covered by liability insurance for all Owners which may be obtained by the Association as part of the common expense in connection with Common Properties and Common Facilities.

**Section 2. Obligations of the Association.** The Association shall have the following responsibilities regarding utility bills, taxes and insurance:

a. The Association shall pay, as a common expense of all Owners, for the care and maintenance of wildlife, including Exotic Animals; maintenance of the lake; and all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Properties or Common Facilities or any part thereof, including, as necessary or desirable, the drilling of water wells and the installation of on-site sewage and propane facilities.

b. The Association shall directly render for taxation and, as part of the common expense of all Owners, shall directly pay all taxes levied or assessed against or upon the Common Properties, the Common Facilities and any property appertaining thereto.

c. The Association shall have authority to obtain and continue in effect as a common expense of all Owners, a blanket property insurance policy or policies to insure the buildings



and improvements, if any, located in the Common Properties and the contents thereof and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with Exotic Animals and wildlife, the Common Properties and Common Facilities.

d. All costs, charges and premiums for all utility bills taxes and any insurance to be paid by the Association as hereinabove provided shall be paid as a common expense of all Owners and shall be a part of the annual assessment.

## **ARTICLE 7. MAINTENANCE AND REPAIRS**

**Section 1. By the Owners.** It shall be the duty, responsibility and obligation of each Owner at his or her own cost and expense to care for, maintain and repair the exterior and interior of all improvements on his or her Lot and the appurtenances thereto, including the driveway and fences (other than the fence located on the easement adjacent to the perimeter boundary of the Property) that are located on the Lot. The Association shall have no duty or obligation to any Owner in this regard.

**Section 2. By the Association.** The Association, as a common expense of all Owners, shall perpetually care for, maintain and keep in good repair the Common Properties and all parts thereof, including but not limited to, private streets, landscaped areas, Exotic Animals, parking areas, fences, security and/or entry gates and improvements and facilities owned by the Association, including but not limited to the Common Facilities.

## **ARTICLE 8. RESTRICTIONS ON USE**

**Section 1. Single Family Residential Use.** The Lots shall be used solely for single family residential use. The term "**single family**", when used in this Amended Declaration, shall mean and refer not only to the architectural design of the Living Unit but also to the permitted number of inhabitants. For purposes of these restrictions, a singular nuclear family shall be defined as any number of persons related within the second degree of consanguinity or affinity, living with not more than one (1) person who is not so related, as a single household unit and one household employee of the household unit. It is not the intent of Association to exclude from a Living Unit any individual who is authorized to so remain by any state or federal law.

**Section 2. No Commercial Use.** No trade or business may be conducted on any portion of the Property except for business activities conducted by the Owner or occupant of a Lot such that all of the following requirements are satisfied: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the building; (b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property; and (c) the business activity is consistent with the residential character of the Property and does not constitute



a nuisance, or a hazardous, offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Architectural Control Committee. Door-to-door solicitation of residents is prohibited. An Owner may appeal the denial of Architectural Control Committee approval to the Association's Board of Directors. Use as a day-care facility, church, nursery, pre-school, or other similar facility is expressly prohibited.

**Section 3. Common Property.** No portion of the Common Property shall be improved, used or occupied, except in such a manner as shall have been approved by the Board of Directors in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and improvement. Access to any Common Property may be limited to persons currently paying assessments and other charges, or otherwise conditioned or restricted, or made available to Owners, all on such terms and conditions as the Board of Directors may determine in its sole and absolute discretion. Any proposed construction of recreational improvements within any Common Property shall be subject to approval by the Architectural Control Committee. No representation is made as to whether any recreational improvements will be constructed in the future by the Association.

a. Lot 72 shall be restricted to use as a lake and shall be part of the Common Properties. The Association, as a common expense of all Owners, shall be responsible for the maintenance of the lake and the surrounding land that is part of Lot 72, including but not limited to keeping the grass mowed and controlling growth of algae in the lake. The following shall be applicable to Lot 72:

- i. Swimming in the lake shall be prohibited at all times.
- ii. Fishing shall be allowed in the lake but only "catch and release" is permitted.
- iii. No open fires, campfires or BBQ grills may be placed, conducted or operated on Lot 72 at any time.
- iv. Except as hereafter set forth, no person may utilize water from the lake for irrigation or other purposes. Notwithstanding the foregoing, the Association may utilize surface water as needed for irrigation and maintenance of the Common Properties and Common Facilities, and emergency responders may utilize surface water as needed for firefighting.
- v. No dock, pier or any other structure that extends over the lake may be constructed on any part of Lot 72.
- vi. The operation of motorized boats or vehicles, including but not limited to all-terrain vehicles and gasoline-powered toy planes and boats, on any part of Lot 72 is strictly forbidden except for the designated parking area. Notwithstanding the foregoing, the Association may utilize such motorized vehicles as may be needed for the maintenance, repair and replacement of the Common Properties or Common Facilities.
- vii. The use of non-motorized boats (such as row boats or canoes) is allowed. However, no such non-motorized boat or any other personal property of an Owner or other occupant may be allowed to remain on any part of Lot 72 overnight.



b. Lot 62 shall be restricted to use as a park or such other similar recreational use as may be approved by the Board of Directors. Lot 62 shall be part of the Common Properties. The Association, as a common expense of all Owners, shall be responsible for the maintenance of Lot 62, as well as any Common Facilities that may be constructed thereon. The following shall be applicable to Lot 62:

- i. Swimming in the creek shall be prohibited at all times.
- ii. Fishing shall be allowed in the creek but only "catch and release" is permitted.
- iii. No open fires, campfires or BBQ grills may be placed, conducted or operated on Lot 62 at any time.
- iv. Except as hereafter set forth, no person may utilize water from the creek for irrigation or other purposes. Notwithstanding the foregoing, the Association may utilize surface water as needed for irrigation and maintenance of the Common Properties and Common Facilities, and emergency responders may utilize surface water as needed for firefighting.
- v. The operation of motorized boats or vehicles, including but not limited to all-terrain vehicles and gasoline-powered toy planes and boats, on any part of Lot 62 is strictly forbidden except in designated areas. Notwithstanding the foregoing, the Association may utilize such motorized vehicles as may be needed for the maintenance, repair and replacement of the Common Properties or Common Facilities.
- vi. The use of non-motorized boats (such as row boats or canoes) for recreational use is prohibited.

**Section 4. Review by Architectural Control Committee.** No improvements shall hereafter be constructed upon any of the Property without the prior written approval of the Plans for the improvements by the Architectural Control Committee.

**Section 5. Completion of Construction.** The construction of any improvement must be completed within one year from the date that construction is commenced, subject to force majeure delays. If construction of any improvement is not completed within this timeline, then the Architectural Control Committee may, but shall not be obligated to, cause the construction of the improvements to be completed or have the partially completed improvements removed and the site restored to its original condition. The cost of such completion or removal of the improvements by the Architectural Control Committee shall be the responsibility of the Owner, and the cost shall be a Charge against the Lot and the Owner.

**Section 6. Location of Improvements.** Unless the Architectural Control Committee otherwise agrees in writing to grant a variance because of the dimensions of a Lot or for topographical considerations, which variances are subject to Architectural Control Committee approval to the extent provided in Article 4, Section 8: (a) each Living Unit shall face the front of the Lot, (b) no building on any Lot shall be located nearer than one hundred (100) feet from the front lot line, (c) no building on



any Lot shall be located nearer than twenty-five (25) feet to any interior side lot line or nearer than fifty (50) feet to any side lot line that is adjacent to a street, (d) no building shall be located nearer than thirty (30) feet from the thirty-five (35) feet easement described in Article 5, Section 2 for a total of sixty-five (65) feet or, for lots that are not located on the perimeter boundary of the Property, nearer than one hundred (100) feet from the rear lot line, and (e) no barn door shall face the front of the Lot. This restriction may not be construed to permit any portion of a building to encroach on an easement.

No planting or object which obstructs sight lines at elevations between two (2) feet and six (6) feet above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street property line or extension thereof shall be placed, planted or permitted to remain on any corner Lots.

**Section 7. New Construction; No Residential Use of Temporary Buildings and Outbuildings.** All buildings, structures, and other improvements erected, altered, or placed in the Property shall be of new construction. Prefabricated materials are not permitted. No structure of a temporary character or a trailer, mobile home, tent, shack, garage, barn or outbuilding shall be used in the Property at any time as a residence, either temporarily or permanently. Notwithstanding the foregoing, the Architectural Control Committee is authorized to approve the use of an outbuilding as a guesthouse or servants' quarters.

**Section 8. Exterior Finish.**

a. Unless the Architectural Control Committee otherwise agrees in writing, the exterior finish or construction of each building on the Property (except for barns) shall be at least seventy-five percent (75%) Masonry or Masonry Veneer, exclusive of windows, doors, and other building openings. In computing such percentage, roof areas shall be excluded, but attached garages and porches shall be included. All exterior walls exposed to view from any street shall be constructed of one hundred percent (100%) Masonry or Masonry Veneer, exclusive of windows, doors, and other building openings. Those portions of a chimney that are exposed to the elements shall be one hundred percent (100%) Masonry, but the area of the chimney shall not be included in the calculation of the seventy-five percent (75%) Masonry restriction.

b. The exterior finish or construction of a barn shall be constructed of either (a) the same materials, in the same or greater percentages, as the Living Unit on the Lot, or (b) a wainscoting of Masonry or Masonry Veneer between 42" and 44" in height as measured from the foundation, with the remainder of the barn constructed of the same Non-Masonry materials as approved by the Architectural Control Committee for the Living Unit. Secondary buildings constructed for workshops, storage, or similar use shall be constructed and finished as described in Article 8, Section 8, paragraph a.

c. The Architectural Control Committee shall have the right to require additional Masonry application in the construction of any building if, in the exercise of its approval of Plans, it should determine that same will better maintain the aesthetic quality and general plan and scheme of the Properties and the Common Facilities.



**Section 9. Garages.** A garage for not less than two cars (either attached or unattached to the Living Unit) shall be constructed in conjunction with each Living Unit. No carports shall be permitted on the Property; provided, however, that this provision shall not be construed to prohibit the incorporation of a porte cochère treatment in the site plan and Schematic Plan submitted to the Architectural Control Committee for its approval in accordance with the provisions of Article 4, Section 2 hereof, provided that the porte cochère treatment shall be an integral part of the architectural design of the proposed improvements and shall be constructed in a fashion and of materials which the Architectural Control Committee shall, in the exercise of its judgment, determine to be compatible with the overall character and aesthetics of the Property. All garages shall be finished at the time of construction with 5/8" firewall sheetrock, taped and painted or otherwise finished as approved by the Architectural Control Committee. All garage doors shall be steel or other material approved by the Architectural Control Committee. No garage may be converted to residential use. All garages shall open to the side or to the rear of the Lot upon which it is built, except that a garage may open to the front of the Lot if (a) the front of the garage is set back at least forty (40) feet from the front of the Living Unit, (b) the garage doors will not be visible from the street, or (c) the topography or dimensions of the Lot are such that it is not practicable or feasible to construct a side or rear entry garage. Such determination of the practicability or feasibility for a side or rear entry garage shall be at the sole and absolute discretion of the Architectural Control Committee. An Owner may appeal the denial of Architectural Control Committee approval to the Association's Board of Directors. Garage doors visible from any street shall be kept in the closed position when the garage is not being actively used by the Owner or occupant.

**Section 10. Servants' Quarters, Guest Houses, Outbuildings and Barns.** Servants' quarters, guest houses, outbuildings, and barns which may be constructed on a Lot may not be rented except as provided in Article 8, Section 37. Servants' quarters and guest houses may be used only by servants who are employed in the Living Unit erected upon the same Lot where such quarters are located or by members and guests of the family occupying the Living Unit on said Lot. Barns may not be used for residential purposes.

**Section 11. Construction Period.** This Amended Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements upon any Lot within the Property, but no Owner or contractor may enter onto land owned by another person for purposes of ingress or egress during construction without permission of that Owner. Specifically, no construction activities shall be deemed to constitute a nuisance or violation of this Amended Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Control Committee, provided that such waiver shall be only for the reasonable period of such construction. The Architectural Control Committee may require the use of silt fences during construction.

**Section 12. Landscaping.** An initial landscaping plan shall be submitted to the Architectural Control Committee within 60 days of substantial completion of the living unit. All landscaping installed by an Owner shall comply with the Landscape Design Guidelines recorded under Comal County Clerk File Number 201706034228. Any changes established by the Architectural



Control Committee must be approved by the Board at an open Board meeting. All landscaping shall be maintained by the Owner in a neat and attractive condition at all times. Any replacement landscaping which complies with the Landscape Design Guidelines does not need to be approved by the Architectural Control Committee, however, an Owner shall submit a landscape layout and plans for replacement landscaping to the Architectural Control Committee for approval, if the plans do not conform to the Landscape Design Guidelines.

**Section 13. Natural Vegetation Preserve.** Each Lot shall have an area twenty (20) feet from each interior side lot line, forty-five (45) feet from each side lot line that is adjacent to a street and fifty (50) feet from the front and rear property lines, which area shall be designated as a "Natural Vegetation Preserve." The purpose of the Natural Vegetation Preserve shall be to (a) enhance the privacy of each Lot by providing a visual and noise barrier from adjoining Lots or streets, (b) provide natural habitat for Exotic Animals and wildlife, and (c) preserve the natural rural character and beauty of the Development. The Natural Vegetation Preserve must remain in its existing natural state, and no living vegetation of any kind including trees, shrubs, grasses or any other plants shall be removed, or damaged in any way without the prior approval of the Architectural Control Committee or unless such removal is necessary for the construction of utilities or driveways across the Natural Vegetation Preserve. The Architectural Control Committee may grant variances to the Natural Vegetation Preserve requirement if (aa) necessary to enhance the view from a Living Unit on a Lot, (bb) certain undesirable vegetation begins to dominate or crowd out other vegetation or grow rampantly so that it becomes a nuisance, or (cc) the Owner of a Lot submits an alternate plan for landscaping or maintaining the Natural Vegetation Preserve across the front or side having frontage on a street which would enhance or improve the appearance of the area covered by the alternate plan. Notwithstanding the foregoing, cedar and huisache trees may be removed at any time from a Lot by the Owner or from the Common Property by the Association. Any areas in the Natural Vegetation Preserve which are damaged during the construction process shall be replanted by the Owner with native vegetation indigenous to Comal County. Native vegetation and trees indigenous to Comal County may be added to any Natural Vegetation Preserve, and any dead trees, tree limbs, shrubs, or other plants may be removed.

**Section 14. Driveways.** The Owner of each Lot shall construct and maintain at the Owner's expense a driveway of exposed aggregated finished concrete, concrete, brick pavers, asphalt paving, or other materials approved in writing by the Architectural Control Committee. All driveways must be shown on the Plans submitted to the Architectural Control Committee and approved prior to commencement of any construction. The first fifty (50) feet of the drive from the property line must be finished concrete.

**Section 15. Maximum Height, Minimum Square Footage.** No building on any Lot shall be more than two and one-half stories and shall not exceed thirty-five (35) feet in height, measured from the ground at the front entrance of the house to the top-most part of the roof, excluding any chimneys and no building may exceed the height of the Living Unit. Furnished attics and/or basements shall not be considered for the purposes of this section to be separate stories. No Living Unit shall contain less than 2,600 square feet for a one-story structure or less than 3,000 square feet for a structure that is more than one-story, unless the Architectural Control Committee agrees to the contrary in writing. All computations of living area shall be exclusive of attics, basements, open and screened porches, open terraces, stoops, patios, driveways, garages and detached servants' quarters or guest houses. The maximum area of the enclosed first floor of a barn shall be 1,600 square feet, and



computation of the maximum area shall be exclusive of open and screened porches and stoops. Measurements shall be to the face of the outside walls. All rooms in all Living Units, other than attics, must be finished rooms and in compliance with all applicable building code requirements.

**Section 16. Color.** All exterior color schemes on any structure must be approved by the Architectural Control Committee prior to use and must be earth tone in color.

**Section 17. Gates and Fences.** The following restrictions will apply to fences constructed by the Owners on the Lots:

a. Fences on the perimeter boundaries of a Lot: The Owner is not required to install fencing on the perimeter on any Lot. If perimeter fencing is installed, the fence shall not be located closer than twenty-five (25) feet from the Lot line; all corner posts shall be peeled cedar with a minimum diameter of 8" and set in concrete at a minimum dimension of 48" deep; all fencing shall be "King Ranch Style" wire mesh and one strand of smooth wire; barbed wire may only be installed at the bottom of the fence, just off the ground; all wire, posts and gates shall be new when installed; maximum fence height shall be approximately 48". Deer-proof solid knot wire fencing may be constructed around the perimeter of the building, as shown on site Plans that have been submitted to and approved by the Architectural Control Committee; and gateposts and columns shall be constructed out of the following materials: (i) cedar or steel (painted), not less than 8" in diameter, (ii) stone or (iii) CMU or concrete with plaster finish.

b. Fences along street rights-of-way: line posts shall be peeled cedar with a minimum diameter of 4", set a minimum of 36" deep, at a minimum spacing of 18'; cedar stays shall be a minimum of 1" in diameter at a minimum of spacing of 6'; the setback shall be a minimum of 50' from the street right of way; steel T-posts will be allowed; and only two vehicle entries/gates will be allowed from any Lot.

c. Side and rear fences: Fences that are constructed along the side and rear lot lines shall not be located closer than twenty-five (25) feet from the side or fifty (50) feet from rear lot lines, except as described above for lot lines along street rights-of-way and as described in Article 5, Section 2 for Lot lines along the perimeter boundaries of the Property; line posts shall be peeled cedar with a minimum diameter of 4", set a minimum of 30" deep, at a minimum spacing of 18'. Green 6' T-posts may be used for line posts and set on an 18' spacing. If T-posts are used, the 4"-minimum-diameter peeled-cedar posts shall be set on a 100' maximum spacing. Stays shall be at least 1" cedar at a minimum of 6'.

d. Interior Fences. An interior fence is one erected within 100 feet of the main house that does not intrude on any easement, natural vegetation preserve, or set back restrictions of an owner's lot. Cedar board fences, wrought iron, or similar style fences shall be permitted with approval of the Architectural Control Committee.

e. There shall be no chain link fencing constructed, installed or maintained on any Lot, except as authorized by the Architectural Control Committee for temporary storage of building materials and supplies during the construction phase or for enclosing a tennis court or dog run.



f. Plans of all entry gates and fences require approval of the Architectural Control Committee. Only two lot access vehicle entries/gates will be allowed from any Lot.

g. Maintenance of entry gates and fences on each Lot (other than a fence within the easement described in Article 5, Section 2 that is designated as part of the Common Properties) 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 the Amended 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 five (5) degrees out of perpendicular alignment with its base, (ii) missing, loose or damaged stone or wood rails in the fence or (iii) symbols, writings and other graffiti on the fence.

**Section 18. Temporary Structures, Outbuildings.** No tent, shack, barn, mobile home, outbuilding or temporary building shall be permitted on any Lot without prior written approval from the Architectural Control Committee. All outbuildings must be in keeping with the overall character and aesthetics of the Living Unit located on the Lot.

**Section 19. Lot Drainage.** All drainage of water from any Lot and the improvements thereon shall drain or flow as set forth below:

a. There shall be no interference with the established drainage patterns of any Lot unless adequate provision is made for proper drainage and approved by the Architectural Control Committee. No water shall be diverted or allowed to drain or flow onto adjoining Lots or Common Properties unless an easement for such purpose has been granted. The builder and/or Owner shall provide drains or swales to affect such drainage during construction on the Lot. The drainage plan for each Lot shall be approved by the Architectural Control Committee before the commencement of construction on the Lot.

b. All slopes or terraces on each Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

c. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken within the Property or any portion thereof by any Owner which might damage or interfere with the established slope ratios or interfere with established drainage functions or facilities established for the Properties.

**Section 20. Roofs.** The roofs of all improvements, including Living Units, barns, garages and other outbuildings, shall be of slate, fire-retardant composition shingles with a thirty (30) year or more warranty, standing-seam metal, concrete tile, or roofing tile. The Architectural Control Committee shall approve all roofs before installation and shall have the authority and sole discretion to approve other roof treatments and materials if the form utilized will be harmonious with the surrounding homes and the Property as a whole. An Owner may appeal the denial of Architectural Control Committee approval to the Association's Board of Directors. Roof fans, attic fans, attic ventilators, and other roof penetrations should be placed on the roof so as not to be visible from the front lot line or other streets. If roof penetrations do not satisfy this standard, they must be approved



by the Architectural Control Committee prior to installation.

**Section 21. Air Conditioners.** No window or wall-type air conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any building on any part of the Property.

**Section 22. Energy Generation Devices.** The location of energy generation devices, including but not limited to, windmills, solar panels and generators shall be approved by the Architectural Control Committee prior to installation, subject to the provisions of Sections 202.010 and 202.019, Texas Property Code.

**Section 23. Swimming Pools.** No swimming pool may be constructed on any Lot without the prior written approval of the Architectural Control Committee. Each application made to the Architectural Control Committee shall be accompanied by Plans for the proposed swimming pool construction to be done on such Lot, including a site plan and Schematic Plan showing the location and dimensions of the swimming pool and all related improvements, together with the plumbing and excavation disposal plan. The Owner shall be responsible for all necessary temporary erosion control measures required during swimming pool construction on said Lot to ensure that there is no erosion into the streets, lakes, tanks, or other lots. In no event shall swimming pools be drained or permitted to discharge water into the streets, lakes, tanks, or other Lots. All swimming pools must be enclosed with a fence or design (approved by the Architectural Control Committee) that is adequate to prevent unauthorized access to the swimming pool and complies with applicable law.

**Section 24. Lighting.** No exterior lighting may be constructed or installed on any Lot without the prior written approval of the Architectural Control Committee. The purpose of any restrictions or design guidelines on all exterior lighting on the Property shall be to (a) minimize light pollution of the night sky, (b) minimize the visibility of light sources from any part of the Property, and (c) enhance the aesthetic nighttime appearance of each Lot, Living Unit, and the Property in general by promoting a consistent and harmonious scheme for exterior lighting. Unless otherwise approved by the Architectural Control Committee, all exterior fixtures which may be visible from any other part of the Property shall be of a type and style with housings or cut-off lenses which can shield or directionally focus the light source. No exposed bulb or wrap around lens "yard lights" will be permitted.

**Section 25. Control of Sewage Effluent.** No outside toilets will be permitted, and no installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried in the streets or into any body of water.

**Section 26. Reasonable Enjoyment.** No nuisance shall ever be erected, placed, or suffered to remain upon any Lot in the Property, and no Owner or occupant of any Lot in the Property shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or occupant. The Association is hereby authorized to determine what constitutes a violation of this restriction.



**Section 27. Animal Husbandry.** No cows, sheep, goats, swine, pot-bellied pigs, poultry, fowl, wild or dangerous animals (the determination as to what is a wild animal or a dangerous animal to be at the discretion of the Association's Board of Directors), shall ever be kept on the Property except when the occupant of a Lot is a bona fide participant in an animal-husbandry project sponsored by the Future Farmers of America or a similar organization. Dogs, cats and other common household pets in reasonable numbers may be kept on a Lot. Each Lot shall be allowed one (1) horse for each 1.25 acres of land within the Lot (e.g., 5 acres ÷ 1.25 = 4 horses), as long as they are kept in an enclosed area, as described below. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on any portion of the Property other than on the Lot of its owner unless confined to a leash. No animal may be stabled, maintained, kept or boarded on the Property for hire or remuneration, and no commercial kennels or breeding operation will be allowed. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas, which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with Plans approved by the Architectural Control Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof and shall be screened so as not to be visible from any other portion of the Property.

**Section 28. Debris, Trash, Rubbish; Burning.** No trash, rubbish, garbage, manure, tree stumps, trees, limbs, branches, or other debris of any kind shall be kept or allowed to remain on any Lot, and each Lot shall be maintained in a reasonable, orderly, and neat condition at all times. Streets and street ditches shall be kept free from trash, materials, and dirt. If an Owner permits trash, materials, or excess dirt to spill or get into streets or street ditches, the Owner shall remove the debris, without delay, not less than daily. The Owner of each Lot shall remove trash from the Lot at regular intervals at the Owner's expense. Prior to removal from a Lot, trash shall be placed in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be seen from neighboring Lots or streets. No debris may be dumped on another Lot or any other part of the Property. No burning shall be permitted on any Lot without the prior written approval of the Architectural Control Committee and a burn permit having been obtained from the local agency with applicable jurisdiction.

**Section 29. Storage of Vehicles and Equipment.** No boat, trailer, recreation vehicle, camping unit, bus, commercial truck or self-propelled or towable equipment or machinery of any sort shall be permitted to park on any Lot except in an enclosed structure or screened from view. No business vehicles displaying commercial signs or advertising shall be permitted to be parked within public view on any Lot, other than service vehicles contracted by Owners to perform specific services. No repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in garages or other enclosed structures. Owners shall not park more than two automobiles to be visible from any portion of the Property for any period more than seventy-two (72) hours, and no vehicles may be parked overnight on any street within the Property.

**Section 30. Visual Screening on Lots.** No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any Lot to be visible from adjoining property or streets. The drying of clothes in public view is prohibited, and the Owners or occupants of any Lot where the rear or side yard portion of the Lot is visible to the public shall construct and maintain a drying yard or other suitable enclosure to screen drying clothes from public view. Similarly, all



service areas, storage areas, loading areas, propane tanks, water storage tanks and appurtenant equipment, yard equipment, woodpiles or storage piles shall be kept screened, in order to conceal them from view from neighboring Lots or streets.

**Section 31. Construction Work.** Except in an emergency or when other unusual circumstances exist, as determined by the Architectural Control Committee, outside construction work or noisy interior construction work shall be permitted only after 7:00 a.m. and before 7:00 p.m. with no work permitted on Sunday and specified government holidays.

**Section 32. Antennas, Satellite Dishes and Other Transmission Devices.** Without the prior written approval of the Architectural Control Committee, no television or radio antenna, satellite dish, or other apparatus for the transmission of signals of any kind shall be placed, allowed or maintained outside a Living Unit or on the exterior of any other building or improvement located on a Lot, if it is visible from the street or another Lot.

**Section 33. Signs, Advertisements and Billboards; Street Address Signs.** No sign, advertisement, billboard or advertising structure of any kind shall be displayed to the public view on any portion of the Properties or any Lot or Living Unit except:

a. An Owner may erect one (1) sign on the Lot, not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of such Lot, advertising the property for sale.

b. Not more than two political signs, not exceeding 2' x 3' in area each, may be erected upon a Lot by the Owner of the Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that the signs shall not be erected more than thirty (30) days in advance of the election to which they pertain and shall be removed within three (3) days after such election.

c. School signs containing information about one or more children residing on the Lot and the school they attend shall be permitted so long as each sign is not more than 3' x 3' and is fastened only to a stake in the ground. There shall be no more than one sign for each child.

d. Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the Lot shall be permitted so long as the sign is not more than 8" x 8", or the sticker is no more than 4" x 4". There shall be no more than one sign. Stickers shall also be permitted upon windows and doors for the "Child Find" program or a similar program sponsored by a local police and/or local fire department.

e. Signs for street addresses shall be uniform throughout the Property and shall consist of a stone with minimum 4-inch numbers erected near the driveway to the residence. All signs shall be subject to the prior approval by the Architectural Control Committee. Reflective street address signs provided by the fire department are allowed.



f. A builder's sign must be removed from the Lot within fourteen (14) days after the house is occupied by an Owner.

g. The Association shall have the right to remove any sign, advertisement or billboard or structure which is placed on any portion of the Property in violation of this section and in so doing shall not be subject to any liability for trespass or other tort in connection with or arising from such removal.

**Section 34. Maintenance of Lot and Improvements.** The Owner of each Lot shall maintain the Lot, improvements and the unpaved portion of the adjacent street right-of-way, and the improvements, trees, hedges and planting thereon, in good condition and repair and in a neat and attractive condition. Reasonable amounts of construction materials and equipment may be stored on a Lot for reasonable periods of time during the construction of improvements, but only if the Lot is continuously kept in a reasonably clean and organized condition. The Association shall have the right, after ten (10) days' notice to the Owner of any Lot, setting forth the action intended to be taken by the Association, provided at the end of such time such action has not already been taken by such Owner, (a) to mow the grass thereon, (b) to remove any debris there from, (c) to trim or prune any tree, hedge, or planting that, in the opinion of the Association, by reason of its location or height or the manner in which it is permitted to grow, is detrimental to the enjoyment of adjoining property or is unattractive in appearance, (d) to repair or paint any fence thereon that is out of repair or not in harmony, with respect to color, with fencing on adjacent property, and (e) to do any and all things necessary or desirable in the opinion of the Association to place such property in a neat and attractive condition consistent with the intention of this Amended Declaration. The person who is the Owner of such property at the time such work is performed by the Association shall be personally obligated to reimburse the Association for the cost of such work within ten (10) days after it is performed by the Association, and if such amount is not paid within the same period of time, such Owner shall be obligated to pay interest thereon at the maximum lawful rate per annum allowed by applicable law, and to pay any attorneys' fees and court costs incurred by the Association in collecting said obligation, and all of the same shall be deemed Charges for all purposes and shall be secured by the continuing vendor's lien on such Owner's Lot.

**Section 35. Removal of Plants and Trees.** No trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point four (4) feet above ground level, other than dead or diseased vegetation, shall be cut, removed, or mutilated, except to provide room for construction of improvements in accordance with Plans approved by the Architectural Control Committee. Notwithstanding the foregoing, cedar and huisache trees may be removed at any time from a Lot by the Owner or from the Common Property by the Association.

**Section 36. Damage by Fire or Other Casualty.** All improvements within the Property that are destroyed partially or totally by fire, storm, or any other casualty shall be repaired or demolished within a reasonable period of time, and the Lot and improvements thereon, as applicable, restored to an orderly and attractive condition.

**Section 37. Rentals.** Nothing in the Amended Declaration shall prevent the rental of any entire Lot and the improvements thereon by the Owner for residential purposes, but lease or rental for



less than a term of six (6) months is not permitted. Owners must notify the Association within ten (10) days whenever entering into a lease and provide the Association with the name of the tenant, a copy of the lease and the current mailing address of the Owner. In no event, however, shall any rental or leasing be allowed except pursuant to a written agreement or form that affirmatively obligates all tenants and other residents of the Lot to abide by this Amended Declaration and the rules and regulations of the Association.

**Section 38. Hunting.** No hunting is allowed on the Properties. No discharge of handguns, rifles, shotguns or other firearms, pellet or air guns, bows or cross bows, or other weapons is allowed except as permitted by Texas law.

**Section 39. Noise.** No exterior speakers, horns, whistles, bells, or other sound devices (other than devices used exclusively for security, septic alarms, or public safety purposes) shall be located, used or placed on any position of the Property such that noise becomes or will become clearly audible at the property line of adjoining Owners.

**Section 40. Mining and Drilling Operations.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth.

**Section 41. Fireworks.** The storage or use of fireworks on any part of the Properties shall be prohibited at all times.

**Section 42. No Warranty of Enforceability.** While the Association has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article 8 or elsewhere in this Amended Declaration are or may be invalid or unenforceable for any reason or to any extent, the Association makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold the Association harmless therefrom.

## **ARTICLE 9. GENERAL PROVISIONS**

**Section 1. Enforcement.** The terms and provisions of this Amended Declaration shall run with and bind the land within the Property and shall inure to the benefit of and be enforceable by the Association and the Owner of any Lot, and by their respective legal representatives, heirs, successors and assigns. This Amended Declaration may be enforced in any proceeding at law or in equity against any person or entity violating, or threatening to violate any term or provision hereof, to enjoin or restrain violation or to recover damages, and against the Property to enforce any lien created by this Amended Declaration. Failure of the Association, or any Owner to enforce any term or provision of this Amended Declaration shall never be deemed a waiver of the right to do so thereafter.

**Section 2. Incorporation.** The terms and provisions of this Amended Declaration shall be construed as being adopted in each and every contract, deed, or conveyance hereafter conveying all



or any part of the land and/or Lots in the Property, whether or not referred to therein, and all estates conveyed therein and warranties of title contained therein shall be subject to the terms and provisions of this Amended Declaration.

**Section 3. Amendments.** This Amended Declaration may be amended in whole or in part by an instrument executed by the president of the Association when approved by not less than sixty-seven percent (67%) of the votes in the Association. All amendments shall be filed in the Real Property Records of Comal County, Texas. Following any such amendment, every reference herein to this Amended Declaration shall be held and construed to be a reference to this Amended Declaration as so amended.

**Section 4. Books and Records.** The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any Member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and any other matters to the end that inspection of the books and records by any Member will not become burdensome to nor constitute harassment of the Association.

**Section 5. Annexation.** Additional residential property and Common Properties may be annexed to the Properties. Annexation shall occur with the approval of two-thirds (2/3) of the votes in the Association.

a. The annexation of additional land shall be accomplished by the execution and filing for record by the owner of the property being added or annexed of any instrument which may be called "Supplemental Declaration" which shall at least set out and provide in substance the name of the owner of the property being added or annexed; the perimeter description of the property being added or annexed; the description of the residential areas and of the Common Properties of the property being added or annexed and the rights and easements of the Owners in and to the Common Properties; that the property is being added or annexed in accordance with the provisions of this Amended Declaration and that the property being added or annexed shall be developed, held, used, sold and conveyed in accordance with and subject to the provisions of this Amended Declaration; and that all of the provisions of this Amended Declaration shall apply to the property being added or annexed with the same force and effect as if said property were originally included therein as part of the original development. Such Supplemental Declaration may contain other provisions which are not inconsistent with the provisions of this Amended Declaration or the general scheme or plan to the development of Waggener Ranch as a residential development.

b. At such time as the Supplemental Declaration is filed for record as hereinabove provided, the addition or annexation shall be deemed accomplished, and the added or annexed area shall be a part of the Properties and subject to each and all of the provisions of this Amended Declaration and to the jurisdiction of the Association in the same manner and with the same force and effect as if such added or annexed property had been originally included in this Amended Declaration as part of the initial development.

c. After additions or annexations are made, all assessments collected by the Association from the Owners in the added or annexed areas shall be commingled with the assessments



collected from all other Owners so that there shall be a common maintenance fund for the Properties.

**Section 6. Rights of Mortgagees, Trustees or Lienholders.** No violations of any of these restrictions, covenants or conditions, shall affect or impair the rights of any mortgagee, trustee or lienholder under any mortgage or deed of trust, or the rights of any assignee of any mortgagee, trustee or lienholder under any such mortgage or deed of trust.

**Section 7. Building Sites.** With the prior written approval of the Architectural Control Committee, the Owner(s) of a group of Lots, each of which is adjacent to one or more other Lots in the group, may designate a part of a Lot, or any combination of Lots or portions of Lots, to be a building site or building sites. The front, rear and side lines of the platted Lots affected by any such action, as such lines are designated on the Subdivision Plat, shall be adjusted to conform to the front, rear and side lines of the new building sites; for building and other purposes. The side-lot utility easement, if applicable on the common property line of the two Lots to be combined, must be released or abandoned in accordance with applicable law, and the Owner will be responsible for the cost of relocating any utility lines and restoring the surface of any abandoned or relocated utility easements. Improvements, as permitted pursuant to this Amended Declaration, may be constructed on any such building site in accordance with the new front, rear and side lines thereof. Each such building site, upon being designated as such by the Owner(s) thereof and approved by the Architectural Control Committee, shall thereafter be a Lot for all purposes of this Amended Declaration, except that all future assessments payable by the Owner of a building site comprised of more than one Lot combined in accordance with this Article 9, Section 7 will be based upon an assessment for each of the originally platted Lots so combined.

**Section 8. Duration.** This Amended Declaration shall remain in full force and effect for a term of thirty (30) years from the date this Amended Declaration is recorded in the Real Property Records of Comal County, Texas, after which time this Amended Declaration shall be extended automatically for successive periods of ten (10) years unless and until an instrument signed by the Members entitled to cast not less than sixty seven percent (67%) of the votes in the Association has been filed for record in the Real Property Records of Comal County, Texas, agreeing to terminate this Amended Declaration.

**Section 9. Severability.** Invalidation of any term or provision of this Amended Declaration by judgment or otherwise shall not affect any other term or provision of this Amended Declaration, and this Amended Declaration shall remain in full force and effect except as to any terms and provisions which are invalidated, and the remaining terms or provisions of this Amended Declaration shall there forth be interpreted to be as restrictive as possible to preserve as much of the original intent of this Amended Declaration as possible.

**Section 10. Gender and Grammar.** The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.



**Section 11. Titles.** The titles of this Amended Declaration and of Articles and Sections contained herein are for convenience only and shall not be used to construe, interpret, or limit the meaning of any terms or provisions contained in this Amended Declaration.

**Section 12. Successors in Title.** The terms and provisions of this Amended Declaration shall apply to, be binding upon, and inure to the benefit of the Association, the Owners and their respective successors and assigns.

IN WITNESS WHEREOF, this Amended Declaration of Covenants, Conditions and Restrictions for Waggener Ranch. is executed as of the 23<sup>rd</sup> day of September, 2020.

WAGGENER RANCH PROPERTY OWNERS ASSOCIATION, INC.:

  
\_\_\_\_\_  
Creig Alan Rice, President

  
\_\_\_\_\_  
Patricia Green Solo, Secretary

STATE OF TEXAS       §  
                                  §  
COUNTY OF COMAL   §

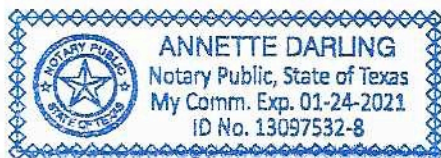
This instrument was acknowledged before me on the 23<sup>rd</sup> day of September, 2020, by Creig Alan Rice, President of Waggener Ranch Property Owners Association, Inc., a Texas corporation, on behalf of said corporation.



  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COMAL   §

This instrument was acknowledged before me on the 23<sup>rd</sup> day of September, 2020, by Patricia Green Solo, Secretary of Waggener Ranch Property Owners Association, Inc., a Texas corporation, on behalf of said corporation.



  
\_\_\_\_\_  
Notary Public, State of Texas

[See Exhibit "A" for Certification]

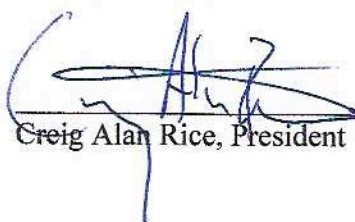


EXHIBIT "A"

CERTIFICATION

We, the undersigned hereby certify under the penalty of perjury, on the 23<sup>rd</sup> day of September, 2020, that the Amended Declaration of Covenants, Conditions and Restrictions set forth herein was duly adopted by vote of the Property Owners in accordance with applicable Texas Law.

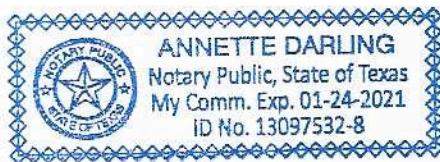
WAGGENER RANCH PROPERTY OWNERS ASSOCIATION, INC.:

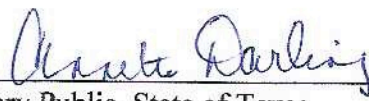
  
Creig Alan Rice, President

  
Patricia Green Solo, Secretary

STATE OF TEXAS       §  
                                  §  
COUNTY OF COMAL   §

This Certification was acknowledged before me on the 23<sup>rd</sup> day of September, 2020, by Creig Alan Rice, President of Waggener Ranch Property Owners Association, Inc., a Texas corporation, on behalf of said corporation.

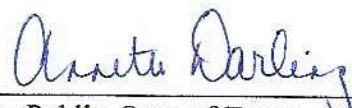


  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COMAL   §

This Certification was acknowledged before me on the 23<sup>rd</sup> day of September, 2020, by Patricia Green Solo, Secretary of Waggener Ranch Property Owners Association, Inc., a Texas corporation, on behalf of said corporation.



  
Notary Public, State of Texas





This page has been added to comply with the statutory requirement that the clerk shall stamp the recording information at the bottom of the last page.

This page becomes part of the document identified by the file clerk number affixed on preceding pages.

Filed and Recorded  
Official Public Records  
Bobbie Koepf, County Clerk  
Comal County, Texas  
09/23/2020 03:40:00 PM  
CSCHUL 38 Page(s)  
202006041312



*Bobbie Koepf*