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AFTER RECORDING RETURN TO:
PHILLIP SCHMANDT
MCGINNIS LOCHRIDGE
600 CONGRESS, SUITE 2100
AUSTIN, TEXAS 78701

VERAMENDI
MASTER COVENANT
[RESIDENTIAL]

(A Master Planned Community in Comal County, Texas)

NOTE: NO PORTION OF THE PROPERTY DESCRIBED ON EXHIBIT "A" IS SUBJECT TO THE TERMS OF THIS MASTER COVENANT UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE PROPERTY IS FILED IN THE OFFICIAL PUBLIC RECORDS OF COMAL COUNTY, TEXAS, IN ACCORDANCE WITH SECTION 10.05 BELOW.

Declarant: Veramendi Development Company, LLC, a Texas limited liability company

VERAMENDI
MASTER COVENANT
[RESIDENTIAL]

TABLE OF CONTENTS

ARTICLE I DEFINITIONS 2

ARTICLE II GENERAL RESTRICTIONS..... 8

 2.01 General..... 8

 2.02 Incorporation of Development Area Declarations 10

 2.03 Conceptual Plans..... 10

 2.04 Maximum Number of Lots 10

 2.05 Provision of Benefits and Services to Service Areas..... 10

 2.06 Veramendi Residential Community Council 11

ARTICLE III VERAMENDI RESIDENTIAL MASTER COMMUNITY, INC. 12

 3.01 Organization 12

 3.02 Neighborhoods..... 13

 3.03 Membership 13

 3.04 Voting Rights 16

 3.05 Voting Groups 19

 3.06 Vote Allocation 20

 3.07 Powers..... 21

 3.08 Common Area, Special Common Area and Area of Common Responsibility 24

 3.09 Indemnification 26

 3.10 Insurance 26

 3.11 Bulk Rate Contracts..... 26

 3.12 Community Technology..... 27

 3.13 Cooperation with the Community Council..... 28

ARTICLE IV INSURANCE 28

 4.01 Insurance 28

 4.02 Restoration 28

 4.03 Mechanic’s and Materialmen’s Lien 29

ARTICLE V COVENANT FOR ASSESSMENTS 29

 5.01 Assessments 29

 5.02 Maintenance Fund..... 30

 5.03 Regular Annual Assessments 30

 5.04 Special Common Area Assessments..... 30

 5.05 Service Area Assessments 31

 5.06 Special Assessments..... 31

 5.07 Individual Assessments..... 31

 5.08 Working Capital Assessment 32

5.09	Amount of Assessment.....	33
5.10	Late Charges.....	34
5.11	Owner’s Personal Obligation; Interest	34
5.12	Application of Payments.....	35
5.13	Assessment Lien and Foreclosure.....	35
5.14	Exempt Property.....	37
5.15	Fines and Damages Assessment	37
ARTICLE VI ARCHITECTURAL COVENANTS AND CONTROL.....		39
6.01	Purpose	39
6.02	Veramendi Residential Review.....	39
6.03	Architectural Control by Declarant	39
6.04	Architectural Control by Association.....	40
6.05	Prohibition of Construction, Alteration and Improvement	40
6.06	Architectural Approval	41
ARTICLE VII MORTGAGE PROVISIONS.....		43
7.01	Notice of Action.....	43
7.02	Examination of Books	44
7.03	Taxes, Assessments and Charges.....	44
ARTICLE VIII GENERAL PROVISIONS.....		44
8.01	Term	44
8.02	Eminent Domain	44
8.03	Amendment	45
8.04	Enforcement	45
8.05	Higher Authority.....	45
8.06	Severability	46
8.07	Conflicts.....	46
8.08	Gender.....	46
8.09	Acceptance by Grantees	46
8.10	Damage and Destruction.....	46
8.11	No Partition.....	47
8.12	Notices	48
8.13	View Impairment	48
8.14	Safety and Security.....	48
ARTICLE IX EASEMENTS		49
9.01	Right of Ingress and Egress.....	49
9.02	Reserved Easements.....	49
9.03	Roadway and Utility Easements	49
9.04	Subdivision Entry, Fencing and Landscape Easements	49
9.05	Easements for Special Events	50
9.06	Declarant as Attorney in Fact	50

ARTICLE X DEVELOPMENT RIGHTS50

 10.01 Development by Declarant50

 10.02 Special Declarant Rights..... 51

 10.03 Addition of Land.....51

 10.04 Withdrawal of Land.....52

 10.05 Notice of Applicability52

 10.06 Assignment of Declarant’s Rights.....53

ARTICLE XI DISPUTE RESOLUTION.....53

 11.01 Definitions53

 11.02 Agreement to Arbitrate55

 11.03 Binding Arbitration.....55

 11.04 Governing Rules.....55

 11.05 Statute of Limitations.....55

 11.06 Scope of Award; Modification or Vacation of Award; Qualifications.....55

 11.07 Other Matters and Discovery56

 11.08 Expenses.....56

VERAMENDI
MASTER COVENANT
[RESIDENTIAL]

This Veramendi Covenant [Residential] (this “Covenant”) is made by Veramendi Development Company, LLC, a Texas limited liability company (“Declarant”) and is as follows:

R E C I T A L S:

A. Declarant owns or has the right to acquire of approximately 2,462 acres of real property, more or less, located in Comal County, Texas, as more particularly described on Exhibit “A” attached hereto (the “Property”).

B. Upon the acquisition thereof, Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property.

C. Portions of the Property may be made subject to this Covenant upon the filing of one or more Notices of Applicability pursuant to *Section 10.05* below. Once a Notice of Applicability is filed pursuant to *Section 10.05*, the portion of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Covenant. In turn, the Development will be comprised of separate Development Areas (as defined below) which will be governed by and subject to separate Development Area Declarations (as defined below) in addition to this Covenant.

No portion of the Property is subject to the terms and provisions of this Covenant until a Notice of Applicability (as defined in *Section 10.05*) is filed in the Official Public Records of Comal County, Texas. A Notice of Applicability may only be filed by Declarant. If Declarant is not the owner of any portion of the Property then being made subject to the terms and provisions of the Covenant, the owner of the Property must execute the Notice of Applicability evidencing its consent to its recordation.

Property versus Development versus Development Area	
“Property”-	Described on Exhibit A. This is the land that <u>may be made</u> subject to this Covenant, from time to time, by the filing of one or more Notices of Applicability.
“Development”-	This is the portion of the land described on Exhibit A that <u>has been made</u> subject to this Covenant through the filing of a Notice of Applicability.
“Development Area”	This is a portion of the Development. In most circumstances, a Development Area will comprise a separately platted subdivision within the Development.

D. By the filing of this Covenant, Declarant serves notice that upon the further filing of one or more Notices of Applicability pursuant to the requirements of *Section 10.05* below, portions of the Property identified in such notice or notices will be subjected to the terms and provisions of this Covenant.

NOW, THEREFORE, it is hereby declared: (i) that those portions of the Property as and when subjected to this Covenant pursuant to *Section 10.05* below will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying those portions of the Property which are subjected to this Covenant pursuant to *Section 10.05* will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Covenant uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Covenant, the text will control.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Covenant will have the meanings hereinafter specified:

1.01 “Applicable Law” means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Development, and any other applicable building codes, zoning restrictions, permits and ordinances adopted by a Governmental Entity (defined below), including but not limited to the “City Ordinances,” as defined herein, which are in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes, ordinances and regulations specifically referenced in the Documents are “Applicable Law” on the effective date of the Document, and are not intended to apply to the Development if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.02 “Approval or Consent” as used in the Documents means advance written approval or consent that may be granted or withheld in the sole discretion of the party whose consent or approval is required.

1.03 “Arbitration Rules” has the meaning set forth in *Section 11.01*

1.04 “Assessment” or “Assessments” means assessments imposed by the Association under this Covenant.

1.05 “**Assessment Unit**” has the meaning set forth in *Section 5.09(b)*.

1.06 “**Association**” means the Veramendi Residential Master Community, Inc., a Texas nonprofit corporation, which will be created by Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Covenant.

1.07 “**Area of Common Responsibility**” means all of the properties and facilities for which the Association has responsibility under the Documents, or for which the Association otherwise agrees to assume responsibility, regardless of ownership. The Area of Common Responsibility includes the Common Area, Special Common Area, and may also include Lots and Condominium Units or portions thereof, and property dedicated to the public, such as public rights-of-way. The initial Area of Common Responsibility is described in *Section 3.08*.

1.08 “**Board**” means the Board of Directors, which is the governing body of the Association.

1.09 “**Bulk Rate Contract**” or “**Bulk Rate Contracts**” means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots and/or Condominium Units and/or Common Areas or Special Common Areas. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, broadband services, security services, trash pickup services, propane services, natural gas service, lawn maintenance services, and any other services of any kind or nature which are considered by the Board to be beneficial. The Board has no obligation to enter into any Bulk Rate Contracts for the provision services to Owners or Residents.

1.10 “**Bylaws**” means the Bylaws of the Association as adopted and as amended from time to time.

1.11 “**Certificate**” means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

1.12 “**Common Area**” means property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Lot or Condominium Unit. The Common Area also include any property that the Association holds possessory rights under a lease, license or any easement in favor of the Association. Some Common Area will be for the common use and enjoyment of the Development’s residents, *e.g.*, subdivision swimming pools or internal pocket parks, while some portion of the Common Area may be for the use and enjoyment of the public, *e.g.*, open space, parks, and recreational facilities. Open space, parks and/or recreational facilities dedicated to the public may be classified as Common Area under this Covenant to permit the Association to provide maintenance services to such facilities. No portion of any Common Area dedicated in whole or in part for public use may be designated as Special Common Area. Declarant, from time to time and at any time, may designate Common Area.

1.13 "**Community Council**" means the Veramendi Residential Community Council, Inc., if created by Declarant pursuant to *Section 2.06* below.

1.14 "**Community Covenant**" means the Community Covenant for Veramendi which creates the Veramendi Residential Community Council, Inc. and includes additional provisions regarding the operation of thereof, if created by Declarant pursuant to *Section 2.06* below.

1.15 "**Condominium Unit**" means an individual unit, including any common element assigned thereto, within a condominium regime, if any, established within the Development.

1.16 "**Declarant**" means Veramendi Development Company, LLC, a Texas limited liability company. Notwithstanding any provision in this Covenant to the contrary, Declarant may, by Recorded written instrument, assign in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Covenant.

The "Declarant" is the party who causes the Property to be developed for actual residential use. Declarant enjoys special privileges to help protect its investment in the Development. These special rights are described in this Covenant. Many of these rights do not terminate until either Declarant: (i) has sold all Lots or Condominium Units which may be created out of the Property; or (ii) voluntarily terminates these rights by a written instrument recorded in the Official Public Records of Comal County, Texas.

1.17 "**Design Guidelines**" means the standards for design, construction, landscaping, and exterior items placed on any Lot or Condominium Unit adopted by the Veramendi Residential Reviewer pursuant to *Section 6.06(b)*, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Development. The Design Guidelines may be Recorded as a separate written instrument or may be incorporated into a Notice of Applicability or Development Area Declaration by exhibit or otherwise. Until expiration or termination of the Development Period, any amendment or modification to the Design Guidelines must be approved in advance and in writing by the Declarant.

1.18 "**Development**" refers to any and all portions of the Property that are made subject to this Covenant pursuant to *Section 10.05* of this Covenant.

1.19 "**Development Agreement**" means that certain Development Agreement Between City of New Braunfels and Word-Borchers Ranch Joint Venture, as predecessor in interest to Declarant, for Proposed Mixed Use Development, dated as of February 25, 2013 filed

of record as Document No. 201506029547 in the Official Public Records of Comal County, Texas as amended from time to time.

1.20 “**Development Area**” means any part of the Development (less than the whole), which may be subject to Development Area Declarations in addition to being subject to this Covenant.

1.21 “**Development Area Declaration**” means, with respect to any Development Area, the separate instruments containing covenants, restrictions, conditions, limitations and/or easements, to which the property within such Development Area is subjected.

1.22 “**Development Period**” means the period in which Declarant owns or has the option to acquire all or any portion of the Property.

1.23 “**District**” means Comal County Water Improvement District No. 1.

1.24 “**Documents**” means the restrictions, covenants, and conditions contained in this Covenant, any Development Area Declaration, the Design Guidelines, Bylaws, or in any Rules promulgated by the Association pursuant to this Covenant or any Development Area Declaration, as adopted and amended from time to time. See *Table 1* for a summary of the Documents.

1.25 “**Governmental Entity**” means (i) a public improvement district created pursuant to Chapter 372, Subchapter B of the Texas Local Government Code; (ii) a municipal utility district or water control and improvement district created pursuant to Article XVI, Section 59 of the Constitution of Texas and Chapters 49, 51 and 54, Texas Water Code, including but not limited to Comal County Water Improvement District No. 1; or (iii) any other similarly constituted quasi-governmental entity created for the purpose of providing benefits or services to the Development and/or the Property; or (d) any other regulatory authority with jurisdiction over the Development.

1.26 “**Homebuilder**” means an Owner (other than the Declarant) who acquires a Lot for the construction of a single family residence for resale to a third party.

1.27 “**Improvement**” means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.28 "**Lot**" means any portion of the Development designated by Declarant or as shown as a subdivided lot on a Plat, other than Common Area or Special Common Area, or a Lot on which a condominium regime has been established, and which is intended and designated solely for single-family residential use.

1.29 "**Majority**" means more than half.

1.30 "**Manager**" has the meaning set forth in *Section 3.07(h)*.

1.31 "**Members**" means every person or entity that holds membership privileges in the Association.

1.32 "**Membership Agreement**" means an agreement in the form specified by the Board for execution by each Member, evidencing such Member's acknowledgment of and agreement to be bound by the terms of this Covenant. As provided in *Section 3.03(b)* below, the Board may elect to require each Member to execute a Membership Agreement.

1.33 "**Mortgage**" or "**Mortgages**" means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot or Condominium Unit.

1.34 "**Mortgagee**" or "**Mortgagees**" means the holder(s) of any Mortgage(s).

1.35 "**Notice of Applicability**" has the meaning set forth in *Section 10.05*.

1.36 "**Owner**" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot or a Condominium Unit. A Mortgagee under a Mortgage shall become an Owner if and when such Mortgagee acquires a fee simple interest in a Lot or Condominium Unit pursuant to foreclosure of the lien of its Mortgage or by grant of a deed in lieu of foreclosure of the lien of its Mortgage.

1.37 "**Plat**" means a subdivision plat of any portion of the Development as recorded in the Official Public Records of Comal County, Texas, and any amendments thereto.

1.38 "**Property**" means all of that certain real property described on Exhibit "A", attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 10.03* and *Section 10.04* of this Covenant.

1.39 "**Record, Recording, Recordation and Recorded**" means recorded in the Official Public Records of Comal County, Texas.

1.40 "**Rules**" means any instrument, however denominated, which is adopted by the Board for the regulation and management of the Development, including any amendments to those instruments.

1.41 "**Service Area**" means a group of Lots and/or Condominium Units designated as a separate Service Area pursuant to this Covenant for purpose of receiving benefits or services

from the Association which are not provided to all Lots and Condominium Units. A Service Area may be comprised of more than one housing type or structure and may include noncontiguous Lots. A Lot or Condominium Unit may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.04*.

1.42 “Service Area Assessments” means assessments levied against the Lots and/or Condominium Units in a particular Service Area to fund Service Area Expenses, as described in *Section 5.05*.

1.43 “Service Area Expenses” means the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Covenant.

1.44 “Special Common Area” means any interest in real property or improvements which is designated by Declarant in a Notice of Applicability filed pursuant to *Section 10.05*, in a Development Area Declaration or in any written instrument recorded by Declarant in the Official Public Records of Comal County, Texas (which designation will be made in the sole and absolute discretion of Declarant) as Common Area which benefit one or more, but less than all of the Lots, Condominium Units, Owners or Development Areas, and is or will be conveyed to the Association, or otherwise held by Declarant for the benefit of the Owners of property to which such Special Common Area benefits. The Notice of Applicability, Development Area Declaration, or other written notice will identify the Lots, Condominium Units, Owners or Development Areas benefited by such Special Common Area. By way of illustration and not limitation, Special Common Area might include such things as private roadways or gates, entry features, walkways or landscaping which Declarant desires to dedicate for the exclusive use of certain Lots and/or Condominium Units. All costs associated with maintenance, repair, replacement, and insurance of Special Common Area will be assessed as a Special Common Area Assessment against the Owners of the Lots and/or Condominium Units to which the Special Common Area is assigned. No portion of any Common Area, which is open to the public use, may be designated as Special Common Area.

1.45 “Sub-Association” means a property owners association created to administer all or a portion of a Development Area. The formation of a Sub-Association must be approved in advance and in writing by Declarant during the Development Period, or a Majority of the Board after expiration or termination of the Development Period.

1.46 “Sub-Declaration” means an independent declaration of covenants pertaining to all or a portion of a Development Area which provides for the creation of a Sub-Association and assessments to be levied by the Sub-Association to discharge costs and expenses anticipated to be incurred by the Sub-Association. Each Sub-Declaration must be approved in advance and in writing by Declarant during the Development Period, and a Majority of the Board after expiration or termination of the Development Period. Each Sub-Declaration will be subordinate to the terms and provisions of the Documents. In the event of a conflict between the terms and

provisions of a Sub-Declaration and the terms and provisions of the Documents, the terms and provisions of the Documents will control.

1.47 “Veramendi Residential Reviewer” means Declarant until Declarant no longer owns or has the option to acquire all or any portion of the Property. When Declarant no longer owns or has any option to acquire all or any portion of the Property, the rights of the Veramendi Residential Reviewer will automatically be transferred to the Architectural Control Committee appointed by the Board.

TABLE 1: DOCUMENTS	
Covenant (recorded in the Official Public Records of Comal County, Texas)	Creates obligations that are binding upon the Association and all present and future owners of Property made subject to the Covenant by the filing of a Notice of Applicability.
Notice of Applicability (recorded in the Official Public Records of Comal County, Texas)	Describes the portion of the Property being made subject to the terms and provisions of the Covenant.
Development Area Declaration (recorded in the Official Public Records of Comal County, Texas)	Contains additional covenants, conditions and restrictions governing portions of the Development.
Certificate of Formation (filed with the Secretary of State)	Establishes the Association as a Texas nonprofit corporation.
Bylaws (adopted by the Board of the Association)	Govern the Association’s internal affairs, such as elections, meetings, etc.
Design Guidelines (adopted by the Veramendi Residential Reviewer and recorded in the Official Public Records of Comal County, Texas)	Govern the design and architectural standard for the construction of Improvements and modifications thereto.
Rules (adopted by the Board of the Association)	Regulate the use of property, activities, and conduct within the Development.
Board Resolutions (adopted by the Board of the Association)	Establish rules, policies, and procedures for internal governance and activities of the Association.

ARTICLE II GENERAL RESTRICTIONS

2.01 General.

(a) Conditions and Restrictions. All Lots and Condominium Units within the Development, for which a Notice of Applicability has been filed in accordance with *Section 10.05*, will be owned, held, encumbered, leased, used, occupied and enjoyed subject to: (i) the applicable conditions, restrictions, reservations, and easements contained in this Covenant; (ii) any applicable conditions, restrictions, reservations, and

easements contained in the Development Area Declaration covering the Development Area in which such Lot or Condominium Unit is located; (iii) the Design Guidelines, as amended or modified as to such Lots or Condominium Units; and (iv) any Rules adopted by the Board. The Development Agreement contains a "Development and Design Control Document" that governs development activities in the Development. **NO PORTION OF THE PROPERTY WILL BE SUBJECT TO THE TERMS AND PROVISIONS OF THIS MASTER COVENANT UNTIL A NOTICE OF APPLICABILITY HAS BEEN FILED FOR SUCH PROPERTY IN ACCORDANCE WITH SECTION 10.05 OF THIS MASTER COVENANT.**

(b) Ordinances. Ordinances, requirements and regulations imposed by applicable governmental and quasi-governmental authorities are applicable to all Lots and Condominium Units within the Development. Compliance with the Documents is not a substitute for compliance with such ordinances, requirements and regulations. Please be advised that the Documents do not purport to list or describe each restriction that may be applicable to a Lot or Condominium Unit located within the Development. Each Owner is advised to review all ordinances, requirements, regulations, and encumbrances affecting the use and improvement of the Owner's Lot prior to submitting plans to the Veramendi Residential Reviewer for approval. Furthermore, approval by the Veramendi Residential Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations, or encumbrances which may affect the Owner's Lot or Condominium Unit. Certain ordinances, requirements, regulations, and encumbrances may benefit parties whose interests are not addressed by the Veramendi Residential Reviewer.

(c) Other Requirements. In addition to the terms of the Documents and the Development Agreement, the Property is also be subject to certain requirements pertaining to the use and development of the Property imposed by the City of New Braunfels and Comal County Water Improvement District No. 1, including but not limited to: (i) Chapter 14 (Buildings and Building Regulations) of the City of New Braunfels Code of Ordinances, as it may be amended from time to time, to the same extent as if the Property were located within the corporate city limits of the City of New Braunfels; and (ii) Sections 50-26 (Unsafe Buildings), 50-27 (Unoccupied Buildings), 50-56 (Definitions), 50-57 (Prohibited Accumulations, Litter, Weeds, Graffiti, Duty of Property Owner, Occupant), and Chapter 6 (Animals) of the City of New Braunfels Code of Ordinances, as they may be amended from time to time, as if the Property were located within the corporate city limited of the City of New Braunfels (collectively, the "City Ordinances"). The City Ordinances are incorporated herein by reference. A violation of the City Ordinances shall constitute a violation of the Documents. **EACH OWNER IS ADVISED TO REVIEW SUCH REQUIREMENTS PRIOR TO THE CONSTRUCTION OF ANY IMPROVEMENT WITHIN THE DEVELOPMENT TO INSURE THEIR STRICT COMPLIANCE WITH THE TERMS AND PROVISIONS THEREOF.**

(d) Health Care Facilities. No portion of the Properties may be used for a Health Care Facility as that term is defined in the Veramendi Master Covenant [Commercial] Recorded as Document No. 201706023765 of the Comal County real property records, as amended from time to time.

NOTICE

The Documents are subject to change from time to time. By owning or occupying a Lot or Condominium Unit, you agree to remain in compliance with the Documents, as amended or modified.

2.02 **Incorporation of Development Area Declarations.** Upon recordation of a Development Area Declaration in the Official Public Records of Comal County, Texas, such Development Area Declaration will, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Covenant, to the extent not in conflict with this Covenant, but will apply only to the Development Area described in and covered by such Development Area Declaration.

2.03 **Conceptual Plans.** All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Development and/or the Property (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any homebuilder or other developer of any portion of the Property and/or the Development makes any representation or warranty concerning such land uses and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property and/or the Development. Each Owner who acquires a Lot within the Development acknowledges that the Development is a master planned community, the development of which is likely to extend over many years, and agrees that the Association will not have the authority to engage in or use Association funds to support, protest, challenge, or make any other form of objection to changes in the Conceptual Plans.

The Development is a master planned community which will be developed over a number of years. Changes may be made to the plans for the Development from time to time.

2.04 **Maximum Number of Lots.** The maximum number of Lots which may be made subject to the terms of this Covenant is six thousand (6,000).

2.05 **Provision of Benefits and Services to Service Areas.**

(a) **Declarant Designation.** Declarant, in a Notice of Applicability filed pursuant to *Section 10.05* or in any written notice recorded in the Official Public Records of Comal County, Texas, may assign Lots and/or Condominium Units to one or more

Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots and/or Condominium Units in addition to those which the Association generally provides to the Development. Such benefits or services may include landscape maintenance. During the Development Period, Declarant may unilaterally amend any Notice of Applicability or any written notice that it has recorded in the Official Public Records of Comal County, Texas, to re-designate Service Area boundaries or to terminate any Service Area. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots and/or Condominium Units within the Service Area as a Service Area Assessment.

(b) Owner Petition. In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots and/or Condominium Units as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Lots and/or Condominium Units, or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots and/or Condominium Units within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the charge to be made therefor, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot and/or Condominium Unit among all Service Areas receiving the same service). Upon written approval of the proposal by Owners of at least sixty-seven percent (67%) of the Lots and/or Condominium Units within the proposed Service Area and the Declarant (during the Development Period), the Association will provide the requested benefits or services on the terms set forth in the proposal. The cost and administrative charges associated with such benefits or services will be assessed against the Lots and/or Condominium Unit within such Service Area as a Service Area Assessment.

2.06 Veramendi Residential Community Council.

(a) Community Programs. Declarant hereby reserves the right, but will have no obligation, to create the Veramendi Residential Community Council, which may serve as a means to encourage and support community interaction within Veramendi. The Veramendi Residential Community Council, if created, will exist to encourage and provide a means for certain Owners and residents of Veramendi to participate in community-oriented affairs, services, programs, and activities. The Association may contribute money, real or personal property, or services to such entity.

(b) Community Covenant. If created, the Veramendi Residential Community Council will have rights and responsibilities set forth in the Community Covenant and the organization documents of the Veramendi Residential Community Council. To secure and facilitate Declarant's ability to file a Community Covenant, each Owner, by

accepting a deed to a Lot or Condominium Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Lot or Condominium Unit, and any other person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot or Condominium Unit, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and person's irrevocable attorney-in-fact, with full power of substitution, only for the purpose of filing the Community Covenant which will subject each Owner to the terms and provisions thereof. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party.

2.07 **Drilling and Mining.** No portion of the Development may 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. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction improvements and/or the development of the Development. Furthermore, this provision will not be interpreted to prevent the drilling of water wells approved in advance by the Veramendi Commercial Reviewer and operated by an Approved Water Well Driller, which are required to provide water to all or any portion of the Property or the Development. An "**Approved Water Well Driller**" means Declarant or another person or entity designated by Declarant, which may include without limitation an affiliate of Declarant, the Association or the District. Each Owner acknowledges that Declarant, or Declarant's predecessor, has reserved all rights in groundwater in, on or under the Development an all oil and gas rights relating to the Development. All water wells must also be approved in advance by any applicable Governmental Entity.

2.08 **BMPs.** The Development Agreement requires Declarant or its affiliates to install and operate water quality and drainage systems and methods (defined in the Development Agreement as "**BMPs**") within easements located within the Development. Upon Conveyance to the Association of an easement containing a BMP, the Association shall assume all costs to maintain, operate and, if necessary, improve or repair, the BMPs. Prior to such conveyance, Declarant shall be responsible for the BMPs. The Association may contract with the District or another entity to perform such obligations. The Association shall determine whether the BMPs are Common Area or Special Common Area.

ARTICLE III VERAMENDI RESIDENTIAL MASTER COMMUNITY, INC.

3.01 **Organization.** The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas nonprofit

corporation. Neither the Certificate nor the Bylaws will for any reason be amended, otherwise changed, or interpreted so as to be inconsistent with this Covenant.

3.02 **Neighborhoods.** Every Lot and Condominium Unit will be located within a Neighborhood. Lots and Condominium Units are grouped into Neighborhoods to: (i) facilitate a system of representative voting on matters which this Covenant or any Development Area Declaration require approval of the Association's membership; and (ii) to promote a sense of community and belonging by permitting Owners and residents within a Neighborhood to share, discuss and take action on issues unique to their Neighborhood. A Neighborhood may be comprised of any number of Lots or Condominium Units, as well as Lots or Condominium Units that are not contiguous to one another. Each Neighborhood will elect one "Neighborhood Delegate" to cast the votes allocated to all Lots and Condominium Units in that Neighborhood on matters requiring a vote of the Owners, as described below in this *Article 3*. Each Notice of Applicability filed pursuant to *Section 10.05* for the purpose of annexing portions of the Property into the Development shall initially assign the property described therein to a specific Neighborhood which may then be existing or newly created. During the Development Period, Declarant may record an amendment to any previously recorded Notice of Applicability filed pursuant to *Section 10.05* to designate or change Neighborhood boundaries.

3.03 **Membership.**

(a) **Mandatory Membership.** Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot or Condominium Unit that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot or Condominium Unit, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot or Condominium Unit.

<p style="text-align: center;">If you acquire a Lot or Condominium Unit you automatically become a member of the Association. <u>Membership is Mandatory!</u></p>
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(b) **Membership Agreement.** If required by the Board, each Owner, other than Declarant, must execute a Membership Agreement and deliver the same to the Association prior to or concurrently with the recording of a deed conveying fee title to a Lot or Condominium Unit to such Owner. Each Owner must notify the immediate transferee of his Lot or Condominium Unit of such transferee's obligation to execute and deliver a Membership Agreement, but the failure to notify a transferee will not relieve such transferee of his obligations under this *Section 3.03(b)*. The failure to execute a Membership Agreement will not prevent any person from being a Member or Owner under the terms of the Certificate, Bylaws or Documents, or excuse any Member from the payment of Assessments. If a Membership Agreement is required by the Board, an Owner who has not executed and delivered a Membership Agreement will automatically forfeit his right to vote as a Member and additionally forfeit his right to the use and enjoyment of the Common Area and applicable Special Common Area.

Such Owner will not be entitled to restoration of his voting privileges and rights in the Common Area or applicable Special Common Area until execution and delivery of a Membership Agreement by such Owner. However, the Board may, at the Board's sole discretion, provide that a Member will be entitled to the full privileges of membership in the Association, notwithstanding the failure to execute a Membership Agreement. In the event Members are entitled to a key, membership card or other token evidencing or facilitating the right to use any Improvements erected or placed on the Common Area or Special Common Area, the Board may require any Member who has not executed a Membership Agreement to return the same to the Board immediately.

(c) Owner Information. Within thirty (30) days after acquiring legal title to a Lot or Condominium Unit, each Owner must provide the Association with: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot or Condominium Unit; (2) the Owner's address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name and phone number of any resident other than the Owner.

You may be required to execute a Membership Agreement before using any of the Association's property or voting on any Association matter.

Your obligation to pay assessments to the Association and comply with this Covenant, any applicable Development Area Declaration, the Design Guidelines, or the Rules will not be affected by your failure to execute a Membership Agreement.

You must provide certain information to the Association upon acquiring a Lot or Condominium Unit.

(d) Easement of Enjoyment – Common Area. Every Member will have a right and easement of enjoyment in and to all of the Common Area and an access easement by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot or Condominium Unit, subject to *Section 3.03(b)* above and subject to the following restrictions and reservations:

(i) The right of the Association to suspend the Member's voting rights and right to use the Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such member is in violation of any provision of this Covenant;

(ii) The right of the Association and Declarant (during the Development Period) to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose;

(iii) The right of the Association and Declarant (during the Development Period) to grant easements or licenses over and across the Common Area;

(iv) The right of the Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;

(v) The right of the Association to make reasonable Rules regarding the use of the Common Area and any Improvements thereon; and

(vi) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

(e) Easement of Enjoyment – Special Common Area. Each Owner of a Lot or Condominium Unit which has been designated as a beneficiary of Special Common Area in a Notice of Applicability or Development Area Declaration, will have a right and easement of enjoyment in and to all of such Special Common Area, and an access easement by and through such Special Common Area, which easement will be appurtenant to and will pass with title to such Owner's Lot or Condominium Unit, subject to *Section 3.03(b)* above and subject to the following restrictions and reservations:

(i) The right of Declarant to restrict the use of the Special Common Area to the beneficiaries designated in a Notice of Applicability filed pursuant to *Section 10.05* or a Development Area Declaration;

(ii) The right of the Association to suspend the Members voting rights and right to use the Special Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such Member is in violation of any provision of this Covenant;

(iii) The right of the Association and Declarant (during the Development Period) to dedicate or transfer all or any part of the Special Common Area to any public agency, authority or utility for any purpose;

(iv) The right of the Association and Declarant (during the Development Period) to grant easements or licenses over and across the Special Common Area to any third party;

(v) The right of the Association to borrow money for the purpose of improving the Special Common Area, and, in furtherance thereof, mortgage the Special Common Area;

(vi) The right of the Association to make reasonable Rules regarding use of the Special Common Area and any Improvements thereon; and

(vii) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

3.04 **Voting Rights.**

(a) **Neighborhood Delegates.**

(i) **Representative System.** Due to the number of Lots and Condominium Units that may be developed in the Development, this Covenant provides for a representative system of voting. The Owners of Lots and Condominium Units in each Neighborhood elect a “**Neighborhood Delegate**” and an alternative Neighborhood Delegate, in the manner provided below, to cast the votes of all Lots and Condominium Units in the Neighborhood on matters requiring a vote of the membership, except where this Covenant specifically requires a vote of the Owners. However, until such time as the Board first calls for election of a Neighborhood Delegate for a particular Neighborhood, each Owner of a Lot or Condominium Unit in such Neighborhood shall be considered a “Neighborhood Delegate” and may personally cast the vote allocated to such Owner’s Lot or Condominium Unit on any issue requiring a vote of the Neighborhood Delegates under this Covenant.

(ii) **Candidates.** Candidates for election as the Neighborhood Delegate and alternate Neighborhood Delegate from a Neighborhood shall be Owners of Lots or Condominium Units in the Neighborhood, spouses of such Owners, or residents of the Neighborhood. The Neighborhood Delegate and the alternate Neighborhood Delegate shall be elected on a biennial basis (once every two years), either by written ballot or at a meeting of the Owners within each Neighborhood, as the Board determines; provided, upon written petition signed by Owners holding at least ten percent (10%) of the votes within any Neighborhood, the election for such Neighborhood shall be held at a meeting. The presence, in person or by proxy, of Owners representing at least twenty-five percent (25%) of the total votes in a Neighborhood shall constitute a quorum at any Neighborhood meeting.

(iii) **Election.** Unless otherwise provided below, the Board shall call for the first election of a Neighborhood Delegate from a Neighborhood not later than four (4) years after the first conveyance of a Lot or Condominium Unit in the Neighborhood to a Person other than Declarant. The candidate for each position who receives the greatest number of votes shall be elected to serve until his or her successor is elected. During the Development Sale Period, the Declarant may elect, by written instrument in the Official Public Records of

Comal County, Texas, to postpone the election of Neighborhood Delegates. If Declarant elects to postpone the election of Neighborhood Delegates, the notice will specify an alternate date on which the election will occur. If the date specified in the notice occurs after the expiration or termination of the Development Sale Period, then in such event a Majority of the Board will have the right to determine whether an election of the Neighborhood Delegates will be held. Until the election of Neighborhood Delegates occurs, each Owner of a Lot or Condominium Unit in such Neighborhood shall be considered a "Neighborhood Delegate" and may personally cast the vote allocated to such Owner's Lot or Condominium Unit on any issue requiring a vote of the Neighborhood Delegates under this Covenant.

(iv) Removal. Any Neighborhood Delegate may be removed, with or without cause, upon the vote or written petition of Owners holding a Majority of the votes allocated to the Lots and Condominium Units in the Neighborhood that the Neighborhood Delegate represents.

(v) Voting. The Neighborhood Delegate or, in his or her absence, the alternate Neighborhood Delegate attends Association meetings and casts all votes allocated to Lots and Condominium Units in the Neighborhood that he or she represents on any matter as to which such Neighborhood Delegate is entitled to vote under this Covenant. A Neighborhood Delegate may cast all votes allocated to Lots and Condominium Units in the Neighborhood in such delegate's discretion and may, but need not, poll the Owners of Lots and Condominium Units in the Neighborhood which he or she represents prior to voting.

(vi) Authority. Neighborhood Delegates are subordinate to the Board and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

(b) Board of Directors.

(i) Control by Declarant. **Notwithstanding the foregoing or any provision to the contrary in this Covenant, and except as otherwise provided herein, until expiration or termination of the Development Period, Declarant will be entitled to appoint and remove all Board members and officers of the Association and their successors (any appointment of a successor will be deemed a removal of the Board member being replaced by such appointment).** Declarant, at its option, may assign or delegate, in whole or in part, its rights and powers to the Association, the Board or any other entity provided such designation is in writing. Declarant may terminate its right as to the appointment and removal of one or all the Board members or officers of the

Association by the recordation of a termination notice executed by Declarant and recorded in the Official Public Records of Comal County, Texas. In the event Declarant terminates its right to appointment and remove less than all of the Board members of the Association, the Board positions to which the termination applies will be elected by the Neighborhood Delegates. Each Board member elected by the Neighborhood Delegates in accordance with the foregoing sentence will be elected for a term of one (1) year.

(ii) Interim Director Election. Within one hundred and twenty (120) days after seventy-five percent (75%) of the maximum number of Lots that may be subjected to the terms and provisions of this Covenant have been conveyed to Owners other than Declarant or a Homebuilder, or sooner as determined by Declarant, the President of the Association will thereupon call a meeting of the Members or Neighborhood Delegates (the “**Initial Member Election Meeting**”) where the Members or Neighborhood Delegates, as applicable, other than Declarant, will elect one (1) Director, for a one (1) year term (“**Initial Member Elected Director**”). Declarant will continue to appoint and remove two-thirds (2/3) of the Board after the Initial Member Election Meeting until expiration or termination of the Development Period. Notwithstanding the foregoing, the Initial Member Elected Director’s term will expire as of the date of the Member Election Meeting (as defined below).

(iii) Post-Development Period. At the expiration or termination of the Development Period, the Declarant will thereupon call a meeting of the Members of the Association where the Declarant appointed Directors will resign and the Members or Neighborhood Delegates, as applicable, will elect three (3) new directors (to replace all Declarant appointed Directors and the Initial Member Elected Director) (the “**Member Election Meeting**”), one (1) Director for a three (3) year term, one (1) Director for a two (2) year term, and one (1) Director for a one (1) year term (with the individual receiving the highest number of votes to serve the three (3) year term, the individual receiving the next highest number of votes to serve the two (2) year term, and the individual receiving the third highest number of votes to serve a one (1) year term). Notwithstanding the foregoing provision, if a Voting Group Designation is filed in accordance with the Covenant such designation may establish a different number of Board members to be elected at the Member Election Meeting provided that in any event the number of Board members shall be no less than three (3) in number. The Voting Group designation may also assign an initial term to each Board member position. A Voting Group Designation which establishes a different number of Board members and the initial terms of such Board members shall be deemed an amendment to the Bylaws. Upon expiration of the term of a Director elected by the Members or Neighborhood Delegates pursuant to this S *Section 3.04(b)(iii)*, his or her successor will be elected for a term of two (2) years.

(c) Co-Owners. In any situation in which an Owner is entitled personally to exercise the vote allocated to such Owner's Lot or Condominium Unit, if there is more than one Owner of a portion of the fee simple interest in the Lot or Condominium Unit, the vote for such Lot or Condominium Unit shall be exercised as the co-Owners holding a Majority of the ownership interest in the Lot or Condominium Unit determine among themselves and designate in writing to the Secretary of the Association (or as designated in the Membership Agreement relating to such Lot if required by the Board) prior to the close of balloting. Any co-Owner may cast the vote for the Lot or Condominium Unit, and Majority agreement shall be conclusively presumed unless another co-Owner of the Lot or Condominium Unit protests promptly to the President or other person presiding over the meeting on the balloting, in the case of a vote taken outside of a meeting. In the absence of a Majority agreement, the Lot or Condominium Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently. In no event will the vote for such Lot or Condominium Unit exceed the total votes to which such Lot or Condominium Unit is otherwise entitled pursuant to *Section 3.06* below. Notwithstanding the foregoing, all co-Owners of a Lot or Condominium Unit shall be Members of the Association.

(d) Suspension. The right of any Owner to vote may be suspended by the Association, acting through the Board, for any time period during which any Assessment against such Owner's Lot or Condominium Unit remains past due, for any period during which such Owner or such Owner's Lot(s) or Condominium Unit(s) are in violation of this Covenant and, as provided in *Section 3.03(b)* above, for any period during which such Owner has failed to execute and deliver a Membership Agreement, if required by the Board. In addition, Declarant may suspend the right of any Owner to vote during the period such Owner's Lot or Condominium Unit is exempt from Assessments in accordance with *Section 5.09(f)*.

3.05 Voting Groups. "Voting Groups" permit groups with dissimilar interests within a Neighborhood the opportunity to be represented on the Board and to avoid situations in which one or more, but less than all, groups are able to appoint or elect all Board members allocated to a particular Neighborhood. The Declarant hereby reserves the right to create and group certain Owners or Neighborhoods into Voting Groups by recording an instrument in the Official Public Records of Comal County, Texas, identifying the Voting Groups and designating which Owners or Neighborhoods belong to which Voting Groups. If established, then upon the expiration or termination of the Development Period, the Owners within each Voting Group will vote on a separate slate of candidates for election of Directors within each voting group, with each Voting Group electing an equal number of Directors and any additional Director elected at large by all Members, represented by the Neighborhood Delegates, which Directors will serve until their respective successors have been duly elected or appointed. Voting Groups will be established, if at all, not later than the date of the expiration of the Development Period. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of the Development Period by recording in the Official Public Records of

Comal County, Texas, an amendment to any previously recorded written notice to designate or change the composition of any Voting Group.

3.06 Vote Allocation.

(a) Lot Owner Allocation. The Owner of each Lot will be allocated one (1) vote for each Lot so owned. In the event of the re-subdivision of any Lot into two or more Lots: (i) the number of votes to which such Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision, e.g., each Lot resulting from the re-subdivision will be entitled to one (1) vote; and (ii) each Lot resulting from the re-subdivision will be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights and Assessments will continue to be determined according to the number of original Lots contained in such consolidated Lot. Nothing in this Covenant will be construed as authorization for any re-subdivision or consolidation of Lots, such actions being subject to the conditions and restrictions of the applicable Development Area Declaration.

(b) Condominium Owner Allocation. Each Owner of a Condominium Unit will be allocated the number of votes for such Condominium Unit so owned as determined by Declarant at the time that a Development Area Declaration is first recorded in the Official Public Records of Comal County, Texas for the Development Area within which such Condominium Unit is located. Declarant will determine such votes in its sole discretion, taking into account, among other things, the relationship of the Condominium Units to the entire Development. Declarant's determination regarding the number of votes to which such Owners will be entitled will be final, binding and conclusive. Such determination of Declarant may also be set forth in the notice filed by Declarant pursuant to *Section 10.05* below for the Development Area within which such Condominium Units are located. Prior to the time any Condominium Units in a Development Area are conveyed by Declarant to any person not affiliated with Declarant, Declarant may amend or modify its allocation of votes by filing an amended notice in the Official Public Records of Comal County, Texas, setting forth the amended allocation. In addition, Declarant, in its sole and absolute discretion, may modify or amend (which amendment or modification may be effected after Declarant's conveyance of any Condominium Units to any person not affiliated with Declarant) the number of votes previously assigned to a Condominium Unit if the Improvements actually constructed on the Condominium Unit differ substantially from the Improvements contemplated to be constructed thereon at the time a notice allocating votes thereto was originally filed. In the event of a modification to the votes allocated to a Condominium Unit, Declarant will file of record an amended vote determination setting forth the revised allocation of votes attributable to such Condominium Unit

(c) Declarant Allocation. In addition to the votes to which Declarant is entitled by reason of *Section 3.06(a)* and *Section 3.06(b)*, for every one (1) vote outstanding

in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

3.07 **Powers.** The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or this Covenant. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) **Rules and Bylaws.** To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such Rules and Bylaws not in conflict with this Covenant as it deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or of the Association;

When you acquire a Lot or Condominium Unit, you are required to comply with the terms of ALL of the Documents!

(b) **Insurance.** To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions;

(c) **Records.** To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Documents available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours;

(d) **Assessments.** To levy and collect assessments and to determine Assessment Units, as provided in *Article 5* below;

(e) **Right of Entry and Enforcement.** To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon or into any Condominium Unit for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Documents. The expense incurred by the Association in connection with the entry upon any Lot or into any Condominium Unit and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot or the Condominium Unit so entered, will be deemed a Special Assessment against such Lot or Condominium Unit, will be secured by a lien upon such Lot or Condominium Unit, and will be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on

behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Documents. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Documents; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or their successors or assigns. The Association may not alter or demolish any Improvements on any Lot or Condominium Unit other than Common Area or Special Common Area in enforcing this Covenant before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) or Condominium Unit(s) has been obtained. **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.07(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE;**

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association;

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area or Special Common Area, in compliance with the use and occupancy restrictions imposed by the Documents or by any Governmental Entity, for the purpose of constructing, erecting, operating or maintaining: (i) parks, parkways or other recreational facilities or structures; (ii) roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths; (iii) lines, cables, wires, conduits, pipelines or other devices for utility purposes; (iv) sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or (v) any similar improvements or facilities;

(h) Manager. 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. Personnel may be employed directly by the Association or may be furnished by the Manager. Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon sixty (60) days written notice to the Manager. To the extent permitted by law, the Board

may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **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;**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for any portion of the Property or the Development and any Common Area, including but not limited to private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes;

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law (including the Texas Business Organizations Code) or under the terms of the Documents or as determined by the Board;

(k) Construction. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board;

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, Special Common Area, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members;

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise;

(n) Authority with Respect to Development Area Declaration. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any Development Area Declaration. Any decision by the Association to delay or defer the exercise of the power and authority granted by this *Section 3.07(n)* will not subsequently in any way limit, impair or affect ability of the Association to exercise such power and authority;

(o) Allocation of Votes. To determine votes when permitted pursuant to *Section 3.06* above;

(p) Membership Privileges. To establish Rules governing and limiting the use of the Common Area, Special Common Area, and any Improvements thereon; and

(q) Owner Education. To implement procedures and rules pertaining to the use of pesticides, herbicides and fertilizers, maintaining wildfire defensible space, and mitigating and enhancing wildlife impact, and to periodically educate Owners, through newsletters or the distribution of appropriate written materials, about the sensitivity of the Texas Hill Country ecosystem and each Owner's potential impact on water quality, wildfire safety and wildlife.

3.08 Common Area, Special Common Area and Area of Common Responsibility.

(a) Transfers and Conveyance by Declarant. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant may transfer or convey to the Association interests in real or personal property within or for the benefit of the Development, or the Development and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Such property, rights, and/or obligations will be accepted by the Association and thereafter will be maintained as Common Area or Special Common Area, as applicable, by the Association for the benefit of the Development and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Declarant shall have no obligation to fund a reserve or replacement fund for the property conveyed to the Association, regardless of the age of the property or improvements when conveyed. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment to the extent conveyed in error or needed to make minor adjustments in property lines.

(b) Maintenance of Areas of Common Responsibility. The Association shall maintain the Area of Common Responsibility. The Area of Common Responsibility includes, but is not limited to:

(i) The Common Area including but not limited to all landscaping and other flora, parks, ponds, signage, structures, and improvements, including any private streets, and bike and pedestrian pathways/trails, situated upon the Common Area;

(ii) The Special Common Area;

(iii) Landscaping, sidewalks, street-lights, and signage within public rights-of-way within or abutting the Development, except to the extent that responsibility therefore is assigned to the Owners of adjacent Lots or Condominium Units;

(iv) Such portions of any additional property as may be included within the Area of Common Responsibility pursuant to this Covenant, any Development Area Declaration, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association, including property not owned by the Association, such as Lots, Condominium Units and property dedicated to the public; and

(v) Any property and facilities that Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and some or all of its Members. Declarant shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility and be maintained by the Association until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

(c) Cost Allocation. Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a common expense to be included in the Regular Annual Assessments levied by the Association, without prejudice to the Association's right to seek reimbursement from the owner(s) of, or other persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Covenant, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair, and replacement of Special Common Area shall be a Service Area Expense assessed against the Service Area(s) to which the Special Common Area is assigned, notwithstanding that the Association may be responsible for performing such maintenance.

(d) Failure to Maintain. In the event that the Association fails properly to perform its maintenance responsibilities hereunder, Declarant during the Development Period may, upon not less than ten (10) days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

(e) Relationships with Other Properties and Entities. The Association may contract with the owner of any neighboring property and any entity that provides services to all or any portion of the Members for the purpose of sharing costs associated with: (a) maintenance and operation of mutually beneficial properties or facilities; and (b) provision of mutually beneficial services.

(f) Relationships with Governmental Entities and Tax Exempt Organizations. The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to Governmental Entities or nonprofit, tax-exempt organizations, the operation of which confers some benefit upon the Development, the Association, its members, or residents.

The Association may contribute money, real or personal property, or services to such entity. Any such contribution shall be a common expense to be included in the assessments levied by the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code (the "**Code**"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time. The Association may maintain multiple-use facilities within the Development and allow use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for the use of such facilities.

3.09 **Indemnification.** To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

3.10 **Insurance.** The Board may purchase and maintain, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability or otherwise.

3.11 **Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 3.07* hereinabove, the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot or Condominium Unit. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under

the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Covenant with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot or Condominium Unit which is reserved under the terms and provisions of this Covenant. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such twelve (12) day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the occupant of such Owner's Lot or Condominium Unit) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the occupant of such Owner's Lot or Condominium Unit) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

3.12 Community Technology.

(a) Community Systems. Without limiting the generality of *Section 3.07*, the Association is specifically authorized to provide, or to enter into contracts with other persons to provide, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Development ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. The Association shall have no obligation to utilize any particular provider(s).

(b) Opportunities for Community Interaction. The Association may make use of computers, the internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology related services and opportunities for Owners and occupants to interact and participate in Association-sponsored activities. To the extent Texas law permits, and unless otherwise specifically prohibited in the Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means. The Board will specifically have the authority to adopt policies and procedures related to: (i) Community Systems access by Owners,

Residents and other parties; (ii) using the Community Systems for the purpose of sending any notice required by the Documents; and (iii) electronic voting and the establishment of any quorum.

3.13 **Cooperation with the Community Council.** The Association will cooperate with the Veramendi Residential Community Council, if created, involving the Veramendi Residential Community Council's obligations and responsibilities under the Community Covenant. For example, to the extent reasonable and financially feasible in the Board's discretion, the Association will permit use of Common Area by the Veramendi Residential Community Council and "chartered clubs" and other volunteer groups operated by or through the Veramendi Residential Community Council, for their offices, programs, activities, and services.

ARTICLE IV INSURANCE

4.01 **Insurance.** Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot or Condominium Unit. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot or Condominium Unit. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot, a Condominium Unit, or any Improvements or personal property located on a Lot or contained within a Condominium Unit.

4.02 **Restoration.** In the event of any fire or other casualty, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the

Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month will be added to the Assessment chargeable to the Owner's Lot or Condominium Unit. Any such amounts added to the Assessments chargeable against a Lot or Condominium Unit will be secured by the liens reserved in the Covenant for Assessments and may be collected by any means provided in this Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot or Condominium Unit. **EACH SUCH OWNER WILL RELEASE, INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

4.03 **Mechanic's and Materialmen's Lien.** Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this Article 4, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE V COVENANT FOR ASSESSMENTS

5.01 **Assessments.**

(a) **Established by Board.** Assessments established by the Board pursuant to the provisions of this *Article 5* will be levied against each Lot and Condominium Unit in amounts determined pursuant to *Section 5.09* below. The total amount of Assessments will be determined by the Board pursuant to *Section 5.03, 5.04, 5.05, 5.06* and/or *5.07*.

(b) **Personal Obligation; Lien.** Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot or Condominium Unit against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon and each such Condominium Unit (such lien, with respect to any Lot or Condominium Unit not in existence on the date

hereof, will be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

(c) Declarant Subsidy. Declarant may, but is not obligated, to reduce Assessments which would otherwise be levied against Lots and Condominium Units for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. Any subsidy and the characterization thereof will be disclosed as a line item in the annual budget prepared by the Board and attributable to such Assessments. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

5.02 Maintenance Fund. The Board will establish one or more accounts into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under the Documents and the Texas Business Organizations Code. The funds of the Association may be used for any purpose authorized by the Documents and the Texas Business Organizations Code, as each may be amended from time to time.

5.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Covenant, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the covenants and restrictions contained herein, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. The budget prepared by the Association for the purpose of determining Regular Annual Assessments will exclude the maintenance, repair and management costs and expenses associated with any Special Common Area. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such Regular Annual Assessments will be due and payable to the Association on anniversary of the date the Owner first acquired a Lot or Condominium Unit or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.04 Special Common Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget covering the estimated expenses to be incurred by the Association to maintain, repair, or manage any Special Common Area. The budget will be an estimate of the amount needed to maintain, repair and manage such Special Common Area

including a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and surplus from the prior year's fund. The level of Special Common Area Assessments will be set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including non-payment of any individual Special Common Area Assessment, the Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All such Special Common Area Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.05 **Service Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year. The total amount of estimated Service Area Expenses for each Service Area will be allocated equally among all Lots and/or Condominium Units in the benefited Service Area and will be levied as a Service Area Assessment. All amounts that the Association collects as Service Area Assessments will be held in trust for and expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general funds.

5.06 **Special Assessments.** In addition to the Regular Annual Assessments provided for above, the Board may levy Special Assessments whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under this Covenant. The amount of any Special Assessments will be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Special Common Area. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. Any Special Assessments levied by the Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Special Common Area will be levied against all Owners who have been designated as a beneficiary of such Special Common Area and will be allocated among such Owners based on Assessment Units.

5.07 **Individual Assessments.** In addition to any other Assessments, the Board may levy an Individual Assessment against an Owner and the Owner's Lot or Condominium Unit. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner's Lot or Condominium Unit into compliance with the Documents; fines for violations of the Documents; transfer-related fees and resale certificate fees; fees for estoppel letters and

project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or residents of the Owner's Lot; common expenses that benefit fewer than all of the Lots or Condominium Units, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot or per-Condominium Unit basis; and "pass through" expenses for services to Lots or Condominium Units provided through the Association and which are equitably paid by each Lot or Condominium Unit according to benefit received.

5.08 **Working Capital Assessment.**

(a) **Due Upon Sale.** Except as otherwise provided herein, a Working Capital Assessment, in such amount as may be determined by the Board from time to time in its sole and absolute discretion, will be payable upon the sale of each Lot and Condominium Unit. The Working Capital Assessment will be collected from the transferee when the sale of the Lot or Condominium Unit closes to an Owner and shall be paid to the Association. No portion of the Working Capital Assessment shall be paid to the Declarant. Contributions to the fund are not advance payments of any other Assessments levied hereunder and are not refundable. Declarant is not required to make contributions for any Lot or Condominium Unit owned or retained by it, or for any Lot or Condominium Unit for which the contribution was not collected at closing. Upon the earlier expiration or termination of the Development Period, the Board will have the authority to amend or modify the Working Capital Assessment, which amendment or modification must be in writing and recorded in the Official Public Records of Comal County, Texas.

(b) **Exempt Transfers.** Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, a Homebuilder will not be subject to the Working Capital Assessment; however, the Working Capital Assessment will be payable by any Owner who acquires a Lot and/or a Condominium Unit from a Homebuilder for residential living purposes or by any Owner who: (i) acquires a Lot and/or a Condominium Unit and is not in the business of constructing single-family residences for resale to a third party; or (ii) who acquires the Lot for any purpose other than constructing a single-family residence (including a Condominium Unit) thereon for resale to a third party. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, Declarant's determination regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this *Section 5.08*. The Working Capital Assessment will be in addition to, not in lieu of, any other assessments levied in accordance with this *Article 5* and will not be considered an advance payment of such assessments. The Working Capital Assessment hereunder will be due and payable to the Association immediately upon each transfer of title to the Lot or Condominium Unit, including upon transfer of

title from one Owner of such Lot or Condominium Unit to any subsequent purchaser or transferee thereof. The Association will have the power to waive the payment of any Working Capital Assessment attributable to a Lot or Condominium Unit by the recordation in the Official Public Records of Comal County, Texas of a waiver notice executed by a Majority of the Board members of the Association.

5.09 **Amount of Assessment.**

(a) **Assessments to be Levied.** The Board will levy Assessments against each "Assessment Unit" (as defined in *Section 5.09(b)* below). Unless otherwise provided in this Covenant, Assessments levied pursuant to *Section 5.03* and *Section 5.06* will be levied uniformly against each Assessment Unit. Special Common Area Assessments levied pursuant to *Section 5.04* will be levied uniformly against each Assessment Unit allocated to a Lot or Condominium Unit that has been designated as a beneficiary of the Special Common Area to which such Special Common Area Assessment relates. Service Area Assessments levied pursuant to *Section 5.05* will be levied uniformly against each Assessment Unit allocated to a Lot or Condominium Unit that has been included in the Service Area to which such Service Area Assessment relates.

(b) **Assessment Unit.** Each Lot will constitute one (1) "Assessment Unit" unless otherwise provided in *Section 5.09(c)*. Each Condominium Unit will constitute that number of Assessment Units as determined by Declarant at the time that the Development Area Declaration is first recorded in the Official Public Records of Comal County, Texas for the Development Area within which such Condominium Unit is located. Declarant will determine such Assessment Units in its sole and absolute discretion, taking into account, among other things, the relationship of such Condominium Units to the entire Development. Declarant's determination regarding the number of Assessment Units applicable to each Condominium Unit will be final, binding and conclusive. Such determination of Declarant (or the Board, as the case may be) may be set forth in the Notice of Applicability filed by Declarant pursuant to *Section 10.05* for the Development Area within which such Condominium Units are located. Declarant, in its sole and absolute discretion, may modify or amend the number of Assessment Units previously assigned to Condominium Unit if the Improvements actually constructed on the Condominium Unit differ substantially from the Improvements contemplated to be constructed thereon at the time the notice allocating Assessment Units thereto was originally filed. In the event of a modification to the Assessment Units allocated to a Condominium Unit, Declarant will file of record an amended notice setting forth the revised Assessment Units attributable to the or Condominium Unit.

(c) **Assessment Allocation.** Declarant, in Declarant's sole and absolute discretion, may elect to allocate more than one (1) Assessment Unit to a Lot. An allocation of more than one Assessment Unit to a Lot must be made in a notice filed by Declarant pursuant to *Section 10.05* or in a Development Area Declaration for the

Development in which the Lot is located. Declarant's determination regarding the number of Assessment Units applicable to a Lot pursuant to this *Section 5.09(c)* will be final, binding and conclusive.

(d) Modification of Allocation. Prior to the time any Lots or Condominium Units in such Development Area are conveyed to any person not affiliated with Declarant, Declarant may modify its determination regarding the allocation of Assessment Units by filing a notice in the Official Public Records of Comal County, Texas, setting forth the amended allocation.

(e) Declarant Exemption. Notwithstanding anything in this Covenant to the contrary, no Assessments will be levied upon Lots or Condominium Units owned by Declarant.

(f) Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Development, Lot or Condominium Unit from Assessments; (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Development, Lot or Condominium Unit; or (iii) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Development, Lot or Condominium Unit. In the event Declarant elects to delay or reduce Assessments pursuant to this Section, the duration of the delay or the amount of the reduction will be set forth in a written instrument recorded in the Official Public Records of Comal County, Texas. Declarant may terminate, extend or modify any delay or reduction set forth in a previously recorded instrument by the recordation of a replacement instrument in the Official Public Records of Comal County, Texas.

5.10 Late Charges. If any Assessment, whether Regular Annual, Special Common Area, Service Area or Special Assessment, is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Lot or Condominium Unit owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot or Condominium Unit; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

5.11 Owner's Personal Obligation; Interest. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Condominium Unit will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one

and one half percent (1½%) per month), together with all costs and expenses of collection, including reasonable attorneys fees. Such amounts will be levied as an Individual Assessment against the Lot or Condominium Unit owned by such Owner.

5.12 **Application of Payments.** The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order: Individual Assessments, Special Assessments, Service Area Assessments, Special Common Area Assessments and (lastly) Regular Annual Assessments. The Association may refuse to accept partial payment, *i.e.*, less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Owner's account.

5.13 **Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 5* is, together with late charges as provided in *Section 5.10* and interest as provided in *Section 5.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 5.01(b)* above, and will bind each Lot or Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot or Condominium Unit, except only for tax liens and all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot or Condominium Unit in question, provided such Mortgage was recorded in the Official Public Records of Comal County, Texas before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice may be signed by one of the officers of the Association and will be recorded in the Official Public Records of Comal County, Texas. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Covenant will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. Such lien for payment of Assessments may be enforced by the non-judicial foreclosure of the defaulting Owner's Lot or Condominium Unit by the Association in like manner as a real property mortgage with power of sale under Tex. Prop. Code § 51.002. (For such purpose, Phillip Schmandt of Travis County, Texas, is hereby designated as trustee for the benefit of the Association, with the Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The Assessment liens and rights to foreclosure thereof will be in addition to and not in

substitution of any other rights and remedies the Association may have by law and under this Covenant, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any first-lien Mortgage securing indebtedness incurred to acquire such Lot or Condominium Unit, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first lien Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 5.13*, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer of the Association. **NOTWITHSTANDING ANY PROVISION IN THIS SECTION 5.13 TO THE CONTRARY, THE ASSOCIATION WILL NOT HAVE THE AUTHORITY TO FORECLOSE ON A CONDOMINIUM UNIT FOR NON-PAYMENT OF ASSESSMENTS IF THE ASSESSMENTS CONSIST SOLELY OF FINES.** In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or occupant to the utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot or Condominium Unit will not relieve the Owner of such Lot or Condominium Unit or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot or Condominium Unit and on the date of such conveyance Assessments against the Lot or Condominium Unit remain unpaid, or said Owner owes other sums or fees under

this Covenant to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot or Condominium Unit, and such sums will be paid in preference to any other charges against the Lot or Condominium Unit other than a first lien Mortgage or Assessment Liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot or Condominium Unit which are due and unpaid. The Owner conveying such Lot or Condominium Unit will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Condominium Unit also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Lot or Condominium Unit to a third party; provided, however, that no administrative transfer fee will be due upon the transfer of a Lot or Condominium Unit from Declarant to a third party.

Yes, the Association can foreclose on your Lot or Condominium Unit!
If you fail to pay assessments to the Association, you may LOSE TITLE TO YOUR LOT OR CONDOMINIUM UNIT if the Association forecloses its assessment lien.

5.14 **Exempt Property.** The following area within the Development will be exempt from the Assessments provided for in this Article:

- (i) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Public Records of Comal County, Texas;
- (ii) The Common Area and the Special Common Area; and
- (iii) Any portion of the Property or Development owned by Declarant.

No portion of the Property will be subject to the terms and provisions of this Covenant, and no portion of the Property (or any owner thereof) will be obligated to pay assessments hereunder unless and until such Property has been made subject to the terms of this Covenant by the filing of a Notice of Applicability in accordance with Section 10.05 below.

5.15 **Fines and Damages Assessment.**

(a) **Board Assessment.** The Board may assess fines against an Owner for violations of any restriction set forth in this Covenant, any Development Area Declaration, the Design Guidelines, or any rules adopted by the Board which have been committed by an Owner, an occupant of the Owner's Lot or Condominium Unit, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 5.15* will be considered an Assessment pursuant to this Covenant. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or Special Common Area or any

facilities located by the Owner or the Owner's family, guests, agents, occupants, or tenants. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

(b) Procedure. The procedure for assessment of fines and damage charges will be as follows:

(i) The Association, acting through an officer, Board member or Manager, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;

(ii) The notice of the fine or damage charge must describe the violation or damage;

(iii) The notice of the fine or damage charge must state the amount of the fine or damage charge;

(iv) The notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and

(v) The notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

(c) Due Date. Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges will be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

(d) Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot or Condominium Unit is, together with any late charges as provided in *Section 5.10* and interest as provided in *Section 5.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.01(b)* of this Covenant. Unless otherwise provided in this *Section 5.15*, the fine and/or damage charge will be considered an Assessment for the purpose of this Article, and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 5*.

ARTICLE VI
ARCHITECTURAL COVENANTS AND CONTROL

6.01 **Purpose.** This Covenant creates rights to regulate the design, use, and appearance of the Lots and Condominium Units in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent Improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, inappropriate or peculiar in comparison to the then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing Improvements, including but not limited to dwellings, buildings, fences, landscaping, retaining walls, yard art, sidewalks, and driveways, and further including replacements or modifications of original construction or installation. Until expiration or termination of the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

6.02 **Veramendi Residential Reviewer.** The purposes of this Article shall be undertaken by the Veramendi Residential Reviewer. Until expiration or termination of the Development Period, the Veramendi Residential Reviewer shall mean Declarant or its designee. Upon expiration or termination of the Development Period, the rights of the Veramendi Residential Reviewer will automatically be transferred to the Architectural Control Committee appointed by the Board as provided in *Section 6.04* below. In furtherance of the purposes of this Article, the Veramendi Residential Reviewer may adopt Design Guidelines as more fully set forth in *Section 6.06(b)* below.

6.03 **Architectural Control by Declarant.**

(a) **Declarant as Veramendi Residential Reviewer.** During the Development Period, the Veramendi Residential Reviewer shall mean Declarant or its designee, and neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Declarant may designate one or more persons from time to time to act on its behalf as Veramendi Residential Reviewer in reviewing and responding to applications pursuant to this Article.

(b) **Declarant's Rights Reserved.** Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property. Accordingly, each Owner agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of the Veramendi Residential Reviewer, which approval may be granted or withheld at the Veramendi Residential Reviewer's sole discretion. In reviewing and acting on an application for

approval, the Veramendi Residential Reviewer may act solely in its self-interest and owes no duty to any other person or any organization.

(c) Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights as Veramendi Residential Reviewer under this Article to an Architectural Control Committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason.

6.04 Architectural Control by Association.

(a) Association as Veramendi Residential Reviewer. Upon Declarant's delegation in writing of all or a portion of its reserved rights as Veramendi Residential Reviewer to the Board, or upon the expiration or termination of the Development Period, the Association, acting through an Architectural Control Committee (the "ACC") will assume jurisdiction over architectural control and will have the powers of the Veramendi Residential Reviewer hereunder.

(b) ACC. The ACC will consist of at least three (3) but not more than seven (7) persons appointed by the Board. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

(c) Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

6.05 Prohibition of Construction, Alteration and Improvement. No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may be constructed or occur unless approved in advance by the

**NO IMPROVEMENT MAY BE CONSTRUCTED, ALTERED, OR MODIFIED
WITHOUT THE ADVANCE WRITTEN APPROVAL OF THE VERAMENDI RESIDENTIAL
REVIEWER.**

Veramendi Residential Reviewer. The Veramendi Residential Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement, provided that such action is not visible from any other portion of the Development or Property.

6.06 Architectural Approval.

(a) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots or Condominium Units, a proposal for such re-subdivision or consolidation will be submitted in accordance with the Design Guidelines or any additional rules adopted by the Veramendi Residential Reviewer together with any review fee which is imposed by the Veramendi Residential Reviewer in accordance with *Section 6.06(b)*. Contact information for the Veramendi Residential Reviewer will be set forth in the Design Guidelines. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot or Condominium Unit, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by the Veramendi Residential Reviewer. The Veramendi Residential Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Veramendi Residential Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Veramendi Residential Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Veramendi Residential Reviewer, in its sole discretion, may require. Site plans must be approved by the Veramendi Residential Reviewer prior to the clearing of any Lot, or the construction of any Improvements. The Veramendi Residential Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot or Condominium Unit on any grounds that, in the sole and absolute discretion of the Veramendi Residential Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(b) Design Guidelines. Declarant, as the initial Veramendi Residential Reviewer, will have the power to adopt the Design Guidelines during the Development Period. Thereafter, the Veramendi Residential Reviewer will have the power, from time to time, to adopt, amend, modify, or supplement the Design Guidelines. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Covenant, the terms and provisions of this Covenant will control. In addition, the Veramendi Residential Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and

information submitted to it pursuant to the terms of this Covenant. Such charges will be held by the Veramendi Residential Reviewer and used to defray the administrative expenses incurred by the Veramendi Residential Reviewer in performing its duties hereunder; provided, however, that any excess funds held by the Veramendi Residential Reviewer will be distributed to the Association at the end of each calendar year. The Veramendi Residential Reviewer will not be required to review any plans until a complete submittal package, as required by this Covenant and the Design Guidelines, is assembled and submitted to the Veramendi Residential Reviewer. The Veramendi Residential Reviewer will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Covenant, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(c) Failure to Act. In the event that any plans and specifications are submitted to the Veramendi Residential Reviewer as provided herein, and the Veramendi Residential Reviewer fails to either approve or reject such plans and specifications for a period of sixty (60) days following such submission, the plans and specifications will be deemed disapproved.

(d) Variances. The Veramendi Residential Reviewer may grant variances from compliance with any of the provisions of this Covenant or any Development Area Declaration, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Veramendi Residential Reviewer, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and, if Declarant has assigned its rights to the ACC, must be approved by at least a Majority of the members of the ACC. Each variance must also be recorded in the Official Public Records of Comal County, Texas; provided however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the Veramendi Residential Reviewer, including the Declarant or its designee, the Association, the Board or the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Covenant or any Development Area Declaration will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Covenant, or any Development Area Declaration, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Covenant or any Development Area Declaration.

(e) Duration of Approval. The approval of the Veramendi Residential Reviewer of any final plans and specifications, and any variances granted by the

Veramendi Residential Reviewer will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Veramendi Residential Reviewer, and the Veramendi Residential Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 6.06(e)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(f) No Waiver of Future Approvals. The approval of the Veramendi Residential Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Veramendi Residential Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Veramendi Residential Reviewer.

(g) Non-Liability of Veramendi Residential Reviewer. THE VERAMENDI RESIDENTIAL REVIEWER WILL NOT BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE Veramendi Residential Reviewer's DUTIES UNDER THIS MASTER COVENANT, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT OR BAD FAITH OF THE VERAMENDI RESIDENTIAL REVIEWER OR ONE OR MORE INDIVIDUALS ACTING ON ITS BEHALF, AS THE CASE MAY BE.

ARTICLE VII MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots or Condominium Units within the Development. The provisions of this Article apply to the Covenant and the Bylaws of the Association.

7.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot or Condominium Unit to which its Mortgage relates (thereby becoming an "**Eligible Mortgage Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot or Condominium Unit on which

there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot or Condominium Unit subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Documents relating to such Lot or Condominium Unit or the Owner or occupant which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

7.02 **Examination of Books.** The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

7.03 **Taxes, Assessments and Charges.** All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Lots or Condominium Units and not to any other portion of the Development.

ARTICLE VIII GENERAL PROVISIONS

8.01 **Term.** Upon the filing of a Notice of Applicability pursuant to *Section 10.05*, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Covenant will run with and bind the portion of the Property described in such notice, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and its respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Covenant is recorded in the Official Records of Comal County, Texas, and continuing through and including January 1, 2090, after which time this Covenant will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Comal County, Texas. Notwithstanding any provision in this *Section 8.01* to the contrary, if any provision of this Covenant would be unlawful, void or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death or the last survivor of the now living descendants of Elizabeth II, Queen of England.

8.02 **Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Covenant is in effect, the Board is hereby authorized to negotiate with

such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot. In the event any proceeds attributable to acquisition of Special Common Area are paid to Owners who have been designated as a beneficiary of such Special Common Area, such payment will be allocated based on Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot.

8.03 **Amendment.** This Covenant may be amended or terminated by the recording in the Official Public Records of Comal County, Texas, of an instrument executed and acknowledged by: (i) Declarant acting alone and unilaterally; or (ii) by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (unless Declarant has relinquished such right by written instrument recorded in the Official Public Records of Comal County, Texas) and Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast by members of the Association. No amendment will be effective without the written consent of Declarant, or its successors or assigns until expiration of the Development Period. Specifically, and not by way of limitation, Declarant may unilaterally amend this Covenant and any Development Area Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot or Condominium Unit; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots and/or Condominium Units; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

8.04 **Enforcement.** The Association and Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Covenant. Failure to enforce any right, provision, covenant, or condition granted by this Covenant will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

8.05 **Higher Authority.** The terms and provisions of this Covenant are subordinate to federal and state law, and local ordinances. Generally, the terms and provisions of this Covenant are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

NOTICE

Users of the Documents should periodically review statutes and court rulings that may modify or nullify the terms and provisions of those documents or their enforcement, or which may create rights or duties not contemplated therein.

8.06 **Severability.** If any provision of this Covenant is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Covenant, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

8.07 **Conflicts.** If there is any conflict between the provisions of this Covenant, any Development Area Declaration, the Certificate of Formation, the Bylaws, or any Rules adopted pursuant to the terms of such documents, the provisions of this Covenant will govern.

8.08 **Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

8.09 **Acceptance by Grantees.** Each grantee of Declarant of a Lot, Condominium Unit, or other real property interest in the Development, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Covenant or to whom this Covenant is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Development, and will bind any person having at any time any interest or estate in the Development, and will inure to the benefit of each Owner in like manner as though the provisions of this Covenant were recited and stipulated at length in each and every deed of conveyance.

8.10 **Damage and Destruction.**

(a) **Claims.** Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 8.11(a)*, means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) **Repair Obligations.** Any damage to or destruction of the Common Area or Special Common Area will be repaired unless a Majority of the Board decides within

sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area or Special Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Special Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

(d) Special Assessment. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 5*, against all Owners. Additional Special Assessments may be made in like manner at any time during or following the completion of any repair.

(e) Special Common Area Assessments. If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Common Area Assessment, as provided in *Article 5*, against all Owners designated as a beneficiary of such Special Common Area. Additional Special Common Area Assessments may be made in like manner at any time during or following the completion of any repair.

(f) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners, including but not limited to any proceeds of insurance policies paid to Owners as a result of any damage or destruction to any Common Area or any Special Common Area, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

8.11 No Partition. Except as may be permitted in this Covenant or amendments thereto, no physical partition of the Common Area or Special Common Area or any part will be permitted, nor will any person acquiring any interest in the Development or any part seek any such judicial partition unless the Development in question has been removed from the provisions of this Covenant pursuant to *Section 10.04* below. This *Section 8.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Covenant, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

8.12 **Notices.** Any notice permitted or required to be given to any person by this Covenant will be in writing and may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

8.13 **View Impairment.** Neither the Declarant nor the Association guarantee or represent that any view over and across the Lots, Condominium Units or any open space within the Development will be preserved without impairment. Neither the Declarant nor the Association shall have any obligation to relocate, prune, or thin trees or other landscaping to preserve or restore views. The Association (with respect to any Common Area or Special Common Area) will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

8.14 **Safety and Security.**

(a) **Owner Responsibility.** Each Owner and occupant of a Lot or Condominium Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to promote or enhance the level of safety or security which each person provides for himself and his property. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(b) **No Representation or Warranty.** No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Development, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Residents of such Owner's Lot or Condominium Unit that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Development assumes all risks of personal injury and loss or damage to property, including any residences or Improvements constructed upon any Lot or Condominium Unit and the contents of thereof, resulting from acts of third parties.

ARTICLE IX EASEMENTS

9.01 **Right of Ingress and Egress.** Declarant and its agents, employees and designees will have a right of ingress and egress over and the right of access to the Common Area or Special Common Area to the extent necessary to use the Common Area or Special Common Area and the right to such other temporary uses of the Common Area or Special Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Development.

9.02 **Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Development becoming subject to this Covenant are incorporated herein by reference and made a part of this Covenant for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Development.

9.03 **Roadway and Utility Easements; Trails and Common Areas.** Declarant hereby reserves unto itself and the Association a perpetual non-exclusive easement over and across the Development for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Development and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Development and any other property owned by Declarant; and (iii) the installation, operation and maintenance of roadways, walkways, pathways and trails, drainage systems, street lights and signage to serve the Development and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and improvements described in (i) through (iii) of this *Section 9.03*. The exercise of the easement reserved herein will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or Condominium Unit or residence or Improvement constructed thereon. Each Lot abutting or in the vicinity of Common Area is subject to an easement allowing noise, smoke or light from the Common Area to enter onto such Lot. Each Owner of a Lot abutting or in the vicinity of Common Area accepts title to such Lot on the basis that the nature and use of the Common Area may change in the future and trailways, bikeways, pedestrian ways, benches, pavilions, landscaping or other improvements may be installed, modified or removed from the Common Area in the future, all of which may impact such Lot or the views from such Lot and each Owner waives all claims resulting therefrom.

9.04 **Subdivision Entry, Fencing and Landscape Easements.** Declarant hereby reserves for itself and the Association, an easement over and across the Development for the

installation, maintenance, repair or replacement of certain subdivision entry facilities, fencing and landscaping which serves the Development. Declarant will have the right, from time to time, to record a written notice in the Official Public Records of Comal County, Texas, which identifies the subdivision entry facilities, fencing or landscaping to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities, fencing or landscaping as Common Area or Special Common Area by written notice recorded in the Official Public Records of Comal County, Texas. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or Condominium Unit or residence or Improvement constructed thereon.

9.05 **Easements for Special Events.** Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, non-exclusive easement over the Common Area or applicable Special Common Area for the purpose of: (i) conducting parades; (ii) running, fishing, biking or other sporting events; (iii) educational, cultural, artistic, musical and entertainment activities; (iv) Declarant's Marketing and promotional activities and (v) other activities of general community interest, at such locations and times as Declarant and/or the Association, in their reasonable discretion, deem appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot or Condominium Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement.

9.06 **Declarant as Attorney in Fact.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Covenant, each Owner, by accepting a deed to a Lot or Condominium Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Lot or Condominium Unit, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot or Condominium Unit, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Covenant. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

ARTICLE X DEVELOPMENT RIGHTS

10.01 **Development by Declarant.** It is contemplated that the Development will be developed pursuant to a coordinated plan, which may, from time to time, be amended or

modified. Declarant reserves the right, but not the obligation, to designate Development Areas, to create and/or designate Lots, Special Common Areas and Common Area and to subdivide with respect to any of the Development pursuant to the terms of this *Section 10.01*, subject to any limitations imposed on portions of the Development by any applicable Plat. These rights may be exercised with respect to any portions of the Property in accordance with *Section 10.05*. As each area is developed or dedicated, Declarant may record one or more Development Area Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Any Development Area Declaration may provide its own procedure for the amendment of any provisions. All lands, Improvements, and uses in each area so developed will be subject to both this Covenant and the Development Area Declaration, if any, for that Development Area.

10.02 Special Declarant Rights. Notwithstanding any provision of this Covenant to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots or Condominium Units in the Development; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate staging areas, construction trailers and construction tools and equipment within the Development. The construction placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 10.02* until two (2) years after Declarant no longer owns any portion of the Property. Declarant hereby retains an easement over and across the Common Area and Special Common Area to effectuate any purpose enumerated in this *Section 10.02*.

10.03 Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property. Upon the filing of a Notice of Addition of Land, such land will be considered part of the Property for purposes of this Covenant, and upon the further filing of a Notice of Applicability meeting the requirements of *Section 10.05* below, such added lands will be considered part of the Development subject to this Covenant and the terms, covenants, conditions, restrictions and obligations set forth in this Covenant, and the rights, privileges, duties and liabilities of the persons subject to this Covenant will be the same with respect to such added land as with respect to the lands originally covered by this Covenant. To add lands to the Property, Declarant will be required only to record in the Official Public Records of Comal County, Texas, a Notice of Addition of Land (which notice may be contained within any Development Area Declaration affecting such land) containing the following provisions:

(a) A reference to this Covenant, which reference will state the volume and initial page number of the Official Public Records of Comal County wherein this Covenant is recorded;

(b) A statement that such land will be considered Property for purposes of this Covenant, and that upon the further filing of a Notice of Applicability meeting the

requirements of *Section 10.05* of this Covenant, all of the terms, covenants, conditions, restrictions and obligations of this Covenant will apply to the added land; and

- (c) A legal description of the added land.

10.04 **Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw from the Property, including the Development, and remove and exclude from the burden of this Covenant and the jurisdiction of the Association: (i) any portions of the Development which have not been included in a Plat; (ii) any portion of the Development included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portions of the Development included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal and renewal this Covenant and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development withdrawn. To withdraw lands from the Development hereunder, Declarant will be required only to record in the Official Public Records of Comal County, Texas, a Notice of Withdrawal of Land containing the following provisions:

- (a) A reference to this Covenant, which reference will state the volume and initial page number of the Official Public Records of Comal County wherein this Covenant is recorded;
- (b) A statement that the provisions of this Covenant will no longer apply to the withdrawn land; and
- (c) A legal description of the withdrawn land.

10.05 **Notice of Applicability.** Upon the filing in the Official Public Records of Comal County, Texas, this Covenant serves to provide notice that at any time, and from time to time, all or any portion of the Property may be made subject to the terms, covenants, conditions, restrictions and obligations of this Covenant. This Covenant will apply to and burden a portion or portions of the Property upon the filing of a Notice of Applicability describing such Property by a legally sufficient description and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants conditions, restrictions and obligations of this Covenant. To be effective, a Notice of Applicability must be executed by Declarant and the record title owner of the Property being made subject to this Covenant if such Property is not owned by Declarant. Declarant may also cause a Notice of Applicability to be filed covering a portion of the Property for the purpose of encumbering such Property with this Covenant and any Development Area Declaration previously recorded by Declarant (which Notice of Applicability may amend, modify or supplement the restrictions, set forth in the Development Area Declaration, which will apply to such Property). To make the terms and provisions of this Covenant applicable to a portion of the Property, Declarant will be required only to cause a Notice of Applicability to be recorded containing the following provisions:

(a) A reference to this Covenant, which reference will state the volume and initial page number of the Official Public Records of Comal County, Texas wherein this Covenant is recorded;

(b) A reference, if applicable, to the Development Area Declaration which will apply to such portion of the Property (with any amendment, modification, or supplementation of the restrictions set forth in the Development Area Declaration which will apply to such portion of the Property), which reference will state the volume and initial page number of the Official Public Records of Comal County, Texas wherein the Development Area Declaration is recorded;

(c) A statement that all of the provisions of this Covenant will apply to such portion of the Property;

(d) A legal description of such portion of the Property; and

(e) If applicable, a description of any Special Common Area which benefits the Property and the beneficiaries of such Special Common Area.

NOTICE TO TITLE COMPANY

NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS MASTER COVENANT AND THIS MASTER COVENANT DOES NOT APPLY TO ANY PORTION OF THE PROPERTY UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PROPERTY AND REFERENCING THIS MASTER COVENANT HAS BEEN RECORDED IN THE OFFICIAL PUBLIC RECORDS OF COMAL COUNTY, TEXAS.

10.06 **Assignment of Declarant's Rights.** Notwithstanding any provision in this Covenant to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of their respective privileges, exemptions, rights, and duties under this Covenant or under any Development Area Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

10.07 **Use of Name "Veramendi" by Association.** Any use by the Association of names, marks or symbols of Declarant or any of its affiliates, including the name Veramendi (the "**Declarant Marks**"), shall inure to the benefit of Declarant and shall be subject to Declarant's periodic review for quality control. Upon request by Declarant, the Association shall enter into a licensing agreement with Declarant for the use of the Declarant Marks, terminable with or without cause, at the sole discretion of Declarant, with respect to permissive use of all or some of the Declarant Marks. The Association shall not use, or permit others to use, the Declarant Marks without the prior written consent of Declarant.

10.08 **Use of Name "Veramendi" by Owners.** No Owner (other than Declarant or its affiliates) or any other person, corporation or other entity may use the name "Veramendi", or any derivative thereof, or any other term that Declarant may select as the name of the Development, or any of the Declarant Marks, in any printed, digital or promotional material without the Declarant's prior written consent. However, Owners may use the name "Veramendi" in printed or promotional materials solely to specify that particular property owned by the Owner is located within the Development.

ARTICLE XI **ARBITRATION**

11.01 **Definitions.**

(a) **"Affiliates"** means and includes all of the following: (i) any partner, shareholder, trust beneficiary, owner or holder of any interest in either Declarant or an Owner, as applicable (referred to herein as a **"Shareholder"** and in the plural as **"Shareholders"**); (ii) any employee, officer, director or agent of either Declarant or an Owner, as applicable (referred to herein in the singular as an **"Agent"** and in the plural as **"Agents"**); (iii) any entity, whether partnership, corporation, trust, or other form, majority owned (directly or indirectly) by Declarant or an Owner or Agent of Declarant or Agent of an Owner or by any trust which Declarant or an Owner or any Shareholder or Agent of Declarant or Agent of an Owner is a direct or indirect beneficiary.

(b) **"Arbitration Rules"** means and refers to the commercial arbitration rules of the American Arbitration Association.

(c) **"Dispute"** or **"Disputes"** means and refers to any and all actions, disputes, claims, disagreements or controversies of any kind (*e.g.*, whether in contract or in tort, statutory or common law, legal or equitable) now existing or hereafter arising between or among the Parties in any way arising out of or relating to the Documents and/or the Development, including without limitation any dispute, claim or controversy of any kind arising out of, relating in any way to, or in connection with: (a) the sale or conveyance of the Lot(s) or Condominium Unit(s); (b) the design, construction, purchase, ownership, operation or sale of the Development; (c) the purchase, sale, conveyance, assignment or other transfer of any ownership interest in, to or with respect to any of the Parties; (d) any incidents, omissions, acts, practices, or occurrences arising out of or in connection with the ownership or operation of the Development; (e) any obligations or alleged obligations arising out of or in connection with the Documents; (f) the interpretation of the Documents or performance of any obligation described in the Documents, and (g) any incidents, omissions, acts, practices or occurrences arising out of, pertaining to or in connection with the Documents.

Notwithstanding the foregoing, the following shall not be considered "Disputes" and shall not be subject to the agreement to arbitrate set forth in this Article XI:

- (1) Any suit or collection by the Association for fees or assessments owed by an Owner to the Association under this Agreement, including but not limited to the Association's enforcement of Article 5 of these Covenants;
- (2) Any suit by the Association to obtain a temporary restraining order (or similar equitable relief) and such other ancillary relief as the court may deem necessary in connection with such equitable relief to enforce an Owner's compliance with the terms of the Documents, including but not limited to any suit by the Association to enforce Articles 2 or 6 of these Covenants;
- (3) Any suit between Owners that does not involve Declarant or the Association as a party; and
- (4) Any action by the Declarant or the Association against a Party which relates to actual or potential threat to the health or safety of a Party.

(d) "Party" or "Parties" means and refers to Declarant or any Owner (each together with its respective Affiliates), individually, and Declarant and any Owner (each together with its respective Affiliates), collectively.

11.02 **Agreement to Arbitrate.** The Parties recognize and agree that the failure to timely resolve any Dispute could have an adverse effect upon one or more of the Parties. For this reason and for other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree to submit all Disputes to binding arbitration in accordance with the terms and provisions of this *Article 11* and the Arbitration Rules.

11.03 **Binding Arbitration.** Upon the written request of any party, whether made before or after the institution of any legal proceeding, any Dispute or Disputes between or among any one or more of the Parties shall be resolved by binding arbitration administered by the American Arbitration Association's Dallas or Austin office in accordance with the terms and provisions of this *Article 11* and the Arbitration Rules. Any Party may, by summary proceedings (*e.g.*, a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Disputes not referred to arbitration as required by this *Article 11*.

11.04 **Governing Rules.** All Disputes between or among the Parties shall be resolved by binding arbitration in accordance with the terms of this *Article 11* and the Arbitration Rules. In the event of any inconsistency between this *Article 11* and the Arbitration Rules, this *Article 11* shall control. Judgment upon the award rendered by the arbitrator shall be binding and may be entered in any court having jurisdiction. Except as otherwise expressly provided in this *Article 11*, such judgment shall not be subject to appeal.

11.05 **Statute of Limitations.** All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding.

11.06 **Scope of Award; Modification or Vacation of Award; Qualifications.** Unless the Parties agree in writing to the contrary, all arbitration proceedings shall be arbitrated by a single arbitrator who is either a retired judge or a lawyer with at least ten (10) years' experience in commercial real estate in the Austin, New Braunfels or San Antonio, Texas markets. In the event that the Parties cannot agree on a qualified arbitrator within ten (10) days after a Party's receipt of written request for arbitration from the other Party (the "**Deadline**"), then a qualified arbitrator shall be appointed pursuant to the Arbitration Rules within thirty (30) days after the expiration of the Deadline. The arbitrator shall resolve all Disputes in accordance with Applicable Law. The arbitrator shall determine the scope of this *Article 11* and whether or not a matter or issue is to be resolved by arbitration. The arbitrator may grant only the remedy or relief requested by the prevailing party and within the scope of this *Article 11*. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. The arbitrator's findings of fact and conclusions of law shall be binding on all Parties and shall not be subject to any appeal or further review, except as otherwise required by Applicable Law.

11.07 **Other Matters and Discovery.** The arbitration hearing hereunder shall be closed within four (4) months of the filing of the Dispute for arbitration by notice from either Party to the other. The arbitrator may limit discovery as he or she deems necessary to meet such timeline and may order that the Parties' discovery be limited to some or all of the following: (1) a specified number of depositions of a specified duration, or (2) a specified number of requests for production of documents or requests for production of documents that are limited in scope to the documents specifically identified in the request for production. The arbitrator's decision on the scope of discovery will take into consideration the complexity and nature of the Dispute, the timing of the hearing, and will in all events be final. Arbitration proceedings hereunder shall be conducted in Austin, Texas or other location mutually agreed by the Parties. The arbitration proceedings, all pleadings filed and all evidence introduced in the arbitration proceedings shall be confidential. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Texas Rules of Civil Procedure and Applicable Law. The provisions of this *Article 11* shall survive any termination, amendment or expiration of the Documents.

11.08 **Expenses.** Subject to the reimbursement provisions set out herein below, each of the Parties to any arbitration proceeding shall pay an equal share of the arbitration fees and any costs of arbitration, as those fees and costs come due. Upon the conclusion of any arbitration proceeding under this *Article 11*, the prevailing Party in such arbitration proceeding shall be entitled to recover from the non-prevailing Party all of the prevailing Party's costs and expenses in connection with such arbitration, including without limitation, expert witness fees, reasonable attorneys' fees and reimbursement of all of the arbitration fees and costs previously advanced by the prevailing Party. The term "**prevailing Party**" means that Party which the arbitrator finds and/or declares is the prevailing Party, whether or not that Party obtains monetary, declaratory, injunctive, equitable or nominal relief. With respect to any monetary

claim, no award of damages shall be necessary in order for a Party to be found by the court to have prevailed. With respect to any non-monetary claim, no equitable relief shall be necessary in order for a Party to be found by the court to have prevailed. In addition, a non-defaulting Party shall be entitled to recover from the defaulting Party under this *Article 11* all of the non-defaulting Party's costs and expenses in connection with such arbitration, including without limitation, expert witness fees, reasonable attorneys' fees and reimbursement of all of the arbitration fees and costs previously advanced by the non-defaulting Party.

[SIGNATURE PAGE FOLLOWS]

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

DECLARANT:

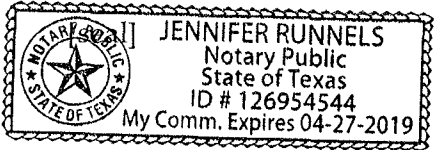
Veramendi Development Company,
a Texas limited liability company

By: ASA Properties, LLC
A Texas limited liability company,
its Sole Manager

By: 
Peter James, President

THE STATE OF TEXAS §
 §
COUNTY OF Comal §

This instrument was acknowledged before me on this 29th day of January, 2018, by Peter James, President of ASA Properties, a Texas limited liability, the Sole Manager of Veramendi Development Company Development Company, LLC a Texas limited liability company, on behalf of said limited liability companies.



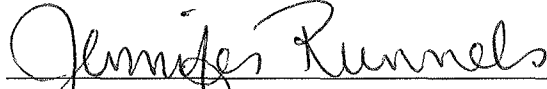

Notary Public, State of Texas

EXHIBIT "A"
DESCRIPTION OF PROPERTY

That certain 2,462 acres of land, more or less located in Comal County, Texas, described as the "Option Property" in that certain Memorandum of Option dated October 14, 2015 by and between Word-Borchers Ranch Real Estate Limited Partnership and Veramendi Development Company, LLC, recorded as Document No. 201506041782, Official Public Records of Comal County, Texas, and described by metes and bounds on Exhibit A attached thereto.

Filed and Recorded
Official Public Records
Bobbie Koepf, County Clerk
Comal County, Texas
01/31/2018 11:07:24 AM
JESSICA 65 Page(s)
201806003832



Bobbie Koepf