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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OLD 32 RANCH  
UNIT 2

STATE OF TEXAS

\*

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COMAL

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This Declaration is made on the date hereinafter set forth by BRICKSTONE DEVELOPMENT, LP, a Texas limited partnership, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of a portion of that certain tract of land known as OLD 32 RANCH, UNIT 2 being a subdivision containing 335.99 acres of land situated in Comal County, Texas with the Plat of OLD 32 RANCH, UNIT 2 being recorded in Volume 202106 on Page 049077 in the records of Deeds and Plats of Comal County, Texas, in the office of the County Clerk of Comal County, Texas on the 17<sup>th</sup> day of Sept, 2021, after having been approved as provided by law; and,

WHEREAS, Developer desires to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against OLD 32 RANCH, UNIT 2, in order to establish a uniform plan for its development, improvement and sale, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of those Lots in OLD 32 RANCH, UNIT 2.

WHEREAS, Developer reserves and retains unto itself, the right, as it, in its sole discretion, shall determine, to (i) add to or delete areas from the Subdivision, (ii) add or delete areas, including but not limited to Lots located in OLD 32 RANCH, UNIT 2, from these restrictions and (iii) hereafter place and impose such restrictions, easements, covenants, conditions, stipulations and reservations on any and all remaining unrestricted properties, or portions thereof, in the Subdivision, in order to establish any plan chosen by Developer for the development, improvement and sale thereof.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Developer, hereby adopts, establishes and imposes upon OLD 32 RANCH, UNIT 2, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Subdivision, which Restrictions shall run with said Subdivision and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof. Developer also declares that OLD 32 RANCH, UNIT 2, shall be subject to the jurisdiction of the "Association" (as hereinafter defined).

ARTICLE I  
DEFINITIONS

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

1.1 Architectural Control Committee or "Committee". "Architectural Control Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property.

1.2 Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

1.3 Association. "Association" or "Master Association" shall mean and refer to OLD 32 RANCH PROPERTY OWNERS ASSOCIATION, a Texas non-profit corporation, its successors and assigns. Notwithstanding anything herein to the contrary, OLD 32 RANCH PROPERTY OWNERS ASSOCIATION shall consist of members from all Phases within the Subdivision, unless otherwise determined by Declarant.

1.4 Board. "Board" shall mean the Board of Directors of the Association.

1.5 Bylaws. "Bylaws" shall mean the Bylaws of the Association to be adopted by the Board, and as from time to time amended.

1.6 OLD 32 RANCH, UNIT 2 Restrictions and Declarations. "OLD 32 RANCH, UNIT 2 Restrictions", "Restrictions" and/or "Declarations" shall mean collectively (i) this Declaration, together with any and all Supplemental Declaration, as the same may be amended from time to time.

1.7 Rules. "Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

1.8 Certificate of Formation. "Certificate of Formation" shall mean the Certificate of Formation of OLD 32 RANCH PROPERTY OWNERS ASSOCIATION, which shall be filed in the office of the Secretary of State of Texas, and as from time to time amended.

1.9 Common Area. "Common Area" shall mean that portion of the Subdivision owned or leased by the Association for the common use and enjoyment of the Members of the Association including but not limited to, all parks, recreational facilities, community facilities, landscaping, sprinkler systems, pavement, streets (to the extent not owned by appropriate governmental authorities), gates, walkways, parking lots, pipes, wires, conduits and other public utility lines situated thereon (to the extent not owned by appropriate governmental authorities or by local utility companies).

1.10 Declarant or Developer. "Declarant" or "Developer" shall mean BRICKSTONE DEVELOPMENT, LP, a Texas limited partnership, its duly authorized representative, or their respective successors or assigns; provided that any assignment of the rights of BRICKSTONE DEVELOPMENT, LP, a Texas limited partnership, as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Subdivision without written assignment of the rights of Declaration shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.11 Development Period. The "Development Period" is the period of time beginning on the date when the Declaration has been recorded and ending six months after the date that the Declarant no longer owns any portion of the Property, unless earlier terminated by a recorded written instrument executed by the Declarant. The Development Period is the period in which the Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

1.12 Design Guidelines. "Design Guidelines" shall mean the criteria and guidelines established by the Architectural Control Committee for the design and/or construction of all Improvements, landscaping and other exterior items within the Subdivision.

1.13 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind located on any Lot in the Subdivision, including but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, basketball goals, swimming pools, and swimming pool equipment, garages, storage buildings, fences, gates, trash enclosures, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment and poles, pumps, wells, tanks, reservoirs, poles, pumps, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.14 Lot or Tract "Lot", "Lots", "Tract" or "Tracts" shall mean any parcel or parcels of land within the Subdivision shown as a subdivided lot on a Plat of the Subdivision, together with all Improvements located thereon.

1.15 Member. "Member" or "Members" shall mean any person, persons, entity or entities holding membership rights in the Association.

1.16 Mortgage. "Mortgage" shall mean any mortgage or deed of trust lien covering all or any portion of the Subdivision given to secure the payment of a debt.

1.17 Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.18 Owner. "Owner" or "Owners" shall mean and refer to a person or persons, entity or entities holding a fee simple interest in all or any portion of the Subdivision, but shall not include a Mortgagee, until such Mortgagee forecloses on all or any portion of the Subdivision.

1.19 Person. "Person" or "Persons" shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.

1.20 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or creation of any Improvement, including but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, signage, lighting, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.21 Plat. "Plat" shall mean a final plat of any portion of the Property, or any portion thereof, as defined below.

1.22 Property. "Property" shall mean that real property which is subject to the terms of this or any other declaration for any phase of OLD 32 RANCH and subject to the jurisdiction of the Association.

1.23 Subdivision. "Subdivision" shall mean and refer to OLD 32 RANCH, UNIT 2 and which is more fully described on Map or Plat recorded in Volume \_\_\_\_\_ on Page \_\_\_\_\_, in the records of Deeds and Plats of Comal County, Texas 202106049076

1.24 Supplemental Declaration. "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions and restriction which may be recorded hereafter in order (i) to incorporate additional property into the Development, (ii) to subject any area of the Property to further covenants, conditions or restrictions, or (iii) to withdraw land from the Property.

## ARTICLE II ADDITIONS TO THE PROPERTY

### 2.1 Phased Subdivision.

(A) Incorporation. Incorporation and Withdrawal. The Declarant, its successors and assigns, shall have the sole right, without requiring the consent or approval of any third party, including the Owners of any Lots or lienholders on those lots, at any time prior to June 1, 2030, to (i) annex or incorporate within the Subdivision or the scheme of this Declaration additional lots or phases of the Development (a) following the acquisition of such property, or (b) barring acquisition of such property, with the consent of the record owner of such other property, (ii) withdraw any property owned by Declarant from the Subdivision or (iii) remove property owned by Declarant from the terms of these restrictions.

(B) Filing Affidavit. To evidence the incorporation or annexation of additional property (including but not limited to additional lots) or withdrawal of property from the Subdivision or these Restrictions, Declarant shall record an Affidavit stating that such property has been incorporated into, annexed into or withdrawn from the Subdivision or these restrictions.

(C) Phases. Declarant may develop the Property into additional phases and may, at its sole discretion, encumber each phase with similar or the same Restrictions.

2.2 Merger of Consolidation. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Subdivision and/or the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration pertaining to the Property except as hereinafter provided.

### ARTICLE III GENERAL RESTRICTIONS

All of the Subdivision except utility lots and common areas shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

3.1 Single Family Residential Construction. All Lots shall be used solely for single family residential purposes. No more than two dwellings shall be allowed on any Lot. No building or structure shall be erected, altered, placed or permitted to remain on any tract without the approval in writing by the Architectural Control Committee.

All single story dwellings that will serve as the primary residence must have at least two thousand (2,000) square feet of Living Area and must be built of new construction material. All two-story dwellings must have at least two thousand six hundred (2,600) square feet of Living Area and must be built of new construction material. The term "Living Area" does not include porches, breezeways, or garages. One secondary dwelling (i.e. guest house, casita, bardominium, etc.) may be built of new construction material on each Lot in addition to the main dwelling thereon. Such secondary dwelling must be no less than seven hundred (700) square feet and no more than fifteen hundred (1,500) square feet and shall require the approval of the Architectural Control Committee as to location, materials and plans. The foundation of any dwelling must be a concrete slab or a combination of concrete slab and piers.

The guest/servants house and any detached garage must be of the same general construction and exterior as the dwelling, including exterior materials, roofing materials, and color and must be located according to the Committee approved building site plan.

While there is no time requirement on starting an Improvement, any dwelling, building, structure or Improvement commenced on any Tract shall be completed as to the exterior finish and appearance within one year from the commencement date. All dwellings must be served with electricity and telephone through the front of the Tract. All dwellings must be connected to a septic system. No Improvement shall use an electric generator as its primary source of electricity.

The term "dwelling", "main dwelling" and "guest/servants house" does not include either industrialized housing, double wide, triple wide or manufactured homes, single wide mobile homes, or prefab houses regardless of whether the same are placed upon permanent foundation, and said homes are not permitted within the Subdivision. As used herein, "Manufactured home" includes but is not limited to, any prefabricated or pre-built dwelling which consists of one (1) or more transportable sections or components and shall also be deemed to include manufactured housing, manufactured

home, HUD-code manufactured home and mobile home as defined by the Texas Manufactured Housing Standards Act, Title 83, Article 5221f, Vernon's Texas Civil Statutes.

3.2 Garages and Outbuildings. All garages, including but not limited to detached garages, will be of the same general constructions and exterior finish as the main dwelling and located on the Lot according to the Architectural Control Committee approved building site plan. Outbuildings, including but not limited to barns, barndominiums, storage buildings, green houses, workshops, well houses, gazebos, cabanas, decks, car ports or pavilions, must be constructed of new materials and the location, design, materials, and plans must be approved by the Architectural Control Committee prior to construction. These types of outbuildings may be limited in number by the Architectural Control Committee and shall be built on at a location that is behind the main dwelling.

3.3 Masonry. The exterior walls of any dwelling constructed on a Tract shall be constructed of no less than one hundred percent masonry, or masonry veneer, excluding windows and door openings. Masonry or masonry veneer includes stucco, ceramic tile, brick, fibrous cement (i.e. Hardi-plank), clay and stone. The exterior of all chimneys shall be one hundred percent masonry of a type and color matching the exterior walls of the dwelling. All outbuildings and temporary structures are subject to Architectural Control Committee approval as to the exterior finish.

3.4 Setback Requirements. All Improvements, except fences, on all Tracts shall be set back at least seventy five (75) feet from any Lot line.

Notwithstanding anything within this paragraph, no Lot Owner shall fence in any meter, utility pole or transformer or place a fence within ten (10) feet from any meter, utility pole or transformer.

3.5 Roofing Materials. The surface of all principal and secondary structures, any garages and any outbuildings shall be made of slate, stone, clay tile, or other tile of a ceramic nature, composition shingles with a thirty (30) year or more warranty or metal (using standing or battened seams). The roof may be left natural or painted a color approved by the Architectural Control Committee. The ACC shall approve roofing shingles made of other materials that:

(a) are designed primarily to:

- (1) be wind and hail resistant;
- (2) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or
- (3) provide solar generation capabilities:

And,

(b) When installed:

- (1) resemble the shingles used or otherwise authorized for use on property in the Subdivision;
- (2) are more durable than and are of equal or superior quality to the shingles used or otherwise authorized for use on property in the Subdivision; and,
- (3) match the aesthetics of the property surrounding the Owner's Tract.

3.6 Colors. All exterior colors of any structures must be natural or earth tones and must complement the surrounding landscape. The Architectural Control Committee may, in its sole discretion, approve other color schemes so long as such colors complement the Subdivision.

3.7 Walls and Fences. Walls, fences and gates, if any, must be approved prior to construction by the Architectural Control Committee. Unless otherwise approved by the Architectural Control Committee, all fences must be constructed of metal, masonry, masonry veneer, wrought iron, wood, pipe, ranch fencing with t-posts or a combination thereof. Chain link fencing shall not be permitted for use as perimeter fencing for a Lot, but can be used on the interior for animals or bird containment only if such fencing is not visible from any street or adjacent property. All walls, fences and gates must be

maintained in good condition.

3.8 Subdividing, Combining Two (2) or More Lots. No Lot shall be further divided or subdivided by the Owner thereof without the prior written consent of the Architectural Control Committee and Comal County, if required; provided, however, when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot or convey an easement or other interest less than the whole, all without the approval of the Architectural Control Committee. Lots may be combined into one Lot for building purposes and the interior common boundary line shall be extinguished by filing a recordable document of record, joined by the Declarant, or Architectural Control Committee, declaring the same to be extinguished. Thereafter, all set back lines shall refer to the exterior property lines. Portions of Lots may be combined with adjoining Lots for building purposes so long as all resulting Lots are larger than the original Lots. Combined Lots shall nevertheless be considered as separate Lots for assessment purposes, unless otherwise determined by Old 32 Ranch Property Owners Association. Public utility and drainage easements are exempt from this provision and each Lot Owner is required to obtain any needed releases from the Public Utility companies.

3.9 Repair of Improvements. All Improvements upon any of the Subdivision shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof.

3.10 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement, shall be performed only with the prior written approval of the Architectural Control Committee.

3.11 Temporary Structures. No structure of a temporary character, whether trailer, motor home, recreational vehicle, tent, basement, shack, garage or other outbuilding shall be maintained or used on any Tract at any time as a residence, either temporarily or permanently, except as provided below. A motor home or camper may be used as a weekend getaway or for camping or may be used while the home is being built. Once the home is built, the motor home or camper may no longer be used as a living quarter and must comply with Section 3.19. Homebuilders may erect a job-site trailer during construction of the dwelling on a Tract. The Committee may require that any structure or object placed on a Tract be screened from view, if, in the Committee's sole discretion, the same will be necessary to preserve the value or avoid a detriment to the appearance of the Property. Once the dwelling is complete, the job-site trailer must be removed.

The Developer reserves the exclusive right to install and make use of a temporary office or temporary storage facilities within the Property while Developer is selling Tracts or building homes in the Property.

3.12 Mining and Drilling. Except for water wells used for domestic purposes, No portion of the Subdivision shall be used for 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. Water wells to be used for domestic and irrigation purposes associated with the Lot may be drilled. This Section does not apply to minerals, or resources that are vested in third parties. Declarant makes no warranty or representations regarding the ownership of the minerals or resources or any portion thereof.

3.13 Antennas, Towers and Satellite Dishes. Antennas, towers or satellite dishes of any kind shall not exceed five feet above the roof of the dwelling or outbuilding, whichever is higher. Any antennae, tower or satellite dish must be located to the side or rear of the dwelling or outbuilding and not within one hundred feet of any property line. Ham radio operators and other antennae shall not exceed thirty-five feet in height, measured from the ground. The Committee must approve all antennae, towers or satellite dishes prior to installation. Nothing herein shall be construed to conflict with the rules and regulations set forth by the Federal Communications Commission's latest rules and regulations. Specifically, there shall be no act or decisions that impairs installation, maintenance or use of an antenna that:

- (i) unreasonably delays or prevents installation, maintenance or use;
- (ii) Unreasonably increases the cost of installation, maintenance or use; or
- (iii) Precludes reception or transmission of an acceptable quality signal.

3.14 Light Pollution. Exterior lights such as those for security, safety, and decorative reasons are allowed with prior written approval of the Committee, provided all exterior lighting is hooded or the main beam of light is at no greater than a thirty degree angle from the ground.

3.15 Signs. Except as specifically set forth in this section, no signs, advertising, billboards or advertising structure of any kind may be erected or maintained on any Tract without the consent in writing of the Architectural Control Committee. Real estate signs shall be allowed in the Subdivision, including but not limited to for sale signs, sold signs, for lease signs or for rent signs provided there are no lots left for sale by the Declarant. This provision shall not apply to the Declarant so long as Declarant shall own a Lot in the Subdivision.

In accordance with the Texas Property Code, one or more signs advertising a political candidate or ballot item for an election may be displayed as follows:

- a. On or after the 90<sup>th</sup> day before the date of the election to which the sign relates or
- b. Before the 10<sup>th</sup> day after the election date

Such signs must comply with the following:

- a. The signs must be ground mounted;
- b. No more than one sign for each candidate or ballot item is allowed
- c. The sign shall not
  - (i) Contain roofing material, siding, paving materials, flora, one or more balloons or lights or any other similar building, landscaping or nonstandard decorative component;
  - (ii) Is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle or any other existing structure or object;
  - (iii) Includes the painting of architectural surfaces
  - (iv) Threatens the public health or safety;
  - (v) Is larger than four feet by six feet
  - (vi) Violates a law;
  - (vii) Contains language, graphics or any display that would be offensive to the ordinary person; or
  - (viii) Is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

3.16 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon a Lot and no odors shall be permitted to arise therefrom so as to render such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view except on pickup days. In the event the Owner shall fail or refuse to keep, or cause to be kept such Owner's property or any Improvements thereon free from rubbish or debris of any kind, and such failure or refusal shall continue for fifteen (15) days after delivery of written notice thereof, then OLD 32 RANCH PROPERTY OWNER'S ASSOCIATION may enter upon such Lot and remove or correct the same at the expense of the property owner and any such entry shall not be deemed a trespass.

3.17 Hazardous Activities. No activities shall be conducted in the Subdivision and no Improvements constructed in the Subdivision which are or might be unsafe or hazardous to any person or property.

3.18 Junk Motor Vehicles Prohibited. No Tract shall be used as a depository for abandoned or junk motor vehicles. No junk of any kind or character shall be kept on any Tract.

3.19 Travel Trailers and Recreational Vehicles. All trailers, travel trailers, graders, recreational vehicles, boats, tractors, campers, wagons, buses, motorcycles, motor

scooters, ATV's and lawn and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view from public or private thoroughfares and adjacent properties. All such vehicles and equipment shall be stored no closer than one hundred feet from any property line.

3.20 Animals-Household Pets. It is intended that the Lots be permitted to be used in a way that allows them to qualify for agricultural use exemptions with regard to ad valorem property taxes, subject to the following restrictions: Domestic livestock and exotic animals shall be allowed on any Lot so long as such animals do not become a nuisance or threat to other Owners or animals. Owners may keep on the Tracts up to one horse and/or one cow per every two fenced acres without prior approval from the Board of Directors. Pigs are not allowed. Any fowl, such as chickens, turkey or exotic birds shall be allowed so long as such birds are kept in a coup and do not exceed sixteen birds per Tract. All animals being raised by individual Tract Owners must be contained in a fenced area. No overgrazing is permitted on any portion of the Tract. Dogs must be kept in a dog run or fenced area. Dogs will not be permitted to run loose in the Subdivision.

3.21 Hunting. No hunting is allowed.

3.22 Landscaping. All lots must contain no less than 11,000 square feet of yard and/or landscaped area(s) using such shrubs, trees and grasses with higher stormwater runoff infiltration and retention characteristics as compared to the native grasses on said lot. The intention of this requirement is to help mitigate increased runoff from each lot due to added impervious cover and to reduce adverse impacts to downstream properties. The yard and/or landscaped area(s) shall be deemed to have satisfied this intent if said area(s) contain at least 25% more vegetative cover as compared to pre-development vegetative coverage. In addition, no lot may have more than 20,000 square feet of impervious cover. Further rules and requirements for landscaping may be set out in the Design Guidelines

3.23 Drainage. No person or persons shall impair the natural established drainage patterns of streets, Tracts or roadway ditches. No creeks or natural drainage areas may be dammed or water impounded, diverted or used for any purpose without the prior written approval of the Architectural Control Committee. Driveway culverts must be installed and will be of sufficient size to afford proper drainage or ditches without backing water up or diverting flow. Drainage culvert installation must meet County requirements.

3.24 Compliance with Provisions of Restrictions Each Owner, tenant, guest, invitee and licensee, shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration and shall give rise to a cause of action to recover sums due for damages, injunctive relief, fines or other rights granted to the Board or an aggrieved Owner in these Declarations, at common law or in equity. All fines shall become part of the Lot Owner's Regular Assessment as defined herein and may be enforced as an Assessment in accordance with Article VII.

3.25 Rentals. Owners may lease their Tracts for any length of time, including terms as short as a day.

3.26 Model Homes. Notwithstanding anything herein contained, Builders shall be allowed to construct and staff model homes as long as such model homes conform to these restrictions.

3.27 Prohibition of Offensive Activity. No activity, whether for profit or not, shall be conducted on any Tract which is not related to single family residential purposes, unless said activity meets the following criteria: (a) no additional exterior sign of activity is present, (b) no additional traffic, that would not be there normally, is created, (c) no exterior signs or machinery is visible and (d) nothing dangerous is present that should not be there. Home offices are specifically allowed so long as they meet the requirements of (a), (b), (c) and (d) above. No noxious or offensive activity shall be carried on upon any Tract, nor shall anything be done thereon which may be or may



become an annoyance or nuisance to the neighborhood. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

The Association shall have the right to adopt rules regulating the

- (i) frequency of garage sales,
- (ii) the burning of brush or trash;
- (iii) blasting on tracts; and
- (iv) any other activities that the Association deems a nuisance, annoyance or hazard.

Notwithstanding, this restriction is waived in regard to the customary sales activities required to sell homes or Lots in the Subdivision. Further, during the Development Period, Declarant may construct and/or maintain upon portions of the Common Area, Lot or any part of the Property such signs or facilities and conduct such activities as may be reasonably required, convenient or incidental to the sale of Lots and uses incidental thereto.

3.28 Oak Wilt. If Oak Wilt is present on an Owner's Lot, the Owner shall remove all of the trees affected by the Oak Wilt and take immediate action to prevent the spread of the disease to surrounding Lots and trees.

3.29 Flags, Rainwater Harvesting Equipment and Solar Energy Devices. The Board of Directors may adopt rules to regulate the use and placement of flags, rainwater harvesting equipment and solar energy devices. Such rules shall be in compliance with all Texas statutes.

3.30 Construction of Improvements. No Improvements shall hereafter be constructed upon any of the Lots without the prior written approval of the Plans and Specifications for the Improvement(s) by the Architectural Control Committee. Anything herein to the contrary notwithstanding, in the case of single family residences constructed on any Lot, the Architectural Control Committee, in its sole discretion, may limit its review of specific floor plans, and elevations, and upon the Architectural Control Committee's approval of such specific floor plans and elevations, residences may be constructed with the approved floor plans and elevations without the requirement of further review or approval by the Architectural Control Committee.

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

#### ARTICLE IV USE RESTRICTIONS

4.1 General. Except as provided below, the Subdivision shall be improved and used solely for single family residential use or for Common Areas. Common Areas may, subject to the approval of Declarant, be improved and used for active and passive recreational purposes for the primary benefit of Owners and occupants of portions of the Property; provided, however that, as to any specific area, Declarant may, in its sole and absolute discretion, permit other improvements and uses.

4.2 Minimum Yards. The location of all Improvements located on a Lot shall be subject to approval by the Architectural Control Committee. Minimum yard and setback requirements may be established in excess of those shown on the plat by the Architectural Control Committee or by Declarant through a Supplemental Declaration in order to maximize open areas, pedestrian and vehicular movement and to benefit the overall appearance of the Property.

4.3 Common Areas. No land with any Common Areas shall be improved, used, or occupied, except in such a manner as shall have been approved by the Board, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and Improvement. Access to any Common Areas may be limited to persons currently paying Assessment fees and other charges, or otherwise conditioned or restricted, or made available to non-Owners, all on such terms and conditions as the Board may determine, in its sole discretion.

4.4 Recreational Improvements. Any proposed construction of recreational improvements within a Greenbelt or any Amenity Areas shall be subject to approval by the Architectural Control Committee.

4.5 Utility Lots. Lots dedicated to public or private utilities shall be used solely for utility purposes.

#### ARTICLE V OLD 32 RANCH PROPERTY OWNERS ASSOCIATION

5.1 Organization. The Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Association as a nonprofit corporation under the laws of the State of Texas. The Association shall be created for the purposes, charged with the duties, governed by the provisions, and vested with the powers prescribed by law or set forth in its Certificate of Formation and Bylaws or in this Declaration. Neither the Certificate of Formation nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Nothing in this Declaration shall prevent the creation, by provision therefor in Supplement Declaration(s) executed and recorded by Declarant or any person or persons authorized by Declarant, of Sub-associations to own, develop, assess, regulate, operate, maintain or manage the Property subject to such Supplemental Declarations.

5.2 Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to or excepted from, by covenants or record, Assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Any Mortgagee or Lienholder who acquired title to any Lot which is a part of the Property through judicial or non-judicial foreclosure, shall be a Member of the Association. It is understood that the Development may be developed in phases or sections, and upon the completion of development of each individual section or phase by Declarant, such completed section or phase or any part thereof shall, at the option and election of Declarant, be incorporated within the scheme of the Declarant and become bound hereby and a part hereof, which incorporation shall be evidenced by the filing of the Supplemental Declaration or new Declarations.

5.3 Voting Rights. The Association shall have two classes of voting memberships. All Owners other than Declarant shall be Class A Members and shall be entitled to one vote per Tract owned. Where a Tract is owned by more than one Owner, the vote for such Tract shall be as all Owners jointly decide. If no decision is made by the Owners, no vote will be counted for that Tract. Declarant, its successors and assigns, shall be the Class B Members and shall be entitled to five votes for each Tract owned. Declarant's Class B membership shall apply to any lots or tracts annexed or added by the Declarant.

5.4 Powers and Authorities of the Association. The Association shall have the powers of the Texas Nonprofit Corporation, subject only to such limitations upon the exercise of such power(s) as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which 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 of the two (2) preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all time as follows:

(A) OLD 32 RANCH, Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such OLD 32 RANCH Rules and Bylaws not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions, including but not limited to establishing fines for violations of these Restrictions.

(B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion the Board are reasonably necessary or appropriate to carry out the Association functions.

(C) Records. To keep books and records of the Association's affairs.

(D) Assessments. To levy assessments as provided in Article VII below. An assessment is defined as that sum which must be levied in the manner and against the property set forth in Article VII hereof in order to raise the total amount for which the levy in question is being made.

(E) Right of entry and Enforcement. To enter at any time in an emergency (or in the case of non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon, excluding a completed dwelling used as a single family residence, for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expenses Incurred by the Association in connection with such entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and upon the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special assessments. The Association shall 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 Restrictions. The Association is also authorized to settle claims, enforce liens and take any action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

Each Owner shall release 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.

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

(G) Collection for Sub-association. To collect on behalf of and for the accounting of any Sub-association (but not to levy) any assessment made by a Sub-association created pursuant to this Declaration.

(H) Conveyances. To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way, or mortgages out of, in, on, over, or under any Common Properties for the purpose of constructing, erecting, operating or maintaining the following:

- (1) Parks, parkways or other recreational facilities or structures;
- (2) Roads, streets, walks, driveways, trails and paths;
- (3) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (4) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(5) Any similar public, quasi-public or private improvements or facilities; provided, however, that the Association shall not convey fee simple title in and to, or mortgage all or any portion of any Common Areas without the consent of at least sixty-seven (67%) of the Owners (excluding Declarant).

Nothing above contained, however, shall be construed to permit use or occupancy of any Improvement or other facility in a way which would violate applicable use and occupancy restrictions imposed thereon by other provisions of this Declaration.

(I) 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. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The members of the Association 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.

(J) Association Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utility services for all Common Areas and to maintain and repair easements, roads, parks, median strips, and other areas on the Property, as appropriate and the maintenance of which has not been accepted by the appropriate governmental entity.

(K) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Certificate of Formation or Bylaws of the Association.

(L) Construction on Association Property. To construct new Improvements or additions to Common Areas, subject to the approval of the Architectural Control Committee as provided in this Declaration.

(M) Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service or perform any function on behalf of Declarant or any Person.

(N) Property Ownership. To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise and to own and operate any and all types of facilities for both active and passive recreation.

5.5 Maintenance and Landscape Authority. The Association shall maintain and repair easements, entrances, gates, roads, roadways, rights-of-way, parks, parkways, swimming pools, landscaped median or median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Property, as appropriate, and all streets and roadways within the Property, which have been completed but not accepted by the appropriate governmental entity for maintenance. In addition, the Association shall be authorized to landscape all easements, access easements, rights-of-way, median strips, sidewalks, paths, trails, detention ponds and other areas of the Property, as appropriate. Prior to the termination of the Development Period, the Association, shall, upon first securing the consent of Declarant, maintain all Common Areas dedicated to the Association for maintenance. The Association shall also maintain any landscaped medians and boulevard areas, not fronting Lots, located in any public right-of-way.

5.6 Lighting. The Association shall pay for any electrical service and for all other costs and expenses necessary to operate and maintain the lighting whether within street right-of-ways, Greenbelt and Amenity Areas or on Common Areas

5.7 Common Properties. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

(A) To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Declarant, together with all Improvements of whatever kind and for whatever purpose which may be located in said area; and to accept, own, operate and maintain all other Common Properties, real and personal, conveyed or leased to the Association by the Declarant and to maintain in good repair and condition all lands improvements and other Association property owned by or leased to the Association. Such maintenance shall include, but not be limited to, mowing and removal of rubbish or debris of any kind.

(B) To construct, maintain, repair and replace landscape improvements and irrigation systems which lie within public rights-of-way, pursuant to any agreement with the Comal County or other appropriate governmental authority.

(C) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(D) Upon the approval of two-thirds (2/3rds) of the Owners, (excluding Declarant), to execute mortgages, both construction and permanent, for construction of facilities, including improvements on property owned by or leased to the Association. Additionally, the Association may accept lands in Common Areas, whether or not improved, from Declarant subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien as shall be deemed appropriate by borrower, whether Declarant or the Association, on the improvement or other facility to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees or Assessment paid by the members of the Association, as the case may be, but subject to the limitations imposed by this Declaration.

(E) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment of the Common Areas, as well as casualty coverage on all real and personal property owned by the Association, and in such amounts as determined by the Board, if the Board shall deem the same appropriate.

(F) To develop a wildlife management plan and implement the wildlife management activities on any Common Area that is under a wildlife management valuation.

5.8 Indemnification. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was director, officer, committee member, employee, servant or agent of the Association against expenses, including attorney's 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 interest of the Association, and (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 proceedings by settlement, or upon a plea of Nolo Contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association, against any liability asserted against 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 hereunder or otherwise.

5.9 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant or which would be detrimental to the sale of Lots within the Property.

## ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

6.1 Approval of Plans and Specifications. Except for Improvements erected by the Developer, no Improvement shall be commenced, erected, constructed, placed or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the Plans and Specifications therefor shall have been submitted to and approved by the Architectural Control Committee in accordance herewith.

6.2 Membership of Architectural Control Committee. The Architectural Control Committee shall consist of not less than three (3) nor more than five (5) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as Declarant or its successors or assigns deems appropriate.

6.3 Actions of the Architectural Control Committee. The Architectural Control Committee may, by resolution, unanimously adopted in writing, designate one or two (2) of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Control Committee. In the absence of such designation, the vote of a majority of all the members of the Architectural Control Committee taken without a meeting, shall constitute an act of the Architectural Control Committee.

6.4 Advisory Members. The Voting Members may from time to time designate Advisory Members.

6.5 Term. The Declarant shall appoint the initial members of the Architectural Control Committee. Such members shall serve until the termination of the Development Period. If any member resigns during the Development Period, the Declarant shall appoint its replacement. Such members are not required to be a Lot Owner. The Architectural Control Committee will act solely in the Declarant's interest and will owe no duty to any other Owner or the Association until the earlier of the termination of the Development Period or the Declarant delegates its rights, in writing, to the Members.

6.6 Adoption of Rules. The Architectural Control Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to, a building code, a fire code, a housing code, and other similar codes as it may deem necessary and desirable.

6.7 Review of Proposed Construction. Whenever in this Declaration, or in any Supplemental Declaration, the approval of the Architectural Control Committee is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in questions and all other facts and information which, in its sole discretion, it considers relevant, and may require an Owner to provide such other information as it deems relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Lot or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Control Committee, and construction thereof may not commence unless and until the Architectural Control Committee has approved such Plans and Specifications in writing. The Architectural Control Committee may postpone review of the Plans and Specifications until such time as the Architectural Control Committee has received all information reasonably requested. If the Architectural Control Committee fails to approve or disapprove in writing any plans and specifications within thirty days following

the submission of plans, or the receipt of any requested additional information, such plans and specifications shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance of such plans and specifications. The Architectural Control Committee shall perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Control Committee. The Architectural Control Committee's approval of any Plans and Specifications shall not be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

6.8 Variances. The Architectural Control Committee may grant variances from compliance with any of the provisions of this Declaration or any Supplemental Declaration, when, in the opinion of the Architectural Control Committee, in its sole and absolute discretion, such variance will not impair or detract from the high-quality development of the Property, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument in recordable form and must be signed by a majority of the Committee's Voting Members. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof.

6.9 No Waiver of Future Approvals. The approval or consent of the Architectural Control Committee to any Plans or Specifications for any work done or proposed in connection with any other matter requiring the approval or consent of the Architectural Control Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatsoever, subsequently or additionally submitted for approval or consent by the same or a different person.

6.10 Work in Progress. The Architectural Control Committee, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications.

6.11 Non-Liability of Committee Members. NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION.

## ARTICLE VII FUNDS AND ASSESSMENTS

### 7.1 Assessments.

(A) Assessments established hereunder or by the Board pursuant to the provisions of this Article VII shall be levied on a uniform basis against each Lot, but not Common Area or areas dedicated or conveyed to a public authority or utility, within the Subdivision. Lots which have been re-platted to create a larger lot shall continue to pay assessments as if such lots were individual lots. Notwithstanding, if any Owner owns more than one (1) Lot in the subdivision, such Owner shall pay only twice the Assessment of one (1) Lot no matter how many lots are owned. The Developer shall determine the assessments against each lot until the termination of the Development Period.

(B) Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which the Assessment falls due, and shall become a lien against each such Lot and all Improvements thereon. The Developer, or the Association thereafter,

may enforce payment of such assessments in accordance with the provisions of this Article.

(C) Where the obligation to pay an Assessment first arises after either the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose to the duration of the Assessment year or other period remaining after said date.

7.2 Maintenance Fund. The Developer shall initially establish, and the Board shall continue, a maintenance fund into which shall be deposited all monies paid the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended. Nothing contained herein shall limit, preclude or impair the establishment or other maintenance funds by a Sub-association pursuant to any Supplement Declaration.

7.3 Regular Annual Assessments. Prior to the beginning of each fiscal year after the Development Period, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Restrictions, including but not limited to, the cost of all maintenance, the cost of enforcing the Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessment set by the Board shall 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 as aforesaid. All such regular Assessments shall 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. In no event shall the regular Assessment per Lot for the year 2021 exceed the sum of \$700.00. Thereafter, the regular Assessment permitted hereunder shall not be increased by more than ten percent (10%) per year. However, if any Owner owns more than one Tract in the Subdivision, such Owner shall pay only twice the Assessment of one Tract no matter how many Tracts are owned.

7.4 Special Assessments. In addition to the Regular Annual Assessment, the Association may levy Special Assessments against only Class A Members. to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Lots benefiting from such special assessment and may be enforced in the same manner as the Regular Annual Assessment.

7.5 Owner's Personal Obligation for Payment of Assessments. The Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by 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 shall be obligated to pay interest on the amount of the Assessment from the due date at a percentage rate of six percent (6.0%) per annum, or the highest amount allowed by law, whichever is lower, together with all costs, and expenses of collection, including reasonable attorney's fees.

7.6 Creation of Lien and Personal Obligation. In order to secure the payment of the assessments, fees and other charges hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure, pursuant to the provisions of Section 51 of the Texas Property Code (and any successor statute) and Section 209 of the Texas Property Code and each such owner hereby expressly grants the Association a power of sale in connection with such statute. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of Sections 51 and 209 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed



for record in the Real Property Records of Comal County, Texas. In the event that the Association has determined to non-judicially foreclose the lien pursuant to the provisions of said Section 51 and 209 of the Texas Property Code and to exercise the power of sale hereby granted, the Association, or the Association's agent, shall give notice of foreclosure sale as provided by the Texas Property Code as then amended. Upon request by the Association, the Trustee shall give any further notice of foreclosure sale as may be required by the Texas Property Code as then amended, and shall convey such Lot to the highest bidder for cash by Deed. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Subject to Section 209 of the Texas Property Code, following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder. In the event of non-payment by any Owner of any assessment, fee or other charge levied hereunder, the Association may, in addition to foreclosing the lien and exercising the remedies provided, upon ten (10) days prior written notice to such non-paying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 7.5 to comply with the provisions of Section 51 and 209 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of Section 51 or 209 of the Texas Property code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration file in the Real Property Records of Comal County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51 or 209 of the Texas Property Code.

**7.7 Notice of Lien.** In addition to the right of the Association to enforce the assessments, fees or other charge levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Lot against which the lien is claimed and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured hereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

**7.8 Liens Subordinate to Mortgages.** The lien described in this Article VII shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or any other third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof, including home equity loans. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid assessments, fees or other charges against such Lot which accrued prior to the time such holder acquired title to such Lot. No such sale or transfer shall relieve such holder from liability for any assessments, fees or other charges thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot shall not affect the Association's lien for assessments, fees or other charges. The Association shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of lien described in Section 7.5 hereof, which notice

shall be sent the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent assessments, fees or other charges upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VII.

## ARTICLE VIII EASEMENTS/DISCLOSURES

8.1 Reserved Easements. All dedications, limitations, restrictions and reservations shown on a Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights, made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of 10.0 feet on each side of such Lot line.

8.2 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the easement area affecting the Property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, cable television, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no sewer, electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Control Committee. Additionally, it shall be expressly permissible for the utility companies and other entities supplying service to trim overhanging trees and shrubs which are located on portions of the Property abutting such easements in the event it shall be determined that such overhanging limbs and shrubs shall interfere with the maintenance of the utilities.

8.3 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Control Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent in any drainage easement, except as approved in writing by the Architectural Control Committee.

8.4 Surface Areas. Each Owner shall maintain the surface area of all easements located within his Lot and all Improvements located therein except for such improvements for which a public authority or utility company is responsible. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement are shall be liable to any owner or to the Association for any damage done by them or either of them or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

8.5 Title to Easement and Appurtenances Not Covered. Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or Common Area or any drainage, water, gas, sewer, storm sewer, electrical light, electrical power, telegraph or telephone way, or any pipes, lines poles or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Property, and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved by Declarant.

8.6 Common Areas. Each Owner shall have any easement of use and enjoyment in and to all Common Areas, including but not limited to the right to ride horses within the road right-of-way but not within the paved area of such right-of-way, which shall be appurtenant to and shall run with title to such Owner's Lot, subject to the following restrictions:

(A) The right of the Association to suspend the Owner's voting rights and right to use the Common Areas for any period, during which any Assessment against such Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Association;

(B) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a majority vote of the Members;

(C) The right of the Association to borrow money for the purpose of improving the Common Areas and, in furtherance thereof, to mortgage the Common Areas, all in accordance with the Certificate of Formation and Bylaws;

(D) The right of the Association to make reasonable rules and regulations regarding the use of the Common Areas and any facilities thereon, including but not limited to the number guests allowed and areas where horses may be ridden

(E) The right of the Association to charge reasonable fees for use of the Common Area and/or to set aside use of the Common Area (other than the private road) for the exclusive use of specific individuals and/or groups of individuals; and

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

Notwithstanding anything herein, no Lot Owner shall be denied access for ingress and egress to their Lot on any Association owned road because of the nonpayment of dues, violation of restrictions or for any other reason, except for unavoidable closures due to temporary construction, repair and/or maintenance of such roads.

8.7 Easement to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives and employees, successors, assigns, licensees and mortgagees, an easement over the roadways within the Subdivision, and any other roadways or access easements and Common Areas for the purposes of enjoyment, use, access, and development of Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of the roads, for the posting of signs and for connecting and installing utilities serving the Additional Property. Declarant reserves the right to convey this non-exclusive easement to any current or successive owner or owners of any part of the Additional Lands.

8.9 Oak Wilt. All Owners are advised to secure from the Texas Forest Service, the Texas Extension Forester at Texas A & M University or its local county agent information on oak wilt and other diseases which may infect their trees and possibly spread to trees on other Lots. Each Owner is responsible for taking such actions as may be necessary on his property to ensure that oak wilt and other diseases are not spread to the trees of other Owners. Because there is no known cure for oak wilt and oak wilt almost always spreads from a diseased tree to its neighboring oak trees, each Owner shall properly destroy all infected oak trees, avoid unnecessary pruning, and shall immediately apply dressing to all wounds on all oak trees. If oak wilt is detected, a minimum of 100 feet of the area surrounding the infected oak tree shall be trenched at least three feet (3') deep so as to prevent the oak wilt from spreading through connecting roots. Oak trees are most susceptible to oak wilt from February 1 to June 1. As a precaution, Owners should (i) avoid using firewood from infected oak trees, (ii) dispose of unused oak firewood after one heating season, and (iii) cut firewood only in the summer. Owners should use fungicide propiconazole to treat uninfected oaks when first informed of oak wilt being present on nearby trees. The foregoing information regarding oak wilt is provided to alert Owners and neither Declarant nor the Association shall be liable to any Owner in connection with the existence of spread of oak wilt on any Lot.

8.10 Notice of Water Level Fluctuations: The water level of the creeks within or adjoining the OLD 32 RANCH, UNIT 2 fluctuates for various reasons, including as a result of:

- (a) An entity lawfully exercising its right to use the water stored in the impoundment; or
- (b) drought or flood conditions.

#### ARTICLE IX MISCELLANEOUS

9.1 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until June 1, 2037, unless amended as herein provided. After June 1, 2037, this Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least two-thirds (2/3rds) of the Lots within the Property then subject to this Declaration.

9.2 Non-liability of Board and Architectural Control Committee Members. Neither the Architectural Control Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any connected with the performance of the Architectural Control Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Control Committee or its members or the Board or its members, as the case may be. Neither the Architectural Control Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

9.3 Amendment.

(A) By Declarant. This Declaration or any Supplemental Declaration may be amended by the Declarant acting alone until June 1, 2037, or until termination of the Development Period, whichever is later.

(B) By Owners. In addition to the method in Section 9.3(A), after June 1, 2037 or after the termination of the Development Period, whichever is earlier, this Declaration may be amended by the recording in the Official Public Records of Comal County, Texas, an instrument approved, executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by at least sixty-six and two thirds percent (66 2/3%) of ***Lots in all Phases of the Property.*** There shall be one vote per Lot, regardless of the number of Owners of such Lot.

9.4 Notices. Any notice permitted or required to be given this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third 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.

9.5 Interpretation. The provisions of this Master Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

9.6 Mergers and Consolidations. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger, consolidation or annexation shall have the consent (in writing or at a meeting duly called for such purpose) of those Members entitled to cast not less than two-thirds (2/3rds) of the votes of the Association.

9.7 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Control Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities to construct any and all other types of improvements anywhere within the Property, however, the construction of sales and leasing offices and the posting of sign advertising the sale and leasing of Lots by Declarant shall be limited to Lots owned by the Declarant.

9.8 Assignment by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

9.9 Enforcement and Nonwaiver.

(A) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant and/or the Board shall have the right to enforce all of the provisions of the Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against the breach of any such provision.

(B) Non-waiver. The failure to enforce any provision of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

(C) Liens. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

9.10 Construction.

(A) Restrictions Severable. The provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

(B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(C) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

9.11 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property and/or Common Area ("Conceptual Plans") are conceptual in nature and are intended to be used for illustrative purposes only. These items and the uses listed thereon are subject to change from time to time. Developer makes no representations or warranty concerning such land uses and Improvements shown on the Conceptual Plans and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans.

9.12 Development by Declarant. It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, the right to direct the size, shape and composition of the Property, the right to create and/or designate Lots, utility areas and Common Areas and to subdivide all or any portion of the Property. Collectively these rights shall be known as the "Development Rights" and Declarant hereby reserves the right and privilege for itself and or its assigns to exercise the Development Rights until twenty-four (24) months after the expiration or termination of the Development Period, except the right to appoint and remove Board members and officers, as more fully set forth herein and in the Bylaws. Declarant may assign the Development Rights by written assignment recorded in the Official Public Records of Comal County, Texas.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this the 6th day of Sept, 2021.

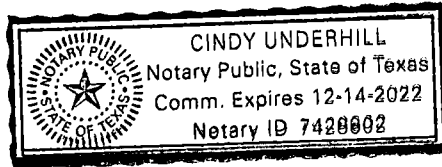
BRICKSTONE DEVELOPMENT, LP  
a Texas limited partnership

By: Kurt Rogers  
Printed Name: Kurt Rogers  
Title: GEN. PARTNER

THE STATE OF TEXAS

COUNTY OF Tarrant

This instrument was acknowledged before me on this the 6<sup>th</sup> day of Sept, 2021, by Rusty Rogers Ken Partners of BRICKSTONE DEVELOPMENT, LP, a Texas limited partnership, in the capacity therein stated, on behalf of said Company.



Cindy Underhill  
NOTARY PUBLIC, STATE OF TEXAS

Filed and Recorded  
Official Public Records  
Bobbie Koepp, County Clerk  
Comal County, Texas  
09/17/2021 11:05:03 AM  
JESSICA 23 Page(s)  
202106049077



Bobbie Koepp