Book 14269 Page 1749 23pgs Doc# 20090228974

#859

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NAPA OAKS SUBDIVISION, UNIT 1

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS
COUNTY OF BEXAR §

This Declaration is made on the date hereinafter set forth by NAPA OAKS S.A., LTD. a Texas Limited Partnership, duly authorized to do business in the State of Texas, hereinafter referred to as "Developer".

W I T N E S S E T H:

WHEREAS, Developer is the owner of that certain tract of land known as NAPA OAKS, Unit 1, being a residential Subdivision situated in Bexar County, Texas according to the plat ("Plat") of NAPA OAKS SUBDIVISION, Unit 1, recorded in the Official Public Records of Real Property of Bexar County, Texas, after having been approved as provided by law, and being recorded in Volume 9609, Pages 87-90 in the Official Public Records of Real Property of Bexar County, Texas hereinafter referred to as the "Property", "Properties" or the "Subdivision"); and,

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plat for the benefit of both the present and future owners of Lots in said Subdivision, such that the Property, and all land annexed thereto, shall be hereafter held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions set forth below;

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon NAPA OAKS SUBDIVISION, UNIT 1 these Restrictions, and declares the following reservations, easements, restrictions, covenants, and conditions applicable thereto, for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1.01 "ACC" shall mean and refer to the Architectural Control Committee of the Association, created and governed by Article V of this Declaration.

Section 1.02 "Association" shall mean and refer to Napa Oaks Owners' Association, the mandatory association of Owners of Lots within the Property, established pursuant to Article III below.

Section 1.03 "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association.

Section 1.04 "Bylaws" shall mean and refer to the Bylaws of the Association.

Section 1.05 "Builder" shall mean and refer to each person or entity that purchase Lots and build speculative or custom homes thereon for third party purchasers in the regular course of business.

Section 1.06 "Common Areas" and "Common Facilities" shall mean and refer to all property leased, owned, or maintained by the Association for the use and benefit of the Members of the Association. In addition, Common Facilities may include, but are not necessarily limited to, an entry gate, signs, clubhouse, pool, fence, fountains, statuary, parkways, medians, islands, common security guardhouse, landscaping, walls, safety lanes, bridges, greenbelts, and other similar or appurtenant Improvements.

Section 1.07 "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Lot in the Subdivision.

Section 1.08 "Developer" shall mean NAPA OAKS S.A., LTD. as well as any other person or entity who is a successor to NAPA OAKS S.A., LTD. or who shall have had their rights or duties as Developer assigned to them.

Section 1.09 "Improvement" shall mean and refer to any building, structure, fence, wall, sign, statuary, landscaping, driveway, ground cover, swimming pool, curbing, or grading, as well as any alteration or modification of any of them.

Section 1.10 "Initial Capital Contribution" shall mean and refer to the one-time charge, ($300.00) payable immediately after each Lot is sold, transferred or conveyed by the Developer to a non-builder owner, to be paid to the HOA at closing of each such Lot by the purchaser thereof.

Section 1.11 "Lot" shall mean and refer to any plot of land identified as a Lot or home site on any plat or replat of the Subdivision or any part thereof, except for any Common Area.

Section 1.12 "Member" shall mean and refer to each person or entity who is a member of the Association pursuant to the Bylaws.

Section 1.13 "Owner" shall mean and refer to the record owner, according the Official Public Records of Real Property of Bexar County, Texas, whether one or more persons or

entities, of fee simple title to any Lot which is a part of the Property, including (i) contract sellers, but excluding those having such interest merely as security for the performance of an obligation and those who have only an interest in the mineral estate, (ii) Developer (except as otherwise provided herein,) and (iii) Builders.

Section 1.14 "Property", "Properties" and/or "Subdivision" shall mean and refer to Napa Oaks Subdivision, Unit 1, as shown by the plat thereof recorded in the Plat Records of Bexar County, Texas, subject to the Reservations set forth herein and/or in the Subdivision Plats, and any additional properties made subject to the terms hereof, pursuant to the provisions set forth herein.

Section 1.15 "Required Plans" shall mean and refer to any and all site plans, floor plans, exterior elevations, color samples, material exemplars, and any other plans or information deemed necessary by the ACC for the performance of its function.

Section 1.16 "Restrictions" shall mean and refer to this Declaration, as it now exists and as it may hereafter from time to time be amended.

ARTICLE II
RESERVATIONS, EXCEPTIONS, DEDICATIONS AND ADDITIONS

Section 2.01 Plat of the Property. The plat ("Plat") of the Subdivision dedicates to the Public for use as such, subject to the limitations as set forth therein, the roads, streets, and easements shown thereon. The Plat further establishes certain reservations, exceptions and dedications applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat, and/or any replat or amendments of the Plat of the Subdivision recorded or hereafter recorded, shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Developer, conveying said Property or any part thereof whether specifically referred to therein or not.

Section 2.02 Easements. Developer reserves the non-exclusive right to use the utility easements and right-of-ways shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Official Public Records of Real Property of Bexar County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of water, electric lighting, electric power, and telephone line or lines, storm surface or underground drainage, cable television or any other utility the Developer sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Property. Should any utility company furnishing a service covered by the general easements herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their

respective facilities. Nothing contained herein shall impose any obligation on Developer to contract to maintain any utilities. Neither Developer nor any utility company, political Subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements.

Section 2.03 Title Subject to Easements. It is expressly agreed and understood that the title conveyed by Developer to any of the Lots shall be subject to any easement affecting same for roadways or drainage, water system, electric lighting, electric power, cable TV, or telephone purposes and other easements previously granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot.

Section 2.04 Utility Easements. Utility easements have been dedicated in accordance with the Plat. No building or structure shall be located over, under, upon or across any portion of any utility easement. The Owner of each Lot shall have the right to construct, keep and maintain concrete drives, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive, fence or similar Improvement placed upon such utility easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each tract subject to said utility easements shall be responsible for (i) obtaining prior approval, if required, by from each easement holder, (ii) any and all repairs to the concrete drives, fences and similar Improvements which cross or are located upon such utility easements, and (iii) repairing any damage to said Improvements caused by a utility district or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the utility easements. In the event that a single Owner shall own two or more adjacent Lots used as a single building site, then the fifteen foot utility easement along the interior and common Lot lines shall be considered vacated so long as no utilities have been previously installed therein. However, in the event that one such Lot shall thereafter be conveyed to any third party, the interior Utility easements along such interior and common Lot line shall again burden both such Lots.

Section 2.05 General Drainage Easements. The Plat generally dedicates drainage easements centered on all natural runoff channels, creeks, or swales, in addition to those drainage easements specifically shown and dedicated on the Plat. Developer, its successors and assigns, reserves the right, but not the obligation, to more specifically identify these natural runoff channels, creeks, and swales to the extent that such identification is necessary or convenient for a Lot Owner. Should a Lot Owner request such identification and Developer, in its sole discretion, employs an engineer or surveyor to assist in the identification process, the Lot Owner shall pay the fees and costs for such expert assistance. The written identification of such natural runoff channels, creeks, or swales may be reduced to be written notice filed in the Official Public Records of Real

Property of Bexar County, Texas, which shall supersede and replace, for said Lot, the general Plat reference to same. Any drainage pattern and/or earthen tank embankment established on the property cannot be altered or blocked in any manner whatsoever.

Section 2.06 Easements for Inspection and Enforcement. The Association, the Board and the ACC are each hereby granted easements on, over and to each Lot for the purposes of inspecting for compliance with this Declaration and any rules, regulation or guidelines adopted pursuant to it, and bringing each Lot into compliance; provided, however, that no breach of the peace shall be committed by the exercise of such rights. No trespass shall been found to have been committed by the lawful exercise of such rights. In the event any person shall obstruct, interfere with or impede exercise of such easement rights they shall be subject to a court-ordered injunction to cease and desist from such conduct.

Section 2.07 Annexation of Additional Property. Developer hereby reserves the right to subject additional land to these Restrictions and to add then-current and future owners of said land as Members to the Association, by filing for record in the Official Public Records of Real Property of Bexar County, Texas, an annexation declaration subjecting such land to these Restrictions and the jurisdiction of the Association. If annexation of additional land occurs, then the real property so annexed will form a part of the Properties, as defined above, and shall be subject to the Restrictions herein; provided, however, that Developer may alter, modify, amend, repeal or revise these Restrictions, as applied to the annexed property, to the extent necessary or convenient, in Developer's sole discretion. Any Owner of any Lot annexed to the Property and the Association shall have rights of use and enjoyment of the Common Areas and Common Facilities co-extensive with the rights of Owners of Lots within NAPA OAKS SUBDIVISON, UNIT 1. The Developer expressly retains the right to acquire and subdivide adjacent properties and connect the Subdivision road(s) to same in order to provide ingress and egress thereto in establishing continuing development of such future development.

Section 2.08 Exterior Lighting. Any and all exterior lighting shall comply with Bexar County Commissioners Court Regulation No. 12.501.072208 regarding the regulation of outdoor lighting in the unincorporated areas of Bexar County, Texas within 5 miles of the Camp Bullis boundaries.

ARTICLE III
ASSOCIATION MEMBERSHIP AND CLASS OF MEMBERSHIP

Each Owner shall automatically be a member of an association of owners of land within the Subdivision so long as they are an Owner. Membership in the Association is a mandatory requirement incident to ownership of a Lot. No Owner may exempt themselves from membership in the Association.

The Association shall have the following classes of membership as set forth on the Bylaws:

Class A. Class A Members shall be all those Owners as defined in Article II above, with the exception of the Developer and Builder Members. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest of interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B Members shall be the Developer and Builder Members. Class B Members shall be entitled to twenty-five votes for each Lot in which they hold the interest, provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following, events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On January 1, 2030.

From and after the happening of these events, whichever occurs earlier, the Class B Members shall be deemed to be Class A Members entitled to one vote for each Lot in which they hold the interest required for membership.

Management of the affairs of the Association shall be governed by the Bylaws of the Association, except in the event of a conflict between the Bylaws and these Restrictions, in which case these Restrictions shall prevail.

ARTICLE IV
PROPERTY RIGHTS IN THE COMMON AREA AND COMMON FACILITIES

Section 4.01. Members' Easements of Enjoyment. Subject to the provisions of Section 4.02 of this Article IV, every Member shall have a common right and easement of enjoyment in and to the Common Facilities and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

Section 4.02. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The rights and easements existing or hereafter created in favor of others as provided for in the Subdivision Plat, recorded instruments on file in the Official Public Records of Real Property of Bexar County, Texas, and/or in Article II hereof.

(b) The rights of the Association, once it has obtained legal title to the Common Facilities, to do the following:

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

(2) to take such steps as are reasonably necessary to protect the above-described properties and facilities against foreclosure;

(3) to enter into one or more contracts or agreements for the maintenance or improvement of the Common Facilities;

(4) to suspend Common Area and Common Facilities usage rights, pursuant to Article IX below;

(5) to convey, transfer, encumber and grant easements to governmental entities, public agencies, and/or utility providers, upon such terms and conditions as may be approved by two-thirds of each Class of membership, voting in person or by proxy at a meeting duly called for such purpose; and,

(6) to adopt rules and regulations governing the use, maintenance and occupancy of the Common Area, include fines for non-compliance and reasonable fees and deposits for use of same.

Section 4.03. Title to Common Areas. The Association shall accept conveyance from the Developer of, and own, all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Areas which may be established. Once the Association member uses a facility intended for the HOA, the HOA accepts the amenity, "as is" with all faults, and shall maintain the facility. From and after the date on which title to any Common Area vests in the Association, the Association shall purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its members, covering occurrences on the Common Areas. The policy limits shall be determined by the Board of Directors of the Association. The Association shall use its best efforts to see that such policy shall contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of members, Directors and the management company retained by the Association (if any), insuring each against liability to each other insured as well as third parties. Developer shall not be responsible to the HOA for any defect or warranty for any common area amenity.

The Association shall not convey or mortgage any Common Area without the consent of two-thirds or more of the Lot Owners.

Section 4.04. Gate Hours. Gates shall be open from 7 a.m. to 7 p.m. seven days a week until the last new home is closed and funded. On holidays that the sales offices are closed, the gates may be closed.

Section 4.05. Water Meters. The Association shall have the right to tap into any water meter for the purpose of irrigating and maintaining HOA property. The HOA shall deduct $40.00 per month to each individual owner who's meter is used.

ARTICLE V
ARCHITECTURAL CONTROL COMMITTEE

There is hereby created an Architectural Control Committee (hereinafter called the "ACC"), which shall be comprised of three members only and shall be initially composed of James Japhet, Jeff Japhet and Amber Japhet, to serve until their successors are named. A majority of the ACC may act for the ACC and no notice of any of its meetings shall be required. In the event a vacancy on the ACC shall arise, the remaining member or

members of the ACC may fill such vacancy by appointment, and if they fail to do so within thirty days, then Developer may do so. In the event any vacancy on the ACC shall not be filled within sixty days, then the Board of Directors of the Association may fill such vacancy by appointment provided, however, that in the event that Developer still owns any Lots subject to the jurisdiction and assessments of the Association, the Board shall first give Developer written notice of such vacancy and thirty days within which to make such appointment. Subject to the terms hereinafter set forth, Developer shall have the right to remove or add members to the ACC and fill vacancies in the committee membership and Developer may assign such rights to the Association. The sale of the last Lot owned by Developer within the Properties shall be deemed to be an assignment to the Association of Developer's powers with respect to ACC membership. ACC members shall not be entitled to compensation for their services rendered in such capacity.

Except as provided in Article VII herein, no Improvement shall be erected, altered, added onto, placed or repaired on any Lot in the Subdivision until the Required Plans are submitted and approved in writing by the ACC as to the conformity and harmony of exterior design with existing Improvements in the Subdivision, the location with respect to topography, existing trees, and finished elevation, and apparent conformity with the requirements of this Declaration. The ACC shall have the power to employ professional consultants to assist it in discharging its duties and may create and impose reasonable fees for processing of applications. The ACC shall further have the power to promulgate design guidelines, and to amend same from time to time as the ACC deems necessary, for construction of and/or alternations to all Improvements within the Subdivision. Any such guidelines will be made available to an Owner upon request.

Within thirty days after the Owner has submitted to the ACC the Required Plans and written notice that the Owner desires to obtain ACC approval, the ACC shall notify Owner in writing whether the Required Plans are approved or disapproved. If plans and specifications are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally, and reject the balance. No Improvement may be made without compliance with any conditions or requirements imposed by the ACC. In the event the plans submitted by the Owner have not been approved or disapproved within thirty days after being submitted, the plans so submitted will be deemed to have been disapproved. The ACC shall have the right to charge $200.00 review fee for each submittal.

The ACC shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or compatible of more than one interpretation. The goal of the ACC is to encourage the construction of dwellings of good architectural design, quality and proper size compatible with Developer's conceptual plan for the Subdivision. Dwellings should be planned and designed with particular attention to the design and aesthetic appearance of the exterior and the use of such materials, which, in the sole judgment of the ACC, create an attractive and harmonious blend with existing and proposed dwellings in the immediate area and the natural surroundings. The ACC may disapprove the construction or design of any Improvement on purely aesthetic grounds

where, in its sole judgment, such disapproval is required to protect the continuity of design or values of the neighborhood and of other homeowners or to preserve the serenity and natural beauty of any surroundings. Members of the ACC and their representatives shall not be liable to any person subject to or possessing or claiming the benefits of these restrictive covenants for any damage or injury to property or for damage or loss arising out of their acts hereunder. The ACC's evaluation of Required Plans is solely to determine compliance with the terms of this Declaration and the aesthetics of the proposed Improvements and the ACC disclaims any responsibility to determine compliance with any applicable building code or other standard for construction.

The ACC shall have the right, but not the obligation, to grant variances and waivers relative to deviations and infractions of the Declaration or to correct or avoid hardships to Owners. Upon submission of a written request for same, the ACC may, from time to time, in its sole discretion, permit an Owner to construct, erect or install any Improvement which is in variance from the covenants, restrictions or architectural standards which are provided in this Declaration. In any case, however, the Improvement with such variances must, in the ACC's sole discretion, blend effectively with the general architectural style and design of the neighborhood and must not detrimentally affect the integrity of the Subdivision or be incompatible with the natural surroundings. All requests for variances shall be in writing, shall be specifically indicated to be a request for variance, and shall indicate with specificity the particular standard sought to be varied and the nature of the variance requested. All requests for variances shall be deemed to be disapproved if the ACC has not expressly and in writing approved such request within thirty days of the submission of such request. No member of the ACC shall be liable to any Owner for any claims, causes of action or damages arising out of the grant of any variance to an Owner. No individual member of the ACC shall have any personal liability to any Owner or any other person for the acts or omissions of the ACC. Each request for a variance submitted hereunder shall be reviewed independently of similar requests and the grant of a variance to any other Owner shall not constitute a waiver of the ACC's right to deny a variance to another Owner.

All decisions of the ACC shall be final and binding, and there shall not be revisions of any action of the ACC except by procedure for injunctive relief when such action is patently arbitrary and capricious. In the event of construction of Improvements or threatened construction of Improvements in violation of this Declaration, any Owner, the Association, Developer or the ACC may seek to enjoin such construction or seek other relief against the Owner or builder responsible therefor provided that each such offending party shall first be given written notice of the perceived violation and the opportunity to remedy the violation prior to the filing of suit. Neither the Developer, the ACC, nor any member of the ACC shall be liable in damages, or otherwise, to anyone submitting plans and, specifications for approval or to any Owner who believes himself adversely affected by this Declaration by reason of mistake of judgment, negligence or misfeasance in connection with the approval or disapproval of plans or requests for variance.

The ACC shall be duly constituted and shall continue to function for the entire duration of this Declaration, including any extensions thereof. At such time as Developer no

longer owns any Lots, or adjoining land, subject to the jurisdiction and assessments of the Association, the Board of Directors shall have the right and obligation to appoint the members of the ACC.

ARTICLE VI
CONSTRUCTION REQUIREMENTS

Section 6.01 Dwellings. Only one single-family residential dwelling with a detached or attached garage may be constructed on any Lot. All garages shall be large enough to accommodate under roof a minimum of two (2) full-sized automobiles. No garage shall be permanently enclosed for conversion to any other use. Open carports shall not be permitted. All dwellings and outbuildings must be constructed with new materials, except that used brick, stone, wooden beams, and doors may be used for antique effect if such use is appropriate for the structure and does not detract from the appearance of the structure or the Subdivision. All residential dwellings must be site built and constructed upon a monolithic full concrete slab foundation. More specifically, no concrete pier, beam or similar structure may be used as a foundation (this shall be waived for the following lots due to the serious incline: Lots 3-15 Blk 81, Napa Landing). As used herein, the term "single family residential dwelling" shall be construed to prohibit mobile homes or trailers being placed on said Lots, or the use of said Lots for duplex houses, multi-plex houses, condominiums, or apartments.

Section 6.02 Outbuildings. Outbuildings may be constructed, so long as they are of good construction, kept in good repair, and are not used for temporary or permanent residential purposes. All outbuildings must be approved in writing by the Architectural Control Committee. Outbuildings shall not exceed dimensions of twelve feet by fourteen feet (12' x 14'), and the color shall be approved by the ACC.

Section 6.03 Roofing. Roofing shall be 20-year composition or better, tile roofing or metal roofing (natural colors only).

Section 6.04 Masonry. Each residential dwelling must have a minimum of three sides of first floor plate and full masonry on the front elevation (siding allowed over roof area on 2nd floor, not to exceed 20%) of either brick, rock or stucco masonry construction on exterior walls. Cement siding (for example, Hardi-Plank) may not be used to fulfill any portion of the masonry requirement hereunder.

Section 6.05. Setbacks. No Improvement of any kind, other than landscaping, paving and/or or concrete flatwork, shall be located on any Lot nearer than five feet to the side property line (except for corner lots where the minimum setback from the side street shall be ten feet), nearer than fifteen feet to the rear property line, or nearer than twenty feet from the front property line (Except for Lots 3-14 Blk 81, Napa Landing; front setback may be fifteen feet). The Developer reserves the right to grant exceptions to the setback lines shown on the plat and upon filing notice of such exception for record in the Official Public Records of Real Property of Bexar County, Texas, the setbacks in such exception shall supersede and replace the setbacks established in the Subdivision plat. "Rear and

side Lot lines", respectively, as used in this paragraph, in respect to any two or more contiguous whole Lots owned by the same Owner and used as a single building site, shall mean, respectively, the outermost rear Lots and side Lot lines considering said contiguous whole Lots as one Lot; provided, however, that in the event that more than one Lot are owned jointly, and thereafter ownership is separated, the lines between the separated Lots shall be burdened by the setback lines described herein, as if they had never been treated jointly for setback purposes.

Section 6.06 Governmental Requirements. No Improvement shall be placed, erected, modified or constructed on any Lot unless and until all applicable governmental requirements, including issuance of permits and/or licenses, have been met.

Section 6.07 Duty to Complete Promptly. Any Improvement commenced on any Lot shall be completed as to exterior finish and appearance within six months from the date of commencement of construction. Failure to complete such exterior by the deadline shall constitute abandonment of the construction, and automatically void and invalidate any and all approvals given to make such Improvement. Initial basic landscaping of the front yards shall be completed by the Builder, at the Builder's expense, within thirty days from the date a Lot is sold, transferred or conveyed to an Owner. All costs associated with any upgrades to the basic landscaping installed by the Builder, shall be the sole responsibility of the Owner. The Architectural Control Committee shall have the right to determine, in its sole discretion, what basic landscaping must be installed.

Section 6.08 Waste receptacle and temporary toilet. During construction of a dwelling each Owner shall provide a waste receptacle on his Lot for disposal of construction debris resulting from the construction on that Lot. Each Owner shall also provide a temporary or portable toilet during the construction on his Lot (or one toilet for every three homes within 250').

Section 6.09 Landscaping. Builder shall install full sod in front yard, 10 shrubs (5 gallon size) and 2 oak trees (25 gallon size, unless there are already 2 oak trees in the front yard) within 30 days of completion of home.

ARTICLE VII
USE RESTRICTIONS

Section 7.01 Single Family Residential Use. All Lots must be used for single family residential purposes only.

Section 7.02 Use of Temporary Structures. No structure of a temporary character, whether trailer, recreational vehicle, camper, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently. However, the Developer reserves the right to grant approval to erect, place and maintain such facilities in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other Improvements within the Subdivision.

This sentence shall take precedence over any conflicting provision of these Subdivision restrictions.

Section 7.03 Fences. All fences must be constructed with new materials, and shall not be constructed or put in place unless and until approved in writing by the ACC. No fence shall be constructed of pine. There shall be no chain link (except for retention ponds) or shadow box fences. All fences shall be solid, 1" x 6" cedar planks. Builder shall install an eight (8) foot rear fence on all perimeter lots in all units.

Section 7.04 Prohibition of Offensive Activities and Construction. Except as provided in Sections 7.02 and 7.17 operation of a business on a Lot will not be permitted. This Restriction is waived in regard to the customary sales and construction activities required to sell homes in the Subdivision. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done therein which may be or become an annoyance or nuisance to the neighborhood or occupants of any other Lot.

Section 7.05 No Further Subdividing. No Lot shall be subdivided without the consent of the Developer, its successors and assigns, which consent may be granted or withheld at the sole discretion of the Developer, its successors or assigns.

Section 7.06 Storage, Gardens, Refuse, and Prohibited Items. No Lot shall be used or maintained as a dumping ground for rubbish. No Lot shall be used for storage visible from the road of any materials whatsoever. New building materials used in the construction of Improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, as long as the construction progresses without undue delay, until the completion of the Improvements. No household trash or garbage may be burned anywhere in the Subdivision. There shall not be any dumping or placing unsightly objects of any kind on any part of the Property. All garbage cans shall be promptly retrieved and stored out of sight from the street.

Section 7.07 Vehicles. No abandoned, junked, unsightly, or inoperable automobile, truck, trailer, or vehicle of any kind shall be stored or kept on any Lot, except in an enclosed structure which meets the requirement of these Restrictions. A vehicle shall be deemed "inoperable" if it does not have a current vehicle license registration and valid vehicle safety inspection required for use of said vehicle on public roads. Further, no automobile repair work or dismantling shall be conducted on any portion of any Lot except in an enclosed garage or in facilities protected from the view of the public and other residents. No dump trucks, large commercial trucks (i.e., having a load-bearing capacity of greater than one and one-half ton), trailers designed for use with large commercial trucks, or heavy commercial equipment may be parked on or near any Lot except temporarily as needed for residential construction or maintenance of easements. No recreational vehicle shall be parked, kept, or stored on any Lot, except in an enclosed structure which meets the requirements of these Restrictions. The Association has the right to tow or remove any vehicle parked in violation of this Section at the expense of the owner and/or operator of the vehicle.

Section 7.08 Off-Road Parking. Each Owner shall provide appropriate space for off-road parking of vehicles on his Lot. Vehicles shall not be parked on any street, unless prior written approval from the Association is obtained. Said approval shall be for temporary parking only. For the purposes of this provision, temporary parking is defined as parking for no more than seventy-two (72) consecutive hours. The Association has the right to tow or remove any vehicle parked in violation of this Section at the expense of the owner and/or operator of the vehicle.

Section 7.09 Sewage Treatment. No outside toilet will be permitted except during construction as provided in Section 6.08 above. No sanitary sewage disposal system shall be installed on any Lot until a permit is issued by the regulatory authority having jurisdiction over same.

Section 7.10 Signs. No signs, advertisements, billboards or advertising structure of any kind may be erected or maintained on any Lot except one professionally made sign not more than 18" x 24", advertising an Owner's Lot for sale, rent or during home construction or a garage sale. All signs must be promptly removed upon the completion of said event. Developer and/or the Board shall have the right to remove any such sign, which is placed on any Lot in violation of these restrictions, and in doing so, shall not be liable, and is hereby expressly relieved from any liability, for trespass or other action in connection therewith, or arising from such removal. Developer/builder shall have the right to erect any size sign for the purpose of identifying and advertising property for sale.

Section 7.11 Driveways/Sidewalks. No driveway/sidewalk shall be constructed on any Lot until all required permits from the appropriate regulatory agencies have been obtained, and approval has been obtained from the ACC. All driveways shall be broom finish concrete (natural color). All sidewalks shall be 4' in width set next to the curb, broom finish concrete (natural color).

Section 7.12 Drainage. No natural drainage shall be altered, nor shall any drainage ditch, culvert, nor drainage structure of any kind be installed or altered, nor shall any curb nor shall other such impediment to the free flow of water be installed or altered, without prior written consent of the ACC.

Section 7.13 Hunting/Firearms/Fireworks. Hunting and/or discharging of firearms and/or fireworks is expressly prohibited in the Subdivision.

Section 7.14 Animals. Only a maximum of three household pets, such as cats, dogs and birds, may be raised or kept within the Subdivision. No vicious animal may be kept on any Lot or allowed on any part of the Property. Any animal not allowed in the Subdivision may be removed by the Association or any person authorized by the Board. The Board shall have the sole right and authority to determine whether any animal violates or is not allowed by this Section.

Section 7.15 Athletic Equipment. No athletic equipment of any kind, including portable basketball goals/backboards, shall be erected, placed maintained or stored on any portion of a Lot that is within public view. The ACC shall have the right to regulate the appearance and placement of all athletic equipment.

Section 7.16 Holiday Decorations. Holiday decorations may be erected/maintained on a Lot provided that they are erected no earlier than thirty days of the event and that they are removed no later than thirty days after the event, or as otherwise defined in the ACC guidelines, if any.

Section 7.17 Home Office/Telecommuting. No business shall be conducted on any Lot; provided, however, that home offices and/or telecommuting shall not be prohibited. To be considered as a home office/telecommuting activity, the following applies: (a) The activity shall be at the residence of the person conducting the activity and it shall be entirely contained within the personal residence. (b) The activity is carried on only by the person(s) who reside(s) at that residence and specifically no outside employees. (c) The activity is incidental and secondary to the use of the property for residential purposes. (d) The activity does not result in an objectionable noise, nor does it increase traffic volume or parking. (e) The activity does not include any window or outdoor displays and does not include any retail sales on the property. The residence where the activity is located shall not be used as a point for customer visits, customer pick-up or customer deliveries. Outdoor storage of any items related to business activity is prohibited. This provision does not apply to Developer/builder activities.

Section 7.18 Leases. No Owner may rent, lease or otherwise convey a temporary possessory interest to any Lot, or any Improvement thereon, of less than six months. Each lease shall be in writing, be signed by all parties to it and shall require that the occupants of the Lot abide by these Restrictions. A true and correct copy of each and every lease agreement shall be provided by the Owner to the Association referenced in Article III herein. Each lease shall provide that failure of any tenant, their assigns and guests shall constitute an event of default under the lease.

Section 7.19 Maintenance of Lots and Improvements. Each Owner shall maintain their Lot and all Improvements thereon at all times in a neat and tidy manner. Each Improvement located on each Lot shall be kept in a good state of maintenance and repair. Painted or stained objects shall be touched up as necessary to maintain an attractive appearance. No Improvement or other object located on any Lot, whether real or personal, shall be allowed to fall into or remain in disrepair or become unsightly. No maintenance or repair shall alter the external appearance of any Improvement without the written approval of the ACC. The Board of Directors of the Association shall be and is hereby granted the sole authority to determine compliance with the requirements of this Section.

Section 7.20 Maintenance of Landscaping. The Association shall have the right but not the obligation to perform mowing, edging, trimming and other landscaping services on a

uniform basis on all Lots, and may provide such level of such services as it deems appropriate.

Section 7.21 Antennas, Towers and Solar Collectors. No television, radio, CB, satellite dish or other outside antennas or towers of any type shall be used unless placed in the attic of a residence or otherwise completely hidden from view from the street. No satellite television dish is to exceed 18 inches in diameter. Location of antennas or towers must be approved by the Committee prior to installation. Solar apparatus, if used, must be installed in a location not visible from the street and shall be subject to Committee approval. In any event, the Developer reserves the right to construct any antennas it may deemed to be required for community television or telephone service.

ARTICLE VIII
ASSESSMENTS

Section 8.01. Creation of Lien and Personal Obligation of Assessments. Developer, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements or extraordinary expenses, and (3) initial capital contribution assessment, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual, special and the initial capital contribution assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time the obligation accrued.

Section 8.02. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting recreation, health, safety and welfare of the Members, preserving or enforcing the rights and obligations of the Owners and the Association, or for the improvement, maintenance and operation of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Properties by the Members.

Section 8.03. Basis and Maximum of Annual Assessments. The annual assessments shall be determined by the Board of Directors in the manner provided for herein after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made.

Section 8.04. Special Assessments. In addition to the annual assessments provided for in Section 8.03, the Association may levy, in any assessment year, a Special Assessment,

applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Facilities, or to finance or defray the cost of any extraordinary expense of the Association, provided that any such assessment shall have the assent of two-thirds of the votes of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent at least thirty days in advance and shall set forth the purpose of the meeting.

Section 8.05. Change in Basis and Maximum of Annual Assessments. For all annual assessments accruing after January 1, 2010, the maximum annual assessment may be adjusted by majority vote of the Board of Directors but shall not be increased by more than ten percent above that of the previous year without a vote of the membership. Any increase in the maximum annual assessment of more than ten percent above that of the previous year shall require approval of two-thirds vote of each class of Members voting at a meeting duly called for that purpose.

Section 8.06. Quorum for Any Action Authorized Under Sections 8.04 and 8.05. The quorum required for any action by Members authorized by Sections 8.04 and 8.05 hereof shall be as follows:

At the first meeting called, as provided in Sections 8.04 and 8.05 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the requirements set forth in Sections 8.04 and 8.05, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than ninety days following the preceding meeting.

Section 8.07. Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as to all Lots as of the date established by the Board. The due date of any special assessment under Section 8.04 hereof shall be fixed in the resolution authorizing such assessment.

Section 8.08. Duties of the Board of Directors. In December of each year, the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot for the following year and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid or the balance due. Such certificate, when signed by an authorized officer or agent of the Association, shall be conclusive evidence of payment of any assessment herein stated to have been paid. The Association may charge a reasonable fee for issuing such a certificate.

Section 8.09. Initial Capital Contribution Assessment. In addition to the annual assessments provided for in Section 8.03 and the special assessments provided for in Section 8.04, there is hereby created an assessment in the amount of $300.00, imposed uniformly against each Lot (referred to in these Restrictions as an "Initial Capital Contribution Assessment"). The Initial Capital Contribution Assessment is a one-time charge, payable immediately after each Lot is sold, transferred or conveyed by the Developer to a non-builder owner, to be paid at closing by the purchaser of each such Lot. The Initial Capital Contribution Assessment is intended to serve as mechanism to provide the Association with an initial operating fund to assist the Association in meeting its obligations after development of the Properties, and is not intended to offset or pay any of the initial expenses of the development of the Subdivision or reimburse the Developer. The Initial Capital Contribution Assessment shall be distributed as follows: $300.00 to the Association's general operating fund. Once a Lot has been sold, transferred or conveyed by the Developer and the Initial Capital Contribution Assessment has been paid by the purchaser, there shall be no subsequent obligation for any Owner to pay such assessment on that Lot, even if a Lot is re-acquired by the Developer and later resold, it being Developer's intention that each Lot shall be subject to a single Initial Capital Contribution Assessment.

Section 8.10 Effect of Non-Payment of Assessments: The Lien; Remedies of the Association. If any assessment or other sum due the Association hereunder is not paid on the date when due, then such assessment or amount shall become delinquent and shall, together with such interest thereon and cost of collection thereof provided, thereupon becoming a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. If the assessment is not paid within fifteen days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent per annum, or the highest allowed by law, whichever is less, and the Association may bring an action at law against the Owner to pay the same or to foreclose the Association's lien against the property, and there shall be added to the amount of such assessment all reasonable expenses of collection including the costs of preparing and filing the complaint, reasonable attorney's fees and costs of suit. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, with a power of sale in connection with said lien. The lien shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner shall be freed of liability for any assessments provided for herein by virtue of non-use of Common Areas, or non-existence of Common Area.

In addition to the foregoing charges for delinquent accounts, each Owner shall be obligated to pay to the association all costs of collection incurred by the Association and such reasonable late charges and collection charges as the Board of Directors may

establish, all of which costs and charges shall also be subject to the liens of the Association.

Section 8.11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon the Lots subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 8.12. Exempt Property. Lots owned by Developer and all Common Areas are exempt from all assessments.

ARTICLE IX
ENFORCEMENT

In addition to the remedies for enforcement provided for elsewhere in this Declaration or by law, the violation or attempted violation of the provisions of this Declaration, or any amendment hereto, or of any guidelines, rules, or regulations herein referenced or permitted, by any Owner, his family, guests, lessees or licensees shall authorize the Association (in the case of all of the following remedies) or any Owner [in the case of the remedies provided in (c) below], to avail itself of any one or more of the following remedies:

(a) The suspension by the Association of rights to use any Association property, right to vote, right to attend meetings of the Association and/or entitlement to any services provided by the Association to the Members, for a period not to exceed ninety days per violation, plus attorney's fees incurred by the Association with respect to the exercise of such remedy.

(b) The right of the Association to enter the Lot to cure or abate such violation through self help and to charge the expense thereof, if any, to such Owner, plus attorney's fees incurred by the Association with respect to the exercise of such remedy.

(c) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court costs.

(d) The imposition by the Association of a special charge not to exceed Fifty Dollars ($50.00) per day per violation.

(e) The right of the Association to record in the Official Public Records of Real Property of Bexar County, Texas, a notice of violation.

(f) In the case of vehicles improperly parked or kept in the Subdivision, the right of the Board to have such vehicle towed or removed at the expense of the owner and/or operator of such vehicle.

Before the Association may invoke the remedies as set forth in Sections (a) and (d) above, it shall give written notice of such alleged violation to Owner, and shall afford the Owner an opportunity to request a hearing. If after the hearing, a violation is found to exist, the Association's right to proceed with the special charge and/or suspension of privileges shall be absolute. Each day a violation continues after notice thereof has been given Owner shall be deemed a separate violation. Failure of the Association or of any Owner to take any action upon any violation shall not be deemed a waiver of any right to take enforcement action thereafter or upon a subsequent violation. No Owner shall have the right to compel or require the institution of enforcement proceedings or the filing of suit by the Association.

All assessments, charges and costs incurred and/or imposed by the Association and unpaid when due shall bear interest at the rate of eighteen percent per annum, or the highest amount allowed by law, whichever is less, from the date due until paid, said interest to be compounded monthly. All such sums shall be secured by a lien against the Lot of the Owner and/or Lessee responsible for such violation, which shall be equivalent with and subject to the lien for assessments set forth above.

ARTICLE X
GENERAL PROVISIONS

Section 10.01 Covenants Running With The Land. All of the restrictions, covenants, and easements, herein provided for and adopted apply to each and every Lot, and shall be covenants running with the land. The Owner of any Lot in the Subdivision, or any Unit thereof, shall have the right to either prevent a breach of any such Restriction or covenant, or enforce the performance thereof, by suit in law or equity, by way of injunction or damages, filed in any Court of competent jurisdiction. Nothing herein shall be construed as compelling the Developer or the Association to enforce any of these provisions, nor shall the failure of the Developer or the Association to enforce any of these provisions be deemed to be a waiver of the right of enforcement or prohibition. Neither the Developer nor the Association shall have liability or responsibility at law or in equity on account of enforcement of, or on account of the failure to enforce these restrictions.

Section 10.02 Developer's Exemption. The Developer shall not be subject to these Restrictions, and no person, entity or Owner shall be entitled to maintain a suit at law or in equity against the Developer for any alleged violations of these Restrictions by Developer. The Developer further expressly reserves the right to grant any waiver or variance from any of these Restrictions, and unilaterally amend same, however, Developer shall not have the authority to grant any waiver or amendment which has the effect of removing the limitation on the use of the property as single family residential dwellings.

Section 10.03 Partial Liability. Invalidation of any covenant or restriction shall not affect, in any way, the validity of all other covenants and restrictions, all of which shall remain in full force and effect. Acquiescence in any violation shall not be deemed a waiver of the right to enforce against the violator or others the conditions so violated or any other conditions.

Section 10.04 Term. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by the Owner of any Lot, and their respective legal representatives, heirs, successors and assigns, and, unless amended as provided herein, shall be effective for a term of twenty years from this date, after which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten years.

Section 10.05 Amendment. Subject to Section 10.02 paragraph hereto, the covenants, conditions and restrictions may be amended upon the express consent of not less than two-thirds of the votes of the Members. No amendment shall be effective until there shall be recorded in the Official Public Records of Real Property of Bexar County, Texas, a certification signed by the President and Secretary of the Association setting forth such amendment and declaring under penalty of perjury that same has been approved as required by the terms of this Section, nor until the required approval of any governmental regulatory body shall have been obtained.

Section 10.06 Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference. The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions here apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

Section 10.07 Notice. Unless otherwise required by law, any notice required or permitted to be given to an Owner may be given by electronic mail message (i.e., e-mail), if possible.

EXECUTED this 23rd day of November 2009.

NAPA OAKS S.A., LTD. a
Texas Limited Partnership

By: James Japhet, General Partner

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on James Japhet, President of Napa Oaks, S.A., Ltd. on behalf of said entity.

SUSAN J. BRAUN
Notary Public, State of Texas
My Commission Expires
October 20, 2013

Notary Public, State of Texas

ACKNOWLEDGED:

By: Mike Hollaway, President
Hollaway Enterprises, Inc.

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on Mike Hollaway, President of Hollaway Enterprises, Inc. on behalf of said entity.

SUSAN J. BRAUN
Notary Public, State of Texas
My Commission Expires
October 20, 2013

Notary Public, State of Texas

By: Jeff Japhet, President
Japhet Enterprises, LLC

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on Jeff Japhet, President of Japhet Enterprises, LLC. on behalf of said entity.

SUSAN J. BRAUN
Notary Public, State of Texas
My Commission Expires
October 20, 2013

Notary Public, State of Texas

By: Kelly Thompson, President
K Thompson Homes, LLC.

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on Kelly Thompson, President of K Thompson Homes, LLC. on behalf of said entity.

SUSAN J. BRAUN
Notary Public, State of Texas
My Commission Expires
October 20, 2013

Notary Public, State of Texas

AFTER RECORDING RETURN TO:
Elliott S. Cappuccio
Pulman, Cappuccio, Pullen & Benson LLP
2161 N.W. Military Highway, Suite 400
San Antonio, TX 78213