

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LAS COLINAS OF KERRVILLE  
KERR COUNTY, TEXAS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LAS COLINAS OF KERRVILLE ("HOA Covenants"), is made effective as of August 14, 2007 by McRae Partners I, Ltd., a Texas limited partnership ("Declarant").

WHEREAS, Declarant is the Owner of the Real Property described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes, and referred to in Section 1 of this Declaration, and desires to create thereon a development for residential purposes.

WHEREAS, Declarant further desires to provide for the preservation of the values and amenities of said property and for the maintenance thereof; and, for such purposes, Declarant desires to subject the real property described as all that certain tract or parcel of land, lying and being situated in the County of Kerr, State of Texas, comprising 137.88 acres, more or less; being all of the subdivision, Las Colinas of Kerrville, according to the plat dated July 30, 2007 of record in Volume 8, Pages 034-039 of the Plat Records of Kerr County, Texas, together with such additions as hereafter be made thereto (as provided in Section One), to the covenants, conditions, restrictions, easements, charges and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereafter.

WHEREAS, Declarant has caused the Las Colinas of Kerrville Owners' Association, Inc. to be incorporated as a non profit corporation under the laws of the State of Texas, to which will be delegated and assigned the powers of maintaining and administering the properties and facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges as hereafter provided.

NOW, THEREFORE, Declarant declares that the Real Property referred to herein, and such additions thereto as may hereafter be made pursuant to Section One hereof, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens therein collectively called the "covenants" or "the restrictions and covenants", all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property for the benefit of present and future Owners, which restrictions and covenants shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in any of the lots in or any portion of the Property and shall inure to the benefit of and be binding upon each Owner and future Owner thereof.

1. DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (A) "Association" and "HOA" shall mean and refer to Las Colinas of Kerrville Owners Association, Inc. The Association shall be formed for the purpose of maintaining uniform standards and quality of the land as well as the beauty and value of the property in the Subdivision.
- (B) "Board" shall mean the Board of Directors of the Association.
- (C) "Common Area" shall mean all real property, including roadways, including the improvements thereto, conveyed to the Association by Plat dedication or otherwise. The Common Area shall be owned by the Association for the common use and enjoyment of the Owners. Common Area may be designated by Declarant and dedicated or conveyed to the Association from time to time.
- (D) "Properties" and "Property" and "Subdivision" shall mean the 137.88 acres, more or less as described in Exhibit "A" attached hereto; being all of the subdivision, Las Colinas of Kerrville, according to the plat dated July 30, 2007 of record in Volume 8, Pages 034-039 of the Plat Records of Kerr County, Texas and all additions thereto, as are subject to this Declaration or any Supplemental Declaration filed of record pursuant to the following provisions.
- (E) "Member" shall mean Declarant and each Owner of a fee simple interest or held by Contract for Deed for any Lot, Tract or part or portion of the Property.
- (F) "Owner" shall mean the record Owner, whether one or more persons or entities, of a fee simple or under any Contract for Deed to any portion of Property.
- (G) "Architectural Review Committee" (ARC) shall mean and refer to that Committee as defined in Section 7 hereof.
- (H) "Lot" and "Tract" shall mean and refer to any lot, tract or parcel of the Property (with the exception of any Common Area, or any "Open Areas" reserved by Declarant on any plat) shown upon a plat of the property filed for record in Kerr County, Texas (as such plat or plats may be amended from time to time).
- (I) "Improvements" shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to, residence building, outbuildings, storage sheds, patios, exterior lighting, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, drivs, signs, exterior air conditioning, water cooler fixtures or equipment, poles, pumps, wells, tanks, reservoirs, pipes, water collection systems, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.
- (J) "Open Areas" shall mean those areas of the Property including but not limited to streets and the Well Lot which are not designated by number as lots, the ownership of such areas being reserved in Declarant and its successors and assigns.
- (K) "Declarant" and "Developer" shall mean McRae Partners I, Ltd., a Texas limited partnership, and the successors and assigns of Declarant.
- (L) "Declaration" shall mean this Declaration as amended from time to time.
- (M) "Deed" shall mean a deed or contract for deed to a "Lot."
- (N) "Residence" shall mean any free standing building with connections to water and electricity that is usable for residential purposes.
- (O) "Common Area Maintenance Committee (CAMC) shall mean and refer to that Committee as defined in Section 11 hereof.

2. Covenants Binding on Property and Owners

- (F) **Garages.** All dwellings shall have a garage with a capacity of not less than two standard size automobiles. Carpets of any type shall not be permitted. All garages shall comply with all other restrictions on usage. All garages shall consist of structures completely enclosed on all sides with walls and/or garage doors. A garage shall not be situated on a lot so as to cause the garage door opening to be substantially visible from the roadway. Garages on corner lots should be sited, as far as possible, to face the doors away from each street. If that is not possible, the garage doors should be faced in a way that minimizes their appearance from the streets, whether that is accomplished by landscape screening or angling to face the least busy street or the least used side of their neighbor's home.
- (G) **Driveways.** Driveways shall be hard surfaced of crushed granite, two course asphalt, concrete or "hot-mix" asphalt and shall be constructed with a minimum width of ten feet (10') along the entire length. The width of each driveway shall flair to a minimum of sixteen (16) feet at the street making a level, not elevated, transition to the main roadway beginning six feet (6) back from the main roadway. The need for a drainage culvert or grading to accommodate drainage patterns should be discussed with the CAMC to reach agreement on the final configuration of the drive. The CAMC shall approve this configuration.
- (H) **Sewer and Water Systems.** Individual sewage disposal systems shall be located, constructed and equipped in compliance with the rules and regulations of the Texas Department of Health, Texas Natural Resource Conservation Commission, Upper Guadalupe River Authority, Kerr County, and any other applicable rules or regulations. Individual water systems are not permitted.
- (I) **Fences.** No fence or wall shall be built or maintained forward of the front wall line, nor any hedge planted or maintained forward of the front setback line, of the main structure, not including decorative walls or fences which are part of the architectural design of the main structure, and which are not to be built or maintained nearer than the building setback line of any lot unless otherwise approved in writing by the ARC. All fences or walls located on a lot are to be maintained at owner's expense. All fences must be approved by the ARC and shall be of the following composition: all masonry, wood, wrought iron or other material approved by the ARC. Chain-link, net wire, barbed wire and cedar split rail fences are prohibited. No fence, wall or hedge in the front of a lot shall exceed three feet (3'). Side or rear yard fences shall not exceed eight feet (8') in height. Swimming pools must be fenced in accordance with any applicable laws, provided, however, that unless otherwise prohibited by law, all fences enclosing swimming pools must be fenced to a minimum of five (5) feet in height. The ARC is empowered to grant variances to the aforesaid composition requirements for fences and the aforesaid height or setback limitation in connection with retaining walls. No fence, wall or hedge or shrub planting which obstructs sight lines at elevations between three (3) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area as formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- (J) **Antennas.** Antennas of any kind shall not exceed ten feet above the roof of the house or accessory building.
- (K) **On Street Parking.** On street parking is restricted to deliveries, pickups, or short time guests and shall be subject to such reasonable rules as may be adopted by the Committee.
- (L) **Motor vehicles.** "Vehicles" are defined as any automobile, recreational vehicle, boat, trailer, motorcycle, motorized bicycle, go cart, golf cart, dirt bike or all terrain vehicle. Vehicles owned or in the custody of any Member may be parked only in a garage, or automobiles may be parked on a driveway located on or pertaining to such person's lot unless otherwise authorized by the ARC in writing. No trailers, vans or trucks in excess of one ton or designated for commercial purposes shall be placed, allowed or maintained upon any residential lot except with prior written approval of the ARC. Any such permission shall include all applicable sections of these HOA Covenants and/or require that said vehicle be in areas attractively screened or concealed from neighboring properties and roads.
- i. No truck, bus, semi trailer or other "Vehicle" shall be left on the road in front of any lot or on any lot except for construction and/or repair equipment while a residence is being built or repaired, without permission of the ARC. This shall not apply to "pick-up" trucks or non commercial passenger vans.
  - ii. All the following vehicles must have operational spark arresters and be properly muffled: Motorcycles, motorized bicycles, go-carts, dirt bikes and all terrain vehicles. In addition, vehicles, which at law to the ground such as go-carts must have attached to the rear of the vehicle an 8' long pole with an orange triangle flag at the top. What constitutes properly muffled shall be solely within the discretion of the ARC.
  - iii. All vehicles operated within Las Colinas of Kerrville must be operated in a safe manner, in accordance with manufacture requirements. Posted speed limits are to be observed on any road during approved ingress/egress.
  - iv. Lot owners and their guests may operate "Vehicles" on the owner's property so long as they comply with "Vehicle Operating Guidelines" developed by the ARC.
  - v. Any violations concerning "Vehicles" will result in written notification, citing the circumstances thereof and the consequences. These are enumerated in the "Vehicle Operating Guidelines".
- (M) **Storage.** No exterior storage of any items shall be permitted except with prior written approval of the ARC. Any such storage as is approved shall be attractively screened or concealed from view from neighboring property and roads. This provision shall apply without limitation to trailers, camp trailers, boat trailers, travel trailers, boats, and un-mounted pickup camper units. All materials must be kept in an enclosed building or garage and not in general view from the road. Without limitation, no automobile, truck or other vehicle, abandoned or otherwise not in frequent use, except in a closed garage or pursuant to approval of the ARC. No article deemed to be unsightly by the ARC shall be permitted to remain on any lot so as to be visible from adjoining property or road. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabric shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.
- (N) **Repairs to Detached Machinery.** No repairs which take more than one day of any detached machinery, equipment or fixtures, including without limitation motor vehicles, shall be made upon any portion of any lot within view of neighboring property and roads without prior approval of the ARC.
- (O) **Garbage.** No garbage or trash shall be placed on the exterior of any building, except in containers meeting the specifications of the ARC, and the placement, maintenance and appearance of all such containers shall be subject to reasonable rules of the ARC. All rubbish and garbage shall be regularly removed from each lot.

- (CC) **Creek and Tributary Obstructions.** No obstructions of any type, including, but not limited to, fences, dams, and concrete walkways, shall be placed in, on, or across the bed of any creek adjoining or running through any Lot in the Subdivision, without the approval of the Board. "Creek bed" as used herein in relation to obstruction, means that portion of the creek where water would flow in times of normal rainfall.
- (DD) **Filling, Cutting and Slope Control.** Proposed filling, cutting and slope control activities shall be reviewed and approved by the CAMC prior to the beginning of any clearing or construction activity on Lots with slopes exceeding twenty percent (20%). All filling and cutting of the terrain on such Lots shall be kept at a minimum and the effects of drainage run-off shall be carefully considered and planned for.
- (EE) **Pesticide and Herbicide Broadcast Application.** There will be no Pesticide or Herbicide applied in such a manner that causes an entire area or lot to be impacted by such application without approval of the Committee.
- (FF) **Propane Tanks.** Propane tanks shall be buried, attractively screened or substantially concealed from view of neighboring properties and roads.
- (GG) **Swimming Pools.** Moveable, above-ground swimming pools are strictly prohibited. All swimming pools must be of a permanent nature built into the ground and in a fenced enclosure with self-closing and self-latching gates, and in accordance with any applicable ordinance, regulations or statutes. No swimming pools shall be constructed in front or side yards.

### 5. UTILITY EASEMENTS RESERVED BY THE ASSOCIATION.

(A) **Easements.** A ten (10) foot easement for the installation, maintenance, repair and removal of public and/or quasi-public utilities, water lines, sewer and drainage facilities, and floodway easements, are reserved by the Association over, under and across the Properties on the property boundary lines. Full ingress and egress shall be had by the Association at all times over the Properties in and along the above described easements, for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Declarant shall have the right to assign and transfer the easements and rights herein reserved to or for the benefit of any public or quasi-public utility. Declarant reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Kerr County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, storm surface drainage, water lines, sewage lines, cable systems, 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 Common Area and/or Tracts. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, without the joinder of any other Owner, the Declarant shall have the right to grant such easement on and Property without conflicting with the terms hereof. Any utility 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. 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.

(B) **Title Subject to Easements.** It is expressly agreed and understood that the title conveyed by Developer to any of the Tracts by contract deed or other conveyance shall be subject to any easement hereafter granted affecting the Tracts. The Owners of the respective Tracts shall not be deemed to own pipes, wires, conduits or other service lines running through their Tracts which are utilized for or service other Tracts, 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 Tract. The Developer may convey title to said easements to the public, a public utility company or the Association. No building shall be located over, under, upon or across any portion of any utility easement. The Owner of each Tract 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 easement at all times for purposes of gaining access to and from such Tracts, 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 Easement shall be responsible for:

- (i) Any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such Utility Easements and;
- (ii) Repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

(C) **Easement Covering All Lots.** The Owner of each Lot shall, by the acceptance of a deed or entering into a contract for the purchase of his property, agree, grant and convey unto the Association a perpetual easement for the use of said property not under fence for the purpose of allowing the Association to inspect and maintain drainage areas, the Association's water gaps and fences (and the sandbars along the fence lines), and in times of emergency to traverse the property in reach and address areas impacted by the emergency conditions.

(D) **Power to Grant Easements.** In addition to any blanket easements described in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area.

9. **IMPROPER MAINTENANCE BY OWNER.** In the event any portion of a Lot or Structure thereon is in the Declarant's or ARC's judgment so maintained by the owner as to not comply with these Covenants or present a public or private nuisance or substantially detract from the appearance or quality of the neighboring Tracts or Residences or other areas of the Property which are substantially affected thereby or related thereto, the ARC, unless corrective action is taken within ten (10) days after receipt of written notice in the Owner of a lot or Tract specifying the required maintenance action to be made by Owner, shall be authorized and empowered to cause such action to be taken and the cost (the "Maintenance Cost") thereof shall be assessed against the Lot and Residence of the offending Owner and shall be secured by the Maintenance Lien hereinafter provided. Written notice of such assessment shall be delivered to the offending Owner which notice shall specify the amount of such Maintenance Cost and shall demand payment thereof within thirty (30) days after the date of said notice. If any provision of this Paragraph 9 applies and the ARC and the Owner cannot agree on the required maintenance, the parties will submit the dispute to the Board for a decision.

### 1. IMPOSITION OF LIEN; OWNER'S AGREEMENT.

(A) **Imposition of Maintenance Lien.** The Declarant or the Association shall have the right at any time there is unpaid Maintenance Cost outstanding with respect to a Lot, to file or record with the County Clerk of Kerr County, Texas, a written statement describing such Lot and the unpaid Maintenance Cost relating thereto in which event, upon such filing there shall automatically be imposed upon such Lot a lien (the "Maintenance Lien") in favor of the Declarant or the Association for the amount of such unpaid Maintenance Cost. Upon payment of all Maintenance Costs relating to any such Lot, the Declarant or the Association shall file of record with the County Clerk of Kerr County, Texas, an appropriate release of any Maintenance Lien previously filed against the Lot.

(B) **Owner's Promises Regarding Maintenance Fund Charges and Maintenance Lien.** Each Owner, for himself, his heirs, executors, administrators, trustees, personal representatives, successors and assigns, covenants and agrees:

- ii. In addition to the rights provided above, to enforce the Maintenance Fund Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Tract of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description and street address of the Tract against which the lien is claimed and (d) 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 thereby 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 or a reasonable fee as fixed by the Board to cover the preparation and recording of such release of lien instrument.
- (C) **Liens Subordinate to Mortgages.** The Liens described in this Section and the superior title herein reserved shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, pension and profit sharing trusts or plans, or the bona fide third party lender, including Declarant, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Tract and any renewal, extension, rearrangement or refinancing thereof. Each such mortgage of a mortgage encumbering a Tract who obtains title to such tract pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the tract free and clear of any claims for unpaid Maintenance Charges or other charges of assessments against such Tract which accrued prior to the time such holder acquired title to such Tract. No such sale or transfer shall relieve such holder acquiring title to a Tract from liability for any Maintenance Fund Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Tract shall not affect the Association's lien for Maintenance Fund Charges or other charges or assessments. The Association shall make a good faith effort to give each mortgagee by prepaid United States Registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Fund Charges or other charges or assessments 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 Section.
- (F) **Purpose of the Maintenance Fund.** The Maintenance Fund Charge levied by the Association shall be used for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision and other areas, which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Fund Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties. The Maintenance Fund may be expended by the Association for any purposes which will tend to maintain the property values. Except for the Association's use of the Maintenance Fund Charge to perform its duties described in this HOA Covenants and in the Bylaws, the use of the Maintenance Fund Charge for any of these purposes is permissive and not mandatory. The judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith. The Maintenance Fund shall be used for the following:
- (i) Accounting and office expenses;
  - (ii) Road maintenance which shall include the grading, topping and working the Roads and the drainage/ditches adjacent thereto as needed to provide normal access;
  - (iii) Outside fence maintenance;
  - (iv) Legal expenses;
  - (v) Association income tax preparation which includes costs of annual corporate Federal income tax return and State of Texas Franchise Tax return, if applicable;
  - (vi) Expense of a club house or office;
  - (vii) Maintenance expense of Common Areas;
  - (viii) Expense of insurance;
  - (ix) Association expense for garbage and trash removal;
- (I) **Exempt Property.** The following property subject to this Declaration shall be exempt from the Maintenance Fund Charge and all other charges and assessments created herein:
- i. All properties dedicated to and accepted by a public authority;
  - ii. The Common Area;
  - iii. Declarant's unsold Properties;
  - iv. The Well Lot as designated on the plat of the Subdivision.
- (J) **Handling of Maintenance Fund Charges.** The collection and management of the Maintenance Fund Charge or other assessment levied hereunder, shall be performed by the Declarant until the Control Transfer Date, at which time the Declarant shall deliver to the Association all funds on hand together with all books and records of receipt and disbursement. The Declarant and the Association shall maintain separate special accounts for these funds. Owners shall be provided an accounting reconciliation of the Maintenance Fund and any other Association assessments not less than annually.

#### 9. ARCHITECTURAL CONTROL COMMITTEE (ARC).

- (A) **Membership of Architectural Review Committee.** The ARC shall consist of not less than one (1) and not more than five (5) voting Members, and such additional non-voting Members serving in an advisory capacity as Declarant, its successors or assigns deems appropriate. The initial voting member of the Architectural Committee shall be Chastan McRae.
- (B) **Action of Architectural Review Committee.** Items presented to the ARC shall be decided by majority vote of the Voting Members. The ARC's approval shall not be unreasonably withheld or delayed. The vote of a majority of the voting Members of the ARC taken with or without a meeting shall constitute an act of the ARC.
- (C) **Advisory Members.** The Voting Members may from time to time designate Advisory Members.
- (D) **Terms.** Each member of the ARC shall hold office until such time as he or she has resigned, has been removed, or his successor has been appointed as provided herein.
- (E) **Declarant's Right of Appointment.** Declarant, its successors or assigns shall have the right to appoint and remove all members of the ARC until the Control Transfer Date. Declarant may delegate this right to the Board by written instrument until the Control Transfer Date.
- (F) **ARC Approval.** No residence, building, fence, well, sign, walkway, roadway, landscaping, any other improvements either temporary or permanent shall be created, placed, erected, commenced or changes made in the design or exterior appearance thereof, or any addition or exterior alteration made

- (C) **Advisory Members.** The Voting Members may from time to time designate Advisory Members.
- (D) **Term.** Each member of the CAMC shall hold office until such time as he or she has resigned, has been removed, or his successor has been appointed as provided herein.
- (E) **Declarant's Rights of Appointment.** Declarant, its successors or assigns shall have the right to appoint and remove all members of the CAMC. Declarant may delegate this right to the Board by written instrument until the Control Transfer Date.
- (F) **Duties Delegated to the CAMC as noted in these HOA Covenants.** It shall be the duty of the CAMC to manage all real property, including the improvements thereto, conveyed to the Association by plat dedication or otherwise. This may include but is not limited to:
- (i) Road maintenance, including identifying needed repairs and following up to ensure that necessary repairs are made; obtaining estimates from contractors and making recommendations to the Board; and supervising any contractors during the performance of repairs;
  - (ii) Clearing roadways, ditches and areas of debris after flooding or storm passage;
  - (iii) Correcting slope damage affecting common areas;
  - (iv) Engineering water containment berms and dams to prevent erosion and flooding of common areas;
  - (v) Maintenance and repairs necessary for the Association's gates;
  - (vi) Consulting with other committees, homeowners and the Board as appropriate;
  - (vii) Other duties delegated to it by or designated in these HOA Covenants.
- (G) **Association's Authority.** After the Control Transfer Date, the authority of the Declarant shall cease and terminate upon the election of the CAMC by the Association, in which event such authority shall be vested in and exercised by the CAMC.
- (H) **Non-Liability of CAMC Members.** Every Owner or lessee of any portion of the Property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against the Declarant, Association, the Board, or members of the CAMC, or their representatives, to recover any damages whatsoever from them, save and except for damages directly attributable to willful misconduct or bad faith on their part.

12. **LAS COLINAS OF KERRVILLE OWNERS ASSOCIATION, INC.**

- (A) **General Duties and Powers of the Association.** The Association was incorporated to further the common interest of the Members. Subject to provisions and limitations herein expressly stated, the Association, acting through the Board of Directors or through persons to whom the board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the Members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration. The Association may adopt whatever by-laws it may choose to govern the organization or operation of the Subdivision provided that the same are not in conflict with the terms and provisions hereof.
- (B) **Votes.** Each Member shall have one (1) vote per Lot. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
- (C) **Voting Rights In The Association, Powers And Duties**
- (i) **Quorum and Notice Requirements.**
    - (a) Any action by the Members shall require the assent of the Members entitled to cast a majority of the votes of the Members of the Association who are voting in person, by mailed ballot or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members at least ten (10) days in advance and shall set forth the purpose of such meeting.
    - (b) The quorum required for any action shall be the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all of the votes of all Members. If the required quorum is not present at the meeting, an additional meeting may be called, subject to the notice requirement hereinafter set forth, and the required quorum at such second meeting shall be one-half of the required quorum at the preceding meeting.
    - (c) Any action may be taken with the assent given in writing and signed by the Members entitled to cast a majority of the votes of the Association.
    - (d) The voting of any Members shall be suspended for any period during which any assessment to be paid by such Member remains unpaid.
  - (ii) **Powers and Duties Delegated to Declarant.** The Board shall delegate to, and Declarant shall have the sole responsibility and authority to manage the business and affairs of the Association on a year to year basis until the Control Transfer Date or until the Declarant terminates the same. A management agreement may be set forth in a separate agreement. Without limiting the foregoing, Declarant shall have the following powers until Declarant gives written notice to the Board, whereupon the Board shall have such powers:
    - (a) To pay from the funds of the Association all legal and accounting services, policies of insuring the Association and Board of Directors against any liability to the public or the Owners (and/or invitees or tenants), which policy or policies shall contain an endorsement providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insured, fidelity bonds, and any other material, supplies, insurance, furniture, labor, services, maintenance, repairs structural, alterations, taxes or assessments required to be obtained or paid for pursuant to the terms of these HOA Covenants or by law or which shall be necessary or proper for the operation, protection of the Association, or for the enforcement of this Declaration.
    - (b) To execute all declarations of ownership and other documents for tax assessment purposes with regard to the Properties on behalf of all Owners.
    - (c) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association.

(A) **Fire Insurance on Dwelling Unit and Improvements on Lots.** Each Owner shall purchase at his expense and maintain fire hazard insurance coverage with respect to his Lot. Any such insurance shall be for the highest insurable value of the Residence and shall contain a replacement cost endorsement. Upon the request of the Board, each Owner shall furnish to the Board, immediately, evidence of such insurability.

(B) **Damage and Destruction; Reconstruction.** If any Residence or structure is damaged by fire or other casualty, the Owner of such shall immediately take all actions consistent herewith to rebuild such structure.

(C) **Property and Public Liability Insurance With Respect to Common Area, Errors and Omissions and Indemnification.**

1. The Board of Directors of the Association may obtain and continue in effect property insurance, to insure the buildings and structures in the Common Area, naming the Association as beneficiary with an endorsement to the mortgage, if any, against risks of loss or damage by fire and other hazards as are covered under standard fire and extended coverage provisions, and said insurance to include coverage against vandalism.
2. The Board of Directors of the Association shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its agents and employees, and each Owner, from and against liability in connection with the Common Area.
3. The Board of Directors of the Association may obtain liability insurance covering errors and omissions of directors, officers, managers, employees and representatives of the Association, and fidelity bonds for all officers and employees which have control over the receipt or disbursement of funds.
4. The Association may indemnify directors, officers, employees and agents and may purchase indemnity insurance in accordance with the provisions of Article 2.22A of the Texas Non-profit Corporations Act.

(D) **Insurance Premiums with Respect to Common Area.** All costs, charges and premiums for all insurance with respect to the Common Area that the Board of Directors authorizes as provided herein shall be a common expense of all Owners and shall be part of the annual assessment.

(E) **Other Insurance.** None of the above prevents the Board of Directors from obtaining other insurance as may be required by law (e.g. workers compensation) or other insurances which may become the norm for properties of this nature.

(F) **Condemnation.** If part or all of the Common Area shall be taken or condemned by any authority having the power of eminent domain, any compensation and damages shall be paid to the Association. The Board of Directors shall have the exclusive right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation issues affecting such Common Area. The Owners may, by vote of seventy-five per cent (75%) or more of the total voting power hereunder, agree to distribute the proceeds of any condemnation or taking by eminent domain, to each Owner and his mortgagee, if any, as their interest may appear. In event that the Owners shall not so agree, such proceeds shall be added to the funds of the Association, and the Association shall decide on whether or not to replace or restore, as far as possible, the Common Area so taken or damaged. The Association shall give timely notice of the existence of such proceedings to all Owners and their mortgagees, if any. The expense of participation in such proceedings shall be common expenses chargeable to the Owners.

(G) **Insufficient Proceeds.** If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may repair or replace any loss or damage as an expense of the association and, if necessary, levy a special assessment as provided for in Section 8 (C) of this Declaration.

14. **AMENDMENTS.** Subject to provisions and limitations herein expressly stated, these HOA Covenants may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners entitled to cast no less than two-thirds (2/3rds) of the votes of all of the Owners. If the HOA Covenants are amended by a written agreement, the written agreement must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facie evidence of the date of execution of said amendment by such Owner. Subject to provisions and limitations herein expressly stated, those Members (Owners, including the Declarant) entitled to cast no less than two-thirds (2/3rds) of all of the votes of the Members of the Association may also vote to amend these HOA Covenants in person, by mail-in ballot or by proxy, at a meeting of the Members (Owners, including the Declarant) duly for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Kerr County, Texas, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of Members (Owners, including the Declarant) executed the instrument amending these HOA Covenants or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be returned by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination.

15. **AMENDMENTS BY THE DECLARANT.** This Declaration may be amended by the Declarant acting alone until the Control Transfer Date. An Amendment made by Declarant pursuant to this Section shall not adversely affect the value of the Lots and shall maintain the quality of the Subdivision. No amendment may place additional restrictions on a Lot already sold or remove variances previously granted without the express written consent of the Owner of the affected Lot. Declarant shall have and reserves the right at any time prior to the Control Transfer Date to remove any Lot or Lots from the restrictions and covenants if such Lot or Lots are sold to a third party and the Lot or Lots are separately fenced from the other Lots in the Subdivision.

16. **TERM.** The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of twenty (20) years from date these HOA Covenants are recorded, after which time said HOA Covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the Owners (including the Declarant) of the Tracts has been recorded agreeing to amend or change, in whole or part, these HOA Covenants.

17. **SEVERABILITY.** While the Association has no reason to believe that any of the restrictive covenants or other terms and provisions contained in these HOA Covenants are or may be invalid or unenforceable for any reason to any extent, the Association makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof, and, by acquiring the Lot, agrees to hold the Association, the Board and the ARC harmless therefrom. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect other provisions which shall remain in full force and effect.

18. **HEADINGS.** The headings contained in these HOA Covenants are for reference purposes only and shall not in any way affect the meaning or interpretation of these HOA Covenants.

19. **RESERVATION OF RIGHT TO RE-SUBDIVIDE AND RE-PLAT LOTS.** Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time while it is the Owner thereof to re-subdivide and re-plat any Lot or Lots without the consent of any of the other Owners. No Properties may be further subdivided or divided without permission of the Board. No Lot shall be further divided or subdivided nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Board; provided, however, that if Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easement or other interest less than the whole, all without the approval of the Board.