

SCANNED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

SUMMERGLEN, UNIT 5A-1, (PLANNED UNIT DEVELOPMENT),  
BEXAR COUNTY, TEXAS

THE STATE OF TEXAS \*

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF BEXAR \*

This Declaration made on the date hereinafter set forth by SOUTHERLAND/RED CREEK RANCH VENTURE, a Joint Venture, acting herein by and through its Joint Venturer, SOUTHERLAND PROPERTIES, INC., a Texas Corporation, duly authorized to do business in the State of Texas, hereinafter referred to as "Declarant" and MHI PARTNERSHIP, LTD, a Texas limited partnership, acting herein by and through its duly authorized General Partner, MCGUYER HOMEBUILDERS, INC., hereinafter referred to as "MHI".

WHEREAS, Declarant is the owner of Lots 17, 19 and 20, Block 6, SUMMERGLEN, Unit 5A-1, (PLANNED UNIT DEVELOPMENT) and MHI is the owner of Lots 18 and 21, Block 6, SUMMERGLEN, Unit 5A-1, (PLANNED UNIT DEVELOPMENT), which lots are more fully shown on the plat, recorded in Volume 9558, Page 199 of the Deed and Plat Records of Bexar County, Texas, hereinafter referred to as "Subdivision" or "Development"; and,

WHEREAS, the Declarant and MHI desire to hold and from time to time convey the Property, or any portion thereof, subject to certain protective covenants, conditions, restrictions, liens and charges hereinafter set forth; and,

WHEREAS, Declarant and MHI want to identify and describe the additional property which may be incorporated within the scheme of this Declaration; and,

WHEREAS, Declarant and MHI desire to create and carry out a uniform plan for the improvements, development and sale of the Property for the benefit of the present and future owners of the Property.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof, and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions regardless of whether or not the same are set out or referred to in said contract for deed.

ARTICLE I  
DEFINITIONS

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

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

1.2 Articles. "Articles" shall mean the Articles of Incorporation of Summerglen Property Owners Association, Inc., which was filed in the office of the Secretary of State of Texas, and as from time to time amended.

1.3 Assessment. "Assessment" or "Assessments" shall mean such assessments as may

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be levied by the Association under the terms and provisions of this Declaration.

1.4 Association. "Association" or "Master Association" shall mean and refer to Summerglen Property Owners Association, Inc., a Texas non-profit corporation, its successors and assigns. Notwithstanding anything herein to the contrary, The Summerglen Property Owners Association, Inc. shall consist of members from Summerlin, Unit-1 and Unit-2A and Summerglen, Unit-2B and Unit-3, Unit-3A, Unit-4, Unit 5, Unit 5A-1 and any other unit within the property. It is intended that only one Summerglen Property Owners Association, Inc. exist for the whole of the property.

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

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

1.7 Summerglen Restrictions. "Summerglen Restrictions" shall mean collectively (i) this Master Declaration, together with any and all Supplemental Declaration, as the same may be amended from time to time, (ii) the Summerglen Rules, (iii) the Design Guidelines, and (iv) the Articles and Bylaws from time to time in effect, as the same may be amended from time to time.

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

1.9 Common Area. "Common Area" shall mean that portion of the Property owned by the Association for the common use and enjoyment of the Members of the Association including but not limited to, all parks, recreational facilities, community facilities, pumps, landscaping, sprinkler systems, pavement, streets (to the extent not owned by appropriate governmental authorities), walkways, parking lots, pipes, wires, conduits and other public utility lines situated thereon (to the extent not owned by appropriate governmental authorities or by local utility companies). The Common Areas to be owned by Association shall include (i) those areas of land shown on any recorded plat or its equivalent of the Property or any portion thereof filed or approved by Declarant and identified thereon as "Greenbelt" or "Amenity Area"; (ii) the unpaved and landscaped areas of the right of way for any drive within the Subdivision; and (iii) those areas of land and improvements thereon deeded to the Association by Declarant.

1.10 Declarant. "Declarant" shall mean Southerland/Red Creek Ranch Venture, a Joint Venture, acting herein by and through its Joint Venturer, Southerland Properties, Inc., a Texas Corporation, its duly authorized representative or its respective successors or assigns; provided that any assignment of the rights of Southerland/Red Creek Ranch Venture, a Joint Venture, as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declaration shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.11 Design Guidelines. "Design Guidelines" shall mean the criteria and guidelines established by the Architectural Control Committee for the construction of landscaping improvements and commercial development improvements within the Property.

1.12 Greenbelt of Amenity Area. "Greenbelt" or "Amenity Area" shall mean all areas designated by this Declarant to be held as open space for passive or active recreational purposes for the benefit of all of Owners.

1.13 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind located on the Property, including but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, basketball goals, swimming pools, garages, storage buildings, fences, trash enclosures, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener

fixtures or equipment and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

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

1.15 Master Declaration. "Master Declaration" or "Declaration" shall mean this instrument, and as it may be amended from time to time.

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

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

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

1.19 Owner. "Owner" or "Owners" shall mean and refer to a person or persons, entity or entities, excluding Declarant and Mortgagee, holding a fee simple interest in all or any portion of the Property, but shall not include a Mortgagee.

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

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

1.22 Plat. "Plat" shall mean a final subdivision plat of any portion of the Property.

1.23 Property. "Property" shall mean that real property which is subject to the terms of this Declaration initially described as approximately 3.472 acres of land, known as Summerglen, Unit 5A-1, (Planned Unit Development), Bexar County, Texas, as shown on the map or plat recorded in Volume 9558, Page 199, of the Deed and Plat Records of Bexar County, Texas, and any additional real property which may be hereafter incorporated or annexed under the terms of this Declaration.

1.24 Subassociation. "Subassociation" shall mean any non-profit Texas corporation or unincorporated association, organized and established by Declarant or with Declarant's approval, pursuant to or in connection with a Supplemental Declaration.

1.25 Subdivision. "Subdivision" shall mean and refer to Summerlin, Unit-1 and Unit-2A, and Summerglen, Unit-2B, Unit-3, Unit-3A, Unit-4, Unit-5 and Unit-5A, and such other property within the Development, which has been subdivided and shown on a map or plat or recorded in the Plat Records of Bexar County, Texas, and brought within the scheme of this Declaration in accordance with the provisions of Article II of this Declaration.

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

ARTICLE II  
ADDITIONS TO THE PROPERTY

2.1 Phased Subdivision.

(A) Incorporation. The Declarant, its successors and assigns, shall have the right at any time prior to June 1, 2018 to incorporate within the scheme of this Declaration additional phases of the Development following the acquisition of such property, or with the consent of the record owner, without the consent or approval of any party, including the Owners of any Lots (other than Declarant).

(B) Filing Supplemental Declarations. To evidence the incorporation or annexation of additional property, Declarant shall record a Supplemental Declaration which shall incorporate this Declaration by reference. Following such incorporation or annexation and the recordation of such additional plat or maps, then and thereafter the Owners of all lots in the Subdivision shall have the rights, privileges and obligations set forth in this Declaration and each applicable Supplemental Declaration.

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

ARTICLE III  
GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

3.1 Single Family Residential Construction. Except as provided below, or otherwise allowed and approved by the Architectural Control Committee, no lot shall contain more than one dwelling unit and each dwelling unit shall be used only for a single family residence.

3.2 Antennas. No exterior radio or television antenna or aerial or satellite dish receiver, or other devices, designed to receive telecommunication signals, including, but not limited to, radio, television, or microwave signals which are intended for cable television, network television receptions, or entertainment purposes shall be erected or maintained, except by Declarant, without the prior written approval of the Architectural Control Committee, which shall not be unreasonably withheld. Nothing herein shall be construed to conflict with the rules and regulations set forth by the Federal Communications Commission.

3.3 Subdividing, Combining Two (2) or More Lots. 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 consent of the Architectural Control Committee; provided, however, when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Control Committee. Lots may be combined into one Lot for building purposes and the interior common boundary line shall be extinguished by filing a recordable document of record, joined by the Declarant, or Architectural Control Committee, declaring the same to be extinguished. Thereafter, all set back lines shall refer to the exterior property lines. Combined Lots shall nevertheless be

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considered as separate Lots for assessment purposes, unless otherwise determined by the Architectural Control Committee. Public utility and drainage easements are exempt from this provision.

3.4 Signs. No signs, advertising, billboards or advertising structure of any kind may be erected or maintained on any Tract without the consent in writing of the Architectural Control Committee, except one (1) professionally made sign not more than twenty-four inches (24") in height and thirty inches (30") in width (excluding post) advertising Owner's Tract for sale or rent, and one (1) professionally made sign, not more than twenty-four inches (24") in height and twelve inches (12") in width (excluding post) identifying the Tract owner's name or names. The term "professionally made sign" does not include store bought pre-made "for sale" or "for rent" signs. Notwithstanding, builders may place a pre-approved sign that does not exceed four (4) feet by four (4) feet advertising a model home on the tract. No sign shall be nailed to a tree and all signs must be properly maintained. Declarant or any member of such Committee shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any Tract in violation of these restrictions, and in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal.

3.5 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or approximately screened from view. In the event the Owner shall fail or refuse to keep, or cause to be kept such Owner's property or any improvements thereon free from rubbish or debris of any kind, and such failure or refusal shall continue for fifteen (15) days after delivery of written notice thereof, then the Summer Glen Property Owners Association, Inc. may enter upon such property and remove or correct the same at the expense of the property owner and any such entry shall not be deemed a trespass.

3.6 Noise. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security or public safety purposes) shall be located, used or placed on any of the Property such that it becomes or will become clearly audible at the property line of adjoining property owners. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

3.7 Minimum Square Footage. The living area of the main residential structure located on any Lot (as the term is defined herein), exclusive of open porches and parking facilities shall not be less than 2,700 square feet.

3.8 Height. No building or structure erected, altered, or placed on, within or in the properties shall exceed the lesser of thirty-five (35) feet in height (measured from the ground to the top most part of the roof) nor be more than 2-1/2 stories in height without the written consent of the Architectural Control Committee.

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

3.10 Unfinished Structures. The exterior of any structure shall be completed within nine (9) months from the commencement date.

3.11 Masonry. The exterior walls of the main residence building constructed on any lot shall consist of at least eighty-five percent (85%) masonry or masonry veneer, on all areas exclusive of door, window and similar openings. However, all exterior walls exposed to view from any street shall be constructed of one hundred percent (100%) masonry or masonry veneer of both one-story and two-story dwellings, exclusive of door, window and similar openings. Those portions of the chimney exposed to the elements shall be one hundred percent (100%) masonry and the area of the chimney exposed to the elements shall not be included when calculating the eighty-five percent (85%) required above. No more than twelve inches (12") of concrete slab shall be exposed to view from any street, any such excess shall be concealed by an approved masonry or masonry veneer. Masonry or masonry veneer includes stucco, ceramic tile, clay, brick, rock and all other materials commonly referred to in the San Antonio, Texas area as masonry. Notwithstanding the foregoing, the Architectural Control Committee is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material and the resulting structure will not detract from the general appearance of the neighborhood.

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

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

3.14 Roofing Materials. The surface of all principal and secondary structures including garages and domestic living quarters shall be of slate, stone, concrete tile, clay tile, or other tile of a ceramic nature, composition shingles with a thirty (30) year or more warranty; or they may be metal, left natural or painted a color approved by the Architectural Control Committee, using standing or battened seams. The Architectural Control Committee shall have the authority and sole discretion to approve other roof treatments and materials if the form utilized will be harmonious with the surrounding homes and subdivision as a whole.

3.15 Driveways. All driveways shall be constructed of exposed aggregated finished concrete, concrete, or brick pavers materials unless otherwise approved in writing by the Architectural Control Committee. All garages shall be suitable for not less than two (2) automobiles. All garages shall consist of enclosed structures and no carports shall be permitted on any Lot without prior written approval of the Architectural Control Committee. The Architectural Control Committee shall have the absolute authority over the entrance location and siting of all garages. All curbs shall be cut by an experienced, qualified professional curb cutter. All driveways and curb cuts must be shown on the plans submitted to the Architectural Control Committee and approved prior to any action being taken.

3.16 Underground Utility Lines. No utility lines including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television, or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings other Improvements approved in writing by the Architectural Control Committee; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements which have been previously approved in writing by the Architectural Control Committee. The installation method, including, but not limited to, location, type of installation, equipment, trenching method and other aspects of installation, for both temporary and permanent utilities shall be subject to review by the Architectural Control Committee.

3.17 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Control Committee.

3.18 Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

3.19 Temporary Structures. No tent, shack, garage, barn, basement, trailer, motor home or other temporary building, improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Control Committee. Notwithstanding, the Developer reserves the exclusive right 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.

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

3.21 Unightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, recreational vehicles (RVs), trucks other than pickups, boats, tractors, campers, wagons, busses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have garage space sufficient to house all vehicles to be kept on the Lot. Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. No automobiles or other vehicles may be parked overnight on any roadway within the Property. Service area, storage area, loading area, compost piles and facilities for hanging, drying or rinsing clothing or household fabrics shall be appropriately screened from view from public or private thoroughfares and adjacent properties and no lumber, grass, plant, waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulated on any portion of the Property except within enclosed structures or appropriately screened from view from public or private thoroughfares and adjacent properties.

3.22 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) hours. Notwithstanding, the Developer reserves the right to maintain such structures/vehicles within the subdivision as, in its sole discretion, may determine to be necessary or convenient while selling lots.

3.23 Fences. The construction of fences shall be subject to the prior written consent of the Architectural Control Committee. The Architectural Control Committee may, in its discretion, prohibit the construction of any proposed fence, or specify the materials of which any proposed fence must be constructed, or require that any proposed fence be partially screened by vegetation. No fence shall be permitted within any street yard. (Street yard is the yard abutting a street which lies between the street and the face of the house as described in the City Landscape Ordinance.) All fences shall be a minimum of four feet and a maximum of 6.5 feet in height and shall be constructed using masonry,

wrought iron, or a combination of masonry and wrought iron. (Common cement or cinder block and chain link are specifically excluded.) Fences on the side or back of the house, and not facing a street, may be made of masonry, wrought iron, or a combination of masonry and wrought iron, or a combination of masonry and wood. The design, materials and specifications of all fencing shall be approved by the Architectural Control Committee. The Declarant shall include in his fence design, or cause to be included accent landscaping in the public right-of-way to compliment all rear lot line fencing.

(A) Fence Maintenance. Fence maintenance shall be the responsibility of the property owner and all damage shall be repaired within thirty (30) days of written notification by the Master Association. It shall be a violation of this Declaration to maintain a fence in such a manner as to allow (1) any portion of a fence to lean so that the fence's axis is more than five (5) degrees out of perpendicular alignment with its base, (2) missing, loose, or damaged stone or wood rails in the fence and (3) symbols, writings, and other graffiti on the fence.

3.24 Animals-Household Pets. No animals, including pigs, pot bellied pigs, hogs, swine, pigeons, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on any portion of the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within the enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Architectural Control Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

3.25 Maintenance of Lawns and Planting. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot (including any Greenbelt platted as part of such Owner's Lot and any Greenbelt located between such Owner's Lot and a publicly dedicated roadway) cultivated, pruned, mowed and free of trash and other unsightly material.

3.26 Construction Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Control Committee, provided that such waiver shall be only for the reasonable period of such construction.

3.27 Compliance with Provisions of the Summerglen Restrictions. Each Owner shall comply strictly with the provisions of the Summerglen Restrictions as the same may be amended from time to time. Failure to comply with any of the Summerglen Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Board on behalf of the Association or by an aggrieved Owner.

3.28 Construction in Place. All dwellings constructed on the Property shall be built in place on the applicable Lot and the use of prefabricated materials shall be allowed only

with the prior written approval of the Architectural Control Committee.

3.29 Color. All exterior color schemes on any structure must be approved by the Architectural Control Committee prior to use.

3.30 Setback Requirements. All residences shall be set back at least forty (40) feet the front property line, ten (10) feet from the side lot lines and twenty (20) feet from the rear lot line.

3.31 Rentals. Nothing in the Declaration shall prevent the rental of any entire Lot and the Improvements thereon, by the Owner thereof for residential purposes.

3.32 Hunting. No hunting is allowed in the subdivision; no discharge of handguns, rifles, shotguns or other firearms, pellet or air guns, bows or cross bows, or other weapons are allowed.

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

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

3.35 Prohibition of Offensive Activity. No activity, whether for profit or not, shall be conducted on any tract which is not related to single family residential purposes. All commercial activities are specifically prohibited. Notwithstanding, this restriction is waived in regard to the customary sales activities required to sell homes in the subdivision.

#### ARTICLE IV USE RESTRICTIONS

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

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

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

4.4 Recreational Improvements. Any proposed construction of recreational

improvements within a Greenbelt or any Amenity Areas shall be subject to approval by the Architectural Control Committee.

ARTICLE V  
SUMMERGLEN PROPERTY OWNERS ASSOCIATION, INC.

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

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

5.3 Voting Rights. The Association shall have one class of voting memberships.

5.4 Powers and Authorities of the Association. The Master Association shall have the powers of the Texas Nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the Laws of Texas or of the two preceding sentences, the Master Association and the Board, acting on behalf of the Master Association, shall have the power and authority at all time as follows:

(A) Summerglen Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Summerglen Rules and Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

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

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

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

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

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

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

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

- (1) Parks, parkways or other recreational facilities or structures;
- (2) Roads, streets, walks, driveways, trails and paths;
- (3) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (4) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (5) Any similar public, quasi-public or private improvements or facilities; provided, however, that the Master Association shall not convey fee simple title in and to, or mortgage all or any portion of any Common Properties without the consent of at least sixty-seven (67%) of the Owners (excluding Declarant).

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

(I) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Master Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Master Association or may be furnished by the Manager. To the extent permitted by law, the Master Association and the Board may delegate any other duties, powers and functions to the Manager. The members of the Master Association hereby release the Master Association and the members of the Board from liability for any omission or

improper exercise by the Manager of any such duty, power or function so delegated.

(J) Association Property Services. To pay for water, sewer, garbage, removal, landscaping, gardening and all other utilities, services and maintenance for all Common Properties, to maintain and repair easements, roads, roadways, rights-of-way, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Property, as appropriate and the maintenance of which as not been accepted by the appropriate governmental entity; and to own and operate any and all types of facilities for both active and passive recreation.

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

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

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

(N) Property Ownership. To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

5.5 Maintenance and Landscape Authority. The Master Association shall maintain all street and roadways within the Property, which have been completed but not accepted by the appropriate governmental entity for maintenance. In addition, the Master Association shall be authorized to landscape, maintain and repair all easements, access easements, rights-of-way, median strips, sidewalks, paths, trails, detention ponds and other areas of the Property, as appropriate. The Master Association shall maintain all Greenbelt or Amenity Areas dedicated to the Master Association for maintenance, by or with the consent of Declarant. The Master Association shall also maintain any landscaped medians and boulevard areas, not fronting lots, located in the public right-of-way.

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

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

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

(B) To construct, maintain, repair and replace landscape improvements and irrigation systems which public rights-of-way pursuant to agreement(s) with the City of San Antonio or other appropriate governmental authority.

(C) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Master Association,

to the extent that such taxes and assessments are not levied directly upon the members of the Master Association. The Master Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

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

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

5.8 Indemnification. The Master Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was director, officer, committee member, employee, servant or agent of the Master Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Master Association, and (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceedings by settlement, or upon a plea of Nolo Contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Master Association, and with to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Master Association, against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Master Association would have the power to indemnify him against such liability hereunder or otherwise.

#### ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

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

6.2 Membership of Architectural Control Committee. The Architectural Control Committee shall consist to not less than three (3) nor more than seven (7) voting members ("Voting Members") and such additional nonvoting members serving in an advisory

capacity ("Advisory Members") as Declarant or its successors or assigns deems appropriate.

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

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

6.5 Term. At such time as seventy-five percent (75%) of all the Lots in all sections of the Subdivision are conveyed by Declarant (from time to time hereafter referred to as the "Control Transfer Date"), the Declarant shall cause an instrument transferring control to be placed of record in the Official Public Records of Bexar County, Texas (which instrument shall include the Control Transfer Date, and shall appoint not less than three (3) members to form the Architectural Control Committee. Thereafter, annually the Association shall elect three (3) members. Additionally, the Declarant shall have the right to discontinue the exercise of architectural control privileges and arrange for the transfer to the Association at any time prior to the Control Transfer Date by filing a statement and instrument to such effect in the Official Public Records of County, Texas.

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

6.7 Review of Proposed Construction. Whenever in this Declaration, or in any Supplemental Declaration, the approval of the Architectural Control Committee is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in questions and all other facts and information which, in its sole discretion, it considers relevant, and may require an Owner to provide such other information as it deems relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Control Committee, and construction thereof may not commence unless and until the Architectural Control Committee has approved such Plans and Specifications in writing. The Architectural Control Committee may postpone review of the Plans and Specifications until such time as the Architectural Control Committee has received all information requested. The Architectural Control Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Control Committee. The Architectural Control Committee shall not be responsible for reviewing any proposed Improvements, nor shall its approval of any Plans and Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

6.8 Variances. The Architectural Control Committee may grant variances from compliance with any of the provisions of this Declaration or any Supplemental Declaration, when, in the opinion of the Architectural Control Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument in recordable form, and must be signed by at least two (2) of the Voting Members. The granting of such variance shall not operate to waive or amend any of the terms and

provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof. Notwithstanding the foregoing, such variances shall not vary any city ordinance unless a variance or special exception has been first granted by the City of San Antonio.

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

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

6.11 Certificate of Compliance. Upon completion of any Improvement approved by the Architectural Control Committee and upon written request by the Owner of the Lot, the Architectural Control Committee shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the Architectural Control Committee pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the Architectural Control Committee of the actual consideration of the Improvements or of the workmanship or material thereof.

The Owner is hereby notified that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the Architectural Control Committee of the construction workmanship, material and or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the improved Lot.

## ARTICLE VII FUNDS AND ASSESSMENTS

### 7.1 Assessments.

(A) Assessments established by the Board pursuant to the provisions of this Article VII shall be levied on a uniform basis against each Lot within the Property.

(B) Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Property against which the Assessment falls due, and shall become a lien against each such Lot and all Improvements thereon. The Master Association may enforce payment of such assessments in accordance with the provisions of this Article.

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

7.2 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid the Master Association and from which disbursements shall be made in performing the functions of the Master Association under this Declaration. The funds of the Master Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended. Nothing contained herein shall limit,

preclude or impair the establishment or other maintenance funds by a Subassociation pursuant to any Supplement Declaration.

7.3 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Master Association during such year in performing its functions under the Summerglen Restrictions, including but not limited to, the cost of all maintenance, the cost of providing street lighting, the cost of enforcing the Summerglen Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves less any excepted income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessment set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Master Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Master Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the regular Assessment per Lot for the year 1998 exceed the sum of 600.00. Thereafter, the regular Assessment permitted hereunder shall not be increased by more than ten percent (10%) per year. However, if any Owner, including Developer, owns more than one (1) Lot in the subdivision, such Owner shall pay only twice the Assessment of one (1) Lot no matter how many lots are owned.

7.4 Owner's Personal Obligation for Payment of Assessments. The regular Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may except himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest on the amount of the Assessment from the due date at a percentage rate of six percent (6.0%) per annum, together with all costs, and expenses of collection, including reasonable attorney's fees.

7.5 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure, pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection with such statute. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Bexar County, Texas. In the event that the Association has determined to non-judicially foreclose the lien pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association, or the Association's agent, shall give notice of foreclosure sale as provided by the Texas Property Code as then amended. Upon request by Association, the Trustee shall give any further notice of foreclosure sale as may be required by the Texas Property Code as then amended, and shall convey such Lot to the highest bidder for cash by the General Warranty Deed. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for

possession in action of forcible detainer and the issuance of a writ of restitution thereunder.

In the event of non-payment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien and exercising the remedies provided, upon ten (10) days prior written notice to such non-paying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 7.5 to comply with the provisions of Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of Section 51.002 of the Texas Property code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration file in the Real Property Records of Bexar County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

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

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

#### ARTICLE VIII EASEMENTS

**8.1 Reserved Easements.** All dedications, limitations, restrictions and reservations shown on a Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights, made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for

all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of 5.0 feet on each side of such Lot line.

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

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

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

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

8.6 Greenbelt or Amenity Areas. Each Owner shall have any easement of use and enjoyment in and to all Greenbelt or Amenity Areas which shall be appurtenant to and shall

with title to such Owner's Lot, subject to the following restrictions:

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

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

(C) The right of the Master Association to borrow money for the purpose of improving the Greenbelt or Amenity Areas and, in furtherance thereof, to mortgage the Greenbelt or Amenity Areas, all in accordance with the Articles and Bylaws;

(D) The right of the Master Association to make reasonable rules and regulations regarding the use of the Greenbelt or Amenity Areas and any facilities thereon; and

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

**ARTICLE IX**  
**MISCELLANEOUS**

9.1 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until August 1, 2018, unless amended as herein provided. After August 1, 2018, this Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least three-fourths (3/4ths) of the Lots within the Property then subject to this Declaration.

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

9.3 Amendment.

(A) By Declarant. This Declaration or any Supplemental Declaration may be amended by the Declarant acting alone until August 1, 2009, or until Declarant no longer holds seventy five percent (75%) of the votes in the Master Association, whichever occurs last. No amendments by Declarant after August 1, 2009, shall be effective until there has been recorded in the Official Public Records of Bexar County, Texas, an instrument approved and executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Board certifying that the Declarant had the requisite number of votes. Notwithstanding the foregoing, Declarant may amend this Declaration at any time (i) to correct typographical and grammatical errors, and (ii) in order to comply with VA or FHA requirements for approval of the Property.

(B) By Owners. In addition to the method in Section 9.3(A), after August 1, 2009, this Declaration may be amended by the recording in the Official Public Records of Bexar County, Texas, an instrument approved and executed and acknowledged by the President and Secretary of the Master Association, setting forth the amendment and certifying that

such amendment has been approved by Owners entitled to cast at least eighty percent (80%) of the number of votes to be cast pursuant to Section 5.3 hereof.

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

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

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

9.7 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Control Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities to construct any and all other types of improvements anywhere within the Property, however, the construction of sales and leasing offices and the posting of sign advertising the sale and leasing of Lots by Declarant shall be limited to Lots owned by the Declarant.

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

9.9 Enforcement and Nonwaiver.

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

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

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

9.10 Construction.

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

provision or portion thereof.

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

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

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this the 14<sup>th</sup> day of November, 2003.

SOUTHERLAND/RED CREEK RANCH VENTURE, a Joint Venture by SOUTHERLAND PROPERTIES, INC., a Texas Corporation, Joint Venturer

By: [Signature]  
JAY PATTERSON, Vice President

Agreed to and approved by :

MHI PARTNERSHIP, LTD. by  
MCGUYER HOMEBUILDERS, INC., its  
General Partner

By: [Signature]  
Printed Name: Michael K. Love President  
Title: McGuyer Homebuilders Inc., Sole  
General Partner of MHI Partnership, Ltd.

THE STATE OF TEXAS \*  
COUNTY OF Harris Co. mel \*  
*kp*

This instrument was acknowledged before me on this the 20<sup>th</sup> day of November, 2003, by JAY PATTERSON, Vice President of SOUTHERLAND PROPERTIES, INC., a Texas Corporation, Joint Venturer for SOUTHERLAND/RED CREEK RANCH VENTURE, a Joint Venture, in the capacity therein stated, on behalf of said Corporation.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS  
Notary's Name Printed:  
My Commission Expires: \_\_\_\_\_

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THE STATE OF TEXAS  
COUNTY OF Harris

This instrument was acknowledged before me on this the 14<sup>th</sup> day of November, 2003, by Michael K. Lowe, President of MCGUYER HOMEBUILDERS, INC., General Partner of MHI PARTNERSHIP, LTD., in the capacity therein stated, on behalf of said partnership.



Judy D. Johnson  
NOTARY PUBLIC, STATE OF TEXAS  
Notary's Name Printed:  
Judy D. Johnson  
My Commission Expires: 11-9-05

AFTER RECORDING RETURN TO:  
BOB R. KIESLING, P.C.  
P. O. Box 311686  
New Braunfels, TX 78131-1686

PREPARED IN THE LAW OFFICE OF:  
BOB R. KIESLING, P.C.  
P. O. Box 311686  
New Braunfels, TX 78131-1686

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal Law STATE OF TEXAS, COUNTY OF BEXAR.  
I hereby certify that this instrument was FILED in File-Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas etc.

NOV 25 2003



Gerry Rickhoff  
COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20030306723  
# Pages 22  
11/25/2003 10:39:33 AM  
Filed & Recorded in  
Official Records of  
BEXAR COUNTY  
GERRY RICKHOFF  
COUNTY CLERK  
Fees \$56.00

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