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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
THE COOL WATER RANCH

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GILLESPIE §

THAT, COOL WATER RANCH, LTD., a Texas Limited Partnership (“Declarant”), being the owner of that certain subdivision known as COOL WATER RANCH (hereinafter referred to as the “Subdivision”), according to the plat of said subdivision as recorded in Volume 4, Pages 4 and 5 of the Plat Records of Gillespie County, Texas, and, as such, desiring to create and carry out a uniform plan for the improvement, development, and sale of the subdivided Tracts situated within the Subdivision, does hereby adopt and establish the following easements, restrictions, covenants and conditions (“Protective Covenants”) to run with the land and to apply in the use, occupancy, and conveyance of the aforesaid described subdivided Tracts therein, which easements, restrictions, covenants and conditions shall be binding on all parties having a right, title or interest in or to the above described Subdivision or any part thereof, and their heirs, successors and assigns, and which easements, restrictions, covenants and conditions shall inure to the benefit of each owner thereof; and each contract or deed which may be executed with regard to any of such property shall be conclusively held to have been executed, delivered and accepted, subject to the following restrictions and covenants:

ARTICLE I.

DEFINITIONS

“Association” shall mean and refer to The Cool Water Ranch Owners’ Association, Inc. (a Texas non-profit corporation), its successors and assigns.

“Common Area” shall mean all real property (including the Improvements thereto) leased, owned or maintained by the Association for the common use and enjoyment of the Owners. By way of illustration, Common Area may include, but not necessarily be limited to, the following: street medians, entryway Improvements, landscaping, lighting, entrance signs, walls, bridges, and other similar or appurtenant improvements. The term “Common Area” shall also include all Roadways (as defined in Article III) until such time as such Roadways are accepted and included in Gillespie County’s road system.

“Declarant” shall mean and refer to COOL WATER RANCH, LTD., its successors and assigns, if such successors or assigns should acquire all of the undeveloped and unsold lots or acreage from the Declarant for the purpose of development.

“Declaration” shall mean this instrument as it may be amended from time to time.

“Single Family Dwelling” shall mean and refer to any Improvement on a Tract which is designed and intended for use and occupancy as a residence by one individual, by a single

family, or by individuals related by blood, marriage or adoption, who are maintaining a common household.

“Improvement” or “Improvements” shall mean or refer to all structures or other improvements to any portion of the Property, whether above or below grade, including, but not limited to, buildings, barns, carports, fences, pens, walls, well houses, entryways, gates, exterior lighting, mailboxes, flag poles, recreation areas, utility installations (including, without limitation, water, telephone, electric, satellite, propane gas tanks and systems, and septic tanks and systems), driveways, and any exterior additions, including any changes or alterations thereto.

“Member” shall mean and refer to an Owner who is a member of the Association as provided for below.

“Owner” shall mean and refer to the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Tract, including contract Sellers, but excluding those having such interest merely as security for the performance of an obligation.

“Plat” shall mean and refer to the map or plat of the Subdivision recorded in Volume 4, Pages 4 and 5 of the Plat Records of Gillespie County, Texas, as such plat may be modified and amended from time to time.

“Property” or “Subdivision” shall mean and refer to that certain real property hereinbefore described as the “Subdivision” and more particularly described as Cool Water Ranch, according to the Plat, and any additional property that may be made subject to this Declaration pursuant to Article II hereof.

“Tract” shall mean and refer to any plot of land shown upon the Plat, with the exception of any plot designated on the Plat as a Common Area.

## ARTICLE II.

### ADDITION OF LAND

Section 1. Addition of Land. Declarant hereby reserves to itself and shall hereafter have the right, but not the obligation at any time and from time to time, in its sole and absolute discretion, and without notice to or the approval of any party or person whomsoever or whatsoever, to impose this Declaration or a substantially similar Declaration upon additional property adjacent, contiguous or nearby to the Property. Declarant may, at any time and from time to time, add any other lands to the Property, and upon such addition, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall apply to the added land, and the rights, privileges, duties and liabilities of the persons subject to the Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration, unless such supplemental Declaration shall provide for changes to the Declaration to deal with the unique character of Declarant’s overall development plans for the added property. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Official Public Records of Gillespie County, Texas, a notice of addition of land

(in the form of a Supplemental Declaration) containing the following provisions:

- (a) A reference to this Declaration, which reference shall state the book and page numbers of the Official Public Records wherein this Declaration is recorded;
- (b) A statement that the provisions of this Declaration shall apply to the added land;
- (c) A legal description of the added land; and
- (d) Any covenants, conditions, or restrictions that are different or unique to the added land.

### ARTICLE III.

#### DEDICATION OF ROADWAY/RESERVATION OF RIGHTS

Section 1. Dedication of Roadways. Declarant will construct the roads shown on the Plat (the "Roadways"). Developer does hereby dedicate the Roadways for the use of the public. Until such time as the Roadways are accepted and included in Gillespie County's road system, Declarant hereby dedicates the Roadways for the common use of all Owners, and does hereby grant to all such Owners, their heirs, successors and assigns, and their agents, licensees, guests, tenants, invitees and permittees, the free nonexclusive and uninterrupted use, liberty, privilege and easement of passage in and along the Roadways, together with free ingress, egress and regress, over and across the same, at all times and seasons forever, in, along, upon and out of said way (the "Roadway Easement"). The right to use and enjoy the Roadway Easement shall exist in favor of and shall inure to the benefit of the Owners, and each of them, and each of their respective heirs, successors and assigns, and their respective agents, licensees, tenants, guests, invitees and permittees in common with each other, the Declarant, the Declarant's successors and assigns, and their respective agents, licensees, tenants, guests, invitees and permittees. The Roadway Easement shall further be deemed an easement appurtenant to the Property, and each and every portion thereof. The right of ingress and egress provided by the Roadway Easement may be exercised by any reasonable means, whether now in existence or known or whether by a means which may come into existence in the future, and regardless of any increased burden which may result from such use.

Section 2. Reservation of Right to Construct Improvements. Until Turnover (as hereinafter defined), Declarant and/or the Association shall have the exclusive right to construct Improvements in the Common Areas. From and after Turnover, the Association, and the Association's successors and assigns, shall have the exclusive right to construct Improvements in the Common Areas.

Section 3. Maintenance of Common Areas. The Association shall have the exclusive right to repair, replace and maintain the Common Areas.

ARTICLE IV.

EASEMENTS – UTILITY AND DRAINAGE

Section 1. Reservation of Utility Easements. Declarant reserves unto Declarant's, Gillespie County, and any public or private providers of utility services to the Subdivision, and their respective successor and/or assigns, perpetual easements (the "Utility Easements") for the installation and maintenance of utilities and all necessary appurtenances thereto, whether installed in the air, upon the surface or underground, along and within, (i) all Roadways, (ii) ten (10) feet along and outside of all boundaries of the Roadways, (iii) ten (10) feet of the rear, front and side boundary lines of all Tracts, and (iv) twenty (20) feet along the entire perimeter boundary of the Subdivision; with the authority to place, construct, operate, maintain, relocate and replace utility lines, systems and equipment thereon. The Utility Easements include the right of anchoring any support cables or other devices outside such easement areas when deemed necessary to support equipment. Nothing shall be placed or permitted to remain within the easement areas which may damage or interfere with the installation and maintenance of utilities. The easement areas within each Tract and all Improvements within it shall be maintained by the Owner of the Tract, except as otherwise provided in this Declaration and except for those Improvements for which an authority or utility provider is responsible. Utility providers shall have all of the rights and benefits necessary and convenient for the full enjoyment of the rights herein granted, including, but not limited to the free right to ingress to, and egress from, easement areas, and the right from time to time to cut and trim all trees, undergrowth and other obstructions that may injure, endanger or interfere with the installation, operation or maintenance of utilities. Declarant shall have the right, without the necessity of joinder by any Owner, or the Association to execute and deliver any and all instruments that may be required by any provider of such utilities in order to grant or assign such provider the right to utilize the easement reserved hereby to provide such utilities.

Section 2. Easements Shown on Plat. All dedications, limitations, restrictions and reservations shown on the 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.

Section 3. Access Easements. Declarant hereby reserves for itself and its successors and assigns, and the Association is hereby granted, a non-exclusive right of access to and easement across all Tracts for purposes of exercising their respective rights or performing their respective duties under these Declarations (including, without limitation, any rights or duties of maintenance or repair).

Section 4. Drainage Easements. Easements for drainage ("Drainage Easements") throughout the Subdivision are reserved as shown on the aforementioned recorded plats, and are reserved along and within the Roadways. The Drainage Easements are reserved by Declarant, for Declarant and Declarant's successors and assigns. Declarant reserves the right: (i) to

construct drainage channels and install culverts along and within the Drainage Easements, and (ii) to construct water retention berms (the "Water Retention Berms") to be situated within the Drainage Easements. Declarant shall have all of the rights and benefits necessary and convenient for the full enjoyment of the rights herein granted, including, but not limited to the free right of entry onto all Tracts for the purpose of construction and installation of any drainage channel, culverts and Water Retention Berms, and the right to cut and trim all trees, undergrowth and other obstructions that may interfere with the construction or installation of any drainage channels, culverts and Water Retention Berms. No owner of any Tract in the Subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such easements. More specifically, and without limitation, no owner may:

(1) alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements;

(2) alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements or remove trees or other vegetation therefrom without the prior written approval of the Association;

(3) construct, erect or install a fence or other structure of any type or nature within or upon drainage easements which will impede the natural flow of water over said easement.

(4) permit storage, either temporary or permanent, of any type upon or within such drainage easements; or

(5) place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

After the initial construction of any drainage channels, culverts and Water Retention Berms by Declarant, the Association shall have the right to, and shall be responsible for, the maintenance and repair of such drainage channels, culverts and Water Retention Berms to the extent required in order to cause them to adequately perform the drainage and water retention function for which they were initially constructed; provided that the Owner of a Tract on which a Drainage Easement, drainage channel, culvert and/or Water Retention Berm is situated shall be responsible for the normal, day-to-day maintenance of such areas on such Owner's Tract (including, without limitation, mowing such areas, and keeping such areas free from trash, garbage, leaves, limbs and other debris), and for any maintenance or repairs caused by any violation by such Owner of the restrictions provided for in these Declarations. The failure of any owner to comply with the provisions of this Section 4 shall in no event be deemed or construed to impose liability of any nature on the Association and/or Declarant, and such Association and/or Declarant shall not be charged with any affirmative duty to police, control or enforce such provisions. The drainage easements provided for in this provision shall in no way affect any other recorded easement in

the Subdivision.

**Section 5. No Liability for Damage to Improvements.** Declarant shall not be liable to any Owner for any damage to any vegetation (including, without limitation, shrubbery, trees, lawns or flowers) or other Improvements situated within such easement area, as a result of any activity relating to the construction, maintenance, operation, or repair of any utility lines or facilities in any such easement area. A provider of utility services shall not be liable to any Owner for any damage to any vegetation (including, without limitation, shrubbery, trees, lawns or flowers) or other Improvements situated within such easement area, as a result of any activity relating to the construction, maintenance, operation, or repair of any utility lines or facilities in any such easement area, except to the extent liability or obligation to repair any such damage arises out of this Declaration, or any State, County, or Municipal statutes, ordinances, rules or regulations, or the custom and practice of such utility provider. Prior to the construction of any utilities on a developed lot ("developed lot" shall mean any Tract which has a Single Family Dwelling constructed thereon), Declarant and the Association reserves the right to require that the utility provider pay the cost of repairing and restoring the easement area to the same condition as it was prior to construction.

**Section 6. Changes, Additions, and Reservations.** Declarant reserves the right to make changes in and additions to the easements described in this Article IV for the purpose of more efficiently and economically installing any Improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, (i) to grant, dedicate, reserve or otherwise create easements for utility purposes, (including, without limitation, water, sewer, gas, electricity, telephone, cable television, and drainage) in favor of any person or entity furnishing or to furnish utility services to the Property, but only to the extent reasonably necessary and appropriate, and (ii) to execute and deliver any and all instruments and documents in connection therewith, including, without limitation, any and all instruments and documents that may be required by any provider of such utilities.

## ARTICLE V.

### COMMON AREAS

Other than the Roadways (until such Roadways are accepted and included in Gillespie County's road system), the medians, and the entryway to the Subdivision, and any Improvements in connection therewith, there are no Common Areas planned to be developed within the Subdivision.

## ARTICLE VI.

### PROPERTY RIGHTS

**Section 1. Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Tract, subject to the following provisions:

- (a) the right of the Association to charge fees for the repair and maintenance of the

Common Areas, collect all dues, fines, assessments, reimbursements, and/or other fees or charges of any sort provided for in this Declaration, and enforce collection of any such dues, fines, assessments, reimbursements, and/or other fees or charges in accordance with any and all terms, conditions or rights set forth in this Declaration;

(b) the right of the Association to suspend the voting rights of an Owner for any period of time during which any assessment against his Tract remains unpaid, or for any period of time during which such Owner is delinquent in the payment of any dues, fines, assessments, reimbursements, and/or other fees or charges due the Association hereunder;

(c) the right of the Association to suspend the voting rights of any Owner during any period of time in which an infraction of any of the rules and regulations set forth in this Declaration, or adopted by the Association, has taken place, and to uphold such suspension for up to 60 days after said Owner's cure;

(d) the right of the Association (i) to enforce any and all rules and regulations which are a part of this Declaration or which are adopted by the Association pursuant to the authority granted to the Association by these Declarations, and (ii) to make and adopt rules and regulations regarding participation in Association activities or the use of the Common Areas, or otherwise related to its purpose; and

ARTICLE VII.

PROPERTY OWNER'S ASSOCIATION AND COVENANTS FOR  
MAINTENANCE ASSESSMENTS

Section 1. Membership and Voting. Declarant shall take all steps necessary to create the Association, to which Association the Declarant may assign or delegate on a permanent or temporary basis one or more of the rights, powers, obligations and duties of the Declarant under this Declaration. Every Owner of a Tract within the Property shall be a member of the Association.

The Association shall have two classes of voting membership.

Class A: Class A Members shall be all Owners of Tracts, with the exception of the Declarant, and shall be entitled to one (1) vote for each Tract owned. When more than one person owns an interest in any Tract, all such persons shall be members. The vote for such Tract shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any one Tract hereunder.

Class B: Class B Members shall be the Declarant. Declarant shall be entitled to three (3) votes for each Tract owned. Once a Tract is sold to a person or persons who would be classified as Class A Members, the three (3) votes attached to that Tract shall be extinguished.

When more than one person owns an interest in any Tract, in order for the vote attributable to such Tract to be valid, the Owners of such Tract (or their representatives) shall deliver to the Board of Directors such instruments and documents (including, without limitation, resolutions, authorizations, approvals, and certifications) as the Board of the Directors may reasonably request to confirm that such vote was authorized; such instruments and documents to be delivered prior to the taking of the vote of the members. If such instruments and documents are not delivered, or if the Board of Directors determines, in its sole discretion, that such vote was not properly authorized, the vote submitted for such Tract shall be deemed to be an abstention.

### Section 2. Turnover.

(a) At any time after commencement of operations of the Association, at Declarant's sole discretion, the Owners may be required to take over the management of the Association and relieve Declarant of all duties associated therewith (for purposes of this Declaration, the transfer of management of the Association by Declarant to the Owners is hereinafter referred to as "Turnover"). Upon such Turnover by the Declarant, the Owners will be required to choose their own Board of Directors to represent them and to manage the Association in accordance with the terms and conditions of this Declaration and to establish any and all bylaws, procedures and other management devices by which the Association shall operate. Prior to the date such Turnover occurs, a Director need not be a member of the Association. From and after such date, a Director shall be a member of the Association.

(b) Notwithstanding anything to the contrary, until such Turnover has taken place, the management of the Association shall be by Declarant and its staff, and any expenses incurred in such management shall be reimbursed to Declarant by the Association. Said reimbursable expenses shall include the cost of Declarant's staff for the time spent in the management of the Association.

(c) Declarant shall give the Owners written notice of the Turnover (the "Turnover Notice") at least thirty (30) days prior to the effective date of such Turnover. The Turnover Notice shall state the effective date of the Turnover (the "Turnover Date"). In addition, the Turnover Notice shall state the place, date and hour of a special meeting of the Owners called for the purpose of the election of a new Board of Directors as of the Turnover Date, and shall constitute a call and notice of such special meeting. In the event the Owners fail to elect a new Board of Directors by the Turnover Date, the Declarant may (but shall not be obligated to) appoint three (3) or more Owners to serve as an interim Board of Directors until such time as the Owners elect a new Board of Directors. Turnover of the Association shall occur on the Turnover Date specified in the Turnover Notice, whether or not a new Board of Directors is elected by the Owners by the Turnover Date, and whether or not an interim Board of Directors is appointed by the Declarant.

(d) The Association shall at all times from and after Turnover indemnify and hold Declarant, its officers and partners, harmless from and against any and all liability, claims or damages of every kind, arising out of the operation of the Association (whether before or after such Turnover), or the development and operation of the Subdivision (whether before or after such Turnover), including, without limitation, the Common Areas. Additionally, Declarant, its

officers and partners, shall not be held liable in any way in its role in enforcing or failing to enforce any of the covenants, conditions, restrictions and other terms of this Declaration, in protecting its rights or in carrying out any of its duties or obligations. The indemnification by the Association of the Declarant shall include the Association's payment of any and all expenses incurred by Declarant, its officers or partners, including the payment of any and all legal expenses, court costs, and all other costs associated with the protection and/or defense of Declarant, its officers and partners, in any legal actions or proceedings or any other action of any kind.

(e) Upon written request made by Declarant to the Association, which request may be made at any time after the date hereof, the Association shall obtain and maintain in effect at all times, at the Association's expense, Commercial General Liability Insurance with limits of liability reasonably acceptable to Declarant, but not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate single limit; such insurance (i) to include coverage insuring against liability arising out of or related to the operation of the Association, and the development, operation and maintenance of the Subdivision, including, without limitation, the Common Areas, (ii) to name Declarant as an additional insured, and (iii) to be issued by an insurance company reasonably acceptable to Declarant. The Association shall, not later than ten (10) days after the date of Declarant's request for such liability coverage, provide Declarant with a certificate of insurance providing for the insurance coverage required hereby. The Association shall not cancel any insurance policy obtained in accordance herewith without giving Declarant at least thirty (30) days prior written notice. The Association shall maintain such liability insurance until the later of (a) the date all of the Common Areas are turned over to the Association, (b) the date management of the Association has been turned over to the Owners, or (c) the date Declarant no longer owns any interest in any part of the Subdivision.

### Section 3. Personal Obligation and Lien Rights Associated with Collection of Dues and Assessments.

(a) Each Owner, by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to agree to pay to the Association regular annual assessments and all other Association dues, fees, fines, assessments or charges of any kind, including special assessments, which may be established and collected as hereinafter provided.

(b) The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time the assessment fell due. The personal obligation for delinquent assessments shall pass to any successors or assigns in title.

Section 4. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents and/or Owners of the Property, for the improvement and maintenance of the Common Areas, for the enforcement of the covenants, conditions and restrictions contained in this Declaration, and for the general and administrative expenses of the Association. These expenses may include, but shall not necessarily be limited to, payment of taxes and insurance, construction, repair or replacement of

Common Areas and Improvements thereon, cost of trash and debris clean-up, street and lot cleaning, cost of professional or other outside services, and labor, equipment, materials, outside management and supervision necessary to carry out its authorized functions. Additionally, any other expenses which, in Declarant's or Association's sole discretion, are deemed necessary to uphold the Subdivision's property values and/or are for the overall betterment of the Subdivision and its appearance, shall be the responsibility of the Association and shall be paid out of assessments.

Section 5. Initial Annual Assessment. Until adjusted in accordance herewith, the maximum annual assessments shall be as follows:

- Class A Members: \$200.00 per individual Tract owned; and
- Class B Members: \$200.00 per individual Tract owned.

(a) From and after January 1 of the calendar year immediately following the first conveyance of a Tract to an Owner, the maximum Class A annual assessment (a) may be increased each year by the Board of Directors not more than 15% above the maximum assessment for the previous year without a vote of membership and (b) may be increased each year by more than 15% above the maximum assessment for the previous year if such increase is approved by the Board of Directors and by a vote of more than two thirds (2/3) of the votes that may be cast by the members represented in person or by proxy at a meeting duly called for such purpose.

(b) The Board of Directors may fix the Class A annual assessment at an amount not in excess of the maximum Class A annual assessment, as such maximum Class A annual assessment may be increased from time to time as provided for above.

(c) In no event will the maximum Class B annual assessments stated above be altered or adjusted.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy special assessments from time to time for the purpose of defraying the cost of any construction, reconstruction, repair or replacement of any capital improvements upon or which are a part of the Common Areas, the cost of acquisition, repair or replacement of any fixtures and personal property used by or benefiting the Association or the Subdivision, and/or for carrying out any other purposes of the Association as stated herein or in the Association's organizational documents, as they may be amended from time to time. In order for the Board of Directors of the Association to levy a special assessment in accordance herewith, such special assessment must be approved by a vote of more than two thirds (2/3) of the votes that may be cast by the members represented in person or by proxy at a meeting duly called for such purpose.

Section 7. Notice and Quorum for any Action Authorized Under Sections 5 and 6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5 or

6 above shall be sent to all members not less than 20 days nor more than 90 days in advance of any meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of the membership of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called by the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 90 days following the preceding meeting.

Section 8. Uniform Rate of Assessment. Any and all dues of the Association or special assessments must be fixed at a uniform rate for all Tracts owned by Class A Members, and a uniform rate for all Tracts owned by Class B Members, and may be collected on a monthly or quarterly basis in lieu of annually. This decision may be made by Declarant until "Turnover" occurs, and thereafter may be made by the Board of Directors.

Section 9. Date of Commencement of Annual Assessments. The annual assessment period shall be a calendar year. Annual assessments shall not commence until January 1, 2007 (the "Assessment Commencement Date"). With respect to the initial sale of a Tract occurring after the Assessment Commencement Date, the buyer may be assessed at the closing of such sale for a prorated amount of the annual assessment attributable to such Tract as if such Tract had been assessed at the Class A annual assessment rate at all times during such annual assessment period, such prorated amount to be determined based upon the number of days remaining in such annual assessment period after such closing. The Board of Directors shall fix the amount of the annual assessment against each Tract at least ten (10) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto.

Section 10. Assessment Due Date. All assessments (whether annual or special) shall be due and payable in advance upon receipt of the bill for such assessment sent by the Association.

Section 11. Certification Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Tract have been paid. A properly executed certificate of the Association as to the status of assessments on a Tract is binding upon the Association as of the date of its issuance.

Section 12. Reimbursement of Declarant. Notwithstanding any other terms or conditions set forth in this Declaration, any expenses which are incurred by Declarant prior to the establishment of the Association, or prior to sufficient income being received from assessment billings, and which would normally be the responsibility of the Association, shall be reimbursed to Declarant from proceeds of the Association as funds become available from dues and assessments, but in any case not later than one (1) year after the date the expense was incurred.

Section 13. Effect of Nonpayment of Assessments: Remedies of the Association. The Association may charge a one time late fee of \$50.00 if any assessment is not paid within thirty (30) days after the date it is due. In addition, any assessment not paid within thirty (30) days after the date it is due shall bear interest from the due date at a rate equal to the lesser of (a) twelve percent (12%) per annum, or (b) the highest legal rate permitted by law to be charged the non-paying Owner. The Association may bring an action at law against the Owner personally

obligated to pay the same, may foreclose the Association's lien against such Owners' Tract, and/or exercise any and all other rights and remedies it may have hereunder, or under Texas law, to enforce an Owner's obligations hereunder. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Tract.

Section 14. Subordination of the Lien to Mortgage. The Association's lien to secure payment of the assessments provided for herein shall be subordinate to mortgage, deed of trust, or home equity liens of record. The sale or transfer of any Tract shall not affect the assessment lien. No sale or transfer shall relieve such Tract from liability for any assessments thereafter becoming due or from the lien thereof.

Section 15. Exempt Property. All Common Areas and other portions of the Property, if any, which are dedicated to public authorities, shall be exempt from assessment.

## ARTICLE VIII.

### RESTRICTIVE COVENANTS

The Declarant hereby declares that the Property shall henceforth be owned, held, transferred, sold and conveyed subject to the following covenants, conditions and restrictions which are intended for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on Declarant and all Owners, and their respective heirs, successors and assigns, and which shall inure to the benefit of Declarant and each Owner of any part of the Property, and their respective heirs, successors and assigns. THE FOLLOWING RESTRICTIVE COVENANTS SHALL APPLY TO ALL TRACTS UNLESS EXPRESSLY PROVIDED OTHERWISE IN A PARTICULAR RESTRICTIVE COVENANT.

#### Section 1. General Restrictions

(1) Signs. No signs of any kind shall be displayed to the public view on any Tract (or in the right of way of any Roadway adjacent to the Tract) except one sign, commercially attractive, of not more than six (6) square feet advertising the Tract for sale or rent. However, during the construction period of a Single Family Dwelling on a Tract, a builder may have one sign of up to sixteen (16) square feet advertising their particular homes and/or services, and may identify the architect who designed the Single Family Dwelling and may include a lender's name providing construction financing. Declarant, or its agent, shall have the right to remove any sign not complying with the provisions of this subsection, and in so doing shall not be liable for any tort arising from such removal. Declarant may erect signs of any size in order to advertise the Subdivision and the availability of Tracts for sale in the Subdivision, as long as Declarant owns any Tracts.

(2) 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 the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property or to its occupants, provided, timber and vegetation which has been removed in the

clearing of a Tract, may accumulate until appropriate conditions exist to burn the debris onsite. Refuse, garbage and trash shall be kept at all times in covered containers to the rear of the Single Family Dwelling and such containers shall be kept within enclosed structures or appropriately screened from view by the public, and contents thereof disposed of regularly.

(3) Noise. No exterior speakers, horns, whistles, bells or other sound devices (other than speakers for porches or patios, and other than alarm devices used exclusively for security purposes) shall be located, used or placed on any of the Property. 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.

(4) Repair of Buildings. All Improvements erected or constructed upon a Tract subsequent to the execution of this Declaration shall at all times be kept in good, safe, attractive condition and repair and adequately painted or otherwise maintained by the Owner of such Tract.

(5) Hazardous Activities. No activities shall be conducted on a Tract and no Improvements shall be constructed on a Tract which are or might be unsafe or hazardous to any person or property.

(6) 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. No tank for the storage of oil, gasoline, or other hazardous products may be maintained on any Tract.

(7) Unsightly Articles: Vehicles. No unsightly article shall be permitted to remain on any Tract so as to be visible from adjoining Property or public streets. Without limiting the generality of the foregoing, trailers, trucks (other than pickups not to exceed one ton capacity), boats, tractors, vans, recreational vehicles and other vehicles used or designed for use as commercial vehicles, campers, wagons, buses, motorcycles and similar two (2) and four (4) wheel motorized vehicles, motor scooters, golf carts, 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 emergence repairs), except in fully enclosed garages or other structures, screened from public view. No commercial vehicle owned by an Owner or any resident within the Property shall be parked on the driveway or street within the Subdivision. Each Single Family Dwelling constructed within the Property shall have sufficient garage space, or screened area to the rear of such Single Family Dwelling to house all other vehicles to be kept on the Tract.

(8) Mobile Homes. Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Tract at any time, and no travel trailers or recreational vehicles owned by anyone other than the Owner or resident of the Tract, shall be parked on or near any Tract so as to be visible from adjoining Tracts or public streets for more than forty-eight (48) hours.

(9) Animals. No domestic household pet or domestic livestock shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Tract of its Owner unless confined to a leash. The household within each Tract shall not keep more than two (2) dogs and two (2) cats at any one time. No

domestic pet may be caged or boarded for hire or remuneration on the Property and no kennels or breeding operations of domestic pets will be allowed. No domestic household pet shall be allowed to run at large and domestic pets and domestic livestock shall be kept within enclosed areas on a Tract which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof. Enclosures for domestic pets shall be screened so as not to be visible from the front side of the Tract at street level. Dog runs shall not be visible from any portions of the Property at street level. No vicious or dangerous animals shall be allowed on the Property.

(10) Livestock. Domestic livestock shall be permitted provided not more than one animal unit, as defined by rules of the Gillespie Central Appraisal District, shall be permitted for each 5 acres owned by an Owner.

(11) Temporary Structures. No structure of a temporary character such as a trailer, mobile home, manufactured home, tent, shack, garage, barn or other outbuilding shall be used on any Tract at any time as a residence, either temporarily or permanently. No Single Family Dwelling previously constructed elsewhere may be moved on any Tract in the Subdivision. This covenant prohibits the use of a mobile home or manufactured home as a residence, either temporarily or permanently. A portable building or enclosed trailer may be permitted for use as a builder's storage facility during construction of a Single Family Dwelling on a Tract (subject to approval of the Declarant); however, any such building or structure shall be removed immediately upon completion of construction.

(12) Construction Materials and Debris. No building material of any kind shall be placed or stored upon a Tract until the Owner thereof is ready to commence construction of Improvements. All building materials shall be placed within the property lines of the Tract upon which the Improvements are erected and shall not be placed on the street. During construction of a Single Family Dwelling or other Improvements, a Tract must be cleaned of trash and debris and placed in an orderly condition by 7:00 P.M. each Friday. At all times during construction, all trash and debris shall be contained in a small defined area which shall be maintained in a sanitary and orderly manner and disposed of as hereinabove provided.

(13) Nuisances. No noxious, offensive or dangerous activity shall be carried on upon any Tract, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. This includes builders and construction workers working after daylight hours. No Owner shall do any act or any work that will impair any easement or hereditaments, or do any act or allow any condition to exist which will adversely affect the other Tracts or their Owners.

(14) Firearms, Projectiles, and Weapons. The discharge of any firearm, including BB guns and pellet guns, within the Subdivision is prohibited, provided discharge of firearms to eradicate varmints and snakes which are destroying property or pose a potential threat of harm or injury to persons, is permitted. Hunting of game animals protected by State or Federal statutes or regulations is prohibited.

(15) Rentals. Nothing in this Declaration shall prevent the rental of any Tract and the

Improvements thereon by the Owner thereof for single family residential purposes; provided however, all lessees shall be and are hereby bound to comply fully with the terms, covenants and restrictions of this Declaration. During any period when a Tract or Improvements are rented or leased, the Owner of the Tract shall remain liable for complying with all terms of the Declaration. No Single Family Dwelling or Improvement may be rented or leased for any single period of less than one (1) month. No "time-share plan" or any similar plan of fragmented or interval ownership of said Single Family Dwelling shall be permitted on the Property.

(16) Trees. Preservation and maintenance of the deciduous trees within the Subdivision is strongly encouraged. Prudence, care, and discretion should be used in the positioning of all Improvements in order to preserve as many deciduous trees as possible within the Subdivision. Replacement of deciduous trees that are removed or die is encouraged. All precautions shall be taken in connection with the pruning and trimming of deciduous trees, in order to prevent the spread of oak wilt and oak decline within the Subdivision. Such precautions shall include, but not be limited to minimal trimming and pruning of oak trees, trimming and pruning of oak trees during dormant months only (normally January, February and August), and painting all fresh cuts with appropriate dressing or paint. Diseased and dead trees may be cut and removed at anytime.

(17) Entry. Entry or exit into or upon a Tract off of Sultemeier Moellering Road is prohibited.

#### Section 2. Residential Restrictions

(1) Single Family Residential Use. All Tracts shall be improved and used principally for single family residential purposes. Except the use of a room within a Single Family Dwelling as an in-home office or in an office studio, which office use is secondary to the residential use of the Tract, no business, commercial, industrial, trade, professional or other nonresidential activity or use of any nature, type, kind or description shall be conducted upon a Tract or from any Single Family Dwelling or within any Improvement located or constructed on any Tract. No signs of any type advertising or describing in any way the in-home office use or business is permitted to be placed anywhere on a Tract or within or upon the Single Family Dwelling or any other Improvement on a Tract. The activities or business conducted at the in-home office or office studio shall not be such as to generate traffic by customers, vendors or the like through the Subdivision or to a Single Family Dwelling or other Improvements on a Tract.

Notwithstanding the above, a Tract may be used for growing and processing of various agricultural products and commodities for commercial purposes, including, by way of illustration (but not limitation), vineyards, orchards (including, fruits and nuts), farming operations (including vegetable farming), and cropland operations (including, small grain crops, sorghum hay, improved pasture hay, and row crop); provided that, (i) such use does not significantly increase traffic flow to and from any Tract, and (ii) no Tract shall be open to the public for the harvesting and/or purchasing of any such agricultural products and commodities.

(2) Construction in Place. All Improvements constructed on the Property shall be built in place on the Tract and the use of prefabricated buildings are prohibited, provided a prefabricated steel building used as a workshop shall be permitted.

(3) **Building Materials.** All Single Family Dwellings and other Improvements shall be constructed of recognized standard construction quality. New construction materials (except stone or brick) shall be used in constructing any Single Family Dwelling or Improvement situated on a Tract. The exterior walls of all one-story Improvements and the lower story and entire (both first and second stories) front of all two-story Improvements shall be composed of 80% masonry or masonry veneer. In addition, the exterior walls of all two-story Improvements shall be composed of masonry or masonry veneer for 80% or more of the total exterior wall area. The minimum masonry percentage shall apply to the aggregate area of all exterior walls but be exclusive of door, window and similar openings. "Masonry" or "masonry veneer" means stucco, stone and brick. Logs which were hewn prior to 1900 shall be considered masonry for purposes of satisfying the minimum requirements of masonry or masonry veneer.

(4) **Single Family Dwelling Size.** Except for Tract Nos. 23, 24, 26 and 27, all Single Family Dwellings constructed after the execution of this Declaration shall contain not less than 2,500 square feet of enclosed, air conditioned and heated living space, exclusive of porches (open or covered), decks and garages. Additionally, all two-story Single Family Dwellings constructed after the execution of this Declaration shall contain not less than 2,800 total square feet of enclosed, air conditioned and heated living space, exclusive of porches (open or covered), decks and garages, of which a minimum of 2,200 square feet shall be first floor living area.

With respect to Tract Nos. 23, 24, 26 and 27, all Single Family Dwellings shall contain not less than 3,000 square feet of enclosed, air conditioned and heated living space, exclusive of porches (open or covered), decks and garages. Additionally, all two-story Single Family Dwellings on Tract Nos. 23, 24, 26 & 27 shall contain not less than 3,500 total square feet, of enclosed, air conditioned and heated living space, exclusive of porches (open or covered), decks and garages, of which a minimum of 2,500 square feet shall be first floor living area.

Notwithstanding the foregoing, after construction of a Single Family Dwelling complying with the square footage requirements of this paragraph, a second Single Family Dwelling containing not more than 1250 square feet of enclosed, air conditioned and heated living space, exclusive of porches (open or covered), decks and garages may be constructed on a Tract.

(5) **Windows.** Mill finish aluminum window and door frames are hereby expressly prohibited.

(6) **Corner Tract Residences.** Single Family Dwellings constructed upon corner lots shall have the veneer of the sides facing a street constructed of the same style and type of material.

(7) **Setback Lines.** Except for entrance and other gates, wells and related well house, earthen dams and ponds, septic systems, fences and utility lines no Improvements shall be constructed, placed or maintained within one hundred feet (100') of the front (abutting a street or roadway) boundary of a Tract, one hundred feet (100') of the side (common boundary of two tracts) boundary of a Tract, or one hundred feet (100') of the rear boundary (boundary most distance from front boundary of a Tract) of a Tract which rear boundary abuts the boundary of another tract, provided, an owner of two or more tracts which have common and abutting boundaries, shall not be subject to setback restrictions on the common and abutting boundaries.

In the event the platted setback line as described and delineated on the Plat conflicts with, or is other than the setbacks as provided in the Declaration, the platted setback lines shall be controlling.

(8) Improvements Compatible with Single Family Dwelling. All Improvements shall be compatible with the Single Family Dwelling to which they are appurtenant in terms of design and material composition.

(9) 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 ordinances, regulations, or statutes.

(10) Athletic Facilities. Tennis courts and sport courts, and related lighting and fencing shall be allowed and may be constructed on any Tract upon which the primary Single Family Dwelling is situated or upon any Tract contiguous thereto. Tennis courts and sport courts shall not be illuminated between 12:01 A.M. and 6:00 A.M.

(11) Foundation Exposure.

(A) All Stucco Finishes. All foundation sides on any Improvement with an exterior stucco finish shall be covered with stucco which matches the texture and color of the exterior stucco walls of such Improvement and shall be a continuation of such stucco walls so that there is no defined horizontal relief line between the foundation and such walls.

(B) All Stone. Masonry Finishes. The foundation of any Improvement with a stone, brick, masonry, masonry veneer (other than stucco) exterior finish shall not be exposed more than twenty-four (24) inches above final grade. If floor level is more than twenty-four (24) inches above final grade, the foundation shall be built to accommodate a finished wall matching the exterior wall of the Improvement to within twenty-four (24) inches of final grade. The exposed foundation shall be trowel finished. Landscaping to screen exposed foundation is encouraged.

(12) Governmental Rules. All Improvements located, erected, constructed and installed upon any Tract shall conform to and comply with all applicable governmental regulations, rules and ordinances, including, without limitation, all building and zoning requirements. All activities of the Owners, and those of their tenants, invitees, agents, employees and contractors on or about the Property shall comply with all applicable governmental regulations, rules and ordinances.

(13) Garages and Carports. All garages and carports shall be designed, erected, constructed, installed or maintained as side entry/load in such manner that the garage doors or the carport opening shall not face the front of the Single Family Dwelling or any abutting street. All garages must have garage doors that are operated by electric door openers kept in operable condition. All garage doors shall be kept closed when not in use.

(14) Antennas. No radio or television aerial wires, antennae or other special television

apparatus or equipment shall be maintained on any portion of any Tract forward of the rear building line of the principal Single Family Dwelling. Furthermore, no radio or television aerial wires or antennae shall be placed or maintained on any Tract which extends higher than the highest part of the roof of the Single Family Dwelling on said Tract and must be attached to the ground. All satellite dishes, discs, and similar apparatus or equipment must be screened from the view of streets.

(15) Mailboxes. No individual mailbox receptacle shall be placed upon a Tract. A common mailbox receptacle for servicing all of the Tracts shall be provided at the entryway to the subdivision.

(16) Tanks. No Butane, propane, or any type of elevated tank of any kind shall be erected, placed or permitted on any Tract (provided that, such tanks maybe allowed if shielded from view from the street, or buried).

(17) 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 or other Improvements. 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. **This restriction shall not apply to any utility lines situated on the Property on the date of this Declaration.**

(18) Fences Generally. All fences are to be professionally constructed. Wood or chain link fences are prohibited, provided, chain link fencing used for dog runs and kennels, and vinyl clad chain link for tennis and sport courts, shall be permitted.

(19) Livestock Fencing. Notwithstanding paragraph (18) above, if an owner keeps and maintains livestock on a tract, a fence shall be constructed on the exterior perimeter of the sides and rear of the tract to allow more open space for the livestock. The fence shall not be constructed within the front setback line for improvements. Other than a working pen, small confined areas for livestock are prohibited as this promotes cruelty to animals. Exterior perimeter fence should be constructed in a neat professional manner and consist of netting and/or barb wire or barbless wire with steel post, pipe post, cedar or treated post in order to resemble a ranch fence and comparable to the construction of the fence at the entry of the Subdivision. After the exterior perimeter fence is installed, cross fencing is permitted provided that such cross fenced sections must be not less than two acres.

(20) Unfinished Structures. No Single Family Dwelling or Improvement shall remain unfinished for more than eighteen (18) months after the commencement of construction of the structure.

(21) A. Height Limitation. No Improvement shall be constructed, erected, maintained or placed upon any of the Tracts described below if any portion of the Improvement will extend

above a horizontal plane which is located twenty (20) feet above the surface of the tract ("base line") at the 100 foot front building setback line and which plane is described by extending an infinite number of perpendicular lines from the front street (Kruse Hill Drive) side of the tract through the base line to its intersection with the improvement which exceeds the height limitation herein imposed.

The tracts which are subject to this height limitation are Tracts No. 7 and 8.

B. Height Limitation. No Improvement shall be constructed, erected, maintained or placed upon any of the Tracts described below if any portion of the Improvement will extend above a horizontal plane which is located twenty-five (25) feet above the surface of the tract ("base line") at the 100 foot front building setback line and which plane is described by extending an infinite number of perpendicular lines from the front street (Rusty Spur Drive) side of the tract through the base line to its intersection with the improvement which exceeds the height limitation herein imposed.

The tracts which are subject to this height limitation are Tracts No. 50 and 51.

(22) Signage, Setback, and Height Variance. Upon submission of a written request to the Board of Directors of the Association, the Association may, from time to time in its sole discretion, permit Owners to construct, erect or install Improvements which are in variance with the Article VIII., Section 2. Residential Restrictions, (7) Setback Lines, and (21) A. and B. Height Limitation, and signs which are in variance with Article VIII, Section 1. General Restrictions, (1) Signs, which are provided in this Declaration. Such variances must, in the Board of Directors' sole discretion, not detrimentally affect the integrity of the Subdivision. Neither the Declarant, nor the Association, nor any member of the Board of Directors of the Association, shall be liable to any Owner for claims, causes of action, or damages arising out of the grant or denial of any variance to an Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Association's right to strictly enforce the covenants and restrictions provided hereunder, against any other Owner.

Approval of a variance shall require unanimous approval of the members of the Board of Directors of the Association. If written notice of approval has not been delivered to the requesting Owner within thirty (30) days of the date of submission of the request, it shall be conclusively presumed that the Board of Directors has denied the request for a variance.

### Section 3. Restriction Against Subdivision

No subdivision of any Tract shall be permitted prior to January 1, 2011. After January 1, 2011, tracts may be subdivided provided that the resultant tracts shall contain a minimum of four (4) acres each and comply with Gillespie County Subdivision regulations. Notwithstanding the foregoing, Declarant shall have the right to subdivide any Tracts owned by Declarant without restriction at anytime.

Notwithstanding the foregoing, Owners of Tracts having a common and abutting boundary line may modify, alter, change, realign or adjust the common and abutting boundary line.

#### Section 4. Xeriscape and Water Conservation

There is a national, state and local movement to conserve our limited water resources. Water conservation assures this generation and the generations to follow will have sufficient quantities of this most precious resource.

Declarant discourages the establishment of landscaping which traditionally requires high water demands. A xeriscape landscape will conserve water and protect the environment. Xeriscape landscaping incorporates seven (7) basic principles, which achieve water conservation and Owners are encouraged to adhere to these basic principles in establishing landscape on their Tract:

1. Planning and design;
2. Soil analysis;
3. Appropriate plant selection;
4. Practical turf areas;
5. Efficient irrigation;
6. Use of mulches; and
7. Appropriate maintenance.

To aid in water conservation, the following restrictive covenants shall apply:

1. Gardens for personal household purposes shall be limited to 15,000 square feet on all tracts.
2. Irrigation of lawns and landscaping shall be limited to 20,000 square feet on all tracts.

#### Section 5. Compliance with Provision of this Declaration

Each Owner shall comply strictly with the provisions of these restrictions as the same may be amended from time to time. Failure to comply with any provision of this Declaration shall constitute a violation of the Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by an aggrieved Owner or Declarant. Declarant makes no warranty or representation as to the present or future validity or enforceability of the Declaration, its terms or provisions. Each Owner acquiring a Tract in reliance on this Declaration, its terms and provisions shall assume all risks of the possible amendment, validity and enforceability thereof, as well as the possibility that variances from the restrictions contained in this Declaration may be granted from time to time; and, by acquiring the Tract, each Owner agrees to hold Declarant harmless from any damages resulting from any amendment to, variances from, or invalidity or unenforceability of this Declaration.

ARTICLE IX.

TERM

The covenants, conditions and restrictions set forth in this Declaration are made and adopted to run with the land and shall be binding upon the undersigned and all parties and persons claiming through and under them until January 1, 2035, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless and until an instrument executed by Owners of at least two thirds (2/3rds) of the Tracts has been recorded agreeing to terminate said covenants and restrictions in whole or in part; provided that, if Declarant owns any interest in the Property at the time, the covenants and restrictions may only be terminated if the Declarant joins in executing such instrument.

ARTICLE X.

ENFORCEMENT

Section 1. Right of Enforcement. Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner, shall have the right to enforce, by proceedings at law or in equity, the terms, provisions, covenants, conditions, and restrictions of this Declaration. Failure of Declarant or the Association to take any action upon any breach or default shall not be deemed a waiver of their right to take action upon any subsequent breach or default. Declarant, for itself, its successors or assigns, reserves the right to enforce this Declaration, though it may have previously sold and conveyed all Tracts controlled hereby. The reservation by Declarant or the Association of this right of enforcement shall not create a duty or obligation of any kind to enforce same, and neither Declarant nor the Association shall be subjected to any claim, demand, or cause of action from any Owner by virtue of not enforcing any term, provision, covenant, condition or restrictions herein contained.

Section 2. Declarant and Association Right to Self Help.

(a) The Declarant and Association shall have the authority to employ self-help to enforce compliance with any provision of this Declaration. Upon the occurrence of a default or other violation of this Declaration, the Declarant or the Association may provide notice to the defaulting Owner of the matter of noncompliance, the action necessary to cure the noncompliance, and a date by which the noncompliance shall be cured; such notice to be sent in accordance with subparagraph (b) below. In the event the Owner fails to cure the matter of noncompliance within the required time, the Association may take action to cure the matter of noncompliance.

(b) Notice of default or other violation of this Declaration and of the Declarant's or Association's intent to act pursuant to this provision shall be in the form and in the manner as required by Article XVI. In the event of continuing noncompliance, a second notice, at least ten (10) days subsequent to the date of the mailing of the first notice, shall be sent to the noncomplying Owner. Not sooner than thirty (30) days after date of the mailing of the first

notice, the Association or the Declarant may send a third notice (the "Notice of Intent to Remedy") to the noncomplying Owner of the Association's or the Declarant's intent to remedy the noncomplying condition. The Notice of Intent to Remedy shall be sent by United States Certified Mail, return receipt requested, and shall otherwise conform to Article XVI. In the event the noncomplying condition is not cured within ten (10) days after the date of the Notice of Intent to Remedy, the Declarant or the Association may commence actions to remedy the noncomplying condition at the sole expense of the noncomplying Owner.

(c) In the event that Declarant or the Association acts to remedy a noncomplying condition in accordance herewith, all sums incurred by the Declarant or the Association in connection therewith, including any attorneys' fees, shall be charged against the Owner, and shall be payable by the Owner upon demand. If such sums are not paid within three (3) days after demand for payment is made therefor, such sums shall bear interest at a rate equal to the lesser of (a) twelve percent (12%) per annum, or (b) the highest legal rate permitted by law to be charged the Owner and, unless otherwise provided herein, shall be secured by the assessment lien provided for herein against all Tracts owned by such Owner. In addition, the Declarant or the Association may exercise any and all other rights and remedies that may be available hereunder, or under Texas law, to enforce an Owner's obligations hereunder.

Section 3. Penalties. The Association shall have the right to establish penalties, including fines, for the violation of the covenants and restrictions contained in this Declaration.

## ARTICLE XI.

### ASSESSMENT LIEN/NONJUDICIAL FORECLOSURE

Section 1. Special Deed of Trust. To secure the payment of assessments, reimbursements, and the other amounts owed to the Association by an Owner hereunder, and to ensure compliance with the applicable covenants, conditions, restrictions and easements set forth herein, each Owner, upon acceptance of his or her deed to a Tract governed by this Declaration conveys the Tract to the Trustee hereinafter named, in trust, for so long as these covenants, conditions, restrictions and easements shall remain in effect, such conveyance operating as a Special Deed of Trust. If an Owner fails to tender payment of any assessments, reimbursements, or other amounts owed to the Association when due, or if an Owner fails to perform any of the obligations under or maintain any condition required by this Declaration, the Association, or Declarant in accordance with Article X. above, may perform those obligations, advance whatever funds may be required, and then be reimbursed by the Owner on demand for any sums so advanced, including attorney's fees, plus interest on those sums from the dates of payment at a rate equal to the lesser of (a) twelve percent (12%) per annum, or (b) the highest legal rate permitted by law for the Owner. The sum to be reimbursed shall be secured by this Special Deed of Trust.

Section 2. Failure to Pay. If the Owner fails to pay the Association for any assessments, reimbursements or other amounts owed by such Owner to the Association, and such failure continues after the Association gives the Owner notice of the failure and the time within which it must be cured, as may be required by law, then the Association, as the Beneficiary of this Special

Deed of Trust, may:

(a) Request the Trustee appointed herein, or such Trustee's successor, to foreclose the liens created herein, in which case the Association shall give notice of the foreclosure sale as provided by Section 51.002 et. seq. of the Texas Property Code then in effect or any successor statute thereto; and

(b) Purchase the Tract at any foreclosure sale by offering the highest bid and then have the bid credited to the amounts owed to the Association.

Section 3. Foreclosure. If requested by the Association to foreclose this lien, the Trustee shall:

(a) Either personally or by agent give notice of the foreclosure sale as required by, Section 51.002 et. seq. of the Texas Property Code then in effect or any successor statute thereto;

(b) Sell and convey the Tract to the highest bidder for cash with a general warranty binding the Owner, subject to prior liens and to other exceptions to conveyance and warranty; and

(c) From the proceeds of the sale, pay, in this order:

- (1) expenses of foreclosure, including a commission to Trustee of five percent (5%) of the successful bid;
- (2) to the Association, the full amount owed, attorney's fees, and other charges due and unpaid;
- (3) any amounts required by law to be paid before payment to the Owner; and
- (4) to the Owner, any remaining balance.

Section 4. Appointment of Trustee. Carroll J. Bryla is appointed Trustee for the purpose of this Article XI. The Association, as Beneficiary, may appoint a substitute or successor trustee, succeeding to all rights and responsibilities of the Trustee appointed herein, by filing an appropriate designation of substitute trustee among the Real Property Records of Gillespie County, Texas.

Section 5. Tenancy-At-Sufferance. From and after any foreclosure under this Article XI., the occupants of such Tract shall be required to pay a reasonable rent for the use of such Tract and such occupancy shall constitute a tenancy-at-sufferance. The purchaser at such foreclosure shall be entitled to sue for recovery of possession of such Tract by forcible detainer without further notice.

Section 6. Compliance with Property Code. It is intended that the provisions of this Section to comply with the provisions of the Texas Property Code (including, without limitation, Section 51.002), as such provisions may be amended from time to time. The President of the

Association, acting without joinder of any Owner or mortgagee of any Owner, may, by amendment to this Declaration filed in the office of the County Clerk of Gillespie County, Texas, amend the provisions hereof so as to comply with Section 51.002.

Section 7. Priority of Lien. Any liens created by this Declaration, shall be superior to all other liens and charges against any Tract covered hereby, except only for tax liens, and mortgage, deed of trust, or home equity liens of record.

## ARTICLE XII.

### PARTIAL INVALIDITY

The invalidation of any of the terms, provisions, covenants, conditions or restrictions contained in this Declaration, by judgment, court order, operation of law or otherwise, shall in no way affect the validity any of the other terms, provisions, covenants, conditions or restrictions hereof, which shall remain in full force and effect.

## ARTICLE XIII.

### AMENDMENT

(a) Except as otherwise provided herein, as long as Declarant owns any interest in the Property, the Declarant and the Owners (but expressly excluding their respective mortgagee's, if any) of at least two thirds (2/3rds) of the Tracts may amend this Declaration, by executing and filing an instrument containing such amendment, in the office of the County Clerk of Gillespie County, Texas. Except as otherwise provided herein, from and after the date that Declarant no longer owns any interest in the Property, the Owners (but expressly excluding their respective mortgagees, if any) of at least two thirds (2/3rds) of the Tracts may amend this Declaration (except for the terms and conditions of any loan or assessments due to Declarant by the Association) by executing and filing an instrument containing such amendment, in the office of the County Clerk of Gillespie County, Texas.

(b) Notwithstanding anything to the contrary, Declarant shall have the right at any time, at its sole discretion and without any joinder or consent of any other party, to amend this Declaration for the purposes of correcting any error, ambiguity or inconsistency appearing herein or for any reason whatsoever deemed necessary for the benefit of the overall development as determined by Declarant, in its sole discretion. Said amendment shall be effective upon filing of the instrument containing such amendment in the office of the County Clerk of Gillespie County, Texas.

## ARTICLE XIV.

### WAIVER AND LACHES

The obligation to abide by the provisions contained in this Declaration shall be deemed to be of a continuing and continual basis. Each and every day an Owner allows a condition to exist

on such Owner's Tract which is not in compliance with the requirements contained herein shall constitute a separate and individual violation hereof, and shall give rise to a new cause of action for such breach. The intended effect and express purpose of this provision shall be that every Owner, by accepting title to a Tract, hereby waives the affirmative defenses of the statute of limitations, waiver and laches with respect to covenant violations. Failure of Declarant, the Association or of any Owner to enforce the terms of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XV.

ASSESSMENTS BY AWARD OR JUDICIAL DECREE

In the event arbitration or litigation is necessary to enforce any provision contained within this Declaration, any and all awards granted by the arbitrator, or damages, penalties, fees, costs, and/or any other charges awarded in the decree shall also constitute an assessment, which shall likewise run with the land, and which shall be secured by the lien created in Article XI. herein.

ARTICLE XVI.

NOTICE

Whenever written notice or demand to an Owner is permitted or required hereunder, such notice shall be given by the mailing of such notice to such Owner at the address of such Owner appearing on the records of the Association, unless such Owner has given written notice to the Association of a different address, in which event such notice shall be sent to the Owner at the address so designated. Notice shall conclusively be deemed to have been given by the Association on the date such notice is deposited in the United States Mail, properly addressed, whether received by the addressee or not.

ARTICLE XVII.

ASSIGNMENT BY DECLARANT

Notwithstanding any provision in this Declaration to the contrary, Declarant may in writing filed of record referring to this Declaration by volume and page number, expressly 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. Upon assignment by Declarant of any or all of Declarant rights, the Declarant shall no longer be liable for performance of such assigned rights provided that the assignee expressly assumes in the recorded assignment the obligations of Declarant that are assigned.

ARTICLE XVIII.

HEADINGS

The headings contained herein are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Declaration.

EXECUTED by said Declarant, this 5th day of JULY, 2006.

COOL WATER RANCH, LTD.

By COOL WATER RANCH ONE, LLC, its  
General Partner

By: Charles E. Itz  
CHARLES E. ITZ, Member and Manager

By: Richard Stehling Jr  
RICHARD STEHLING, JR., Member and  
Manager

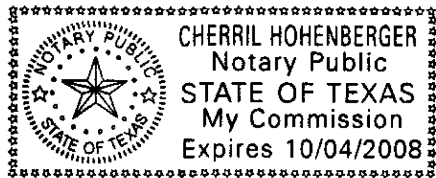
By: Sherman D. Durst  
SHERMAN D. DURST, Member and Manager

By: Carroll J. Bryla  
CARROLL J. BRYLA, Member and Manager

STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on this the 5th day of JULY, 2006, by CHARLES E. ITZ, RICHARD STEHLING, JR., SHERMAN D. DURST, and CARROLL J. BRYLA, Members and Managers of COOL WATER RANCH ONE, LLC, the General Partner of COOL WATER RANCH, LTD, a Texas Limited Partnership.



Cherril Hohenberger  
Notary Public, State of Texas

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS



*Mary Lynn Rusche*

Mary Lynn Rusche, County Clerk

Gillespie County TEXAS

July 05, 2006 03:17:15 PM

FEE: \$115.00

20064225

*Butt*



COOL WATER RANCH, LTD.

TO

THE PUBLIC

FIRST AMENDMENT OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE COOL WATER RANCH

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GILLESPIE

§

WHEREAS, COOL WATER RANCH, LTD. has executed and filed that certain Declaration of Covenants, Conditions and Restrictions of The Cool Water Ranch (herein "Declaration") dated July 5, 2006, recorded under County Clerk's File No. 20064225 of the Official Public Records of Gillespie County, Texas; and

WHEREAS, COOL WATER RANCH, LTD. is the Declarant as defined in the Declaration; and

WHEREAS, pursuant to ARTICLE XIII., AMENDMENT of the Declaration, Declarant has reserved to itself, in Declarant's sole discretion without any joinder or consent of any other party, the right to amend the Declaration for the purpose of correcting any error, ambiguity, or inconsistency appearing therein, or for any other reason whatsoever deemed necessary for the benefit of the overall development as determined by the Declarant. Declarant determines that the Amendment contained herein, is necessary (1) to correct errors, ambiguities, or inconsistencies or (2) for the benefit of the overall development of the subdivision;

WHEREAS, pursuant to ARTICLE XIII., AMENDMENT, "the Declarant and the Owners of at least two-thirds of the Tracts may amend this Declaration by executing and filing an instrument containing such amendment in the office of the County Clerk of Gillespie County, Texas. The Declarant on the date of execution of this instrument is the owner of at least two-thirds of the Tracts;

NOW, THEREFORE, the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COOL WATER RANCH are amended as follows:

AMENDMENT NO. 1

Paragraph (13) Garages and Carports., Section 2. Residential Restrictions, of ARTICLE VIII., RESTRICTIVE COVENANTS, of the Declaration is declared a nullity and of no further force and effect and in substitution for such paragraph (13) Garages and Carports., the Declaration shall be amended by the incorporation of the following paragraph (13) Garages and Carports:

(13) Garages and Carports. All garages and carports shall be designed, erected, constructed, installed or maintained as side/entry load in such a manner that the garage doors or the carport opening shall not be situated on the front side of the single-family dwelling.

All garages must have garage doors that are operated by electric door openers kept in operable condition. All garage doors shall be kept closed when not in use for entry/exit.

The amendment herein shall be effective from and after the date that it is duly filed in the Official Public Records of Gillespie County, Texas.

The amendment herein shall be a burden running with the land and be enforceable by and against the undersigned, its heirs, successors and assigns, and all Owners of Tracts in the Cool Water Ranch Subdivision.

In all other respects, the provisions of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COOL WATER RANCH shall continue in full force and effect as written without change.

EXECUTED this the 2 day of March, 2007.

COOL WATER RANCH, LTD.

By COOL WATER RANCH ONE, LLC, its  
General Partner

By: Charles E. Itz  
CHARLES E. ITZ, Member and Manager

By: Richard Stehling, Jr.  
RICHARD STEHLING, JR., Member and Manager

By: Sherman D. Durst  
SHERMAN D. DURST, Member and Manager

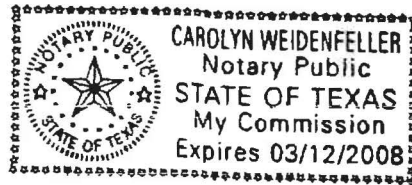
By: Carroll J. Bryla  
CARROLL J. BRYLA, Member and Manager

STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on this the 2<sup>nd</sup> day of March, 2007, by CHARLES E. ITZ, RICHARD STEHLING, JR., SHERMAN D. DURST, and CARROLL J. BRYLA, Members and Managers of COOL WATER RANCH ONE, LLC, the General Partner of COOL WATER RANCH, LTD, a Texas Limited Partnership.

Carolyn Weidenfeller  
Notary Public, State of Texas



**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS



*Mary Lynn Rusche*

Mary Lynn Rusche, County Clerk

Gillespie County TEXAS

March 02, 2007 04:00:57 PM

FEE: \$23.00

20071105

FTC

KC

COOL WATER RANCH, LTD.

TO

THE PUBLIC

SECOND AMENDMENT OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE COOL WATER RANCH

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GILLESPIE

§

WHEREAS, COOL WATER RANCH, LTD. has executed and filed that certain Declaration of Covenants, Conditions and Restrictions of The Cool Water Ranch (herein "Declaration") dated July 5, 2006, recorded under County Clerk's File No. 20064225 of the Official Public Records of Gillespie County, Texas; and

WHEREAS, COOL WATER RANCH, LTD. has executed and filed that certain First Amendment of Declaration of Covenants, Conditions and Restrictions of The Cool Water Ranch dated March 2, 2007, recorded under County Clerk's File No. 20071105 of the Official Public Records of Gillespie County, Texas; and

WHEREAS, COOL WATER RANCH, LTD. is the Declarant as defined in the Declaration; and

WHEREAS, pursuant to ARTICLE XIII. AMENDMENT of the Declaration, Declarant has reserved to itself, in Declarant's sole discretion without any joinder or consent of any other party, the right to amend the Declaration for the purpose of correcting any error, ambiguity, or inconsistency appearing therein, or for any other reason whatsoever deemed necessary for the benefit of the overall development as determined by the Declarant. Declarant determines that the Amendment contained herein, is necessary (1) to correct errors, ambiguities, or inconsistencies or (2) for the benefit of the overall development of the subdivision;

NOW, THEREFORE, the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COOL WATER RANCH is amended as follows:

AMENDMENT NO. 1

Paragraph (4) Single Family Dwelling Size. of Section 2. Residential Restrictions, of ARTICLE VIII., RESTRICTIVE COVENANTS, of the Declaration is amended by the incorporation of the following as an addition to, and part of, paragraph (4) Single Family Dwelling Size:

The improvements situated on Tract No. 12 and Tract No. 48 ("Predeclaration Improvements") were erected prior to the execution of the Declaration. The renovation, remodeling, restoration and construction of Improvements which incorporate the Predeclaration Improvements are not subject to any of the following express requirements in the Declaration: 1) the minimum square footage requirements as contained in this Paragraph (4); 2) that only new materials may be used; 3) that a Single-Family Dwelling complying with the requirements in the Declaration be erected before, or after, renovation of the Predeclaration Improvements. Such renovations, remodelings, restorations and additions to Predeclaration Improvements shall otherwise be subject to the terms, conditions and provisions of this Declaration.

The amendment herein shall be effective from and after the date that it is duly filed in the Official Public Records of Gillespie County, Texas.

The amendment herein shall be a burden running with the land and be enforceable by and against the undersigned, its heirs, successors and assigns, and all Owners of Tracts in the Cool Water Ranch Subdivision.

In all other respects, the provisions of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COOL WATER RANCH shall continue in full force and effect as written without change.

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 2008.

COOL WATER RANCH, LTD.

By COOL WATER RANCH ONE, LLC, its  
General Partner

By: \_\_\_\_\_  
CHARLES E. ITZ, Member and Manager

By: \_\_\_\_\_  
RICHARD STEHLING, JR., Member and Manager

By: \_\_\_\_\_  
SHERMAN D. DURST, Member and Manager

By: \_\_\_\_\_  
CARROLL J. BRYLA, Member and Manager

STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2008, by CHARLES E. ITZ, RICHARD STEHLING, JR., SHERMAN D. DURST, and CARROLL J. BRYLA, Members and Managers of COOL WATER RANCH ONE, LLC, the General Partner of COOL WATER RANCH, LTD, a Texas Limited Partnership.

\_\_\_\_\_  
Notary Public, State of Texas

COOL WATER RANCH, LTD.

TO

THE PUBLIC

THIRD AMENDMENT OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE COOL WATER RANCH

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GILLESPIE

§

WHEREAS, COOL WATER RANCH, LTD. has executed and filed that certain Declaration of Covenants, Conditions and Restrictions of The Cool Water Ranch (herein "Declaration") dated July 5, 2006, recorded under County Clerk's File No. 20064225 of the Official Public Records of Gillespie County, Texas; and

WHEREAS, COOL WATER RANCH, LTD. has executed and filed that certain First Amendment of Declaration of Covenants, Conditions and Restrictions of The Cool Water Ranch dated March 2, 2007, recorded under County Clerk's File No. 20071105 of the Official Public Records of Gillespie County, Texas; and

WHEREAS, COOL WATER RANCH, LTD. has executed and filed that certain Second Amendment of Declaration of Covenants, Conditions and Restrictions of The Cool Water Ranch dated March 24, 2008, recorded under County Clerk's File No. 20081677 of the Official Public Records of Gillespie County, Texas; and

WHEREAS, COOL WATER RANCH, LTD. is the Declarant as defined in the Declaration; and

WHEREAS, pursuant to ARTICLE XIII., AMENDMENT, "the Declarant and the Owners of at least two-thirds of the Tracts may amend this Declaration by executing and filing an instrument containing such amendment in the office of the County Clerk of Gillespie County, Texas. The

Declarant on the date of execution of this instrument is the owner of twenty-three (23) of the fifty-six (56) tracts of the Cool Water Ranch Subdivision; and

WHEREAS, the Declarant and the undersigned owners of Tracts in the Subdivision desire to amend the Declaration as is herein provided;

NOW, THEREFORE, the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COOL WATER RANCH are amended as follows:

AMENDMENT NO. 1

Paragraph (2) Construction in Place. and paragraph (3) Building Materials. of Section 2. Residential Restrictions, of ARTICLE VIII., RESTRICTIVE COVENANTS, of the Declaration are declared a nullity and of no further force and effect and in substitution for such paragraph (2) Construction in Place. and paragraph (3) Building Materials., the Declaration shall be amended by the incorporation of the following as paragraph (2) Construction in Place. and paragraph (3) Building Materials.:

(2) Construction in Place. All Improvements constructed on the Property shall be built in place on the Tract and the use of prefabricated buildings is prohibited, provided a prefabricated steel building used as a workshop which complies with the exterior wall area requirements of paragraph (3) c) Building Materials, shall be permitted.

(3) Building Materials.

a) All Single Family Dwellings and other Improvements shall be constructed of recognized standard construction quality. New construction materials (except stone or brick) shall be used in constructing any Single Family Dwelling or Improvement situated on a Tract.

b) The exterior walls of all one-story Single Family Dwellings and the lower story and entire (both first and second stories) front of all two-story Single Family Dwellings shall be composed of at least 80% masonry or masonry veneer. In addition, the exterior walls of all two-story Single Family Dwellings shall be composed of masonry or masonry veneer for 80% or more of the total exterior wall area. The minimum masonry percentage for Single Family Dwellings shall apply to the aggregate area of all exterior walls but be exclusive of door, window and similar openings ("total exterior wall area"). "Masonry" or "masonry veneer" means stone, brick, stucco, or fiber cement siding;

provided at least 50% of the total exterior wall area shall be stone or brick. Logs which were hewn prior to 1900 shall be considered masonry for purposes of satisfying the minimum requirements of masonry or masonry veneer.

c) All structural Improvements, other than Single Family Dwellings, shall have exterior walls, exclusive of doors and windows, constructed entirely of masonry, masonry veneer or wood.

The amendment herein shall be effective from and after the date that it is duly filed in the Official Public Records of Gillespie County, Texas.

The amendment herein shall be a burden running with the land and be enforceable by and against the undersigned, its heirs, successors and assigns, and all Owners of Tracts in the Cool Water Ranch Subdivision.

In all other respects, the provisions of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COOL WATER RANCH shall continue in full force and effect as written without change.

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 2008.

**Signature Pages Follow**