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THE  **VILLAGE**
AT CREEKSIDE

**AMENDED AND RESTATED
COMMUNITY COVENANT**

for

THE VILLAGE AT CREEKSIDE

A Mixed-Use Project located in the City of New Braunfels, Comal County, Texas

**THIS DOCUMENT AMENDS AND RESTATES IN THE ENTIRETY THAT CERTAIN
COMMUNITY COVENANT FOR CREEKSIDE WELLNESS CENTER, RECORDED UNDER
DOCUMENT NO. 201006034727, OFFICIAL PUBLIC RECORDS OF COMAL COUNTY,
TEXAS.**

Declarant: CWC 306 DEVELOPMENT, INC., a Texas corporation

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AMENDED AND RESTATED COMMUNITY COVENANT

for

THE VILLAGE AT CREEKSIDE

A MIXED-USE PROJECT LOCATED IN THE CITY OF NEW BRAUNFELS, COMAL
COUNTY, TEXAS

PREAMBLE

Acting collectively as "Declarant," CREEKSIDE 1101, LTD., a Texas limited partnership ("Creekside 1101") and FM 1101 CREEKSIDE BBL, LTD., a Texas limited partnership ("Creekside BBL") previously executed and recorded that certain Community Covenant Creekside Wellness Center, recorded under Document No. 201006034727, Official Public Records of Comal County, Texas, as amended (the "Original Covenant"). *Section 20.2* of the Original Covenant provides that during the Development Period, the Original Covenant may be unilaterally amended by the Declarant therein for any purpose.

The "Development and Sale Period" is defined in the Original Covenant as the period of time during which either Creekside 1101 or Creekside BBL, or their successors or assigns, own all or any portion of the Property (as such term is defined in the Original Covenant). Creekside 1101 and Creekside BBL presently own all or portions of the Property (as such term is defined in the Original Covenant). As the "Declarant" under the Original Covenant, Creekside 1101 and Creekside BBL desire to amend and restate the Original Covenant in its entirety, as set forth hereinbelow, as the Village at Creekside Amended and Restated Community Covenant (the "Covenant"). To the extent that it is determined that either Creekside 1101 or Creekside BBL have retained any of right, title and interest held under the Original Covenant as "Declarant", the terms and provisions of the Covenant shall serve as an assignment of all of such right, title, and interest held thereunder to CWC 306 DEVELOPMENT, INC., a Texas corporation ("CWC"), which is the new "Declarant" under the Covenant, as set forth below.

The Covenant establishes a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of The Village at Creekside Master Community (the "Community") as a master planned community. An integral part of the Community is the CWC306 Master Community, Inc., a Texas non-profit corporation (the "Association"), which is comprised of all the owners of real property in the Community.

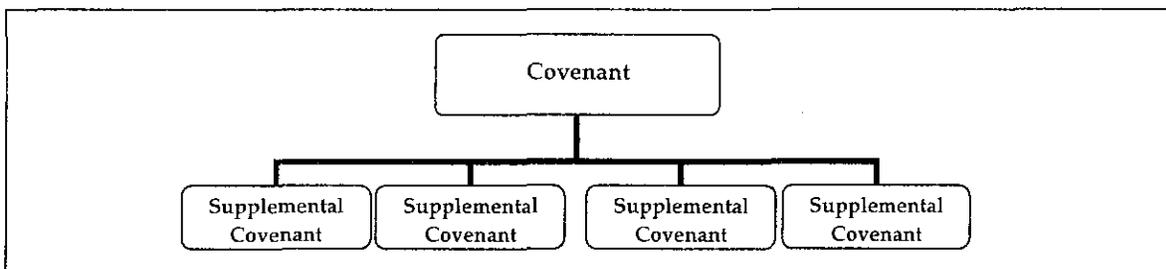
This Covenant does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act.

DECLARATION OF COMMUNITY COVENANT

Creekside 1101 is the owner of Lots 28, 29, 30, 31, 32R, part of 8R and 33 (the "Creekside 1101 Property"), according to the Amending Plat of Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 27, 32 and 33, Creekside Wellness Center, a subdivision located in Comal County, Texas, recorded as Document No. 201206043420 in the Official Public Records of Comal County, Texas (the "Plat"). Creekside BBL is the owner of Lots 1-7, part of 8R, 14R, 15-20 and 22-27 (the "Creekside BBL Property") according to the Plat. Lot 21 according to the plat recorded as Document No. 201106022345 in the Official Public Records of Comal County, Texas, and Lot 12R, according to the Plat, are owned by N N & N, Inc., a Texas corporation and Seidel Properties, Ltd., a Texas limited partnership, respectively (the "Other Property"). The Creekside 1101 Property, the Creekside BBL Property and the Other Property are collectively referred to herein as the "Property" or "The Village at Creekside."

Creekside 1101, Creekside BBL and Declarant desire to create and carry out a uniform plan for the development, improvement, and sale of the Property, subject to the covenants, conditions, restrictions and easements set forth in this Covenant. Accordingly, the Property shall be governed by and fully subject to this Covenant. This Covenant contemplates the recordation of supplemental covenants which may include additional covenants, conditions and restrictions governing portions of the Property.

HIERARCHY OF COVENANTS



Declarant, by executing and recording this Covenant, declares that the Property, and any additional property made subject to this Covenant in the future, shall constitute the "Community". This Covenant will run with the title to the Community, shall govern the development and use of the Community, and shall be binding upon Declarant and the present and future owners of any portion of the Community, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity who now or hereafter has any legal, equitable, or beneficial interest in any portion of the Community. This Covenant will also be binding upon the Association, its successors and assigns.

PART ONE: THE COMMUNITY

Chapter 1 Governing Documents

1.1 Scope and Applicability

The Community is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of the Community, and anyone else who may now or in the future have an interest in any portion of the Community. Such documents, referred to in this Covenant as the "**Governing Documents**", include this Covenant and the documents described in *Table 1.1*, as such documents may be amended. All owners, as well as their tenants, guests, invitees, and other occupants of Units within the Community are required to comply with the Governing Documents.

1.2 Conflicts

If there are conflicts among the provisions of Texas law, the Certificate of Formation, this Covenant, and the Bylaws, the provisions of Texas law, the Covenant, the Certificate of Formation, and the Bylaws (in that order) shall control.

In the event of any conflict between the terms and provisions of the Covenant and the terms and provisions of any Supplemental Covenant, the terms of the Covenant will control.

The Governing Documents use text boxes and tables to illustrate concepts and assist the reader. If there is a conflict between any text box or table and any provision of the Governing Documents, the provision of the Governing Documents will control.

If any court determines that any provision of this Covenant is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

1.3 Definitions

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

1.4 Interpretation of Certain References

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to consent or approval, which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Declarant. All references in the Governing Documents to Declarant means CWC 306 DEVELOPMENT, INC., a Texas corporation and its successors or assigns; provided that any assignment(s) of the rights of Declarant hereunder, must be expressly set forth in writing and recorded in the Official Public Records of Comal County, Texas. Declarant expressly reserves the right to partially assign its rights and duties as Declarant over portions of the Property. In the event of any such partial assignment, except to the extent the partial assignment provides otherwise, the assignee therein may exercise the rights of Declarant under the Governing Documents. In addition, in the event of a partial assignment of Declarant's rights hereunder, the expiration or termination of the Development Period as to the assignor or any other assignee will in no event act to cause the expiration or termination of the Development Period as to any other assignee.

Development Period. All references in the Governing Documents to Development Period means the period of time beginning on the date when this Covenant has been Recorded, and ending seventy-five (75) years thereafter, unless earlier terminated by a Recorded written instrument executed by the Declarant. The Development Period is the period of time in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property and the Development, and the right to direct the size, shape and composition of the Property and the Development. The Development Period is for a term of years and does not require that Declarant own any portion of the Property.

Discretion and Determination. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole, absolute, and unfettered power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by applicable law, anyone authorized in the Governing Documents to exercise his or her discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Improvements. All references in the Governing Documents to Improvements shall refer to all site work, landscaping, structures and all appurtenances of every type and kind, placed on a Unit whether temporary or permanent in nature.

Maintenance. All references in this Covenant to "maintenance" shall refer to maintenance, repair, and replacement.

Person. All references in the Governing Documents to a "person" or "persons" shall refer to an individual, a corporation, a partnership, a limited liability company, trust or any other legal entity.

Recording. All references in the Governing Documents to a "recorded" legal instrument, or to "recordation" or the "recording" of a legal instrument, shall refer to an instrument filed, or the recording of a legal instrument, in the Official Public Records of Comal County, Texas, or such other place designated as the official location for filing documents affecting title to real estate in Comal County in order to make them a matter of public record.

Supplemental Covenant. All references in this Covenant to a “supplemental covenant” shall refer to a separate instrument filed pursuant to this Covenant containing covenants, restrictions, conditions, limitations and/or easements, to which portions of the Community are subjected.

TABLE 1.1: GOVERNING DOCUMENTS	
Certificate of Formation (Filed with the Texas Secretary of State)	Establishes the Association as a non-profit corporation under Texas law.
Board Resolutions (Adopted by the Board)	Establish rules, policies, and procedures for internal governance and activities of the Association and which regulate the operation and use of property owned or controlled by the Association.
Bylaws (Initially adopted by the Board)	Govern the Association’s internal affairs, such as voting, elections, meetings, etc.
Covenant: (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of property in the Community.
Rules and Regulations (Adopted by the Board)	Regulate use of property, activities, and conduct within the Community.
Supplemental Covenant: (Recorded)	Imposes additional obligations or restrictions on portions of the Community.

Chapter 2 Community Administration

Successful communities depend upon all of their stakeholders working together to uphold standards and achieve the vision and goals for the Community. The Declarant, the Association, the owners, and others have a role in how the community functions and in helping to fulfill that vision. This Chapter identifies these stakeholders and describes their role in administering the Community.

2.1 The Declarant

The Declarant has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Declarant may exercise certain of these rights throughout the Development Period. The failure of the Declarant to exercise any of these rights prior to expiration or termination of the Development Period does not constitute a waiver of these rights.

2.2 The Association

The Declarant will establish the Association as the entity responsible for the administration of the common affairs of the Community and the management, maintenance,

operation, and control of the Master Community Facilities as defined in *Section 3.1*. The Association will also have the power to establish, operate, sponsor, and promote services, activities, events, and programs for the Community and to collect assessments. On most matters, the Association acts through the Board of Directors of the Association (the "**Board**"). However, in some instances, the Governing Documents or applicable law limit the Board's ability to act without the approval of the members of the Association. Unless the Governing Documents or Texas law specifically provide otherwise, the Board may exercise the rights and powers of the Association without a vote of the membership.

2.3 The Board

The Association may exercise all rights and powers which the Governing Documents and Texas law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Master Community Facilities and/or the Special Common Area, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

As more particularly described in the Bylaws, until the expiration or termination of the Development Period, the Board will consist of three (3) Persons appointed by the Declarant. If upon expiration or termination of the Development Period, Voting Groups (see *Section 3.2* below) have not been established, the number of Directors will increase to five (5) Persons elected by the Members. If Voting Groups have been established, the number of Directors will be equivalent to the number of Voting Groups; provided, that the total number of Directors will be not less than three (3).

2.4 The Architectural Reviewer

During the Development Period, the "**Architectural Reviewer**" for the Property is Declarant. After expiration or termination of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board. Declarant, as the Architectural Reviewer for the Property, has the right to regulate every aspect of proposed or existing Improvements within or upon the Property. Notwithstanding anything to the contrary stated herein, Improvements constructed on the Property, and all architectural modifications made thereto, that are made by Declarant or its permittees shall not be subject to approval by the Architectural Reviewer.

2.5 The Owners

Each Person who holds record title to a Unit (such term being defined in *Section 3.1* below) is referred to in the Governing Documents as an "Owner." However, a person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

2.6 Mortgages

If a Unit is made subject to a mortgage or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgage**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in *Chapter 15*.

Chapter 3 Community Structure and Organization

The Community consists of portions of property referred to as "Units," which are intended for the exclusive use of the Owner and other occupants of such property.

3.1 Designations of Properties Comprising the Community

Area of Common Responsibility. All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, regardless of who owns them, are collectively referred to in the Governing Documents as the "**Area of Common Responsibility.**" The Area of Common Responsibility includes all of the Master Community Facilities and Special Common Area (if any), and may also include Units or portions of Units and property dedicated to the public, such as parks or rights-of-way.

Dwelling Unit. Any portion of a structure or Improvement constructed upon a Unit which may be used in whole or in part for residential purposes. A Dwelling Unit is a single residential component that may not be independently owned and conveyed, *e.g.*, an apartment utilized for single-family purposes pursuant to a lease, license or other right.

Master Community Facilities. Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "**Master Community Facilities.**" The Master Community Facilities also includes any property that the Association holds possessory rights under a lease, license or any easement in favor of the Association. Master Community Facilities may be for the common use and enjoyment of the Owners and residents of the Community or may be for the use and enjoyment of the general public. Open space, parks, and streets dedicated to the general public may be classified as Master Community Facilities under this Covenant to permit the Association to provide maintenance services to such facilities. During the Development Period, only the Declarant may designate Master Community Facilities. No term or provision of this Covenant shall serve to negate or terminate any provision of that certain First Amended Designation of

Master Community Facilities, recorded under Document No. 201306004586 in the Official Public Records of Comal County, Texas regarding the Master Community Facilities designated therein by Creekside 1101 and Creekside BBL.

SF Residence. One single family residence constructed on a single subdivided lot, or a duplex, triplex, townhome, or other multi-family residential structure, provided that such residence is individually owned either in fee simple or through the condominium form of ownership.

Special Common Area. Certain portions of the Master Community Facilities may be designated as "**Special Common Area**" and assigned and reserved for the exclusive use or primary benefit of certain Units. All costs associated with maintenance, repair, replacement, and insurance of Special Common Area will be assessed as a Service Area Assessment against the Owners of the Units to which the Special Common Area is assigned.

During the Development Period, only the Declarant may designate property as Special Common Area and assign it to particular Units in the deed conveying such property to the Association, in a Supplemental Covenant, or in any Recorded written notice. Since the Property will be developed in phases, the Declarant may assign use of Special Common Area to additional Units and/or Service Areas (as defined in *Section 3.3* below).

In addition, during the Development Period, the Declarant, in a Recorded written notice, may: (i) assign a portion of the Master Community Facilities as Special Common Area; and (ii) re-assign Special Common Area. After expiration or termination of the Development Period, Master Community Facilities may only be assigned as Special Common Area upon the vote of at least sixty-seven (67%) of the total votes in the Association and a majority of the Owners to which the Special Common Area is to be assigned. After expiration or termination of the Development Period, Special Common Area may be re-assigned upon the vote of a majority of the Owners to which the Special Common Area is assigned and, if applicable, a majority of the Owners to which the Special Common Area is to be assigned. After expiration or termination of the Development Period, no Special Common Area may be re-designated from Special Common Area to Master Community Facilities without the consent of a majority of the Board of the Association.

Units. A Unit is a portion of the Community, whether improved or unimproved, depicted as a separately identified lot, condominium unit, or parcel on a Recorded subdivision plat, or condominium instrument, which may be independently owned and conveyed.

The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other Improvements on the Unit. In the case of a building within a condominium or other structure containing multiple units that may be independently owned or conveyed, each such unit shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat or condominium instrument is Recorded subdividing it into more

than one Unit. The term does not include Master Community Facilities or Special Common Area, or any property dedicated, in whole or in part, to the public.

3.2 Voting Groups

Voting Groups permit separate portions of the Community the opportunity to be represented on the Board and to avoid situations in which one or more, but less than all, Owners are able to elect all Board members. The Declarant hereby reserves the right to create and group certain Units into Voting Groups in a Recorded written notice. If established, then upon the expiration or termination of the Development Period, the Owners of Units within a Voting Group will vote on a separate slate of candidates for election to the Board, with each Voting Group electing an equal number of Board members, and any additional Board member elected at large by all Members. Voting Groups will be established, if at all, not later than the date of the expiration or termination of the Development Period. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration or termination of the Development Period by a Recorded written instrument.

3.3 Service Areas

Units may also be part of one or more "Service Areas" in which the Units share Special Common Area or receive special benefits or services from the Association that the Association does not provide to all Units within the Community. For example, special services may include landscaping provided by the Association to certain Units within a Service Area. Designating these Units as a Service Area permits the Association to charge the cost of these services to only those Units benefiting from the services. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one type and may include Units that are not contiguous. Service Areas may consist of one or more Voting Groups or a portion of a Voting Group.

During the Development Period only the Declarant may designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area. The assignment and designation may be made by the Declarant in a Recorded written notice. During the Development Period, the Declarant may unilaterally amend any Recorded written notice to change Service Area boundaries.

If the Declarant designates property as Special Common Area and assigns such property to particular Units, such Units will automatically constitute a Service Area without the need for any further action by the Declarant.

In addition, after expiration or termination of the Development Period, the Board may, by resolution, designate Service Areas and assign Units to such Service Areas upon petition of Owners of at least seventy-five (75%) of the Units affected by the proposed designation as further described in *Section 10.2*.

Owners of Units within each Service Area may elect a "Service Area Committee" in accordance with the Bylaws to represent and act on behalf of the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

Chapter 4 Association Membership and Voting Rights

The Association is an entity through which each Owner can participate in the governance and administration of the Community. Many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation of the Association and Community.

4.1 Membership

Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the Bylaws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by an officer, director, partner, or trustee, or by an individual the Owner designates from time to time in writing to the Association's Secretary.

4.2 Vote Allocation

(a) Votes allocated to Units within the Community will be set forth in the Notice of Allocation and will be assigned to each Unit in accordance with *Section 4.2(b) and (c)* below. Declarant may modify or amend the number of votes previously assigned to Unit in a Recorded written notice if the Improvements or Dwelling Units actually constructed on the Unit differ from the Improvements and/or Dwelling Units contemplated to be constructed on the Unit at the time the Notice of Allocation applicable thereto was originally filed.

(b) For the portions of the Community which will be used for commercial purposes, the allocation of votes is based on the estimated total square footage of the building or structure to be constructed on the Unit, excluding the portion of such building or structure used for parking purposes. For the portions of the Community on which Dwelling Units will be constructed, the allocation of votes is based upon the estimated total number of Dwelling Units within the Unit. For portions of the Community on which SF Residences, the allocation of votes is based upon the estimated total number of SF Residences within the Unit.

(c) The number of votes allocated to Units will be based on the following methodology: (i) one (1) vote for each SF Residence contemplated to be constructed within the Unit; (ii) 0.5 votes for each Dwelling Unit contemplated to be constructed within the Unit; and (iii) one (1) vote for each 1000 gross square feet of commercial building or structure to be constructed on the Unit, excluding the portion of such building or structure used for parking purposes. For purposes of determining the total number of votes (and Assessment Units pursuant to *Section 12.2(b)*) attributable to a commercial building or structure, the calculated result will be rounded to the nearest whole number.

(d) For all other Units, the number of votes allocated to a Unit will be determined by the Declarant at the time a Notice of Allocation is filed for the portion of Community which includes the Unit. Declarant's determination regarding the number of votes allocated to a Unit shall be final, binding and conclusive.

(e) All votes allocated to a Unit are subject to the limitations on voting set forth in this Covenant and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under *Section 12.8* unless such vote is exercised by the Declarant.

(f) For votes allocated to any Unit which has been impressed with a condominium regime, the board of directors of any entity created for the purpose of administering the common affairs of the owners of condominium units within such condominium regime, or such board's designated single proxy holder, will have the sole authority, notwithstanding any provision in this Covenant to the contrary, to cast all votes allocated to the Unit.

(g) Notwithstanding any provision in this Declaration to the contrary, and until expiration or termination of the Development Period, in addition to the votes held by the Declarant as a result of Declarant's ownership of Units, if any, Declarant will also be entitled to four (4) votes for each vote allocated to a Unit not owned by the Declarant. Declarant will be entitled to four (4) votes for each vote allocated to a Unit not owned by the Declarant without regard to whether Declarant owns a Unit or any portion of the Property.

4.3 Voting

Each Owner of a Unit may personally cast the vote allocated to such Owner's Unit on any issue requiring a vote of the Membership under the Governing Documents.

If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves and advise the Secretary of the Association in writing prior to the close of balloting. Any co-Owner may cast the vote for the Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently.

4.4 Method of Exercising Voting Right

At the Board's discretion, the Owners entitled to vote may exercise their vote in person, by mail, personal delivery, telephone, facsimile, electronic mail, the Internet, or other means of electronic communication. The Board may adopt voting rules and procedures. Written instructions describing such rules and procedures, to the extent such rules and procedures are adopted, shall be made available to Owners.

PART TWO: COMMUNITY STANDARDS

Chapter 5 Architecture, Landscaping, and Aesthetic Standards

The Community derives its unique character from the cooperation of all Owners in upholding minimum design, landscaping, and aesthetic standards. This Chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.

5.1 General

All site work, landscaping, structures, improvements, and other items placed on a Unit ("Improvements") and any alterations to such Improvements are subject to standards for design, landscaping, aesthetics set forth in this Chapter.

No approval of any Improvement proposed for a Unit under this Chapter will be issued by the Architectural Reviewer unless, on the date of issuance, all assessments levied pursuant to Chapter 12 against the Unit have been paid in full.

No prior approval is necessary to repaint the exterior of existing building or structure using the most recently approved color scheme or to rebuild or restore any damaged building or structure in a manner which complies with the current plans and specifications approved by Architectural Reviewer. Generally, no approval is required for work done to the interior of a building or structure; however, modifications to the interior of a structure visible from outside of the building or structure do require prior approval.

Approval under this Chapter is not a substitute for any approvals or reviews required by the City of New Braunfels or Comal County or any governmental agency or entity having jurisdiction over architectural or construction matters.

5.2 Architectural Reviewer

During the Development Period, the Architectural Reviewer for the Property is Declarant. After expiration or termination of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Board.

Declarant, as the Architectural Reviewer for the Property, has the right to regulate every aspect of proposed or existing Improvements within or upon the Property. Notwithstanding anything to the contrary stated herein, Improvements constructed on the Property, and all architectural modifications made thereto, that are made by Declarant or its permittees shall not be subject to approval by the Architectural Reviewer.

Each Architectural Reviewer may designate one or more Persons from time to time to act on its behalf in reviewing and responding to applications. After expiration or termination of the Development Period, the Board or a committee appointed by the Board is the Architectural Reviewer and exercises architectural control over the Property. **THE ASSOCIATION, THE BOARD, OR A COMMITTEE APPOINTED BY THE ASSOCIATION OR BOARD (NO MATTER HOW THE COMMITTEE IS NAMED) MAY NOT INVOLVE ITSELF WITH ARCHITECTURAL APPROVAL DURING THE DEVELOPMENT PERIOD.** In reviewing and acting on an application for approval, each Architectural Reviewer may act solely in its self-interest and owes no duty to any other Person or organization.

5.3 Limits on Liability

Until expiration or termination of the Development Period, each Architectural Reviewer has sole discretion with respect to taste, design, and all standards specified by this Chapter. After expiration or termination of the Development Period, the Board has sole discretion with respect to taste, design, and all standards specified by this Chapter. Neither the Architectural Reviewer, Declarant, nor the Board, nor their directors, officers, committee members, employees or agents will have any liability for decisions made in good faith, and which are not arbitrary or capricious. Neither the Architectural Reviewer, Declarant, the Board, nor their directors, officers, committee members, employees or agents are responsible for: (i) errors in or omissions from the plans and specifications submitted to an Architectural Reviewer; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with applicable law. Approval of a modification or improvement may not be deemed to constitute a waiver of the right to withhold approval of similar proposals, plans or specifications that are subsequently submitted.

5.4 Design Guidelines

All Improvements to be placed on the Creekside BBL Property and the Other Property shall be subject to certain design guidelines, attached hereto as Exhibit "A" (the "**Commercial Lots Design Guidelines**"). In addition, all Improvements to be placed on the Creekside 1101 Property shall be are subject to certain design guidelines, attached hereto as Exhibit "B" (the "**Pad Sites Design Guidelines**"). The Commercial Lots Design Guidelines and the Pad Sites Design Guidelines are collectively referred to herein as the "**Design Guidelines**". The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to an Architectural Reviewer. The Design Guidelines are not the exclusive basis for an Architectural Reviewer's decisions.

Declarant will have the authority to amend or supplement the Design Guidelines at any time and from time to time. Amendment to the Design Guidelines shall apply prospectively only. Amendments to the Design Guidelines shall not require modifications to or removal of any structures previously approved.

The Architectural Reviewer shall make the Design Guidelines available to Owners and their contractors upon request. Any amendments to the Design Guidelines will be Recorded.

5.5 Approval Procedures

No activities within the scope of this Chapter may begin within the Community until a written application is submitted to and approved in writing by the Architectural Reviewer. The application must be accompanied by plans and specifications showing information required from time to time by the Architectural Reviewer, for example, the site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation, and other features of the proposed construction. Notwithstanding the foregoing, in its sole discretion, the Architectural Reviewer may waive plan and specification requirements for certain modifications or improvements and/or may adopt alternate approval procedures.

In reviewing each application, the Architectural Reviewer may consider any factors it deems relevant, including, without limitation, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, and harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular Improvements. The Architectural Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to any dispute resolution procedures or judicial review so long as they are made in good faith and in accordance with required procedures.

The Architectural Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Architectural Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Architectural Reviewer may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (iii) disapprove the application. No appeal is available for a decision made by the Architectural Reviewer.

The Architectural Reviewer shall notify the applicant in writing of the final determination on any application no later than sixty (60) days after its receipt of a completed

application and all required submissions. In the event the Architectural Reviewer approves the application with conditions, approves a portion of the application and disapproves other portions, or requests additional information, the Architectural Reviewer shall notify the applicant in writing of the final determination no later than thirty (30) days after the applicant's satisfaction of the conditions, correction of the deficiency, or submission of additional information requested by the Architectural Reviewer. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant. If the Architectural Reviewer fails to respond in a timely manner, the applicant must give the Architectural Reviewer written notice of such failure to respond, stating that unless the Architectural Reviewer responds within thirty (30) days, approval shall be deemed granted. Upon such further failure, approval shall be deemed to have been given. As part of any approval, the Architectural Reviewer may require that construction commence within a specified and reasonable time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

5.6 No Waiver of Future Approvals

The Persons reviewing applications under this Chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until Improvements are completed. In such cases, the Architectural Reviewer will not require changes to objectionable features, but the Architectural Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.7 Variances

The Architectural Reviewer may grant variances or adjustments from any conditions, restrictions, or requirements imposed by this Chapter. No variance shall: (i) be effective unless in writing; or (ii) prevent the Architectural Reviewer from denying a variance in other circumstances.

5.8 Subdivision and Combination of Property

No Person, other than the Declarant, shall subdivide or change the boundary lines of the Property without the Architectural Reviewer's prior written approval. If approved by the Architectural Reviewer, any such subdivision, change or combination will be effective only upon Recording of a plat or other legal instrument reflecting the subdivision or new boundaries of tract. This provision will not be construed to require the advance written approval from the Architectural Reviewer for: (i) the ground lease of all or a portion of the Property; or (ii) the

subdivision of a portion of the Property into condominium units by the filing of a condominium declaration prepared in accordance with Chapter 82 of the Texas Property Code, provided that the subdivision does not affect the exterior of any building or Improvement, the interior of any building or Improvement visible from any other portion of the Property, or the allocation of votes or assessments units under this Covenant.

5.9 Fees

The Architectural Reviewer may establish a reasonable fee to be charged for its review of applications and the issuance of any certificate of compliance and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application or certificate.

5.10 Enforcement

Any Improvements constructed, installed, or taking place in violation of this Chapter or in a manner inconsistent with plans approved in accordance with this Chapter shall be deemed to be non-conforming. Upon written request from the Architectural Reviewer, Owners shall, at their own cost and expense, remove any non-conforming structure or Improvement and restore the Unit to substantially the same condition as existed prior to the nonconforming Improvements. Should an Owner fail to remove and restore the Unit as required, the Board, or its designees shall have the right to enter the Unit, remove the violation, and restore the Unit to substantially the same condition as previously existed, and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Association may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefited Unit as a Specific Assessment.

The Architectural Reviewer may preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Governing Documents from continuing or performing any further activities in the Community, subject to the notice and hearing procedures contained in the Bylaws. **THE ARCHITECTURAL REVIEWER, DECLARANT, THE ASSOCIATION, OR THEIR OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES SHALL NOT BE HELD LIABLE TO ANY PERSON FOR EXERCISING THE RIGHTS GRANTED BY THIS CHAPTER UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT OR BAD FAITH OF THE ARCHITECTURAL REVIEWER, DECLARANT, OR THE ASSOCIATION OR ONE OR MORE OF ITS OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, AS THE CASE MAY BE.**

Chapter 6 Maintenance, Repair, and Replacement

One of the benefits of owning property in the Community is the commitment among Owners to maintain their Unit in a neat, attractive and well-landscaped condition to enhance the overall appeal of

the Community. This Chapter describes the Owners' responsibilities for maintenance and repair of their Units.

6.1 Maintenance by Owners

Each Owner shall maintain the Owner's Unit, including all structures, parking areas, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents.

Each Owner shall also be responsible for maintaining mowing, replacing sod, pruning, and irrigating the landscaping within that portion of any adjacent Master Community Facilities or public right-of-way, street or alley lying between the Unit boundary and any wall, fence, or curb located on the Master Community Facilities or public right-of-way, street or alley in a manner consistent with the Governing Documents, unless responsibility for maintaining such landscaped areas has been assigned to or assumed by the Association. However, Owners may not remove trees, shrubs, or similar vegetation from this area without the prior written approval of the Board.

In addition to any other enforcement rights, if any Owner fails to properly perform its maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment in accordance with *Section 12.4*. The Association shall afford the Owner notice and a reasonable opportunity to cure the deficiency prior to entry, except when entry is required due to an emergency situation.

6.2 Maintenance of Service Area Property

During the Development Period, the Board cannot impose assessments for the maintenance of Service Areas without the consent of the Declarant, which consent shall not be unreasonably upheld. Upon consent of the Declarant during the Development Period, and thereafter upon resolution of the Board, the Owners of Units within each Service Area shall be responsible for paying, through Service Area Assessments, the costs of operating, maintaining, and insuring certain portions of a Service Area. This may include, without limitation, the costs of maintaining any signage, right-of-way and green space within the Service Area or between the Service Area and adjacent public roads, or private drives within the Service Area, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, all areas that are similarly situated shall be treated the same.

6.3 Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, the responsibility for maintenance of a Unit shall include responsibility for repair and replacement. All maintenance shall be performed in a manner consistent with the Governing Documents and all applicable covenants.

Each Owner shall carry property insurance for the full replacement cost of all insurable Improvements on its Unit, less a reasonable deductible.

Within 270 days after any damage to or destruction of any Improvement constructed upon a Unit, the Owner shall commence, and diligently prosecute to completion, the repair or reconstruction of the Improvement, in a manner consistent with the original construction. Alternatively, if impracticable or impossible to repair or reconstruct the Improvement, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition. The Owner shall pay all repair, restoration, and/or clean-up costs not discharged by insurance proceeds. A Supplemental Covenant may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units within portions of the Community and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

Chapter 7 Rules

In order to maintain an environment that encourages respect for and courtesy among Owners and minimizes the potential for disputes, this Chapter sets forth basic standards regarding rules which may be adopted from time to time by the Board.

7.1 Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants and conditions that govern the Community. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board is authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in *Section 7.2*.

(a) **Effective Date.** A Rules change adopted under this Section shall take effect when Recorded.

(b) **Conflicts.** No action taken under this Section shall have the effect of modifying or repealing any provision of this Covenant other than the Rules. In the event of a conflict between the Rules and any provision of this Covenant (exclusive of the Rules) or any Supplemental Covenant, the Covenant and Supplemental Covenant (in that order) shall control.

7.2 Protection of Owners and Others

Except as may be set forth in this Covenant (either initially or by amendment) all Rules shall comply with the following provisions:

(a) **Similar Treatment.** Similarly situated Units shall be treated similarly; however, the Rules may vary by Voting Group, Service Area or housing type.

(b) **Leasing and Transfer of Units.** No Rule shall prohibit leasing or transfer of any Unit or require approval prior to transferring a Unit or leasing a Unit for a period of six (6) months or longer. No Rule shall impose any fee on transfer of any Unit greater than an amount based on the costs to the Association of the transfer including but not limited to administrative costs.

(c) **Reasonable Rights to Develop.** No Rule may unreasonably interfere with the Declarant's ability to develop, market, lease, and sell any portion of the Property, the Community, or any Unit.

(d) **Interference with Easements.** No Rule may unreasonably interfere with the exercise of any easement.

The limitations in subsections (a) through (d) apply to new Rules only; nothing herein shall be construed as a limitation on amendments adopted in accordance with *Chapter 18*.

Chapter 8 Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This Chapter sets forth the obligation to comply and the remedies available to the Association, Owners, and the Declarant for noncompliance.

8.1 Compliance

Every Owner, occupant, tenant, guest, and invitee to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants, tenants, guests, or invitees to their Units, and for any damage to the Master Community Facilities or Special Common Area that such Persons may cause.

8.2 Remedies for Non-Compliance

The Association, the Declarant (during the Development Period), and every adversely affected Owner shall have the right to file a legal proceeding at law or in equity to enforce the Governing Documents, subject to the limitations of and in accordance with *Chapter 18*. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

To the extent permitted by applicable law, all fines and sanctions imposed for the violation of the Governing Documents shall continue to accrue during the time period of any challenge, appeal, arbitration, or mediation of the alleged violation. The amount of sanction,

fine or penalty accrued shall remain due and payable unless the body hearing any such challenge, appeal, arbitration, or mediation finds that the imposition of such a sanction, fine, or penalty was arbitrary or capricious.

(a) **Sanctions Requiring Prior Notice and Hearing.** After written notice and an opportunity for a hearing in accordance with the Bylaws, the Board may:

(i) Impose a reasonable monetary fine, which shall constitute a lien upon the violator's Unit. In the event that any occupant, tenant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, that if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) Suspend any Person's right to use any Master Community Facilities (other than those facilities to which the public has access): (a) for any period during which any charge against such Owner's Unit remains delinquent; and (b) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than sixty (60) days delinquent in paying any Base or Special Assessment); provided nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iii) Suspend services the Association provides to the Owner's Unit (except that no hearing is required if the Owner is more than sixty (60) days delinquent in paying any Base or Special Assessment);

(iv) Exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(v) Without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Governing Documents, from continuing or performing any further activities in the Community;

(vi) Levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Governing Documents; and

(vii) Record a notice of violation with respect to any Unit on which a violation exists.

(b) **Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) Exercise self-help or take action to abate a violation on a Unit in any situation that requires prompt action to avoid potential injury or damage or unreasonable

inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) Exercise self-help or take action to abate a violation on the Master Community Facilities or Special Common Area under any circumstances;

(iii) Require an Owner, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit that is in violation of the Governing Documents, and to restore the property to its previous condition; and

(iv) Initiate a legal proceeding at law for monetary damages or in equity to stop or prevent any violation, or both.

8.3 Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) The Association's position is not strong enough to justify taking any or further action;

(b) The covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) It is not in the Association's best interests, based upon hardship, expenses or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction or rule.

8.4 Attorney Fees and Costs

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys and paralegals fees and court costs reasonably incurred in such action.

PART THREE: ASSOCIATION OPERATIONS

Chapter 9 Property Management

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners. This Chapter establishes the Association's obligation to accept property that the Declarant designates as Master Community Facilities or Special Common Area and to maintain, operate, and insure it, along with certain other properties.

9.1 Acceptance and Control of Master Community Facilities

(a) **Transfers and Conveyances by the Declarant.** The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. During the Development Period, only the Declarant and its designees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, or the Community and the general public, and the Association shall accept such transfers and conveyances. If Declarant is not the owner of such interest in real or personal property, during the Development Period, Declarant must consent to any such transfer to the Association. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. All Master Community Facilities shall be maintained by the Association at its expense for the benefit of the Community or portions of the Community (in the case of Special Common Area), subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

(b) **Management and Control.** The Association is responsible for management, operation, and control of the Master Community Facilities, the Special Common Area, and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Master Community Facilities and the Special Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Master Community Facilities and/or the Special Common Area by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use subject to the terms and provisions of the document transferring such Master Community Facilities or Special Common Area to the Association.

(c) **Water Quality and Detention Facilities-Maintenance.** Certain water quality and water detention facilities (collectively, the "Facilities", and singularly, the "Facility") constructed within the Community may be maintained by the Association and may be designated as either Master Community Facilities or Special Common Area in accordance with this Covenant. All Owners of portions of the Community served by a Facility will be assessed the costs for the performance monitoring, maintenance and repair and remediation of the

Facility through Base Assessments or Service Area Assessments (in the case of Special Common Area) which will be levied by the Association.

9.2 Restoring Damaged Improvements

In the event of damage to or destruction of portions of the Master Community Facilities or Special Common Area for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Master Community Facilities unless the Declarant (the Declarant's consent is only required until termination of the Development Period) and Owners representing at least eighty percent (80%) of the total votes in the Association decide within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed ninety (90) additional days.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, without a vote of the Owners, the Board may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under *Section 11.4*.

9.3 Relationships with Other Properties

The Association may contract with the owner of any neighboring property to provide for sharing costs associated with: (a) maintenance and operation of mutually beneficial properties or facilities; and (b) provision of mutually beneficial services.

Chapter 10 Provision of Services

In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This Chapter describes some of the services the Association may provide and the mechanism by which it may provide and the varying levels and types of services to different areas of the Community.

10.1 Provision of Services to Unit

The Association may arrange for or provide services to Owners and their Units directly or through contracts with other third parties. In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services subject to the contract terms and any provision that may exist elsewhere in Governing Documents requiring the Association to provide such services.

10.2 Provision of Services to Service Areas

(a) **Service Areas.** The Association shall provide services to Units within any Service Area.

(b) **Service Areas Designated by Board.** In addition to Service Areas which may be designated or created pursuant to *Section 3.3*, any group of Owners may petition the Board to designate their Units as Service Area for the purpose of receiving from the Association: (i) special benefits or services that are not provided to all Units; or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of at least sixty-seven percent (67%) of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least sixty-seven percent (67%) of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to *Section 12.2(e)*. Notwithstanding the foregoing provision, the Board may elect not to provide the services or benefits if the Board determines that providing the benefits or services is not in the interests of the Community or the Association.

10.3 Community Interaction

The Association may make use of the Internet and expanding technology to facilitate community operations and participation in Association activities. For example, the Association may create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology related services and opportunities for Owners and occupants to interact and participate in Association-sponsored activities. To the extent Texas law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

Chapter 11 Association Insurance

The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This Chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

11.1 Required Coverage

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on:

(i) The Master Community Facilities;

(ii) The Special Common Area; and

(iii) Other portions of the Community, to the extent that the Association has responsibility for repair and/or replacement in the event of a casualty.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted.

(b) Commercial general liability insurance on the Master Community Facilities, Special Common Area, and other portions of the Community, to the extent that the Association has responsibility for repair and/or replacement, insuring the Association and its members for damage or injury caused by the negligence of the Association or any of its members, employees, agents or contractors while acting on its behalf. Such coverage shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be obtained through a combination of primary and umbrella policies.

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined by the Board's business judgment, but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation;

(e) Directors and Officers liability coverage; and

(f) Such additional insurance as the Board determines advisable.

11.2 Deductibles

The Association policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy

the requirements of *Section 11.1*. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

11.3 Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner. To the extent reasonably available, until expiration or termination of the Development Period, the Declarant will be added as an additional insured to each policy obtained by the Association hereunder. To the extent available at reasonable cost and terms, all Association insurance shall be written with a company whose primary business is providing insurance and which is authorized to conduct business in Texas.

11.4 Insurance Premiums

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Special Common Area shall be a Service Area Expense.

11.5 Indemnification of Officers, Directors, and Others

To the fullest extent permitted by applicable law, the Association will indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith; (ii) in the case of conduct by a person in his official capacity, acted in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; (iii) in the case of conduct by a person not in his official capacity, acted in a manner which such person reasonably believed to be not opposed to the best interests of the Association; and (iv) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

Each Owner shall indemnify and hold harmless the Association from any loss, damages, and expenses, including counsel fees, which they may incur as a result of the failure of such Owner; any occupant of such Owner's Unit; or any contractor, employee, or agent of such Owner acting within the scope of his contract, agency, or employment to comply with the Governing Documents.

Chapter 12 Association Finances

This Chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents.

12.1 Association Expenses

(a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**" Common Expenses also includes such operating reserves and reserves for repair and replacement of capital items within the Master Community Facilities as the Board finds necessary or appropriate.

The characterization of a particular expense as a Common Expense shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Covenant, or any other Recorded covenants or agreements.

(b) **Service Area Expenses.** All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of Special Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses.**" Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such charge is applied at a uniform rate per Assessment Unit (defined below) among all Service Areas receiving the same service.

12.2 Budgeting for and Allocating Association Expenses

(a) **Preparation of Budget.** At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including an amount to fund the reserves of the Association. In addition, the Board shall prepare separate budgets for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for which the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include but not be limited to assessments and any income expected from sources other than assessments levied against Units (including amounts to which the Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (d).

(b) **Calculation of Base Assessments.** Subject to the provisions of *Section 12.2(d)* below, the total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be set at an equal rate per "**Assessment Unit**" (as defined and allocated below). The rate per Assessment Unit multiplied by the number of Assessments Units, or fraction thereof, assigned to a Unit is the Unit's "**Base Assessment.**" The Declarant may, but is not obligated, to reduce a Base Assessment which would otherwise be levied against one or more Units for any year by the payment of a subsidy to the Association. The payment of a subsidy in any given year will not obligate the Declarant to continue payment of a subsidy to the Association in future years.

(c) **Assignment of Assessment Units.** The Assessment Units assigned to each Unit is equivalent to the votes assigned to such Unit in accordance with *Section 4.2* above. Declarant may modify or amend the number of Assessment Units assigned to a Unit in a Recorded written notice if the Improvements or Dwelling Units actually constructed on the Unit differ from the Improvements and/or Dwelling Units contemplated to be constructed thereon at the time the Notice of Allocation applicable thereto was originally filed.

(d) **Limitation on Base Assessments.** For the purpose of this *Section 12.2(d)* the term "**Maximum Base Assessment**" means a Base Assessment of \$300.00 per Assessment Unit. The Maximum Base Assessment may not be increased by more than ten percent (10%) per annum unless approved by the Owners representing a majority of the Assessment Units. The limitations set forth in this *Section 12.2(d)* may be exceeded without Owner approval in circumstances where an expense is required to be paid by the Association in accordance with applicable law.

(e) **Calculation of Service Area Assessments.** The total budgeted Service Area Expense, less any surplus in such Service Area budget from prior years and any income anticipated from sources other than assessments against Units in the Service Area, shall be

allocated to the Units in a Service Area and levied as a "Service Area Assessment." The Declarant may, but is not obligated, to reduce a Service Area Assessment which would otherwise be levied against one or more Units for any year by the payment of a subsidy by the Declarant to the Association. The payment of a subsidy in any given year will not obligate the Declarant to continue payment of a subsidy to the Association in future years. Unless otherwise specified in a Recorded written notice or any Supplemental Covenant applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Assessment Unit, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All amounts the Association collects as Service Area Assessments shall be held and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(f) **Publication of Budget and Assessment.** The Board shall publish notice of each applicable budget with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets in a community newsletter, electronic bulletin board, or by other means that the Board determines will be reasonably effective in disseminating such budgets and assessments on a community-wide basis, at least thirty (30) days prior to the due date of the assessments to be levied pursuant to such budget(s).

(g) **Budget Revisions.** The Board may revise the budget and adjust the Base Assessment or Service Area Assessments anytime during the year, subject to the same publication requirements set forth in subsection (f) above.

12.3 Special Assessments

The Association may levy "Special Assessments" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Covenant, any Special Assessment for Common Expenses that would exceed fifteen percent (15%) of the annual budget for the year immediately preceding that in which the Special Assessment is approved shall require the affirmative vote or written consent of Owners representing at least eighty percent (80%) of the votes attributable to Units subject to assessment. Special Assessments shall be set at a uniform rate per Assessment Unit. Any Special Assessment for Service Area Expenses shall require approval of a majority of the Owners in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under *Section 12.1(b)*. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

12.4 Specific Assessments

The Association may levy "Specific Assessments" against a particular Unit as follows:

(a) To cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services the Association may offer. Specific Assessments for optional services may be levied in advance of providing the requested service;

(b) To cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the Bylaws, before levying any Specific Assessment under this subsection (b); and

(c) To cover the Unit's *pro rata* share of any costs that the Association incurs in bringing the Service Area of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the Bylaws, before levying any Specific Assessment under this subsection (c).

12.5 Authority to Assess Owners; Time of Payment

The Declarant hereby establishes, and the Association is hereby authorized to levy, assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Covenant; or (b) the month in which the Association first determines a budget and levies assessments pursuant to this Chapter, whichever is later. The first annual Base Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

All assessments shall be levied and collected by the Association. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

In the event that any Unit is impressed with a condominium regime, the board of directors of the condominium association or other entity created for the purpose of administering the common affairs of the owners of condominium units within such condominium regime will be the designated party for the receipt of any notice from the Association or the Declarant to the owner of a condominium unit within the regime. The

Association will mail a statement of assessment attributable to each condominium unit to the condominium association with jurisdiction over the unit. The amounts reflected on the statement of assessment will be due and payable within thirty (30) days after the due date set forth on the statement. Each owner of a condominium unit within the regime will be obligated to pay the assessment attributable to such owner's condominium unit. The Association's remittance of a statement to the condominium association will not be construed to waive the Association's right to collect assessments from each owner of a condominium unit.

12.6 Obligation for Assessments

(a) **Personal Obligation.** By accepting a deed to a Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of ten percent (10%) *per annum* or such higher rate as the Board may establish, subject to the limitations of Texas law), late charges as determined by a resolution of the Board, costs, and reasonable attorneys and paralegals fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no Person who obtains title to a Unit following foreclosure of a first priority Mortgage given in good faith and for value by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments that accrued prior to such for foreclosure.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments at the rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt itself from liability for assessments by non-use of Master Community Facilities, Special Common Area, abandonment of such Owner's Unit, or non-use of services provided to all Units or to all Units within the Service Area to which the Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Board shall furnish to any Owner liable for any type of assessment a certificate signed by an officer of the Association or its designated agent setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Board may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) **The Declarant's Financial Obligations to the Association.** The Declarant, Creekside 1101 and Creekside BBL shall have no obligation to pay Base Assessments, Special Assessments, and/or Service Area Assessments.

The foregoing exemption from Base Assessments, Special Assessments, and/or Service Area Assessments hereunder will not apply to any Unit to which the Declarant, Creekside 1101 and/or Creekside BBL: (i) has caused finished improvements to be constructed which may be used for residential, commercial, retail, light industrial, or office use; and (ii) intends to retain ownership, as opposed to market for sale to a third party. Assessments will commence on any such Unit owned by the Declarant, Creekside 1101 and/or Creekside BBL no later than the date a certificate of occupancy for such Improvements has been issued to the Declarant, Creekside 1101 and/or Creekside BBL by the City of New Braunfels.

The Association is specifically authorized to enter into arms-length contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities.

12.7 Lien for Assessments

(a) **Existence of Lien.** Each assessment levied pursuant to this Covenant, together with interest (computed from its due date at a rate of ten percent (10%) *per annum* or such higher rate as the Board may establish, subject to the limitations of Texas law), late charges as determined by a resolution of the Board, costs, and reasonable attorneys and paralegals fees, will be secured by a lien hereby granted and conveyed by the Declarant to the Association against each Unit and all Improvements thereon (such lien, with respect to any Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Unit is created). Such lien shall be superior to all other liens except for tax liens and all sums secured by a mortgage lien, deed of trust lien of record, or any bonded indebtedness to the extent such lien or bonded indebtedness secures sums borrowed for the acquisition, improvement or re-financing of the Unit, provided such bonded indebtedness was issued before a notice of the assessment lien is Recorded, or the mortgage or deed of trust lien was Recorded before a notice of the assessment lien is Recorded. In the event an Owner fails to pay any assessment when due, then as a condition to the Association's enforcement of the assessment lien by foreclosure in the same manner as mortgages on real property are foreclosed under Texas law as permitted by *subsection (b)* below, the Association will prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit covered by such lien and a description of the Unit. Such notice may be signed by one of the officers of the Association, a copy of such assessment lien will be mailed to the Owner of the Unit described in the lien, and the assessment lien will be Recorded. Each Owner, by accepting a deed to a Lot subject to this Covenant, shall be deemed conclusively to have granted a power of sale to the Association to secure and enforce at any time after such payment becomes delinquent by the foreclosure of such lien on the defaulting Owner's Lot by the Association in accordance with applicable law.

(b) **Enforcement of Lien.** The Association's lien, when delinquent, may be enforced by any applicable legal proceeding, including a lawsuit and judgment against the Owner personally and/or through a power of sale in a judicial or expedited judicial foreclosure. The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on the Unit; and (iii) each other Unit shall be charged, in addition to its usual assessment, its *pro rata* share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid Common Expenses, Service Area Expenses, and other costs without foreclosing or waiving the lien securing the same.

(c) **Effect of Sale or Transfer.** Sale or transfer of any Unit shall not affect the assessment lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment, including such acquirer, its successors and assigns.

12.8 Exempt Property

The following property shall be exempt for payment of Base Assessments, Service Area Assessments, and Special Assessments:

- (a) All Master Community Facilities;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Any portion of the Property owned by the Declarant, Creekside 1101 and/or Creekside BBL.

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Chapter 13 Easements

The easements created in this Chapter establish the rights of Owners to use the Master Community Facilities and create various rights for the benefit of owners, the Declarant, the Association, and others over property within the Community. The easements created under this Chapter may exist in conjunction with rights in and to the Master Community Facilities granted to the public. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of the Association to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.

13.1 Easements in Master Community Facilities

Each and every Owner shall have a non-exclusive right and easement of use, access, and enjoyment in and to the Master Community Facilities, subject to:

(a) The Governing Documents and any other applicable covenants and easements, including any declaration of easements and covenants to share costs or similar instruments relating to such Master Community Facilities, and any rights of non-Owners to use and enjoy portions of the Master Community Facilities;

(b) Any restrictions or limitations contained in any deed or other instrument conveying such property to the Association;

(c) Certain Owners' rights to the exclusive use of those portions of the Master Community Facilities designated "Special Common Area";

(d) The Board's right to:

(i) Adopt Rules regulating Master Community Facilities use and enjoyment, including Rules limiting the number of guests who may use certain Master Community Facilities, and to charge fees for such use;

(ii) Suspend an Owner's right to use Master Community Facilities;

(iii) Dedicate or transfer all or any part of the Master Community Facilities, subject to such approval requirements, if any, as may be set forth in this Covenant; and

(iv) To the extent assessments are insufficient to pay for operating or capital expenses, mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

13.2 Easement of Encroachment

There are and shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Master Community Facilities or Special Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of not more than three (3) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the Master Community Facilities or Special Common Area, or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3 Easements for Utilities, Etc.

(a) **Water, Electricity, Natural Gas, Cable, and Telephone.** The local water supplier, electric company, natural gas supplier, cable company, telephone company shall have easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters, boxes, and facilities. However, the exercise of this easement shall not extend to permitting entry into the structure on any Unit, nor shall any utilities be installed or relocated on the Property except as approved by the Declarant during the Development Period.

(b) **Specific Easements.** Creekside 1101 and/or Creekside BBL hereby reserve for the benefit of the Declarant the non-exclusive right and power to grant and Record such specific easements reasonably necessary to develop the Property and the Community. The Owner of any property to be burdened by an easement granted pursuant to this Section shall be given written notice in advance of the grant. The location of the specific easement shall be subject to the written approval of the Owner of the burdened property which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in *Section 13.3(a)* and *(b)* shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant. Notwithstanding anything to the contrary contained in this Section, no above ground sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Community except as: (a) may be approved by the Declarant during the Development Period, or the Board after the expiration or termination of the Development Period; or (b) may be constructed by the Declarant; or (c) may be permitted by the terms of any easement affecting the Community.

The easements provided for in this Section shall in no way adversely affect any other Recorded easement on the Community, nor shall they be exercised in any manner that unreasonably restricts or interferes with the use and development of a Unit.

13.4 Easements to Serve Additional Property

Creekside 1101 and/or Creekside BBL hereby reserve for the benefit of the Declarant, a perpetual nonexclusive easement over the Master Community Facilities for the purposes of enjoyment, use, access, and development of the Property and the Community. This easement includes, but is not limited to, a right of ingress and egress over the Master Community Facilities construction of roads and for connecting and installing utilities on such property.

13.5 Easements for Special Events

Creekside 1101 and/or Creekside BBL hereby reserve for the benefit of the Declarant, a perpetual, nonexclusive easement over the Master Community Facilities and the Special Common Area for the purpose of conducting parades; running, biking or other sporting events; educational, cultural, artistic, musical and entertainment activities; and other activities of general community interest at such locations and times as the Declarant, in its reasonable discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement.

13.6 Easement for Stormwater Drainage and Detention

Each portion of the Property is hereby subjected to a non-exclusive easement appurtenant to and for the benefit of each other portion of the Property for the purpose of stormwater drainage and runoff and drainage detention in accordance with the master drainage and detention plan established for the Community, which easement shall include, but shall not be limited to, the right to tie in to existing drainage and detention facilities and to divert stormwater runoff from each Unit into such drainage and detention facilities at such points and in such a manner as approved by the Declarant during the Development Period, and thereafter the Board, and for the flow of stormwater runoff over the Community to such points and from such points through the stormwater drainage facilities into wetlands, ponds, or other detention facilities within or outside the Community. The foregoing easements shall be subject to any and all restrictions regarding quantity, rate, and quality of discharge that the Declarant or Board may hereafter impose or which may be imposed on the Community, the Declarant, or any Owner by any governmental entity having jurisdiction over the Community.

Chapter 14 Disclosures and Waivers

This Chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this Chapter.

14.1 Facilities and Services Open to the Public

Certain facilities and areas within the Community may be open for use and enjoyment of the public. Such facilities and areas will include, by way of example: roads, sidewalks, parks, and other spots conducive to gathering and interaction.

14.2 Safety and Security

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community.

The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

14.3 View Impairment

Neither the Declarant nor the Association guarantee or represent that any view over and across the Units, or any open space within the Community will be preserved without impairment. The Declarant and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to the Master Community Facilities and the Special Common Area) will have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

Chapter 15 Rights of Lenders

In order to enhance each Owner's ability to obtain financing for the purchase of the Owner's Unit, this Chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies that guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Community. The provisions of this Chapter apply to both this Covenant and to the Bylaws, notwithstanding any other provisions contained therein.

15.1 Notices of Action

An institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Units to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss that affects a material portion of the Community or that affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owned by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

15.2 No Priority

No provision of this Covenant or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Master Community Facilities.

PART FIVE: COMMUNITY DEVELOPMENT

Chapter 16 Expansion of the Community

Due to the need to pace development to the needs of the Community and the market demand for Units or Master Community Facilities, the Community may be developed in phases. The Declarant may submit Property to the Covenant as set forth in this Chapter.

16.1 Annexation

From time to time, the Declarant may submit to the terms of this Covenant additional real property by Recording a written notice describing such real property to be submitted and specifically subjecting it to the terms of this Covenant and any Supplemental Covenant previously Recorded by Declarant (which Recorded written notice may amend, modify or supplement the restrictions set forth in the Supplemental Covenant which will apply to such portion of the Community). The Declarant may Record a written notice without the consent of any other Person except the owner of such property, if not the Declarant.

The Declarant's right to expand the Community under this section expires upon expiration or termination of the Development Period. Nothing in this Covenant shall require the Declarant or any successor to submit the Property to this Covenant or to develop any of the Property or Community in any manner whatsoever.

Chapter 17 Additional Rights Reserved to the Declarant

This Chapter reserves various rights to the Declarant, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Declarant's development and sale of Units, to enable the Declarant to respond to Owners' concerns, and to protect various property rights and other interests of the Declarant.

17.1 Withdrawal of Property

During the Development Period, the Declarant may amend this Covenant to remove any unimproved portion of the Community from the coverage of this Covenant. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment (unless otherwise specifically provided herein) shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn (if not the Declarant). If the property is Master Community Facilities or Special Common Area, a majority of the Board must also consent to such withdrawal.

17.2 Marketing, Sales, and Development Activities

The Declarant and its designees or assigns may construct, use, and maintain upon portions of the Master Community Facilities and the Special Common Area such facilities and activities as, in the reasonable opinion of the Declarant, may be required, convenient, or incidental to the construction or sale of Units.

Such permitted facilities and activities include, but are not limited to, business offices, signs, flags (whether hung from flag poles or attached to a structure), model units, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant and its employees, agents, and designees may park vehicles in designated parking areas.

The Declarant and its designees, during the course of development of the Community, may use portions of the Master Community Facilities and the Special Common Area for temporary storage and for facilitating construction on adjacent property. The Declarant shall not be obligated to pay any use fees, rent, or similar charges for its use of Master Community Facilities or Special Common Area pursuant to this Section.

17.3 Right to Make Improvements, Replat

During the Development Period, the Declarant and the Association, and their employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Master Community Facilities and the Special Common Area for the purpose of making, constructing, and installing such improvements to the Master Community Facilities and the Special Common Area.

In addition, during the Development Period, the Declarant may replat any portion of the Property or Community it owns.

17.4 Supplemental Covenants; Additional Covenants and Restrictions

The Declarant may Record one or more Supplemental Covenants applicable to all or a portion of the Community and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for such property.

During the Development Period, no one other than the Declarant may Record any additional covenants or restrictions affecting any portion of the Community without the Declarant's written consent. Any instrument Recorded without the required consent shall be void and of no force and effect.

17.5 Exclusive Rights to Use Name

No Person shall use the name "The Village at Creekside," "Creekside Wellness Center" or any derivative of either name in any logo or depiction associated with the Community in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the name "The Village at Creekside" in printed or promotional matter where such term is used solely to specify that particular property is located within the Community, and the Association shall be entitled to use the name "The Village at Creekside" in its name.

17.6 Limited Power of Attorney—Changes to Development Plan

Declarant has obtained certain approvals and entitlements from the City of New Braunfels required for the development of the Community and Property (the "Entitlements"). From time to time, certain revisions or amendments to the Entitlements may be required to more efficiently or effectively develop the Property. In an effort to preserve the ability to modify the Entitlements from time to time and to prevent a single Owner from preventing a revision or modification that has no material or substantial effect on such Owner's Unity, each Owner agrees not to unreasonably withhold or delay their consent to any such revision or modification. If an Owner's portion of the Unit is subject to the condominium form of ownership governed by a condominium association (the "Condominium Association"), then a majority of the board of directors (the "Condominium Board") for such Condominium Association will be authorized to approve any revision or modification to the Entitlements on behalf of such Owner, which approval will not be unreasonably withheld or delayed. Each Owner of a portion of the Property made subject to the condominium form of ownership makes, constitutes and appoints the board of directors of their condominium association as its true and lawful attorney-in-fact to act in its name, place and stead and to execute, acknowledge, and deliver, on behalf of such Owner, any consent, applications, or other submittals to the City of New Braunfels, or any other regulatory authority which may be necessary or convenient in connection with a revision or modification to the Entitlements. As each such Owner's attorney-in-fact, the board of directors of the condominium association shall have all power and authority to approve any revision or modification to the Entitlements, and each Owner further ratifies and confirms all approvals and/or consents executed by such board. In exercising the authority hereunder, the board will not be obligated to furnish bond or other security.

PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

Chapter 18 Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between Owners or between an Owner and the Association, the Declarant, or others involved in the Community. This Chapter commits the parties to any such dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

18.1 Agreement to Encourage Resolution of Disputes without Litigation

(a) **Bound Parties.** The Declarant, the Association and its officers, directors, and committee members; all Persons subject to this Covenant; and any Person not otherwise subject to this Covenant who agrees to submit to this Chapter ("**Bound Party**" and collectively, "**Bound Parties**") agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file a lawsuit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 18.2* in a good faith effort to resolve such Claim. However, by submitting to this Chapter, the Bound Parties are in no way suspending the accrual of sanctions and fines that may be due and payable by the Unit Owner, if otherwise permitted by applicable law. All fines and sanctions imposed for the violation of the Governing Documents shall, if otherwise permitted by applicable law, continue to accrue during the time a Unit Owner seeks an alternative method for resolving any dispute under this Chapter. The amount of sanction, fine, or penalty accrued during any alternative dispute resolution shall continue to accrue and remain due and payable unless the board hearing any such challenge, appeal, arbitration, or mediation finds that the imposition of such a sanction, fine, or penalty was arbitrary and capricious.

(b) **Claims.** As used in this Chapter, the term "**Claim**" (or collectively "**Claims**") shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) The interpretation, application, or enforcement of the Governing Documents; or

(ii) The rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) Any claims relating to the design or construction of the Community, the Property, or any Improvement by Declarant, its permitted assigns, its contractor or subcontractors, or its designee

(c) **Exclusions.** Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 18.2*:

(i) Any legal proceeding by the Association against any Bound Party to collect assessments or other amounts due under *Chapter 12*;

(ii) Any lawsuit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the *status quo* and preserve the Association's ability to enforce the provisions of this Covenant;

(iii) Any action by the Association to enforce the easements, architectural control, maintenance and/or use restrictions under this Covenant or otherwise assigned to the Association as the enforcing party;

(iv) Any legal proceeding between Bound Parties that does not include the Declarant or the Association as a party, if such proceeding asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(v) Any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in *Section 18.2*;

(vi) Any legal proceeding as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by *Section 18.2(a)*, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter; and/or

(vii) The imposition by the Association of any fine or sanction as a result of any violation of this Covenant (as it may be amended from time to time), where any opportunity for a hearing before the Board or a committee appointed by the Board is afforded the Bound Party.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in *Section 18.2*.

18.2 Dispute Resolution Procedures

(a) **Notice.** Any Bound Party having a Claim ("**Claimant**") against another Bound Party ("**Respondent**") (collectively, the "**Parties**") shall notify each Respondent in writing ("**Notice**") stating plainly and concisely:

(i) The nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) The legal basis of the Claim (*i.e.* the specific authority out of which the Claim arises);

(iii) The Claimant's proposed resolution or remedy; and

(iv) The Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiating a resolution of the Claim, if the Association is not a Party and the Board, in its discretion, believes its efforts will be beneficial to the Parties and to the welfare of the Community.

(c) **Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Section 18.2*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Chapter.

(d) **Arbitration.** If the Parties do not resolve the claim through mediation, the Claimant shall have thirty (30) days following termination of mediation to submit the Claim to arbitration in accordance with the Rules of Arbitration set forth on *Exhibit "C"* or the Claim shall be deemed abandoned, and the Respondent shall be released and discharged from any and all liability to the Claimant arising out of such claim; provided, nothing herein shall release or discharge the Respondent from any liability to Persons not a Party to the foregoing proceedings.

Unless the Parties agree in writing to be bound by the arbitrator's decision ("Award") prior to the commencement or arbitration proceedings under the foregoing paragraph, any Party shall be free to reject the Award and sue in any court of competent jurisdiction or initiate proceedings before any appropriate administrative tribunal.

18.3 Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by eighty percent (80%) of the Members. No such approval shall be required by actions or proceedings:

- (a) Initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens;
- (b) Initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (c) Initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (d) To defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Chapter 19 Changes in the Master Community Facilities

Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Master Community Facilities. This Chapter explains the procedures for dealing with matters such as changing use rights in Master Community Facilities, partition of the Master Community Facilities, and condemnation.

19.1 Condemnation

If any part of the Master Community Facilities or Special Common Area is taken by any authority having the power of condemnation or eminent domain or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under *Section 17.3*, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance.

If the taking or conveyance involves a portion of the Master Community Facilities or Special Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Master Community Facilities or the Special Common Area, as applicable, unless otherwise approved in accordance with *Section 9.2* above.

If the taking or conveyance does not involve any improvements on the Master Community Facilities, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Master Community Facilities under *Section 19.3*.

19.2 Partition

Except as permitted in this Covenant, the Master Community Facilities shall remain undivided, and no Person shall bring any action to partition any portion of the Master Community Facilities without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Covenant, with such approval as may be required under *Section 19.3*.

19.3 Transfer or Dedication of Master Community Facilities

The Association may dedicate portions of the Master Community Facilities to the City of New Braunfels, Texas, or to any other local, state, or federal governmental or quasi-governmental entity or may transfer or convey Master Community Facilities.

The proceeds from the sale of Master Community Facilities and Special Common Area shall be an asset of the Association to be used as the Board determines.

Chapter 20 Termination, Amendment, Notice and Limitation of Liability

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This Chapter sets out procedures by which either the Declarant or the Owners as a group may amend this Covenant to address such changes.

20.1 Term and Termination.

This Covenant shall be effective for a minimum of twenty-one (21) years from the date it is Recorded. After twenty-one (21) years, this Covenant shall be extended automatically for successive ten (10) year periods unless the Owners holding at least eighty percent (80%) of the votes in the Association sign a document stating that this Covenant is terminated and such document is Recorded within the year before any extension. In such case, this Covenant shall terminate on the date specified in the termination document.

If any provision of this Covenant would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This Section shall not permit termination of any easement created in this Covenant without the consent of the holder of such easement.

20.2 Amendment.

(a) **By the Declarant.** The Declarant may unilaterally amend this Covenant if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination with which it is in conflict therewith; (ii) to enable any reputable title insurance company to issue title insurance coverage any portion of the Community; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, to make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. In addition, during the Development Period, the Declarant may unilaterally amend this Covenant for any other purpose.

(b) **By Owners.** Except as otherwise specifically provided above and elsewhere in this Covenant, this Covenant may be amended only by the affirmative vote or written consent, or any combination thereof, of the Owners representing sixty-seven percent (67%) of the total votes in the Association. In addition, during the Development Period, any such amendment shall also require the Declarant's written consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date.** No amendment may directly or indirectly remove, revoke, or modify the status of, or any right or privilege of the Declarant without the written consent of the Declarant (or the assignee of such right or privilege). In addition, the approval requirements set forth in *Chapter 15* shall be met, if applicable.

If any Owner consents to any amendment to this Covenant or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon Recordation, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Covenant.

20.3 Notice.

In the event that the Declarant or the Association, its officers, directors, and committee members are required to provide notice to an Owner or Member pursuant to this Covenant, notice shall be deemed to have been given to such Owner or member on the earlier of: (i) the date on which the Owner or Member actually receives the notice; or (ii) the date on which the U.S. Postal Service or other entity attempts to deliver such notice to the Owner or Member at their Unit address, or at such other address as the Owner or Member has provided to the Association in writing.

20.4 Limitation of Liability.

In no event will the Declarant, any affiliate of Declarant or any board member, officer, partner, employee, or agent of the Declarant or any such affiliate (a "Benefited Party") be liable to any person as a result of any act performed by a Benefited Party pursuant to the terms or provisions of the Governing Documents.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective on this 28 day of MAY, 2013.

DECLARANT:

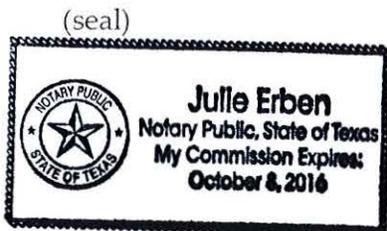
CWC 306 DEVELOPMENT, INC.,
a Texas corporation

By: W.M.N.
W. M. Norris, President

County of Comal, State of Texas

This instrument was acknowledged before me on this 28 day of MAY, 2013 by W. M. Norris, President of CWC 306 Development, Inc., a Texas corporation, on behalf of said corporation.

Julie Erben
Notary Public Signature



CONSENT AND ACKNOWLEDGEMENT:

OWNER OF CREEKSIDE 1101 PROPERTY:

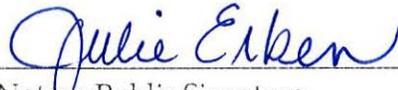
CREEKSIDE 1101, LTD.,
a Texas limited partnership

By: Norris Realty of Canyon Lake, Inc.,
a Texas corporation, its General Partner

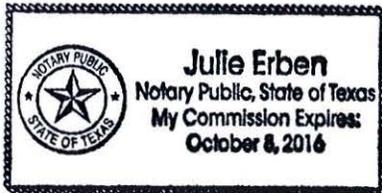
By: 
W. M. Norris, President

County of Comal, State of Texas

This instrument was acknowledged before me on this 28 day of May, 2013 by W. M. Norris, President of Norris Realty of Canyon Lake, Inc., a Texas corporation, General Partner of Creekside 1101, Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.


Notary Public Signature

(seal)



CONSENT AND ACKNOWLEDGEMENT:

OWNER OF CREEKSIDE BBL PROPERTY:

FM 1101 CREEKSIDE BBL, LTD.,
a Texas limited partnership

By: FM 1101 Creekside BBL-MJ, LLC,
a Texas limited liability company, its General Partner

By: 
John Dierksen, Manager

County of Comal, State of Texas

This instrument was acknowledged before me on this 28th day of May,
2013 by John Dierksen, Manager of Creekside BBL-MJ, LLC, a Texas limited liability company,
General Partner of FM 1101 Creekside BBL, Ltd., a Texas limited partnership, on behalf of said
limited liability company and limited partnership.


Notary Public Signature

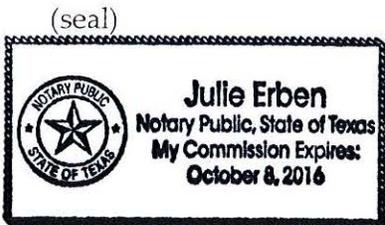


EXHIBIT "A"
COMMERCIAL LOTS DESIGN GUIDELINES

THE ILLAGE AT CREEKSIDE

ARCHITECTURAL DESIGN GUIDELINES





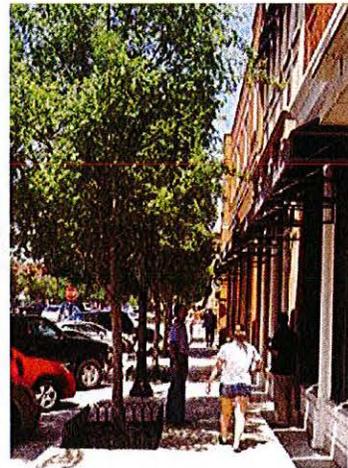
ARCHITECTURAL DESIGN GUIDELINES

This guideline establishes the character for the The Village at Creekside and will be enforced by the Architectural Design Committee. (ARC)

Historical Character

The Character of The Village at Creekside will be based on the historical character of downtown New Braunfels.

The overall character and planning is based on the historical quality of small town development in central Texas. Streets are laid out in a regular manner to provide flexibility connectivity and encourage pedestrian activity and interaction. It is critical that the street front elevations have a scale and character appropriate for this style of development.



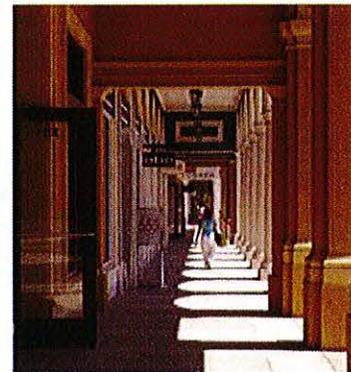
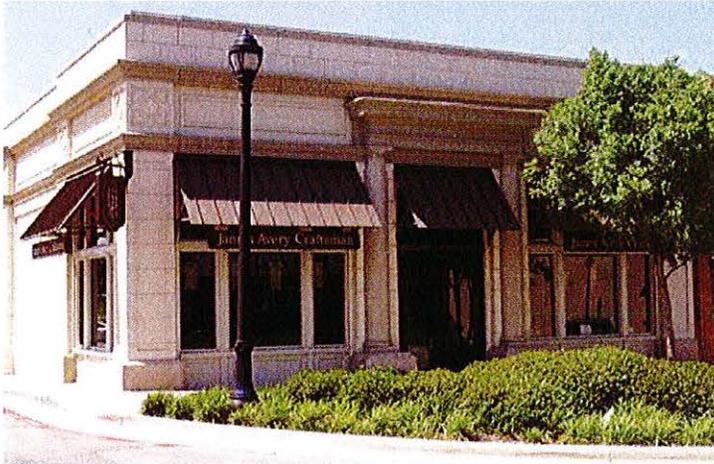


Building Massings

The Store Front level of all buildings should be a minimum of 12' and it is encouraged to be at least 15'. This may include an awning at 9' to 12' above the sidewalk.

Vertical Articulation should occur at approximately 20' intervals with major material changes or facade character changes at no more than 60' Sidewalk intervals.

All entries are to be shaded and protected from weather by a canopy or overhang. Shade is preferred along as much of the streetfront facade as possible.



Top

Body

Store Front Base

Buildings must have a strong "Base" at the ground level, a defined "Body" and an articulated "Top."





Building Height and Roofs

Buildings should be a minimum of 24' high.

Buildings should be a minimum of 24' high. Single story buildings are encouraged to have the appearance of two story structures for some portion of the building. All buildings should have predominately flat roofs with parapets to screen rooftop mechanical equipment. Towers, overhangs, awnings, canopies and bay windows may have sloped roofs as accents.



Building Materials

Materials may be brick, stone or stucco with accents of stone, wood, metal or tile.

Elements and details do not have to be historical but must be appropriate to the scale and character of the building facade.

Details at the Store Front level must be durable such as stone, brick, metal or stucco.

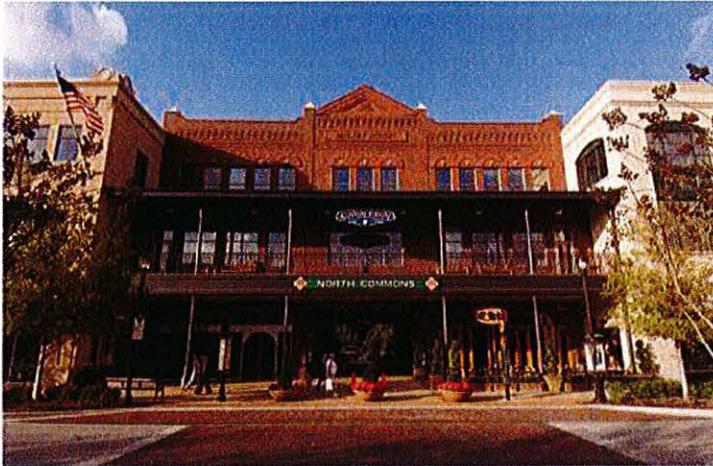
Details above the Store Front level may be EIFS or other synthetic materials.



Variety is encouraged but no more than three major materials will be allowed in a facade defined by the tenant or major articulation.

All glass is to be non-reflective.



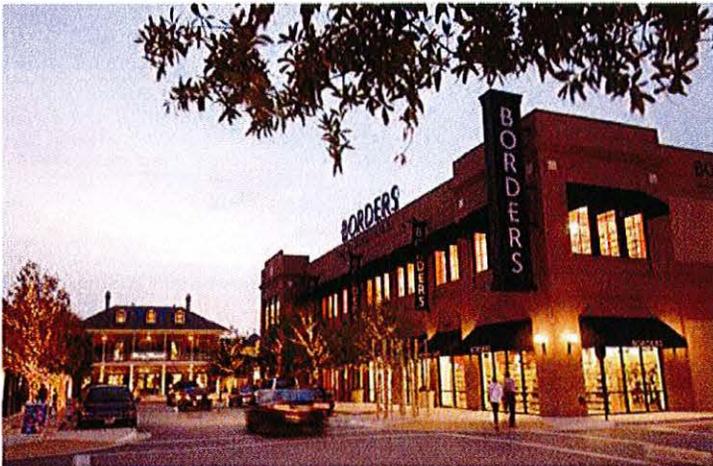


General Character

The goal is to promote pedestrian activity on the streets of this development.

Major entries may be defined by vertical articulation in the facade or off-set elements.

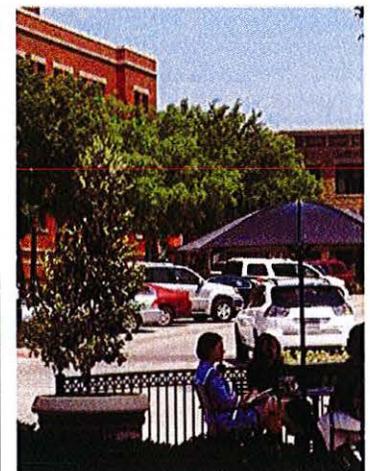
All buildings along the "Park" should address the sidewalk with major entry elements and storefront glass along the street side.

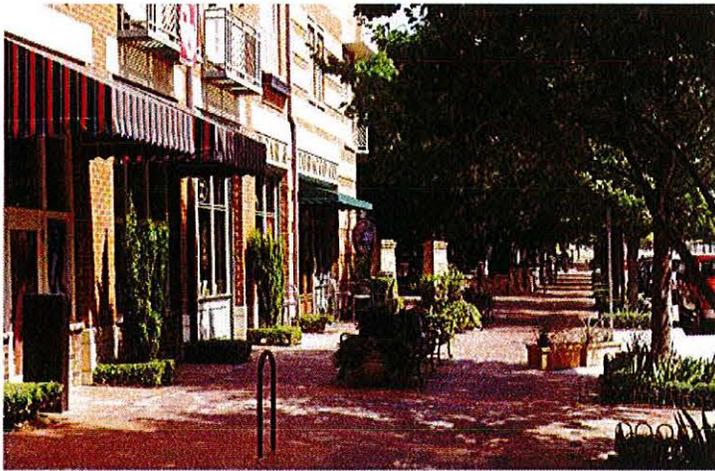


Provide as much shade as possible along the major "streets" especially at the major entries.

Loft over Retail or Live-work uses are also encouraged. These may have residential above office or retail uses on the ground floor.

Residential buildings should also address the "streetfront" with entries and stoops along the sidewalk.



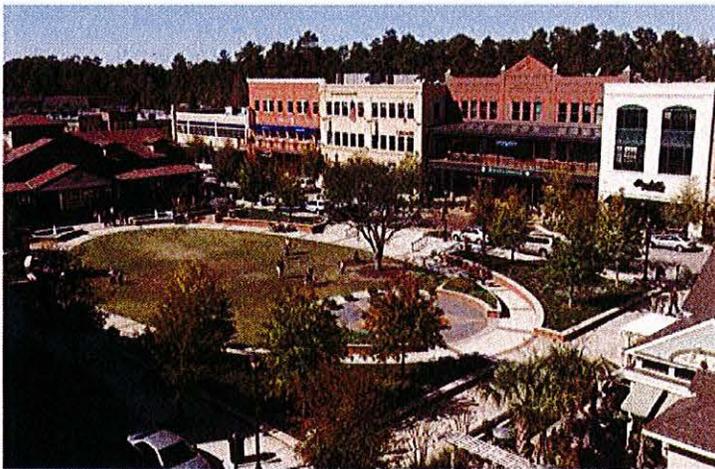


Open Space

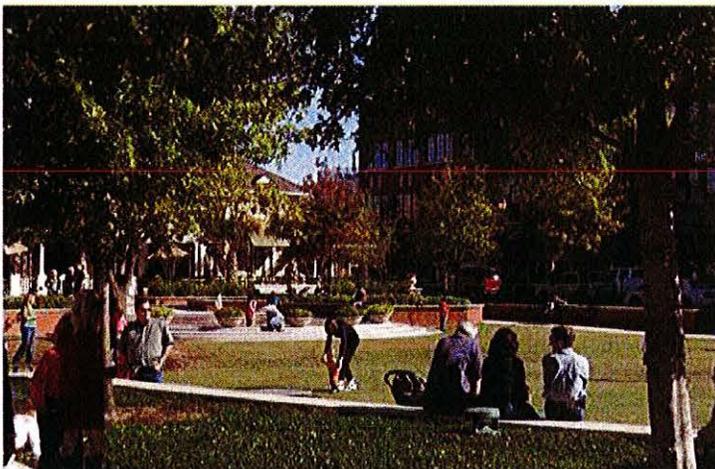
Sidewalks are considered public realm and open space and are important to the success of this development.

Street trees should be provided to offer shade and with landscape plantings, provide a more inviting environment.

Benches, trash receptacles, bike racks and lighting should be consistent with the project standard.



Outdoor seating should be accommodated on the sidewalks adjacent to restaurants, cafes, coffee shops, ice cream shops or other services providing food or drink.



Contact

The Village at Creekside

**CWC 306 Development, Inc
Mike Norris, President**

373 S Seguin Ave
New Braunfels, TX 78130

830-358-7802

miken@svn.com

EXHIBIT "B"
PAD SITES DESIGN GUIDELINES

THE ILLAGE

AT CREEKSIDE

ARCHITECTURAL DESIGN GUIDELINES Pad Sites





ARCHITECTURAL DESIGN GUIDELINES

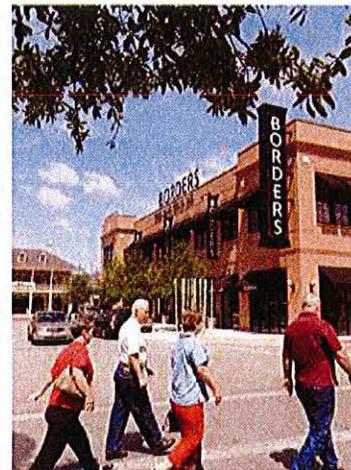
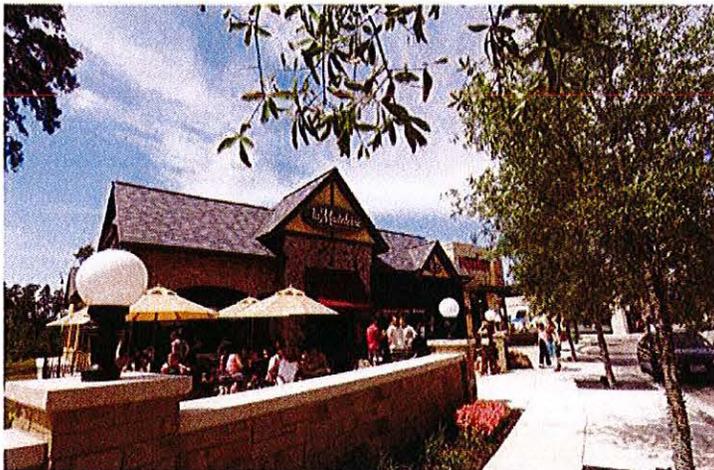
Pad Sites

This guideline establishes the character for the The Village at Creekside Pad sites and will be enforced by the Architectural Design Committee. (ARC)



Character

The Pad Sites associated with The Village at Creekside should be consistent in look and feel with the overall development which is based on the character of the New Braunfels Historic District. Pad site building are typically stand alone structures that will be associated and oriented to FM 306 and FM 1101. These buildings are more typically 1 story structures and may be occupied by nationally branded tenants.





National Chains

Established chains may retain their identifiable character but should make every effort to blend with the character, scale and materials established at The Village at Creekside.



Drive Thrus

Drive Thrus, Awnings and Porte Cochere should be consistent in character, scale and material with the pad building.





Building Height and Roofs

Buildings should be a minimum of 24' high.

Single story buildings are encouraged to have the appearance of two story structures for some portion of the building.

Pad buildings may have sloped roofs with parapets to screen rooftop mechanical equipment.

Towers, overhangs, awnings, canopies and bay windows may have sloped or flat roofs.



Building Materials

Materials may be brick, stone or stucco with accents of stone, wood, metal or tile.

Elements and details do not have to be historical but must be appropriate to the scale and character of the building facade.

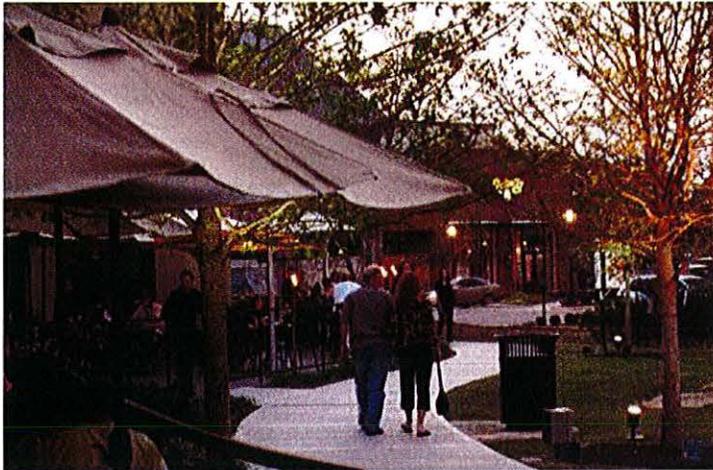
Details at the Store Front level must be durable such as stone, brick, metal or stucco.

Details above the Store Front level may be EIFS or other synthetic materials.

Variety is encouraged but no more than three major materials will be allowed in a facade defined by the tenant or major articulation.

All glass is to be non-reflective.

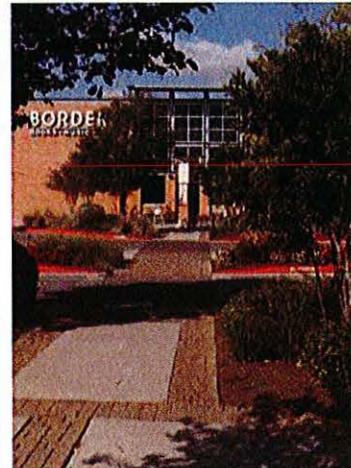
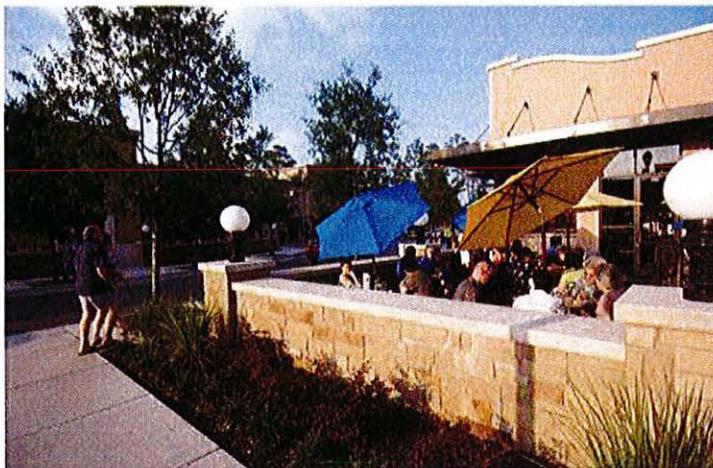
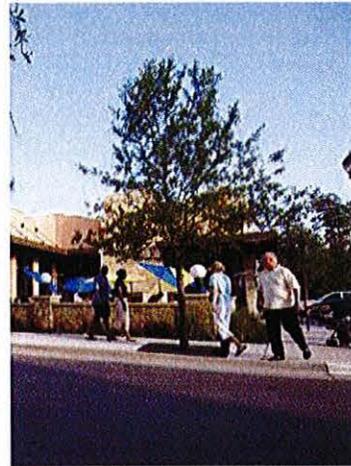




Conectivity

The goal is to promote pedestrian activity on the streets of this development.

Connectivity is critical to the success of the development so all pad buildings should have connectivity to the interior of the projects for pedestrians and vehicles. Shared access "drives" have been design to act as streets that will provide a framework for connectivity.



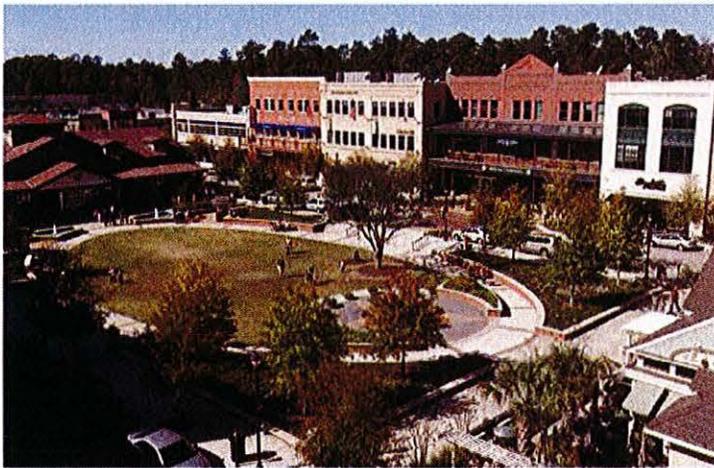


Open Space

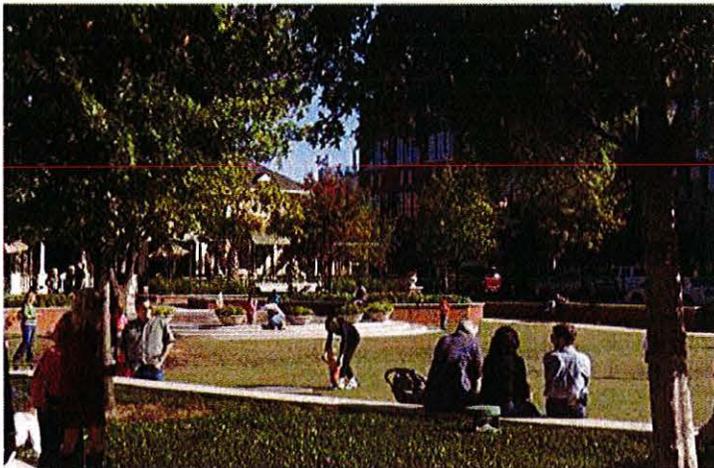
Sidewalks are considered public realm and open space and are important to the success of this development.

Street trees should be provided to offer shade and with landscape plantings, provide a more inviting environment.

Benches, trash receptacles, bike racks and lighting should be consistent with the project standard.



Outdoor seating should be accommodated on the sidewalks adjacent to restaurants, cafes, coffee shops, ice cream shops or other services providing food or drink.



Contact

The Village at Creekside

**CWC 306 Development, Inc
Mike Norris, President**

373 S Seguin Ave
New Braunfels, TX 78130

830-358-7802

miken@svn.com

EXHIBIT "C"

Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought, and Claimant's desire to submit the Claim to arbitration ("**Arbitration Notice**").
2. Each Party shall select an arbitrator ("**Party Appointed Arbitrator**"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("**Neutral(s)**") so that the total arbitration panel ("**Panel**") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within fourteen (14) days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("**Chair**").
3. If the Panel is not selected under Rule 2 within fourteen (14) days from the date of the Arbitration Notice, Claimant may notify any Texas Chapter of The Community Associations Institute, which shall appoint one neutral arbitrator who shall thereafter be the sole arbitrator ("**Arbitrator**"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("**Bias Disclosure**"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.
5. The Arbitrator or Chair, as the case may be, shall fix the date, time, and place for the hearing. The place of the hearing shall be within the Community unless otherwise agreed by the Parties.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.
7. All persons who, in the Arbitrator's judgment, have a direct interest in the arbitration are entitled to attend hearings.
8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

10. The Parties may offer such evidence as is relevant and material to the Claim and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There shall be no post-hearing briefs.

13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than thirty (30) days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

14. If there is more than one Arbitrator, all decisions of the Panel and the Award shall be by majority vote.

15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

Filed and Recorded
Official Public Records
Joy Streater, County Clerk
Comal County, Texas
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