



Economic Improvement Corporation Meeting Agenda
April 21, 2025 at 4:00 PM
City Hall, 701 Main Street, Kerrville, Texas



CALL TO ORDER:

1. **INVOCATION:**

2. **VISITORS/CITIZENS FORUM:** *Any citizen with business not scheduled on the agenda may speak to the Economic Improvement Corporation. No deliberation or action can be taken on these items because the Open Meetings Act requires an item be posted on an agenda 72 hours before the meeting. Visitors are asked to limit their presentation to three minutes.*

3. **APPROVAL OF MINUTES:**

- 3.A Minutes from the regular Economic Improvement Corporation (EIC) meeting held on March 17, 2025. (*K Franchina, Deputy City Secretary*)

4. **MONTHLY REPORTS:**

- 4.A Kerrville Economic Improvement Corporation (EIC) project status update, including Downtown Area Streetscape, Scott Schreiner Golf Course improvements, Olympic Pool renovations, Cailloux Theater improvements, Schreiner Edington Gym and CTWD, Granger MacDonald Park, A.C. Schreiner House, Megaacrete, Habitat for Humanity Mariposa and Travis Street Pump Station upsizing. (*D Paxton, Director of Planning and Development*)

- 4.B Monthly activities report from Kerr Economic Development Corporation (*D Rice, City Manager*)

- 4.C March 2025 Financial Report. (*T Rodriguez, Assistant Director of Finance*)

5. **CONSIDERATION AND POSSIBLE ACTION:**

- 5.A Amendment(s) to Economic Development Grant Agreement between Habitat for Humanity-Kerr County and the EIC for Installation of Public Infrastructure for the Development of the Mariposa Residential Neighborhood. (*M Hornes, Assistant City Manager*)

6. **EXECUTIVE SESSION:** *City Council may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above if they meet the qualifications in Sections 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel/officers), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code.*

7. **ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.**

8. **ITEMS FOR FUTURE AGENDAS:** *Council may suggest items or topics for future agendas.*

ADJOURN.

The facility is wheelchair accessible, and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1118 for further information. I hereby certify that this agenda was posted as notice of the meeting on the bulletin board at City Hall, and on the City's website: **April 17, 2025** at 1:00pm, and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting. Shelley McElhannon, TRMC, City Secretary, City of Kerrville, Texas.



**TO BE CONSIDERED BY THE ECONOMIC IMPROVEMENT
CORPORATION
CITY OF KERRVILLE, TEXAS**

CAPTION: Minutes from the regular Economic Improvement Corporation (EIC) meeting held on March 17, 2025. (*K Franchina, Deputy City Secretary*)

AGENDA DATE: April 21, 2025

DATE SUBMITTED: 09/17/2024

SUBMITTED BY:

EXHIBITS:

1. EIC Minutes 3-17-2025

Expenditure:
Account Number:
**Payment to/Vendor
name:**

Amount Budgeted:
Account Balance:

Kerrville 2050 Item?
No

Key Priority Area:

SUMMARY:

Minutes from the regular Economic Improvement Corporation (EIC) meeting held on March 17, 2025.

RECOMMENDED ACTION:

Approve minutes as presented.

**ECONOMIC IMPROVEMENT
CORPORATION MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
MARCH 17, 2025 4:00 PM**

On March 17, 2025 at 4:00 PM, President Clarkson called the Economic Improvement Corporation meeting to order in City Hall Council Chambers, 701 Main Street, Kerrville, Texas 78028. President Clarkson led the invocation.

**ECONOMIC IMPROVEMENT
CORPORATION MEMBERS PRESENT:**

Kim Clarkson, President
Celeste Hamman, Vice-President
Gregg Appel, KEDC
Kyle Bond, "GO Team"
T.Beck Gipson
Jeff Harris, Councilmember
Gilberto Paiz

**ECONOMIC IMPROVEMENT
CORPORATION MEMBERS ABSENT:**

None.

EXECUTIVE STAFF PRESENT:

Mike Hayes, City Attorney
Michael Hornes, Assistant City Manager
Kim Meismer, Assistant City Manager
Julie Behrens, Director of Finance
Kesha Franchina, Deputy City Secretary
Kelly Hagemeyer, Executive Office
Coordinator
Trina Rodriguez, Assistant Director of
Finance

VISITORS PRESENT:

Gregory Richards
Maria Campana

CALL TO ORDER:

President Clarkson called the meeting to order at 4:00 p.m.

1. **INVOCATION:**

President Clarkson led the invocation.

2. **VISITORS/CITIZENS FORUM:**

There were no citizen speakers.

3. **APPROVAL OF MINUTES:**

3.A Minutes from the regular Economic Improvement Corporation (EIC) meeting held on February 18, 2025. (K Franchina, Deputy City Secretary)

Gregg Appel made a motion to approve the minutes, seconded by Kyle Bond. The motion passed 7-0.

4. **MONTHLY REPORTS:**

4.A Kerr Economic Development Corporation (KEDC) update. (T Bock, KEDC)

There was no KEDC update.

4.B Kerrville Economic Improvement Corporation (EIC) project status update, including Downtown Area Streetscape, Scott Schreiner Golf Course improvements, Olympic Pool renovations, Cailloux Theater improvements, Schreiner Edington Gym and CTWD, Granger MacDonald Park, A.C. Schreiner House, Megaaccrete, Habitat for Humanity Mariposa and Travis Street Pump Station upsizing. (D Paxton, Director of Planning and Development)

Michael Hornes presented the EIC project status update and responded to questions.

4.C February 2025 Monthly Financial Report. (T Rodriguez, Assistant Director of Finance)

Trina Rodriguez presented the monthly financial update and responded to questions.

5. **CONSIDERATION AND POSSIBLE ACTION:**

5.A Amendment(s) to Economic Development Grant Agreement between Habitat for Humanity-Kerr County and the EIC for Installation of Public Infrastructure for the Development of the Mariposa Residential Neighborhood. (M Hornes, Assistant City Manager)

Michael Hornes provided information and introduced Mary Campana.

Mary Campana presented the Habitat update and responded to questions.

Greg Richards presented long-term affordability information. He, Mary Campana, Mike Hayes, and Trina Rodriguez responded to questions.

Vice-President Hamman made a motion to direct staff to draft an amendment in agreement to accelerate the re-payment schedule, to subordinate to the restrictions, remove the 80% and cap at 120%, seconded by Gregg Appel. The motion passed 7-0.

5.B Habitat for Humanity-Kerr County's application of restrictive covenants and lien subordination. (M Hornes, Asst. City Manager)

Item 5.A and 5.B we discussed simultaneously.

6. **EXECUTIVE SESSION:** *The Economic Improvement Corporation may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above if they meet the qualifications in Sections 551.071 (consultation with*

attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel/officers), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code.

None.

7. **ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.**

None.

8. **ITEMS FOR FUTURE AGENDAS:**

President Clarkson requested an item for discussion of a new agreement with KEDC and EIC, with possible consideration of EIC's use of funds to hire counsel.

ADJOURN.

President Clarkson adjourned the meeting at 4:57 p.m.

APPROVED BY THE ECONOMIC IMPROVEMENT CORPORATION: _____

APPROVED:

ATTEST:

Kim Clarkson, President

Kesha Franchina, Deputy City Secretary



**TO BE CONSIDERED BY THE ECONOMIC IMPROVEMENT
CORPORATION
CITY OF KERRVILLE, TEXAS**

CAPTION: Kerrville Economic Improvement Corporation (EIC) project status update, including Downtown Area Streetscape, Scott Schreiner Golf Course improvements, Olympic Pool renovations, Cailloux Theater improvements, Schreiner Edington Gym and CTWD, Granger MacDonald Park, A.C. Schreiner House, Megaacrete, Habitat for Humanity Mariposa and Travis Street Pump Station upsizing. (*D Paxton, Director of Planning and Development*)

AGENDA DATE: April 21, 2025

DATE SUBMITTED: 04/01/2025

SUBMITTED BY:

EXHIBITS:

1. 4-7-2025 EIC projects update
-

Kerrville 2050 Item?

Key Priority Area:

SUMMARY:

RECOMMENDED ACTION:

Monthly EIC Project Status Report

	Project Name	Description	Estimated Design Completion	Estimated Construction Completion	Comments
1	Downtown Area Streetscape	Relocate overhead utility lines to underground; improved beautification of the garage with limestone influences, LED light upgrades and wrought iron railing.	N/A	Summer 2025	KPUB portion is complete for underground utility work. Stop signs installed, masonry and wrought iron railing installed. Street lighting installed on Water Street. Decorative lighting to be installed on Clay St. near Downtown Parking Garage.
2	Scott Schreiner Golf Course improvements	Improvements to the existing golf course	Complete	Summer 2025	EIC and City Council approvals for funding complete. Design complete. Construction in progress, with construction completion anticipated for Summer 2025
3	Olympic Pool renovations	Renovations to the Olympic pool	Feb-2025	Spring 2026	EIC and City Council approvals for funding complete. Design anticipated to complete March 2025 with construction completion anticipated Spring 2026.
4	Cailloux Theater Improvements	Repair of HVAC and roof systems	Complete	Fall 2025	EIC and City Council approvals for funding complete. Design complete and project awarded by City Council at October 22, 2024 meeting. Construction commenced March of 2025. Theater to close during construction.
5	Travis Street Pump Station Upsizing	Increase distribution capacity of the Travis St pump station to meet TCEQ requirements for future developments.	TBD	TBD	Project approved by City Council March 26, 2024. Staff and engineer currently in communication with TCEQ regarding design requirements for the pump station upgrades. Construction completion anticipated for 2026.
6	A.C Schreiner House/HHHC	Repurposing of house and grounds located at 529 Water Street on BHML Campus	Complete	Fall 2025	Design complete. Contract amendment for GMP approved by City Council. Construction commenced October, 2024 with Estimated construction completion in October 2025.
7	Granger McDonald Park	Creation of a new city park along Nimitz Lake in the landing subdivision	Early 2025	TBD	Currently in design phase with Hewitt Engineering. The City of Kerrville submitted a grant application with Texas Parks and Wildlife. Construction schedule will follow based on the outcome of the grant application. GRC has contracted with a grant writer to assist in the City's submission.
8	Megacrete	New autoclave aerated concrete plant	TBD	TBD	Megacrete permit application with TCEQ currently under review.
9	Habitat for Humanity	Infrastructure funding for the new Mariposa subdivision	Complete	TBD	Infrastructure construction in progress with completion anticipated in April, 2025.
10	Schreiner University CTWD and Edington Gym Upgrades	New Center for Talent and Workforce Development and renovations to the Edington Gym	Complete	Fall 2025	Schreiner has hired a director for the CTWD and is currently renovating the Edington Gym Space
11	James Avery Traffic signal	TBD	TBD	TBD	TBD

Financial update for the month ended March 31, 2025

**Economic Improvement Corporation Meeting
April 21, 2025**



**Sales Tax Revenue Bond Series 2023
Statement of Activities
Month Ended March 31, 2025**

Cash Analysis as of March 31, 2025					
Type	Purchase	Maturity	Yield	Placement	Amount
Pool			4.49%	EIC TexPool - 2023 Revenue Bonds	\$ 17,124,011
Com. Paper	10/31/2024	7/25/2025	4.51%	MUFG Bank CP - 62479LUR4	\$ 1,972,216
				2023 Revenue Bonds and Investments	\$ 19,096,228

	Budget	FY2024 Total	Oct 2024	Nov 2024	Dec 2024	Jan 2025	Feb 2025	Mar 2025	Total thru Mar 2025
Revenues:									
Bond Proceeds	20,000,000	20,000,000	-	-	-	-	-	-	20,000,000
Pool Interest Income	750,772	870,506	84,825	71,321	71,936	69,260	61,560	66,605	1,296,014
ST Investment Income	-	-	-	5,925	8,842	7,129	7,129	7,129	36,156
Projects:									
Scott Schreiner Golf Course Improvements	4,000,000	309,195	16,074	2,600	50,705	207,546	200,226	361,278	1,147,625
Olympic Pool Improvements	7,000,000	75,668	198,873	43,004	21,227	1,694	122,613	1,978	465,056
Cailloux Theater Roof & HVAC	4,000,000	25,407	-	-	-	-	2,013	1,383	28,803
Existing Parks Improvements	800,000	374,658	-	-	-	-	-	171,513	546,171
Granger McDonald Park Improvements	2,200,000	-	-	-	-	-	22,847	26,174	49,021
Heart of the Hills Heritage Center	2,000,000	-	-	-	-	-	-	-	-
Investments:									
	-	-	1,935,327	-	-	-	-	-	1,935,327
Arbitrage Payable:									
	-	302,084	-	-	-	-	-	-	302,084
Interest Receivable:									
	-	-	-	5,925	8,842	7,129	7,129	7,129	36,156
Net Cash Balance		19,783,494	(2,065,449)	25,717	5	(139,981)	(286,139)	(495,721)	16,821,927

Bond Proceeds less Project Expenses = **17,763,325**

Interest Earnings less Arbitrage = **1,030,085**



Economic Improvement Corporation
Statement of Activities
Month Ended March 31, 2025

	Annual Budget	Current Period	YTD Actual	YTD Budget Estimate	Better/Worse YTD Estimate
Revenues					
Sales and Use Tax	\$ 5,104,402	\$ 367,116	\$ 2,561,030	\$ 2,544,414	\$ 16,616
Interest Income	153,247	37,772	155,911	91,182	64,729
Investment Maturity	4,000,000	-	1,000,000	1,000,000	-
Total Revenues	9,257,649	404,888	3,716,941	3,635,596	81,345
Expenditures					
Administrative					
Supplies and Miscellaneous	650	-	985	985	-
Training	10,000	-	-	-	-
Legal Services	10,000	-	-	-	-
Professional Services	213,200	17,767	106,600	106,600	-
Kerr Economic Development Corp.	343,750	-	171,875	171,875	-
Total Administrative	577,600	17,767	279,460	279,460	-
Debt Service					
Debt Service - Series 2015 (KSC)	603,100	50,258	301,550	301,550	-
Debt Service - Series 2019 Ref (River Trail)	257,100	21,425	128,550	128,550	-
Debt Service - Series 2020 Ref (River Trail)	230,500	19,208	115,250	115,250	-
Debt Service - Series 2023 (Quality of Life)	1,468,750	122,396	734,375	734,375	-
Total Debt Service	2,559,450	213,287	1,279,725	1,279,725	-
Investment Purchase	2,000,000	-	1,935,327	1,935,327	-
Projects					
Downtown Utilities/Streetscape	69,937	-	-	-	-
Travis Street Pump Station Upgrades	600,000	694	16,034	16,034	-
Schreiner University Talent & Workforce Dvlpmnt	411,214	-	-	-	-
Schreiner University Athletic Facilities	1,088,786	-	1,088,786	1,088,786	-
Lennar Windridge Development*	2,000,000	-	-	-	-
Habitat for Humanity Mariposa Infrastructure*	1,130,000	342,172	1,128,693	753,333	375,360
Total Projects	5,299,937	342,866	2,233,513	1,858,153	375,360
Total Expenditures	10,436,987	573,920	5,728,025	5,352,665	375,360
Change in Net Position	\$ (1,179,338)	\$ (169,032)	\$ (2,011,084)		



Economic Improvement Corporation

Cash Flow Forecast

As of March 31, 2025

	FY2024 Actual	FY2025 Projections	
	Oct 2024 to Mar 2025	Apr 2025 to Jun 2025	Jul 2025 to Sep 2025
Beginning Cash Balance	\$ 4,120,698	\$ 3,950,246	\$ 4,574,119
Revenue			
Sales Tax	2,561,030	1,245,196	1,314,792
Interest Income	155,911	90,000	90,000
Investment Maturity	1,000,000	2,000,000	3,000,000
Total Revenue	3,716,941	3,335,196	4,404,792
Expenditures			
Administrative			
Supplies and Miscellaneous	985	163	163
Legal Services	-	2,500	2,500
Training	-	2,500	2,500
Professional Services	106,600	53,300	53,300
Kerr Economic Development Corp.	171,875	85,938	85,938
Total Administrative	279,460	144,400	144,400
Debt Service	1,279,725	639,862	639,862
Investment Purchase	-	1,000,000	1,000,000
Projects			
Downtown Utilities/Streetscape	-	-	-
Travis Street Pump Station Upgrades	16,034	291,983	291,983
Schreiner University Talent & Workforce Dvlpmnt	-	137,071	137,071
Schreiner University Athletic Facilities	1,088,786	-	-
Lennar Windridge Development	-	-	2,000,000
Habitat for Humanity Mariposa Infrastructure	1,128,693	423,007	423,007
Total Projects	2,233,513	852,061	2,852,061
Total Expenditures	3,792,698	2,636,324	4,636,324
Interest Receivable	94,695	75,000	75,000
Ending Cash Balance	\$ 3,950,246	\$ 4,574,119	\$ 4,267,587



Financial Analysis

Sales Tax Revenue Analysis - FY2025					
Month	Actual FY2024	Actual FY2025	Budget Estimate FY2025	FY2024 vs. FY2025	Budget vs. Actual
October	\$ 465,726	\$ 380,948	\$ 437,120	-18.20%	-12.85%
November	375,745	404,389	\$ 414,771	7.62%	-2.50%
December	389,096	405,904	\$ 377,338	4.32%	7.57%
January	398,538	400,372	\$ 431,653	0.46%	-7.25%
February	485,443	601,268	\$ 498,702	23.86%	20.57%
March	370,297	367,116	\$ 384,830	-0.86%	-4.60%
April	395,960	345,075	\$ 369,058	-12.85%	-6.50%

Cash Analysis as of March 31, 2025					
Type	Purchase	Maturity	Yield	Placement	Amount
Pool			4.49%	EIC TexPool - Cash	\$ 3,950,246
Agency/Security	4/18/2024	10/15/2025	5.06%	US Treasury Note - 91282CFP1	\$ 1,000,469
Agency/Security	7/25/2024	7/25/2025	4.88%	FHLB Note - 3130B23U7	\$ 1,001,532
Commercial Paper	7/25/2024	4/11/2025	5.21%	BNP Paribas CP - 09659BRB8	\$ 1,997,365
Operating Cash and Investments					\$ 7,949,612

Project Analysis as of March 31, 2025			
Project Description	EIC Commitment	Disbursed Funding	Remaining Funding
Downtown Utilities/Streetscape	400,000	330,063	69,937
Travis Street Pump Station Upgrades	750,000	16,034	733,966
Schreiner University Talent & Workforce Dvlpmnt	822,430	-	822,430
Schreiner University Athletic Facilities	2,177,570	1,088,786	1,088,784
Habitat for Humanity Mariposa Infrastructure	2,260,000	1,413,986	846,014
Lennar Windridge Development	5,000,000	-	5,000,000
Operational Project Commitments:	\$ 11,410,000	\$ 2,848,869	\$ 8,561,131



Questions?





**TO BE CONSIDERED BY THE ECONOMIC IMPROVEMENT
CORPORATION
CITY OF KERRVILLE, TEXAS**

CAPTION: Amendment(s) to Economic Development Grant Agreement between Habitat for Humanity-Kerr County and the EIC for Installation of Public Infrastructure for the Development of the Mariposa Residential Neighborhood. (*M Hornes, Assistant City Manager*)

AGENDA DATE: April 21, 2025

DATE SUBMITTED: 04/01/2025

SUBMITTED BY:

EXHIBITS:

1. EIC Grant Agreement_1st Amendment DRAFT
-

Kerrville 2050 Item?

Key Priority Area:

SUMMARY:

RECOMMENDED ACTION:

DRAFT 3/25/25

FIRST AMENDMENT TO ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN HABITAT FOR HUMANITY-KERR COUNTY AND THE CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION FOR INSTALLATION OF PUBLIC INFRASTRUCTURE FOR THE DEVELOPMENT OF THE MARIPOSA RESIDENTIAL NEIGHBORHOOD

This First Amendment to Economic Development Grant Agreement (Amendment) is entered into this ____ day of _____, 2025, by and between **HABITAT FOR HUMANITY - KERR COUNTY** (Habitat), and the **CITY OF KERRVILLE, TEXAS ECONOMIC IMPROVEMENT CORPORATION** (“Corporation”)

WITNESSETH:

WHEREAS, on March 20, 2024, Habitat and Corporation entered into that certain agreement titled *Economic Grant Agreement between Habitat for Humanity-Kerr County and the City of Kerrville, Texas, Economic Improvement Corporation* (the Grant Agreement) in which Corporation agreed to provide Company grant funding from Corporation’s sales tax revenues for costs to develop a residential neighborhood to be known as Mariposa (the Project); and

WHEREAS, based upon an accelerated construction schedule, the Corporation and Company have agreed to amend the Grant Agreement as specified below; and

WHEREAS, Corporation finds that it is in the public interest to amend the Grant Agreement as provided herein;

NOW THEREFORE, for and in consideration of the recitals set forth above and the promises made herein, Company and Corporation agree as follows:

1. Article I of the Grant Agreement is amended by amending the definition of “*Workforce Housing*”, with deletions indicated by ~~strikeout~~ text and additions indicated by underlined text as follows:

“*Workforce Housing*” means a newly constructed Eligible Dwelling Unit with a sales price within the Home Ownership Value Limits for households ~~between 80%~~ and having not more than 120% of the Area Median Family Income (“AMFI”) within Kerr County, Texas, as annually established by the Texas Department of Housing and Community Affairs (“TDHCA”) HOME Program (Title 10, Texas Government Code, Chapter 2306), or its successor program, which is purchased from the original builder of the Eligible Dwelling Unit by a Person. If the AMFI ceases to be published by TDHCA or its successors, the Parties agree to substitute a reasonable standard for the AMFI.”

2. Section 3.1, subsection (b), of the Grant Agreement is amended by deleting it in its entirety, with the deletion indicated by ~~strikeout~~ text:

“3.1 Payment of Grant.

⋮

~~(b) Notwithstanding anything in this Agreement to the contrary, the total amount of installments of the Grant paid by EIC during any EIC Fiscal Year shall not exceed \$1,130,000.00. The submission of a Payment Request during an EIC Fiscal Year that results in the requested amount of Grant payments for such EIC Fiscal Year exceeding \$1,130,000 shall be carried over and paid by EIC in association with the first Payment Request submitted during the next EIC Fiscal Year.”~~

3. Section 4.5 of the Grant Agreement is amended with deletions indicated by ~~strikeout~~ text and additions indicated by underlined text as follows:

“4.5 Dwelling Unit Pricing. Habitat shall develop and sell Eligible Dwelling Units within the Development in accordance with the following:

(a) *Sales Pricing.* Habitat shall develop Lots and sell Eligible Dwelling Units within the Property at sales prices in accordance with affordability standards set forth herein for Workforce Housing. The applicable standards are those established by the Texas Department of Housing and Community Affairs (TDHCA), with the “net sales price” (defined below) of the Eligible Dwelling Units being affordable to homebuyers earning ~~between 80 percent and~~ up to 120 percent of the area median family income (“AMFI”) within Kerr County, Texas. As an example, for 2023, the AMFI is \$84,600 for Kerr County and the upper threshold for workforce housing within the TDHCA HOME Program is \$275,000. “Net sales price” means that any incentives or closing cost assistance that Habitat pays on behalf of a homebuyer will be credited to the sales price of the Eligible Dwelling Unit for purposes of this section. Based upon TDHCA regulations, the sales price of each Eligible Dwelling Unit may not exceed \$275,000 (“Maximum Sales Price”). For purposes of this Agreement, the AMFI and Maximum Sales Price of Eligible Dwelling Units shall be adjusted from time to time in the same manner as set forth in subsections (c) and (d) below, but in no circumstance shall the Maximum Sales Price decrease.”

4. Section 10.3 of the Grant Agreement is amended with deletions indicated by ~~strikeout~~ text and additions indicated by underlined text as follows:

“10.3 ~~INTENTIONALLY LEFT BLANK~~ Subordination. EIC agrees to execute both the i) Declaration of Covenants, Conditions and Restrictions for Mariposa (attached as

Exhibit D); and ii) the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements (attached as Exhibit E) (together, the “Declarations”) solely for the purposes of (i) evidencing its consent to the Declarations, and (ii) subordinating EIC’s lien to the Declarations, both on the condition that EIC’s lien shall remain superior to any assessment lien in all events.”

5. Except as amended herein, the provisions of the Grant Agreement remain in full force and effect. Should a conflict exist between the terms amended herein and the Grant Agreement, the terms provided herein shall control. Amendments to the Grant Agreement shall include renumbering/re-lettering where appropriate.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in the year and as of the date indicated.

**CITY OF KERRVILLE, TEXAS
IMPROVEMENT CORPORATION**

**HABITAT FOR HUMANITY - KERR
COUNTY**

Kim Clarkson, President

Mary Campana, Executive Director

ATTEST:

APPROVED AS TO FORM:

Kesha Franchina, Recording Secretary

Michael C. Hayes, City Attorney

AFTER RECORDING RETURN TO:

Gregory A. Richards

Gregory A. Richards, PC

280 Thompson Drive

Kerrville, Texas 78028

Email: greg@gregrichardslaw.com

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
MARIPOSA,
a subdivision of KERR COUNTY, TEXAS**

Declarant: **HABITAT FOR HUMANITY – KERR COUNTY, a Texas nonprofit corporation**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
MARIPOSA,
a subdivision of KERR COUNTY, TEXAS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF **MARIPOSA (“Covenants”)**, is made effective as of _____, 2024 by **Habitat for Humanity – Kerr County, a Texas nonprofit corporation (“Declarant”)**.

WHEREAS, Declarant is the Owner of the Property defined in Section 1 of this Declaration, and desires to create thereon a development for residential purposes.

WHEREAS, Declarant further desires to provide for the preservation of the values and amenities of said Property and for the maintenance thereof. Declarant desires to subject the Property described as all that certain tract or parcel of land, lying and being situated in the County of Kerr, State of Texas, comprising 8.56 acres, more or less; being all of the subdivision, known as Mariposa, according to the plat recorded of record in Clerk’s file number _____, Official Public Records of Kerr County, Texas, together with such additions as hereafter be made thereto (as provided in Section One), to the covenants, conditions, restrictions, easements, charges and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereafter.

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

NOW, THEREFORE, Declarant declares that the Property referred to herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (herein collectively called the "covenants" or "the restrictions and covenants"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property for the benefit of present and future Owners, which restrictions and covenants shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in any of the Lots in or any portion of the Property and shall inure to the benefit of and be binding upon each Owner and future Owner thereof.

1. DEFINITIONS.

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

- (A) **“Architectural Review Committee”** (ARC) shall mean and refer to that Committee as defined in Section 9 hereof.
- (B) **“Association”** and **“HOA”** shall mean and refer to *Mariposa Owners Association, Inc.* The Association shall be formed for the purpose of maintaining uniform standards and quality of the land as well as the beauty and value of the property in the Subdivision.
- (C) **“Board”** shall mean the Board of Directors of the Association.
- (D) **“Common Area”** shall mean all real property, conveyed to the Association by Plat dedication or otherwise.
- (E) **“Community Manual”** means the community manual, if any, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the Subdivision. The Community Manual may include the Bylaws and Rules and policies governing the Association. The Community Manual may be amended, from time to time, by the Board.
- (F) **“Declarant” and “Developer”** shall mean Habitat for Humanity – Kerr County, a Texas nonprofit corporation, and the successors and assigns of Declarant.
- (G) **“Declaration”** shall mean this Declaration as amended from time to time.
- (H) **“Deed”** shall mean a deed or contract for deed to a Lot.
- (I) **“Documents”** mean, individually or collectively as the case may be, these Covenants, the Plat and Plans, attached hereto as Attachment 1, the Certificate of Formation of the Association, Bylaws of the Association, the Community Manual, and the Rules of the Association, as each may be amended from time to time. An appendix, attachment, exhibit, schedule, or certification accompanying a Document is a part of that Document
- (J) **“Improvements”** shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to, residence building, outbuildings, storage sheds, patios, exterior lighting, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, dams, signs, exterior air conditioning, water softener fixtures or equipment, poles, pumps, wells, tanks, reservoirs, pipes, water collection systems, lines, meters, antennas, flag poles, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities. The term “Improvements” shall also mean all exterior sculptures and other artwork to the extent that the ARC determines, in its sole discretion that such items are visible and notable features of a Lot.
- (K) **“Lot”** shall mean and refer to any lot, tract or parcel of the Property (with the exception of any Common Area) shown upon a plat of the property filed for record in Kerr County, Texas (as such plat or plats may be amended from time to time).
- (L) **“Member”** shall mean Declarant and each Owner of a fee simple interest or purchaser by Contract for Deed for any Lot or part or portion of the Property.
- (M) **“Owner”** shall mean the record Owner, whether one or more persons or entities, of a fee simple interest to any portion of Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee’s sale or through a deed in lieu of foreclosure).
- (N) **“Properties” and “Property” and “Subdivision”** shall mean the 8.56 acres, more or less as described in Exhibit “A” attached hereto; being all of the subdivision, Mariposa, according to the plat filed of record in the Official Public Records of Kerr County, Texas under Clerk’s file number

_____, and all additions thereto, as are subject to this Declaration or any Supplemental Declaration filed of record pursuant to the following provisions.

- (O) **“Residence”** shall mean any free standing building with connections to water and electricity that is usable for residential purposes.

2. **Covenants Binding on Property and Owners.**

(A) **Property Bound.** From and after the date of recordation of these Covenants, the Property shall be subject to the Covenants and said Covenants shall run with the land, for the benefit of the Property.

(B) **Owners Bound.** From and after the date of recordation of these Covenants, the Covenants, shall be binding upon and for the benefit of each Owner and his heirs, executors, administrators, trustees, personal representatives, successors and assigns, whether or not so provided or otherwise mentioned in the Deed.

3. **VARIANCE.** The Board, with the recommendation of the ARC, may authorize variances from compliance with any of the provisions of these Covenants, with minimum acceptable construction standards, or with regulations and requirements as promulgated from time to time by the Board or the ARC, when circumstances such as topography, Lot configuration, Lot size, hardship, aesthetic or environmental considerations may require a variance. Such variances must be evidenced in writing and shall become effective when signed by an officer of the Association upon a majority vote of the Board duly recorded in the Association’s formal minutes. If any such variances are granted, no violation of the provisions of these Covenants shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of these Covenants for any purpose except as to the particular property and particular provisions covered by the variance, nor shall the granting of any variance effect the Owner’s obligation to comply with all laws and regulations affecting the property.

4. **PROTECTIVE COVENANTS.** The Property shall be used and occupied subject to the following restrictions:

- (A) **Prohibition of Offensive Activities.** Except as provided herein, properties shall be used only for residential purposes. No activity, whether for profit or not, shall be conducted which is not related to noncommercial residential purposes. This restriction is waived in regard to the customary sales activities required to sell a home in the Subdivision. The Board shall have the sole and absolute discretion to determine what constitutes a nuisance, annoyance, or an unreasonable use of a Property under this subparagraph. All activities related to development, sale and construction of lots and homes in the subdivision are permitted.
- (B) **Intended Use.** All Lots shall be used only for single-family residential purposes. No Lot shall be used for any commercial, business or church purposes. Except for the use of a room within a residence as an in-house office, which office use is secondary to the residential use on the Lot, no business, commercial, trade, professional or other nonresidential activity or use of any nature, type, kind or description shall be conducted upon or from any residence or within any improvement located or constructed on any Lot. The activities or business conducted at the in-house office shall not be such as to generate traffic by customers, vendors or the like through the Subdivision or to the residence.
- (C) **Camper or Recreation Vehicle.** No camper or recreational vehicle may be used as a residence on a Lot, either during the construction of a dwelling or thereafter. Further, no camper or recreational vehicle shall be parked or stored on a Lot.
- (D) **Equipment and Machinery.** No equipment or machinery of any type, including without limitation, heating, air conditioning or refrigeration equipment and clotheslines, shall be placed, allowed or maintained upon the ground of any Lot, except within fenced areas, and out of view of neighboring properties and roadways. No such equipment, machinery or fixtures shall be placed, allowed, maintained, or repaired anywhere other than on the ground.
- (E) **Open Fires.** No open fires shall be lit or permitted, except for within exterior fire pits, fireplaces designed and built according to industry standards and all applicable laws, codes and statutes, or in contained barbeque units for cooking purposes while attended by a responsible adult.
- (F) **No Offensive or Unlawful Use.** No offensive or unlawful use shall be made of the Properties. The Association may from time to time adopt rules concerning same, and it shall be entitled to enforce such rules.
- (G) **Single Family Dwelling.** “Single Family Dwelling” shall mean and refer to any Improvement on a Lot which is designed and intended for use and occupancy as a residence by one individual, by a single family, or by individuals related by blood, marriage or adoption, who are maintaining a common household.
- i. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than one Single Family Dwelling with attached garage with a capacity of not less than one standard size automobile, and additionally one workshop or storage barn.
 - ii. No phase of construction for a residence or any additional structure located on the property shall begin before the ARC completes site and structure plan approval as provided below. Any change, deletion, or addition to the plans and specifications approved by the ARC, including plans deemed approved by the ARC’s failure to act, must be submitted and approved in writing by the ARC. Failure to submit changes, deletions, or additions to previously approved plans shall void the original approval.
 - iii. All residential/dwelling structures must have at least 1,200 square feet of enclosed, air conditioned and heated living space, excluding porches, decks and garages, and must be built with new construction materials (except rock).
 - iv. “Residential purposes” shall be construed to prohibit duplex houses, triplexes, condominiums, townhouses, or apartment houses or similar type of multi-family structures.
 - v. The term “structure” does not include manufactured homes, mobile homes, modular homes, tent or any other types of portable structures and said structures are not permitted within the Subdivision. Shops, barns and storage buildings must be built on a permanent foundation.
 - vi. Any building, structure or improvement commenced on any Lot shall be completed as to exterior finish and appearance within one (1) year from the construction commencement date except for Single Family Dwellings, which must be completed within eighteen (18) months from the construction commencement.
 - vii. During construction of a Residence or other building or structure, the Owner or his contractor must provide or install a temporary portable toilet and maintain and keep the Lot clean and free of debris.
 - viii. The exterior walls of a Residence shall be constructed with 90% exterior masonry. The minimum masonry percentage shall apply to the aggregate area of all exterior walls including chimneys but excluding doors, windows and similar openings. Masonry includes stone, stone veneer, stucco, rock and brick or cementitious boards or siding. In no instance shall more than eighteen (18) inches of the slab of the Residence or any other structure be exposed above finished grade as viewed from any street, right-of-way or other Common Area. If ground floor level is more than eighteen (18) inches above final grade, the foundation shall be built to accommodate a finished wall matching the exterior wall of the Improvement to within eighteen (18) inches of final grade. The exposed foundation shall be trowel finished. Landscaping to screen any exposed foundation is encouraged.
 - ix. All fireplace flues and smokestacks shall be enclosed and concealed from public view in finished chimneys or materials architecturally compatible with the finish material of the exterior walls of the dwelling or otherwise approved by the ARC. All exterior building materials, finishes and colors shall be

approved in writing by the ARC and shall be of such texture and color to provide a pleasant appearance throughout the Subdivision. Bright colors, such as red, orange, bright or mustard yellow, aqua, bright pink, purple, fuchsia, lime green and royal blue are prohibited. Uncovered or exposed (whether painted or not) concrete or concrete block shall not be permitted as the exterior finish of any building or other Improvement.

- (H) **Garages.** All dwellings shall have a garage with a capacity of not less than one standard size automobiles. Carports are not permitted. All garages shall comply with all other restrictions on usage. All garages shall consist of structures completely enclosed on all sides with walls and/or garage doors.
- (I) **Driveways.** Driveways shall be hard surfaced of concrete and shall be constructed with a minimum width of ten feet (10') along the entire length. Beginning six feet back from the main roadway, the width of each driveway shall flair to a minimum of twelve (12) feet at the street making a level, not elevated, transition to the main roadway.
- (J) **Fences.** All fences or walls located on a Lot are to be maintained at Owner's expense. All fences must be approved by the ARC and shall be of the following composition: all masonry; concrete tile or block, plastered and painted on both sides; all cedar or wood; wrought iron; any combination of masonry, concrete tile or block, and wrought iron; or other material approved by the ARC. Chain-link, net wire and barbed wire fences are prohibited. Any wood fencing shall be constructed so that the finished side must face the outside of the Lot when adjacent to streets. No fence or wall shall extend past the front of the Residence. The ARC is empowered to grant variances to the aforesaid composition requirements for fences and the aforesaid height or setback limitation in connection with retaining walls.
- (K) **Yards.** There shall be no all-rock, all-gravel, or other hard surface or impervious material yards. This shall not prohibit the use of rock or gravel landscaped areas with the prior written approval and authorization of the ARC. Commensurate with the completion of construction of a Residence on a Lot, the front and side yards of a residence completed during the months of March through September shall be fully sodded, seeded or planted in other ground cover within 60 days of completion of the Residence. Residences completed in all other months shall be fully sodded, seeded or planted in other ground cover not later than the last day of the following April.
- (L) **Antennas.** Except as expressly provided below, no exterior radio, television or communications antenna or aerial or satellite dish or disc, nor any solar energy system (collectively, an "**Antenna/Dish**"), shall be erected, maintained, or placed on a Lot without the prior written approval of the ARC.
- i. **Dishes Over One Meter Prohibited.** Unless otherwise approved by the ARC, an Antenna/Dish which is over one meter in diameter is prohibited within the Subdivision.
 - ii. **Notification.** An Owner who wishes to install an Antenna/Dish one meter or less in diameter (a "Permitted Antenna") must submit a written notice to the ARC, which notice must include the Owner's installation plans for the satellite dish.
 - iii. **One Dish Limitation.** Unless otherwise approved by the ARC, only one Permitted Antenna per Lot is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner must provide written notification to the ARC. Upon notification, the Owner will be permitted to install an additional Permitted Antenna if a single Permitted Antenna is not sufficient for the reception of an acceptable quality signal and the use of an additional Permitted Antenna results in the reception of an acceptable quality signal.
 - iv. A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Lots. A Permitted Antenna exists at the sole risk of the Owner of the Lot. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the ARC and the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The ARC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.
 - v. **Preferred Installation Locations.** A Permitted Antenna may be installed in a location on a Lot from which an acceptable quality signal can be obtained and where least visible from the street. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ARC are as follows:
 - a. Attached to the back of the Single-Family Residence constructed on a Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then
 - b. attached to the side of the Single-Family Residence constructed on a Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.
- (M) **On Street Parking.** No on street parking is allowed without the approval of the ARC.
- (N) **Motor vehicles.** "Vehicles" are defined as any automobile, recreational vehicle, boat, trailer, motorcycle, motorized bicycle, go cart, golf cart, dirt bike or all-terrain vehicle. Vehicles owned or in the custody of any Owner may be parked only in a garage, or on a driveway located on such person's Lot. Not more than one Vehicle per licensed driver residing on a Lot shall be allowed, up to a maximum total of 4 Vehicles. Vehicles shall not be parked in any other location on a Lot. No trailers, vans or trucks in excess of one ton or designated for commercial purposes shall be placed, allowed or maintained upon any residential Lot except with prior written approval of the ARC. Any such permission shall include all applicable sections of these Covenants and/or require that said vehicle be in areas attractively screened or concealed from neighboring properties and Roads.
- (O) **Storage.** No exterior storage of any items shall be permitted except with prior written approval of the ARC. Any such storage as is approved shall be attractively screened or concealed from view from neighboring property and roads. This provision shall apply without limitation to trailers, camp trailers, boat trailers, travel trailers, boats, and un-mounted pickup camper units. All materials must be kept in an enclosed building or garage and not in general view from the road. Without limitation, no automobile, truck or other vehicle, regardless of ownership, age, condition or appearance, shall remain on any Lot in any manner which could be construed as being stored, neglected, abandoned or otherwise not in frequent use, except in a closed garage or pursuant to approval of the ARC. No article deemed to be unsightly by the ARC shall be permitted to remain on any Lot so as to be visible from adjoining property or road. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabric shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.
- (P) **Repairs to Detached Machinery.** No repairs which take more than one day of any detached machinery, equipment or fixtures, including without limitation motor vehicles, shall be made upon any portion of any Lot within view of neighboring property and roads without prior approval of the ARC.
- (Q) **Garbage.** No garbage or trash shall be placed on the exterior of any building, except in containers meeting the specifications of the ARC, and the placement, maintenance and appearance of all such containers shall be subject to reasonable rules of the ARC. All rubbish and garbage shall be regularly removed from each Lot. All approved containers shall be stored behind fence so they are not visible from the road. Containers shall be placed curbside only for the day of collection.

- (R) **Outside Lighting.** Outdoor lighting shall be erected and used in such a way to minimize light pollution in the Subdivision and to refrain from disturbing neighbors and distracting motorists with bright lights. Indirect lighting is recommended. Any other lighting, which is not shielded downward, is to have on-off switches, is not to be left on all through the night and is to be used only judiciously. Security pole lights must be approved by the ARC regarding location, type of light fixture used, whether it has an on-off switch, and whether it will create a nuisance to neighbors. Exterior holiday lighting conforming to this subsection shall be permitted from November 1st each year and shall be removed no later than the 15th of January of the following year.
- (S) **Signs.** No sign of any kind, (including signs advertising Lots for sale, for rent or for lease), may be erected, placed, or permitted to remain on the Property unless written approval has been obtained in advance from the ARC. The ARC may adopt sign guidelines associated with the erection and display of certain signs which guidelines may govern the location, nature, dimensions, number, and time period a sign may remain on the Property or a Lot. As used in this paragraph, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The ARC may affect the immediate removal of any sign or object which has not been approved in advance by the ARC. Notwithstanding the foregoing, political signs may be erected provided the sign: (a) is erected no earlier than the 90th day before the date of the election to which the sign relates; (b) is removed no later than the 10th day after the date of the election to which the sign relates; and (c) is ground-mounted. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited. Additionally, a religious item on the entry door or door frame of an Single Family Dwelling (which may not extend beyond the outer edge of the door frame) is permitted, provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches.
- (T) **Oil and Mineral Activity.** No oil exploration, drilling, development or commercial refining operations and no commercial quarrying or mining operations of any kind of minerals, rocks, stones, sand, gravel, aggregate or earth, including oil wells, surface tanks, tunnels, or mineral excavation or shafts shall be permitted upon or under any Lot.
- (U) **Use of Temporary Structures.** No structure of a temporary character, whether trailer, tent, shack, garage, barn or other structure may be used on any tract at any time as a residence, either temporarily or permanently; provided, however, that the ARC reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of the Property as in its sole discretion may be necessary or convenient while selling Lots, constructing residences, constructing other improvements within the Subdivision, and operating the Subdivision or the Association. The ARC may also give consent to Owner, contractors, and builders for the temporary use of structures. Use of any temporary structure for any other function must be approved by the ARC.
- (V) **Hunting / Firearms.** No hunting of any type will be allowed on any of the Lots. No firearms or fireworks shall be discharged upon the Property, except in defense of a person as allowed by law.
- (W) **Animal Husbandry.** No animals, livestock or exotic species of any kind, shall be raised, bred or kept on any Lot, except that dogs, cats, or other common household pets and chickens may be kept in reasonable numbers, provided, however, that roosters are specifically not allowed. No animal may be stabled, maintained, kept, caged or boarded for hire or remuneration on the Property and no kennels or breeding operations of animals will be allowed. Dogs must be kept in a kennel or fenced area. Dogs will not be permitted to run loose in the Property and must be vaccinated for rabies on the basis of current vet practices in Kerr County, which comply with Kerr County legal requirements. The Board shall give notice in writing by certified mail to any Member whose pet has been determined to be a nuisance, and such Member shall remove such pet from his Lot within ten (10) days from receipt of such notice. Failure to remove the pet will allow the Board to use any remedy at law (including, without limitation, referring the matter to Kerr County Animal Control) or that which is provided for herein. In no event shall vicious or dangerous animals be allowed within the Property.
- (X) **Drainage.** Storm water from any Lot shall not be permitted or allowed to drain or flow unnaturally onto, over, under or across any contiguous or adjacent Lot unless a drainage easement shall exist for same and same is done in accordance with any and all applicable governmental permits and approvals. All work done on any Lot affecting or pertaining to the grade, the flow of surface water drainage, the alteration or removal of any drainage or environmental berm or swale or any storm berm or swale, must be in accordance with a site grading and drainage plans prepared by an engineer and approved by the ARC and also in accordance with all applicable laws, codes and regulations.
- (Y) **Site Clearing, Excavation and Landscaping.**
- i. Each Lot must be landscaped in an approved manner within 4 months after completion of the Residence. The digging of the dirt or the removal of any dirt from any Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on such Lot, except as provided in Paragraph 4(R), above.
 - ii. The ARC shall have the absolute discretion and authority to determine the necessity for required maintenance of Lots within the Subdivision. No unsightly Lots shall be permitted.
- (Z) **Roofing Material.** All roofing material for a Residence, other building, or structure shall be top grade dimensional composition shingle, standing seam metal or other material approved by the ARC. Like roofing materials, in the same or similar color, shall be used on all structures on the same Lot. The roofs of the main body of all Improvements on the Property shall be pitched. Flat roofs are prohibited. All roofing color must be approved by the ARC. No windmills, appliances, rooftop attic ventilators, fans, solar collector panels or other rooftop installations or structure of any type shall be placed, located, erected, constructed, installed or maintained upon the exterior roof of any Improvement unless it is erected, constructed, installed and maintained on the rear yard side of the roof or otherwise in such manner and at such location that the same shall not be visible from any street. Any variances must be approved by the ARC.
- (AA) **Access to Adjoining Property.** No Lot may be used for access to or from an adjoining property outside of the Subdivision without the prior written consent of the Board.
- (BB) **Common Area.** Only Owners and their guests may use the Common Areas. Owners may not charge non-owners for the use of the Common Areas. Owner and/or guests may not take away rights or pleasure from other Owners or guests by misusing or abusing the Common Areas. Any cost to repair damage caused the Common Area by an Owner or his guest must be reimbursed to the Association by the Owner who caused (or whose guest caused) the damage, within seven (7) days of notice from Association. All Common Areas are to be maintained and governed by the Association.
- (CC) **Pesticide and Herbicide Broadcast Application.** There will be no pesticide or herbicide applied in such a manner that causes an entire area or Lot to be impacted by such application without approval of the Committee.
- (DD) **Tanks.** No butane, propane or tanks of any kind shall be erected, placed or permitted on a Lot, except that small propane tanks, not exceeding 40 pounds, may be used on a Lot for barbeque grills, patio heaters or similar residential uses.

- (EE) **Environmental Maintenance.** All improved yards shall be kept neat and well maintained and all grass, weeds, and vegetation on each Lot shall be kept mowed at regular intervals. Fences must be repaired and maintained and no objectionable or unsightly usage of Lots will be permitted, which is visible to public view. Until a Residence is built on a Lot, Declarant or the Association may, at its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed therefrom. Declarant or the Association may also, at its option, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The Owner of any Lot shall be obligated to reimburse Declarant or the Association for the cost of such maintenance or removal upon demand.
- (FF) **Swimming Pools.** Moveable, above-ground swimming pools are permitted, but may not exceed ten feet in diameter or 24 inches in depth. In-ground swimming pools are also allowed. All swimming pools must be in a fenced enclosure with self-closing and self-latching gates, and in accordance with any applicable ordinances, regulations or statutes. No swimming pools shall be constructed in front or side yards.
- (GG) **Removal of Improvements.** In the event that a Single Family Dwelling or other Improvement on a Lot shall be damaged or destroyed by casualty, hazard, or other cause, including fire or windstorm, then, within a reasonable period not to exceed three (3) months following the occurrence of the incident, the Owner of the affected Improvement shall cause the damaged or destroyed Improvements to be repaired, rebuilt or reconstructed, or to be removed and cleared from such Lot. Any such repair, rebuilding or reconstruction shall be approved and accomplished as otherwise required for new construction pursuant to the provisions of this Declaration.
- (HH) **Rentals.** Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for single family residential purposes, provided however, all lessees shall be and are hereby bound to comply fully with the Protective Covenants of this Declaration. During any period when a Lot or Improvements are rented or leased, the Owner of the Tract shall remain liable for complying with all terms of the Declaration. No Single-Family Dwelling may be rented or leased for any single period of less than twelve (12) months. No "time-share plan" or any similar plan of fragmented or interval ownership of said Single Family Dwelling shall be permitted on the property.
- (II) **Subdivision.** Except as set forth in paragraph 19 below, no re-subdivision of any Lot into smaller tracts shall be permitted
- (JJ) **Flags.** An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States Military ("**Permitted Flag**") and permitted to install a flagpole no more than a) five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence; or b) twenty feet (20') in height, and installed within 25 feet of the front of a residence near the principal entry door ("**Permitted Flagpole**") within a Lot. Only two (2) permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Architectural Reviewer. Unless otherwise approved in advance and in writing by the ARC, Permitted Flags and Permitted Flagpoles must comply with the following:
- i. Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');
 - ii. The flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;
 - iii. The display of a flag, or the location and construction of the flagpole must comply with all applicable easements and setbacks of record;
 - iv. Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;
 - v. A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;
 - vi. Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and
 - vii. Any external halyard of a flagpole must be secured to reduce or eliminate noise from flapping against the metal of the flagpole.
- (KK) **Rules and Regulations.** In addition to the restrictions contained in this Article 4, each Lot is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:
- i. Use of Common Area.
 - ii. Hazardous, illegal, or annoying materials or activities on the Property.
 - iii. The use of Property-wide services provided through the Association.
 - iv. The use, maintenance, and appearance of anything visible from the street, or other Lots.
 - v. The occupancy and leasing of improvements on a Lot.
 - vi. Animals.
 - vii. Vehicles.
 - viii. Disposition of trash and control of vermin, termites, and pests.
 - ix. Anything that interferes with maintenance of the Property, operation of the Association, or the quality of life for Owners.

5. EASEMENTS RESERVED BY THE ASSOCIATION.

(A) **Easements.** Declarant has retained, and hereby transfers to the Association, a five foot (5') easement of the sides, and ten foot (10') easement of the front and back lines of all Lots as per the final plat of the Subdivision Full ingress and egress shall be had by the Association at all times over the Properties in and along the above described easements, for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Declarant and/or the Association shall have the right to assign and transfer the easements and rights herein described to or for the benefit of any public or quasi-public utility. Declarant reserves for public use the utility easements shown on the plat of the Subdivision or that have been or hereafter may be created by separate instrument recorded in the Official Public Records of Kerr County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, and telephone line or lines, storm surface drainage, cable systems, or any other utility the Declarant sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Common Area and/or Lots. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, without the joinder of any other Owner, the Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility company, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the Lot covered by said easements.

(B) **Title Subject to Easements.** It is expressly agreed and understood that the title conveyed by Declarant to any of the Lots by contract deed or other conveyance shall be subject to any easement hereafter granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot. The Declarant may convey title to said easements to the public, a public utility company or the Association. No building shall be located over, under, upon or across any portion of any utility easement. The Owner of each Lot shall have the right to construct, keep and maintain concrete drives, fences, and similar improvements across any utility easement, and shall be entitled to cross such easement at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said Utility Easement shall be responsible for:

(i) Any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such Utility Easements and;

(ii) Repairing any damage to said improvements caused by any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

(C) **Easement for Stormwater Detention and Drainage.** The Owners of Lots 1 and 6, Block 3, , as shown on the recorded plat of the Subdivision, shall, by the acceptance of a deed or entering into a contract for the purchase of such property, agree, grant and convey unto the Association a perpetual easement over, across and through those portions of Lots 1 and 6, Block 3 which is marked "Drainage Easement" (referred to herein as the "Easement Area") for storm water detention and drainage purposes, including the right of ingress, egress and regress therein, to erect, construct, reconstruct, install, place, repair, operate, use, inspect, modify remove, replace, resize, and maintain certain storm water detention and drainage facilities and appurtenances, together with all lines, pipes, conduits, and other facilities, equipment, improvements, and appurtenances used in connection therewith (herein, the "Facilities"). The Association shall manage, operate, care for, maintain and repair all Facilities and the Easement Area and keep the same in a safe, attractive condition.

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

(F) **No Liability for Damage to Improvements.** Neither Developer nor any provider of utility services shall be liable to any Owner for any damage to any vegetation including, without limitation, shrubbery, trees, lawns and flowers, or other Improvements situated within such easement area, as a result of any activity relating to the construction, maintenance, operation, or repair of any utility lines or facilities in any utility easement, except to the extent liability or obligation to repair any such damage arises out of this Declaration, or any State, County, or Municipal statutes, ordinances, rules or regulations, or the custom and practice of such utility provider. Prior to the construction of any utilities on a Lot, the Developer and the Association reserve the right to require that the utility provider pay the cost of restoring the utility easement to the same condition as it was prior to construction.

6. IMPROPER MAINTENANCE BY OWNER. In the event any portion of a Lot or structure thereon is in the ARC's judgment so maintained by the Owner as to not comply with these Covenants or present a public or private nuisance or substantially detract from the appearance or quality of the neighboring Lots or Residences or other areas of the Property which are substantially affected thereby or related thereto, the ARC, unless corrective action is taken within ten (10) days after receipt of written notice to the Owner of a Lot specifying the required maintenance action to be made by Owner, shall be authorized and empowered to cause such action to be taken and the cost (the "Maintenance Cost") thereof shall be assessed against the Lot of the offending Owner and shall be secured by the Maintenance Lien hereinafter provided. Written notice of such assessment shall be delivered to the offending Owner which notice shall specify the amount of such Maintenance Cost and shall demand payment thereof within thirty (30) days after the date of said notice. If any provision of this Section 6 applies and the ARC and the Owner cannot agree on the required maintenance, the parties will submit the dispute to the Board for a decision.

7. IMPOSITION OF LIEN; OWNER'S AGREEMENT.

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

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

(i) That he will pay to the Association within thirty (30) days after the date of written notice thereof any Maintenance Cost assessed by the Association against his Lot.

(ii) That by accepting a Deed to his Lot, he shall be, and remain, personally liable for any and all Maintenance Cost assessed against his Lot while he is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether he signed the Deed.

(iii) That he will pay a late fee of \$25.00 if not paid when due, and that such Maintenance Cost shall bear interest from the due date at the lesser of the rate of eighteen percent (18%) per annum or the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. Each owner is liable to the Association for all costs and reasonable attorney's fees incurred by the Association in collecting delinquent assessments, foreclosing Association's lien, and enforcing these Covenants.

(C) **Environmental Hazards.** No noxious substances or undesirable products whatsoever shall be permitted on any Lot. The Board shall determine the degree of noxiousness or undesirability and its decision shall be conclusive on all parties.

8. MAINTENANCE FUND DEFINED AND USES.

(A) **Maintenance Fund.** Each Owner (by acceptance of a Deed for any portion of the Properties whether or not it shall be so expressed in any such Deed or other conveyance), hereby covenants and agrees and shall be deemed to covenant and agree to pay the Association assessments and maintenance fund charges ("Maintenance Fund Charges"). All assessments and Maintenance Fund Charges, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each portion of the Properties against which each such assessment and Maintenance Fund Charge is made. Each such assessment and Maintenance Fund Charge, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment or Maintenance Fund Charge becomes due.

(B) **Initial Maintenance Fund.** The amount of an annual Maintenance Fund Charge shall be an amount fixed by the Association. It is intended that the Association will for each year fix the annual amount of the maintenance fund charge at an amount estimated in good faith by the Association to be required in order that the funds produced thereby will approximate the costs and expenditures of such funds for the purposes hereinafter specified. The annual Maintenance Fund Charge shall be adjusted as necessary at the end of each calendar year, and such adjustment shall apply to the succeeding calendar year. Any provisions in these Covenants to the contrary notwithstanding, until December 31, 2028, the Association will not assess Maintenance Fund Charges to Owners on a per Lot basis for an amount in excess of \$200.00 per Lot per year.

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

(D) **Basis of the Maintenance Fund Charge.** The Maintenance Fund Charge referred to shall be used to create a fund to be known as the 'Maintenance Fund', which shall be used as herein provided; and each such Maintenance Fund Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot to the Association. The Maintenance Fund Charge for the year of purchase shall be pro-rated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year.

(E) **Delinquent Maintenance Charges.** Any Maintenance Fund Charge not paid within 15 days after the due date shall be subject to a late fee of 5% of the amount due and shall bear interest from the due date at the lesser of the rate of eighteen percent (18%) per annum or the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot.

(F) **Creation of Lien and Personal Obligation.** In order to secure the payment of the Maintenance Fund Charge, and other charges and assessments hereby levied, a vendor's (purchase money) lien for the benefit of the Association, shall be and is hereby reserved in the deed from the Association to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Association. As additional security for the payment of the Maintenance Fund Charge and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. Gregory A. Richards, Attorney at Law, is appointed Trustee for the purpose of this Section 8. The Association, as beneficiary, may appoint a substitute or successor Trustee, succeeding to all rights and responsibilities of the Trustee appointed herein, by filing an appropriate Designation of Substitute Trustee among the Official Public Records of Kerr County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale using the same notice provisions as those set out in Section 51.002(d) of the Texas Property Code, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Kerr County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; third, any amounts required by law to be paid before payment to the Owner; and fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be tenant at sufferance. The purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice.

- i. In the event of non-payment by any Owner of any Maintenance Fund Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the provided herein, upon ten (10) days prior written notice thereof to such non-paying Owner, exercise all other rights and remedies available at law or in equity.
- ii. It is the intent of the provisions of this Section 8 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice - President of the Association, acting without joinder of other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Official Public Records of Kerr County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.
- iii. In addition to the rights provided above, to enforce the Maintenance Fund Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof. Such notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner or a reasonable fee as fixed by the Board to cover the preparation and recordation of such release of lien instrument.

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

give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Section.

(H) **Purpose of the Maintenance Fund.** The Maintenance Fund Charge levied by the Association shall be used for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision and other areas, which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Fund Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties. The Maintenance Fund may be expended by the Association for any purposes which will tend to maintain the property values. Except for the Association's use of the Maintenance Fund Charge to perform its duties described in these Covenants and in the Bylaws, the use of the Maintenance Fund Charge for any of these purposes is permissive and not mandatory. The judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith. The Maintenance Fund shall be used for the following:

- (i) Accounting and office expenses;
- (ii) Legal expenses;
- (iii) Association income tax preparation which includes costs of annual corporate Federal income tax return and State of Texas Franchise Tax return, if applicable;
- (iv) Maintenance expense of Common Areas and storm water detention facilities;
- (v) Expense of insurance;
- (vi) Enforcement of these Covenants.

(I) **Exempt Property.** The following property subject to this Declaration shall be exempt from the Maintenance Fund Charge and all other charges and assessments created herein:

- (i) All properties dedicated to and accepted by a public authority;
- (ii) The Common Area;
- (iii) Lots owned by the Declarant.

(J) **Transfer-Related Fees.** The Association may charge a transfer fee to an Owner in relation to the transfer of title to a Lot, to offset expenses related to preparation of resale certificates, estoppel certificates, and copies of documents, ownership record changes, and priority processing. The initial transfer fee shall be \$25.00, and may be changed from time to time at the discretion of the Board. Transfer fees are not refundable and may not be regarded as a prepayment of or credit against Regular or Special Assessments.

9. ARCHITECTURAL REVIEW COMMITTEE (ARC).

(A) **Membership of Architectural Review Committee.** The ARC shall consist of not less than three (3) and not more than five (5) voting Members, and such additional nonvoting Members serving in an advisory capacity as the ARC deems appropriate. The chairperson of the ARC shall be a member of the Board.

(B) **Action of Architectural Review Committee.** Items presented to the ARC shall be decided by majority vote of the Voting Members. The ARC's approval shall not be unreasonably withheld or delayed. The vote of a majority of the voting Members of the ARC taken with or without a meeting shall constitute an act of the ARC.

(C) **Advisory Members.** The Voting Members may from time to time designate Advisory Members.

(D) **Term.** Each member of the ARC shall hold office until such time as he or she has resigned, has been removed, or his successor has been appointed as provided herein.

(E) **Declarant's Right of Appointment.** Declarant, its successors or assigns shall have the right to appoint and remove all members of the ARC until the Turnover. Declarant may delegate this right to the Board by written instrument until the Turnover.

(F) **ARC Approval.** No residence, building, fence, wall, sign, or any other Improvements either temporary or permanent shall be created, placed, erected, commenced or changes made in the design or exterior appearance thereof, or any addition or exterior alteration made thereto after original construction, nor demolition or destruction by voluntary action made thereto after originally constructed, or any clearing or sitework (including specifically the removal of trees or any other vegetation) be commenced on any Lot in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the ARC of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements, or clearing or sitework by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument provided, however, that such approval shall not be unreasonably withheld. Each application made to the ARC shall be accompanied by two sets of plans and specifications (including elevations) for all proposed construction (initial or alteration) to be done on such Lot, including plot (site) plans and a survey showing location on the Lot of proposed improvements, property lines, building setbacks, utility easements, including electric connection location, meters, water system connections, driveway(s), septic system, gas connection/tank location, recreational facilities, and fencing; samples of exterior finish materials and color samples; and any other plans, specifications or information deemed pertinent by the ARC. All exterior measurements and dimensions must be shown, at a scale of ¼ inch = 1 foot minimum.

(G) **ARC Review.** The Architectural Review Committee shall review all plans, specifications and other information which is submitted for compliance with all the requirements of this covenant and for the compatibility of any improvements (including landscaping) therein with the architectural, aesthetic and ecological goals of the Subdivision and Declarant, it being the intent that such goals require that all improvements be compatible with all other improvements in the Subdivision and that they be in harmony with their natural surroundings. The ARC shall have full right and authority to utilize its sole discretion in approving or disapproving any plans and specifications which are submitted. In the event the ARC fails to approve submitted plans or to request additional information reasonably required within thirty (30) days after submission, the applicant shall give the ARC written notice of its failure to respond. Unless the ARC responds within ten (10) days of receipt of such notice, approval will be deemed granted. The Architectural Review Committee may disapprove the construction or design of any improvement, including the removal of any trees or other natural vegetation, on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or value of the Subdivision, or to preserve the serenity and natural beauty of any surroundings. Prior approvals and/or disapprovals of the ARC pertaining to any improvement activities or regarding matters of design or aesthetics shall not be deemed binding upon the ARC for later requests for approval if the ARC feels that the repetition of such matters will have an adverse effect on the Subdivision. The Architectural Review Committee shall have the express power to construe and interpret any covenant herein that may be capable of more than one construction. During reasonable hours, members of the Architectural Review Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the Residence thereon, for the purpose of ascertaining whether or not the provisions of the Declaration have been or are being complied with, and said persons shall not be deemed guilty of trespass by reason of such entry. The ARC shall have the authority to employ professional consultants at the expense of the Association to assist it in performance of its duties. The decision of the Architectural Review Committee shall be final, conclusive and binding upon the applicant. The ARC members shall not be entitled to any compensation for any services rendered pursuant to this covenant.

(H) **Issuance of Building Permit.** Upon approval of final submittals, a building permit will be issued and construction may begin. All such permits must be prominently displayed at the job site. Construction of an Improvement shall be completed in accordance with the approved final submittals ("Final Plans") as approved by the ARC. Any changes to the Final Plans must be approved in writing by the ARC prior to the implementation of such changes. The ARC or a representative of the ARC may conduct regular inspections of the construction.

(I) **Effect of Approval.** The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the ARC that the terms and provisions hereof shall be complied with if the building and /or other improvements are erected in accordance with said plans and specifications and plot plan. Such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are constructed in accordance with such plans and plot plan, but, nevertheless, fail to comply with the provisions hereof.

(I) **Non-liability of ARC Members.** Neither the Declarant, Association, the Board, nor the ARC or any member thereof shall be liable to any Owner(s) or any third party for any loss, damage or injury arising out of their being in any way connected with the performance of the ARC's respective duties under this declaration unless due to willful misconduct or bad faith by the ARC or its members. Neither the ARC nor the members thereof shall be liable to any Owner due to the construction of improvements within the Property or the creation thereby of an obstruction to the view from such owner's Lot or Lots. Every Owner who submits plans and specifications to the ARC for approval agrees, by submission of such plans and specifications, and every Owner or lessee of any portion of the Property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against the Association, the Board, or members of the ARC, or their representatives, to recover any damages whatever from them, save and except for damages directly attributable to willful misconduct or bad faith on their part.

10. **MARIPOSA OWNERS ASSOCIATION, INC.**

(A) **General Duties and Powers of the Association.** The Association was incorporated to further the common interest of the Members. Subject to provisions and limitations herein expressly stated, the Association, acting through the Board of Directors or through persons to whom the board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the Members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration. The Association may adopt whatever by-laws it may choose to govern the organization or operation of the Subdivision provided that the same are not in conflict with the terms and provisions hereof.

(B) **Membership and Voting.** Declarant has created the Association, to which Association the Declarant may assign or delegate on a permanent or temporary basis one or more of the rights, powers, obligations and duties of the Declarant under this Declaration. Every Owner of a Lot within the Property shall be a member of the Association. The Association shall have two classes of voting membership.

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

Class B: Class B Members shall be the Declarant. Declarant shall be entitled to twenty-two (22) votes for each Lot: owned. Once a Lot is sold to a person or persons who would be classified as Class A Members, the twenty-two (22) votes attached to that Lot shall be extinguished.

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

(C) **Voting Rights In The Association, Powers And Duties**

(i) Quorum and Notice Requirements.

(a) Any action by the Members shall require the assent of the Members entitled to cast a majority of the votes of the Members of the Association who are voting in person, by mailed ballot or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members at least ten (10) days in advance and shall set forth the purpose of such meeting.

(b) The quorum required for any action shall be the presence at the meeting of Members, or of proxies, entitled to cast thirty percent (30%) of all of the votes of all Members.

(c) Any action may be taken with the assent given in writing and signed by the Members entitled to cast a majority of the votes of the Association

(ii) Turnover

(a) At any time after commencement of operations of the Association, at Declarant's sole discretion, the Owners may be required to take over the management of the Association and relieve Declarant of all duties associated therewith (the "Turnover"). Unless the Turnover has been previously completed, the Turnover shall happen on the date that Declarant no longer owns any Lot. Upon such Turnover by Declarant, the Owners will be required to choose their own Board of Directors to represent them and to manage the Association in accordance with the terms and conditions of this Declaration and to establish any and all bylaws, procedures and other management devices by which the Association shall operate. Prior to the date such Turnover occurs, a Director need not be a member of the Association. From and after the date such Turnover occurs, a Director shall be a member of the Association.

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

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

(d) The Association shall at all times from and after Turnover indemnify and hold Declarant, its officers and partners, harmless from and against any and all liability, claims or damages of every kind, arising either out of the operation of the Association or the development and operation of the Subdivision, whether before or after such Turnover, including, without limitation, the Common Areas. Additionally, Declarant, its officers and partners, shall not be held liable in any way in its role in enforcing or failing to enforce any of the protective covenants, in protecting its rights or in carrying out any of its duties or obligations. This indemnification by the Association of Declarant shall include the Association's payment of any and all expenses incurred by Declarant, its officers and partners, including the payment of any and all legal expenses, court costs, and all other costs associated with the protection and / or defense of Declarant, its officers and partners, in any legal actions or proceedings or any other action of any kind.

(e) Upon written request made by Declarant to the Association, which request may be made at any time after the date hereof, the Association shall obtain and maintain in effect at all times, at the Association's expense, Commercial General Liability Insurance with limits of liability, reasonably acceptable to Declarant, but not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate single limit. Such insurance:

- (1) to include coverage insuring against liability arising out of or related to the operation of the Association, and the development, operation and maintenance of the Subdivision, including, without limitation, the Common Areas,
- (2) to name Declarant as an additional insured, and
- (3) to be issued by an insurance company reasonably acceptable to Declarant

The Association shall, not later than ten (10) days after the date of Declarant's request for such liability coverage, provide Declarant with a certificate of insurance providing for the insurance coverage required hereby. The Association shall not cancel any insurance policy obtained in accordance herewith without giving Declarant at least thirty (30) days prior written notice. The Association shall maintain such liability insurance until the later of (a) the date all of the Common Areas are turned over to the Association, (b) the date management of the Association has been turned over to the Owners, or (c) the date Declarant no longer owns any interest in any part of the Subdivision.

(D) **Duty to Manage and Care for the Common Area.** The Association shall manage, operate, care for, maintain and repair all Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members.

(E) **Duty to Prepare Budgets.** The Association shall prepare budgets for the Association, which budgets shall include a reserve fund for the maintenance of all Common Areas.

(F) **Duty to Levy and Collect the Maintenance Fund Charge.** The Association shall levy, collect and enforce the Maintenance Fund Charge and other charges and assessments as elsewhere provided in these Covenants.

(G) **Annual Financial Statements; Books and Records.** The Association shall, not later than 120 days after the end of each fiscal year of the Association, furnish to each requesting Member financial statements, which shall include a balance sheet as to the end of such year and a statement of operations for the year then ended. Such financial statements may, but shall not be required to be audited. All Members shall have the right during regular business hours and at the office of the Association to inspect the books and records of the Association.

(H) **Duties with Respect to Committees.** The Association shall perform functions to assist the ARC, as elsewhere provided in this Declaration.

(J) **Power to Adopt Rules and Regulations and Amend Community Manual.** The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. The Association, acting through a Majority of the Board, is further granted the right to amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines. Prior to the Turnover Date, any modification, amendment, or repeal to the Community Manual or the Rules, and each new policy or Rule, must be approved in advance and in writing by the Declarant.

(K) **Enforcement.**

- i. **Right of Enforcement.** Declarant, its successors or assigns, the HOA, its successors or assigns, or any Owner, shall have the right to enforce, by proceedings at law or in equity, the terms, provisions, covenants, conditions, and restrictions of this Declaration. Failure of Declarant or the HOA to take any action upon any breach or default shall not be deemed a waiver of their right to take action upon any subsequent breach or default. Declarant, for itself, its successors or assigns, reserves the right to enforce this Declaration, though it may have previously sold and conveyed all Tracts controlled hereby. The reservation by Declarant or the HOA of this right of enforcement shall not create a duty or obligation of any kind to enforce same, and neither Declarant nor the HOA shall be subjected to any claim, demand, or cause of action from any Owner by virtue of not enforcing any term, provision, covenant, condition or restriction herein contained, provided, the Property Owners Association shall enforce the provisions relating to setting and collecting assessments.
- ii. **Declarant and HOA Right to Self Help.**
 - a. The Declarant and HOA shall have the authority to employ self-help to enforce compliance with any provision of this Declaration. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. The notice shall describe the matter of noncompliance, the action necessary to cure the noncompliance, and the date by which the noncompliance shall be cured. Such notice shall be sent in accordance with Section 20 below. In the event the Owner fails to cure the matter of noncompliance within the required time, the HOA may take action to cure the matter of noncompliance. The Association has the right to enter a Lot to abate or remove, using force as may reasonably be necessary, any Improvement, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Association is not trespassing and is not liable for damages related to the abatement. Notwithstanding the foregoing, the Association may not alter or demolish any Improvement within a Lot without judicial proceedings.
 - b. In the event that the Declarant or the HOA acts to remedy a non-complying condition in accordance herewith, all sums incurred by the Declarant or the HOA in connection therewith, including attorneys' fees, shall be charged against the Owner, and shall be payable by the Owner upon

demand. If such sums are not paid within ten (10) days after demand for payment is made, such sums shall bear interest at a rate equal to the lesser of:

- i. eighteen percent (18%) per annum
- ii. the highest legal rate permitted by law

to be charged the Owner and, unless otherwise provided herein, shall be secured by the assessment lien provided for herein against all Lots owned by such Owner. In addition, the Declarant or the HOA may exercise any and all other rights and remedies that may be available hereunder, or under Texas law, to enforce an Owner's obligations hereunder.

(L) **Notice and Hearing.** Before the Association files a suit against an Owner, other than a suit to collect a regular or special assessment or foreclose under the Association's lien, charge an owner for property damage, or levy a fine for a violation of the Documents, the Association or its agent must comply with the notice and hearing provisions set forth in Chapter 209 of the Texas Property Code, as amended.

(M) **Finality of Determination by Association.** It is understood that the judgment of the Declarant/Association, their respective successors and assigns, in the allocation and expenditure of said maintenance fund shall be final so long as such judgment is exercised in good faith. The enumeration of the services for which the maintenance fund may be expended carries no obligation for the Association to furnish any of such services except to the extent of the funds actually received by the Association.

(N) **Venue.** Enforcement of these covenants and restrictions shall be in Kerr County, Texas, and shall be by any proceeding at law or equity against any person or persons violating or attempting to violate them, or to recover damages, or to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any Covenant or Restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

NOTICE

PLEASE READ CAREFULLY THE FOLLOWING PROVISIONS ENTITLED "SECURITY" AND "INJURY TO PERSON OR PROPERTY". THE PROVISIONS LIMIT THE RESPONSIBILITY OF DECLARANT AND THE ASSOCIATION FOR CERTAIN CONDITIONS AND ACTIVITIES.

(O) **Security.** THE ASSOCIATION MAY, BUT IS NOT OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY DESIGNED, EITHER DIRECTLY OR INDIRECTLY, TO IMPROVE SAFETY IN OR ON THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES AND AGREES, FOR HIMSELF AND HIS GUESTS, THAT THE DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES AND ACCEPTS HIS SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR HIS OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER AND OCCUPANT FURTHER ACKNOWLEDGES THAT THE DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER OR OCCUPANT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY LIMITED ACCESS SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. EACH OWNER AND OCCUPANT ACKNOWLEDGES AND AGREES THAT THE DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

(P) **Injury to Person or Property.** NEITHER THE DECLARANT, NOR THE ASSOCIATION, OR THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE A DUTY OR OBLIGATION TO ANY OWNER, OCCUPANT OR THEIR GUESTS: (A) TO SUPERVISE MINOR CHILDREN OR ANY OTHER PERSON; (B) TO PROVIDE SECURITY OR PROTECTION TO ANY OWNER, OCCUPANT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, AND INVITEES FROM HARM OR LOSS. BY ACCEPTING TITLE TO AN ESTATE, EACH OWNER AGREES THAT THE LIMITATIONS SET FORTH IN THIS SECTION 11 (O) ARE REASONABLE AND CONSTITUTE THE EXERCISE OF ORDINARY CARE BY THE DECLARANT AND THE ASSOCIATION. EACH OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DECLARANT AND THE ASSOCIATION, AND THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE SUBDIVISION TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, OCCUPANT, OR THEIR GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.

11. DECLARANTS RIGHTS AND RESERVATIONS

- (A) **Period of Declarant's Rights and Reservations.** Declarant shall have, retain and reserve certain rights as herein set forth with respect to the Association and the Common Area from the date hereof, until the earlier to occur of the Turnover or Declarant's written notice to the Association of Declarant's termination of the rights described herein. The rights, reservations and easements herein set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.
- (B) **Interpretation of the Covenants.** Except for judicial construction, the Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Owners and Property benefited or bound by the Covenants and provisions hereof until the Turnover date and then such power will pass to the Association.

12. INSURANCE AND CONDEMNATION.

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

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

1. The Board of Directors of the Association may obtain and continue in effect property insurance, to insure the buildings and structures in the Common Area, naming the Association as beneficiary with an endorsement to the mortgagee, if any, against risks of loss or damage by fire and other hazards as are covered under standard fire and extended coverage provisions, and said insurance to included coverage against vandalism.
2. The Board of Directors of the Association shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its agents and employees, and each Owner, from and against liability in connection with the Common Area.
3. The Board of Directors of the Association may obtain liability insurance covering errors and omissions of directors, officers, managers, employees and representatives of the Association, and fidelity bonds for all officers and employees which have control over the receipt or disbursement of funds.
4. The Association may indemnify directors, officers, employees and agents and may purchase indemnity insurance in accordance with the provisions of Chapter 8 of the Texas Business Organizations Code.

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

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

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

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

13. COMMON AREAS. Developer transfers, assigns and conveys to the Association for the use and benefit of the Association the common areas as shown, depicted and delineated on the plat of the Subdivision. Other than the common areas depicted on the Subdivision Plat, there are no Common Areas planned to be developed within the Subdivision. The Association shall be responsible for the maintenance and operation of all common areas.

14. AMENDMENTS. This Declaration may be amended by the Declarant acting alone until the Turnover date. An Amendment made by Declarant pursuant to this Section shall not adversely and materially affect the quality of the Subdivision. No amendment may remove variances previously granted without the express written consent of the Owner of the affected Lot. After the Turnover Date, these Covenants may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners entitled to cast no less than two-thirds (2/3rds) of the votes of all of the Owners. If the Covenants are amended by a written agreement, the written agreement must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facia evidence of the date of execution of said amendment by such Owner. Subject to provisions and limitations herein expressly stated, those Members (Owners, including the Declarant) entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Members of the Association may also vote to amend these Covenants, in person, by mail-in ballot or by proxy, at a meeting of the Members (Owners, including the Declarant) duly for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Any such amendment shall become effective when an instrument is filed for record in the Official Public Records of Kerr County, Texas, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of Members (Owners, including the Declarant) executed the instrument amending these Covenants or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination.

15. TERM. The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of twenty (20) years from date these Covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the Owners (including the Declarant) of the Lots has been recorded agreeing to amend or change, in whole or part, these Covenants, provided that, if Declarant owns any interest in the Property at the time, the Covenants may only be terminated if the Declarant joins in executing such instrument.

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

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

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

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

21. SUCCESSORS OF DECLARANT. Any reference in these Covenants to Declarant shall include any successors of Declarant's rights and powers hereunder including the Association.

22. DISCLOSURES.

- (A) **Adjacent Thoroughfares.** The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.
- (B) **Use of Adjacent Property.** No representations are made regarding the current or future use or zoning (if applicable) of adjacent property.
- (C) **Outside Conditions.** In every neighborhood there are conditions that different people may find objectionable. Accordingly, it is acknowledged that there may be conditions outside of the Property that an Owner or Occupant may find objectionable, and it shall be the sole responsibility of an Owner or Occupant to become acquainted with neighborhood conditions that could affect the Subdivision.
- (D) **Construction Activities.** Homebuilders engaged by one or more Owners will be engaging in construction activities related to the construction of homes and other improvements on a Lot. Such construction activities may, from time to time, produce certain conditions within the Subdivision, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of persons and the Subdivision. Notwithstanding the foregoing, all Owners agree that such conditions within the Subdivision resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant or their agents to be deemed in violation of any provision of this Declaration.
- (E) **Water Runoff.** The Property may be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. Water may pond on various portions of the Property having impervious surfaces.
- (F) **Budgets.** Budgets prepared in conjunction with operation and administration of the Association are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.
- (G) **Light and Views.** The natural light available to and views from a Lot can change over time due to among other things, additional development and the removal or addition of landscaping. **NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.**
- (H) **Schools.** No representations are being made regarding which schools may now or in the future serve the Subdivision.
- (I) **Changes to Street Names and Addresses.** Declarant retains the right to change, in its sole discretion, the Subdivision's name and the street names and addresses in or within the Subdivision, including the street address of the Lots before or after conveyance to any third-party.
- (J) **Location of Utilities.** Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.
- (K) **Streets, Driveways and Parking Areas.** Streets within the Property are maintained and administered by the Association, with the costs incurred by the Association discharged through Regular Assessments levied against Owners. No street within the Property will be maintained or repaired by Kerr County.

23. ASSIGNMENT. The rights and powers of the Declarant reserved herein may be assigned to any person or entity. Any such assignment must be expressed in writing and be recorded in the Official Public Records of Kerr County, Texas. No such assignment shall be deemed to arise by implication.

24. GOVERNMENTAL REQUIREMENTS. By acceptance of a deed to a Lot, or initiating construction of a residence or improvements to a Lot, each Owner assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable governmental rules, regulations, and permits, including, but not limited to those promulgated or issued by the Environmental Protection Agency and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 et seq.), and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Water Development Board and Texas Water Commission, related to each Lot, including, without limitation, the provisions of chapters 325 and 331, Texas Administrative Code, and any specific rulings made pursuant to the terms thereof. The foregoing references are made for the benefit of builders and contractors and do not in any way limit the terms and requirements of this covenant and the requirement that all Owners and contractors comply with all governmental regulations, and any plan required by such regulations such as Storm Water Pollution Plan, affecting each Lot and construction site with which they are associated, including delivery to Declarant of a certification of understanding relating to any applicable NPDES permit prior to the start of construction. Each Owner and contractor, by acceptance of a deed to a Lot or undertaking the making of improvements to a Lot, holds harmless and indemnifies Declarant for all cost, loss, or damage occasioned by the failure to abide by any applicable governmental statute, rule, regulation or permit related to the Properties. By acceptance of a deed to a Lot, each Owner agrees that Declarant and the Association shall have the right to enter upon any Lot on which one or more conditions or activities prohibited by appropriate governmental authority is maintained, or on which there has been a failure to perform any act required by appropriate governmental authority, for the purpose of curing any such violation, provided that the Owner has been given five days prior written notice and has failed to remedy the complained of violation within such time, and each such Owner indemnifies and holds harmless Declarant and the Association from all cost and expense of such curative action and any cost or expense of penalty or fine levied by any governmental authority as a result of the act or failure to act of the Owner with respect to his Lot or the Properties. The foregoing remedy shall be cumulative of all other remedies for violations of provisions of these covenants.

25. ASSESSMENTS BY AWARD OR JUDICIAL DECREE. In the event arbitration or litigation is necessary to enforce any provision contained within this Declaration, any and all awards granted by the arbitrator, or damages, penalties, fees, costs, and / or any other charges awarded in the decree shall also constitute an assessment, which shall likewise run with the land, and which shall be secured by the lien created in Article 8 herein.

26. WAIVER AND LACHES. The obligation to abide by the provisions contained in this Declaration shall be deemed to be of a continuing and continual basis. Each and every day an Owner allows a condition to exist on such Owner's Tract which is not in compliance with the requirements contained herein shall constitute a separate and individual violation hereof and shall give rise to a new cause of action for such breach. The intended effect and express purpose of this provision shall be that every Owner, by accepting title to a Tract, hereby waives the affirmative defenses of the statute of limitations, waiver and laches with respect to covenant violations. Noncompliant conditions shall be allowed to exist on a Lot only upon the Owner obtaining a written variance in accordance with the applicable provisions herein. Failure of the Declarant, the HOA, the ARC, or of any Owner to enforce the terms of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

27. GOVERNING LAW AND PLACE OF PERFORMANCE. These Covenants and all rights and obligations created hereby are governed by the laws of the State of Texas. These Covenants are performable only in Kerr County, Texas.

28. DISPUTE RESOLUTION.

- A. **Introduction And Definitions.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this paragraph 28 (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this *paragraph 28* applies to all Claims as hereafter defined. As used in this *paragraph 28* only, the following words, when capitalized,

have the following specified meanings:

“**Claim**” means:

- i. Claims relating to the rights and/or duties of Declarant or its permitted assigns, under the Documents or the Act.
- ii. Claims relating to the acts or omissions of the Declarant during its control and administration of the Association, any claim asserted against the Architectural Reviewer if the claim relates to any act or omission of the Architectural Reviewer while controlled by the Declarant, and any claims asserted against a Person appointed by the Declarant to serve as a Board member or officer of the Association.
- iii. Claims relating to the design or construction of the Property, Lots, or any Improvement made by or on behalf of the Declarant, or its permitted assigns.

“**Claimant**” means any Party having a Claim against any other Party.

“**Respondent**” means any Party against which a Claim has been asserted by a Claimant.

- B. **Mandatory Procedures.** Claimant may not initiate any proceeding before any tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this *paragraph 28*.
- C. **Notice.** Claimant must notify Respondent in writing of the Claim (the “**Notice**”), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *paragraph 28*. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in paragraph D below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *paragraph D*, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. *Paragraph D* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in *paragraph E* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *paragraph E* is required without regard to the monetary amount of the Claim.
- D. **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 the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent’s representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent’s representatives and agents with full access to the Property to take and complete corrective action.
- E. **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 *Paragraph E*.
- F. **Termination Of Mediation.** 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.
- G. **Allocation Of Costs.** Except as otherwise provided in this *paragraph 28*, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorney’s fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.
- H. **General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant’s Claim.
- I. **Period of Limitation.**
- i. **For Actions by an Owner.** The exclusive period of limitation for any of the Parties to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect for any Common Area Improvements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that an Owner discovered or reasonably should have discovered evidence of the Claim; or (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant conveyed a Lot to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom Declarant initially conveyed the Unit.
 - ii. **For Actions by the Association.** The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant or its contractors, including, but not limited to, a Claim of construction defect or defective design of the Common Elements, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Elements, two (2) years and one (1) day after the Turnover Date.

[signature page follows]

IN WITNESS WHEREOF, the undersigned, being the Declarant, has hereunto set its hand as of the date first written above.

Habitat for Humanity – Kerr County

By: _____

Name: _____

Its: _____

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity stated.

SUBSCRIBED TO BEFORE ME, this ___ day of _____, 202__

Notary Public in and for the State of Texas

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the liens created by that certain Deed of Trust recorded as Document No. _____ in the Official Public Records of Kerr County, Texas (the “Lien”), securing notes of even date therewith, executes this Declaration solely for the purposes of (i) evidencing its consent to this Declaration, and (ii) subordinating the Lien to this Declaration, both on the condition that the Lien shall remain superior to the Assessment Lien in all events. The undersigned makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any lot or the effect of the terms and provisions of this Declaration.

**City of Kerrville, Economic Improvement Corporation,
A Texas non-profit corporation**

By: _____

Its: President

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on this _____ day of _____, 2025, by _____, as President of the City of Kerrville, Economic Improvement Corporation, on behalf of said corporation.

Notary Public, State of Texas

EXHIBIT E

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STATE OF TEXAS §
 §
COUNTY OF KERR §

**DECLARATION OF RESTRICTIVE COVENANT REGARDING
AFFORDABLE HOUSING REQUIREMENTS**

**For Mariposa
Kerrville, Kerr County, Texas**

Compliance with the provisions of this Declaration is a requirement of title.

This Restrictive Covenant regarding Affordable Housing Requirements for the development proposed at Mariposa in Kerrville, Texas (the "Restrictive Covenant"), is executed on [REDACTED] ("Effective Date"), by HABITAT FOR HUMANITY – KERR COUNTY, a Texas nonprofit corporation ("Declarant"):

RECITALS

A. Declarant owns 44 lots located at Mariposa in Kerrville, Kerr County, Texas, more particularly described below:

Lots 1-17, inclusive, Block 1, Lots 1-8, inclusive, Block 2, and Lots 1-19, inclusive, Block 3, MARIPOSA SUBDIVISION, according to the map or plat thereof, recorded in Document No. [REDACTED], Official Public Records, Kerr County, Texas (the "Properties").

B. Definitions:

Affordable Housing Requirements. The term "Affordable Housing Requirements" means the requirements in the Restrictive Covenant burdening the Properties and substantially in the form attached as Exhibit "A" which shall restrict each Property(ies) to be primarily occupied by a homeowner household whose adjusted gross income for the year immediately preceding the date of occupancy of the applicable Property no more than 120% of the Area Median Family Income for the San Antonio Metropolitan Statistical Area and is verified in writing as acceptable by the Declarant.

Owners. The term "Owner" means, individually, and the term "Owners" means, collectively, Declarant and all future owners of the fee interest or any portion of the Properties (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.

Property(ies). The term "Properties" means only the lots in the Mariposa development designated in Section A of the Recitals of this Restrictive Covenant. The term "Property" is utilized when referencing a single lot within Mariposa in Section A of the Recitals of this Restrictive Covenant.

Eligible Household(s). An Owner that meets the Affordable Housing Requirements.

Stated Period: Beginning on the Effective Date and continuing until such date that is 40 years from the date each Eligible Household acquires a Property, up to a maximum total of 99 years from the Effective Date. For clarity, each time an Eligible Household acquires a Property, the Stated Period shall begin anew and shall continue for a term that expires on the earlier of i) 40 years from the date the Eligible Household acquires such Property; or the expiration of 99 years from the Effective Date hereof.

C. Declarant has agreed to impose upon the Properties these covenants, conditions, restrictions, and limitations for the benefit of the Properties.

NOW, THEREFORE, Declarant declares that the Properties are subject to the following covenants, conditions and restrictions, which run with the Properties and bind all parties having right, title, or interest in or to such portion of the Properties or any part, their respective heirs, successors, and assigns, and which inure to the benefit of each Owner. Each contract, deed, or conveyance of any kind conveying all or a portion of the Properties will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, restrictions, and limitations regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. **Recitals Incorporated.** The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes as if set forth in full herein.
2. **Compliance with Affordability Housing Requirements.** Declarant and all Owners shall reserve the Properties as affordable, for the Stated Period, and are binding on Declarant and Owners and their respective heirs, successors, and assigns during such period, and after such period, automatically terminates and be of no further force or effect.
3. **Breach Does Not Permit Termination.** Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles the Owners to cancel, rescind, or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Restrictive Covenant.
4. **Maximum Affordable Sales Price.** No Property may be sold for a price that exceeds the Maximum Sales Price for a Three Bedroom Home at no more than 120% median family income (MFI) as set forth by the San Antonio, TX Metropolitan Statistical Area as published by the U.S. Department of Housing and Urban Development (HUD). This restriction will be expressed numerically in each Resale Restrictions Agreement and Covenant Limitation on Resale Price and Buyer Income specifically stating a maximum Affordable Sales Price for that home.
5. **Non-Waiver.** If at any time Declarant fails to enforce this Declaration, whether or not any violations of it are known, such failure does not constitute a waiver or estoppel of the right to enforce it.
6. **General Provisions.**
 - a) **Inurement.** This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind Owners, and their successors and assigns. When an Owner conveys all or any portion of a Property, that former Owner will thereupon be released and discharged from any and all further

obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it from and after the date of recording of such conveyance, but no such sale releases that former Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.

- b) **Duration.** Unless this Restrictive Covenant is modified, amended, or terminated in accordance with Subsection 6.K., this Restrictive Covenant begins on the Effective Date of this Restrictive Covenant for the Stated Period. Compliance with the Affordability Housing Requirements shall be evidenced by the recordation in the Official Records of Kerr County, Texas, of a Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income in the form attached hereto as Exhibit "A" and made a part hereof for all purposes ("Resale Restriction"), which shall impose resale price and buyer income limitations and, inter alia, afford Declarant certain rights to cure a default in any mortgage loan as provided in the Resale Restriction on a Property.
- c) **Non-Merger.** This Restrictive Covenant is not subject to the doctrine of merger, even though the underlying fee ownership of the Properties, or any parts thereof, is vested in one party or entity.
- d) **Severability.** The provisions of this Restrictive Covenant are independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision. Each term and provision of this Restrictive Covenant is valid and enforceable to the fullest extent permitted by law.
- e) **Entire Agreement.** This Restrictive Covenant, and the exhibits attached hereto, contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant are to be construed as a whole according to their common meaning and not strictly for or against any Owner.
- f) **Captions.** The captions preceding the text of each section and subsection hereof are included only for convenience of reference and should be disregarded in the construction and interpretation of this Restrictive Covenant.
- g) **Governing Law: Place of Performance.** This Restrictive Covenant and all rights and obligations created hereby are governed by the laws of the State of Texas. This Restrictive Covenant is performable only in Kerr County, Texas.
- h) **Notices.** Any Notice to the Owners must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- i) **Negation of Partnership.** None of the terms or provisions of this Restrictive Covenant creates a partnership between or among the Declarant and any Owner in their respective businesses or otherwise; nor will the terms or provisions cause the parties to be considered joint ventures or members of any Joint enterprise.
- j) **Enforcement.** If any person, persons, corporation, or entity of any other character, violates or attempts to violate this Restrictive Covenant, it will be lawful for Declarant, or its respective

successors and assigns ("Enforcement Parties"), to prosecute proceedings at law, or in equity, against the person or entity violating or attempting to violate this Restrictive Covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by any of the Enforcement Parties, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.

- k) **Modification and Amendment.** This Restrictive Covenant may only be modified amended, or terminated upon the filing of a written modification, amendment, or termination document in the Official Records of Kerr County, Texas, which has been executed, acknowledged, and approved by (i) Declarant; and (ii) Owner to the extent Owner is not also Declarant. The joint action is effective after it is reduced to writing and signed by the parties listed above.

Executed to be effective on _____, 202__.

Declarant:
Habitat for Humanity – Kerr County

By: Mary Campana
Its: Executive Director

STATE OF TEXAS

COUNTY OF KERR

BEFORE ME, the undersigned authority, on this day personally appeared Mary Campana, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity stated.

SUBSCRIBED TO BEFORE ME, this ___ day of _____, 202__

Notary Public in and for the State of Texas

CONSENT OF MORTGAGEE

The undersigned, being the sole owner and holder of the liens created by that certain Deed of Trust recorded as Document No. _____ in the Official Public Records of Kerr County, Texas (the “Lien”), securing notes of even date therewith, executes this Declaration solely for the purposes of (i) evidencing its consent to this Declaration, and (ii) subordinating the Lien to this Declaration, both on the condition that the Lien shall remain superior to the Assessment Lien in all events. The undersigned makes no representation or warranty, express or implied, of any nature whatsoever, to any Owner with respect to any lot or the effect of the terms and provisions of this Declaration.

**City of Kerrville, Economic Improvement Corporation,
A Texas non-profit corporation**

By: _____
Its: President

THE STATE OF TEXAS §


COUNTY OF KERR §

This instrument was acknowledged before me on this _____ day of _____, 2025, by _____, as President of the City of Kerrville, Economic Improvement Corporation, on behalf of said corporation.

Notary Public, State of Texas

Filed by and Return to:

Gregory A. Richards, P.C.

Prepared in the Law Office of
 GREGORY A. RICHARDS, P.C.
ATTORNEYS
280 Thompson Drive
Kerrville, Texas 78028

[NOTICE TO TITLE COMPANY: THIS EXHIBIT SHOULD BE COMPLETED IN FULL BY THE HOME BUYER AND THE HOME BUYER’S LENDER AT CLOSING AND RECORDED. PLEASE CONTACT HABITAT FOR HUMANITY – KERR COUNTY IF YOU HAVE ANY QUESTIONS OR NEED ASSISTANCE.]

Exhibit “A”

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

STATE OF TEXAS §

COUNTY OF KERR §

**RESALE RESTRICTION AGREEMENT AND COVENANT
LIMITATIONS ON RESALE PRICE AND BUYER INCOME**

Compliance with the provisions of this Covenant is a requirement of title.

AFFORDABLE HOUSING COVENANT

This Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income (“Covenant”) is entered into as of the _____ day of _____, 20____ (“Effective Date”), by and among _____ (the “Buyer”), and **Habitat For Humanity – Kerr County**, a Texas non-profit corporation, (“HHKC”), AND _____ (“Lender”)

This Covenant applies to the real property and improvements located at _____ [Property Address], Kerr County, Texas, further described as follows:

Lot ____, Block _____, Mariposa subdivision, according to the map or plat thereof, recorded in Document Number _____, Official Public Records of Kerr County, Texas (“Property”).

RECITALS

WHEREAS, The Buyer and HHKC support the goal of preserving affordable homeownership opportunities through long term affordability strategies; and

WHEREAS, the Property is subject to the Affordable Housing Declaration defined below in Section 1; and

WHEREAS, the Affordable Housing Declaration requires, *inter alia*, HHKC to impose this Covenant on the Property; and

WHEREAS, in accordance with such requirement, Buyer has agreed to impose the Affordable Housing Requirements set forth in this Covenant upon the Property; and

WHEREAS, the intent of HHKC is to preserve the affordability of the Property for persons of low or moderate income, including a surviving spouse or heirs of an Eligible Buyer; and

WHEREAS, subsequent purchasers of the Property will benefit from the limitations on the resale purchase price which this Covenant requires; and

WHEREAS, in connection with the perseverance of the affordability of the Property, this Covenant assigns to HHKC the right of first refusal described herein and the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions

The following terms shall have the following meanings herein:

“Acknowledgment of Affordability Restrictions” means an acknowledgement in substantially the form of Exhibit 1 attached hereto, confirming an Owner’s review and understanding of the terms and conditions of this Covenant.

“Affordable Housing Declaration” means the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements for Mariposa, recorded under Document No. [REDACTED] of the Official Public Records of Kerr County, Texas.

“Asset Limits” means aggregate personal assets, including cash, personal property and real property assets of not more than Sixty Thousand Dollars (\$60,000.00), excluding employer or tax deferred retirement plan assets and any amount used as the down payment for the Property. The Asset Limit shall be increased or decreased annually in accordance with the Federal Costs of Living Adjustment (COLA).

“Certified” means written acknowledgement of HHKC that an individual is an Eligible Buyer or Income Qualified Person, based on such person’s previous year federal income tax return and year to date income statements or paycheck stubs, as the case may be, and meets the requirements of this Covenant for ownership of the Property.

“City” means the City of Kerrville, a Texas home rule municipality.

“Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against the Property to secure a loan used to purchase the Property made by Lender.

“Eligible Buyer” means an Income-Qualified Person whose annual household earns no more than 120% of the current Annual Median Family Income (“MFI”) for the Greater San Antonio Metropolitan Statistical Area (“SAMSA”) and has been certified by HHKC as meeting its Asset Limits and Income Limits, and has been qualified by Lender for a mortgage to be used to purchase the Property.

“Eligible Capital Improvement” means (i) a capital improvement approved by the City or HHKC in writing prior to construction and made in compliance with zoning and building codes and with proper building permits, (ii) a capital improvement to the Property that is reasonably necessary to maintain the Property in a good state of repair including necessary structural, mechanical, electrical, and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Property and normal and customary repairs and maintenance to the mechanical, electrical, or plumbing systems on the Property; and (iii) replacing built-in appliances and fixtures.

“HUD” means the United States Department of Housing and Urban Development.

“HOA Declaration” means the Declaration of Covenants, Conditions, and Restrictions for Mariposa, recorded under Document No. [REDACTED] of the Official Public Records of Kerr County, Texas,

“HUD Low Income Limit” means the maximum gross household income which allows a household to be

considered “low income” for the purposes of HUD financial assistance. These limits are reported annually by HUD and reflect the low-income limit for a particular area.

“Income” means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 813.106 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then “income” shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household.

“Income Limits” means a projected Income of not more than 120% of the MFI for the SAMSA as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers.

“Income-Qualified Person(s)” means a person or persons who has been certified in writing by HHKC, as meeting their respective Asset Limits and Income Limits.

“Lender” means the Lender described herein, and its successors in interest or assigns which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

“Median Family Income” or “MFI” means the Median Family Income reported annually for single persons and households of various sizes by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the City of Kerrville, Texas.

“Notice of Exercise of Right” means HHKC’s written notice to an Owner of its exercise of its Purchase Right, or assignment of such right to an Eligible Buyer.

“Notice of Waiver of Right” means HHKC’s written notice to an Owner of its waiver of its Purchase Right.

Owners. The term “**Owner**” means, individually, and the term “**Owners**” means, collectively, the Buyer and all future owners of the fee interest or any portion of the Property (whether such fee interest is obtained through a purchase from the Buyer or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors, assigns, transferees, devisees, and grantees.

“Purchase Right” means HHKC’s limited right to purchase the Property solely as provided in Subsection 6.B. of this Covenant.

“Transfer” means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, or bequest) of any interest in the Property, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (except for a lease allowed by this Covenant), or any interest evidenced by a contract for sale by which possession of the Property is transferred and a purchaser retains title.

2. Requirement of Title and Term of Affordability

COMPLIANCE WITH THE PROVISIONS OF THIS COVENANT IS A REQUIREMENT OF TITLE.

Eligible Buyers must have a valid written income certification from HHKC approved within nine months prior to the closing of the purchase of the Property in order to be eligible to purchase the Property.

3. Term. This Covenant shall remain in effect until the earlier of i) 40 years from the Effective Date of this Covenant; or ii) the expiration of 99 years from the effective date of the Affordable Housing Declaration. (“Covenant Term”) unless HHKC and its successors or assigns, and Owner,

execute and record a notice of termination in the Official Records of Kerr County, Texas, or the Covenant otherwise terminates prematurely due to the operation of its terms.

4. Required Conveyance Deed Language. HHKC and each Owner shall use a form of warranty deed, which includes in 12-point type and in all caps on the front page thereof the language immediately below:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING DECLARATION, DATED AS OF _____, RECORDED UNDER DOCUMENT NO. _____ OF THE OFFICIAL RECORDS OF KERR COUNTY, TEXAS.

5. Eligible Buyers

- a. Title to the Property may only be transferred to an Eligible Buyer or Income Qualified Person; provided, however, upon the death of an Owner, the Property may be transferred to the surviving spouse, domestic partner, lineal descendants, or siblings of an Owner without any of such persons having to requalify as an Eligible Buyer. In order to qualify as an Eligible Buyer, the household's assets may not exceed the Asset Limits and the household's projected income may not exceed the Income Limits. If the Property is sold jointly to more than one person in the same transaction, or if the Property is sold to a person who is married or who has a domestic partner, or if the Property is sold to one or more persons who have the custody of children under the age of eighteen, then (i) the person or persons are considered a household for the purposes of this Covenant; (ii) the income of all persons in the household (which includes each purchaser of the Property, the spouse or domestic partner of the purchaser, and all purchaser's children who are age eighteen or older) are used to determine the household's income; and (iii) the HUD Low Income Limit will be adjusted to reflect the household's size.
- b. The following transfers are exceptions to the above qualification requirement as an Eligible Buyer or Income Qualified Person, provided that the Owner, other than an estate, shall use the Property as his or her principal residence:
- i. A transfer resulting from the death of an Owner where the transfer is to the spouse or domestic partner of the Owner.
 - ii. A transfer to an Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.
 - iii. A transfer resulting from the death of an Owner when the transfer is to one or more lineal descendants or heirs of the deceased Owner.
 - iv. A transfer by an Owner where the spouse or domestic partner of the Owner becomes a co-Owner of the Property.
 - v. A transfer resulting from a decree of dissolution of the marriage or from a property settlement agreement incidental to such a decree by which a spouse of an Owner becomes the sole Owner of the Property.
 - vi. A transfer directly resulting from a termination of a registered domestic partnership by which a domestic partner of an Owner becomes the sole Owner of the Property.
 - vii. A transfer which occurs at a foreclosure sale of the Property by the Lender holding the Deed of Trust.

Any other beneficiaries, heirs, legatees, or devisees of an Owner must be certified by HHKC to be Income-Qualified Persons in order to retain title to the Property. Such other beneficiaries, heirs, legatees, or devisees who do not meet the requirements to be certified as an Income Qualified Person, or persons otherwise exempted from these requirements under 5.B. of this Covenant but not wishing to use the Property as his or her principal residence, shall transfer their interest in the Property within 180 days of their receipt of title to the Property. Such transfer must be in accordance with Section 6 herein.

6. Transfer of Ownership through Sale or Exchange

- a. An Owner wishing to transfer the Property must provide HHKC with written notice of the Owner's

intent to sell (“Intent to Sell Notice”) in substantially the same form as attached hereto as Exhibit “3”, and comply with Subsections b., and c. of Section 6 of this Covenant.

- b. The HHKC Purchase Right. If an Owner of the Property delivers an Intent to Sell Notice to the HHKC, then in such limited event, HHKC is hereby granted a Purchase Right to purchase the Property. The Purchase Right must, if at all, be exercised by HHKC within forty-five (45) days after the HHKC’s receipt of said Intent to Sell Notice (“HHKC’s Exercise Period”). If HHKC fails to timely exercise the Purchase Right by timely delivering to the Owner a Notice of Exercise of Right prior to the expiration of the HHKC’s Exercise Period, then the HHKC’s Purchase Right to purchase the Property is waived as to the applicable Intent to Sell Notice. If HHKC timely exercises the Purchase Right by timely delivering the Notice of Exercise of Right prior to the expiration of HHKC’s Exercise Period, then HHKC is obligated to either (i) purchase the Property, or (ii) assign the Purchase Right to an Eligible Buyer. Prior to the expiration of HHKC’s Exercise Period, HHKC must either provide the Owner a Notice of Exercise of Right or Notice of Waiver of Right. In the event that HHKC provides a Notice of Waiver of Right or fails to deliver either a Notice of Exercise of Right or Notice of Waiver of Right prior to the expiration of HHKC’s Exercise Period, the Owner may proceed with sale of the Property, in the manner prescribed by Subsection C. of Section 6 of this Covenant. In the event HHKC provides a Notice of Exercise of Right, the sale of the Property must close with either HHKC, or an Eligible Buyer who is HHKC’s assignee, as stated in the Notice of Exercise of Right, within sixty (60) days of the Owner’s receipt of the Notice of Exercise of Right (“HHKC’s Closing Period”). In the event that the sale does not close prior to the expiration of HHKC’s Closing Period, and such failure is not due to a default by the Owner, the Owner may terminate the contract with HHKC, or its assignee, and sell the Property in accordance with the provisions of Subsection D. of Section 6 of this Covenant. In such event, HHKC shall provide the Owner with such written confirmation or other documentation that may reasonably be necessary to satisfy a title insurer of the Owner’s compliance with this Section.
 - c. Additional Terms of Sale. If HHKC exercises its Option Rights, the Owner and HHKC, or its Eligible Buyer assignee, shall, within 15 days of the exercise of HHKC’s Purchase Rights, enter a purchase and sale contract with a purchase price determined by this Covenant and which requires the Owner to pay:
 - i. All closing costs related to the purchase by HHKC, including, but not limited to, the basic premium for an owner’s title insurance policy in the amount of the purchase price and pro rata taxes from January 1 of the year of closing to the closing date;
 - ii. Any amount due under any Notes on the Property;
 - iii. A fee payable to HHKC equal to 3% of the initial Affordable Sales Price as noted in Section 7.; and
 - iv. Any costs of curing title objections made by HHKC.
 - d. Good Faith Marketing and Selection Process. Provided an Owner: (i) has received a Notice of Waiver of Right from HHKC; or (ii) HHKC has not timely exercised its Purchase Right prior to the expiration of HHKC’s Exercise Period; or (iii) HHKC, or its assignee, fails to timely close the purchase of the Property prior to the expiration of HHKC’s Closing Period, an Owner may market the Property for sale in accordance with this Subsection. The purpose of this Subsection is to assure that an Owner engages in a good faith marketing effort, which shall include marketing the Property for a minimum of thirty (30) days before any contract for sale may be executed by a purchaser, such that members of the public have a fair chance to become informed of the availability of the Property. Upon the expiration of the mandatory Intent to Sell Notice and marketing period, an Owner may enter into a contract for sale of the Property with a ready, willing, and able purchaser; provided such purchaser has been certified by HHKC as an Eligible Buyer.
7. Affordable Sales Price of Property. The Affordable Sales Price of the Property to the Buyer is in the amount of \$ [REDACTED] (“Affordable Sales Price”).
 8. Affordable Resale Price Limit

- a. After the first Transfer from HHKC to the Buyer, the Property may not be transferred for more than the “Affordable Resale Price.” The “Affordable Resale Price” is equal to the Affordable Sales Price *plus* the product of the Affordable Sales Price multiplied by 2.00% (which is the Fixed Rate of Appreciation at an annual, simple interest) multiplied by the number of Ownership Years the Property is owned by an Owner. Ownership Years are calculated on an annual, prorated basis to credit the Owner with each full calendar year and with that portion of a year that may not be a full calendar year. “Ownership Years” equals the total number of full calendar years *plus* the number of days of ownership divided by three hundred and sixty-five days of any non-full calendar year, so that the Ownership Year of a non-full calendar year is prorated daily. The amount of appreciation due to an Owner equals the Fixed Rate of Appreciation multiplied by the number of Ownership Years. As an example, an Owner paying \$100,000 as the Affordable Sales Price and having owned the Property for 10 full calendar years would be eligible for an Affordable Resale Price of \$120,000 ($\$100,000 + (\$100,000 \times 2.00\% \times 10 \text{ years})$), subject to the provisions in Subsections B, C, and D of this Section.
 - b. Nothing in this Covenant represents or guarantees that the Property will be re- sold at an amount equal to the Affordable Resale Price. Depending upon conditions affecting the real estate market, the Property may be re-sold for less than the Affordable Resale Price.
 - c. Adjustments to Affordable Resale Price. The Affordable Resale Price shall be increased or decreased, as applicable, by the following adjustment factors (“Adjustment”).
 - i. Capital Improvements. Provided that prior to an Owner’s undertaking Eligible Capital Improvements the Owner obtains HHKC’s written approval to proceed, the Affordable Resale Price shall be increased in an amount equal the original cost to the Owner for making the Eligible Capital Improvement. To receive HHKC’s approval, the Owner must submit evidence to HHKC showing the purpose and cost of the capital improvements. As Eligible Capital Improvements increase the Affordable Resale Price, such Improvements may also increase the value at which the Property is taxed by the applicable taxing authorities by the amount of the Eligible Capital Improvements. Owner understands that HHKC will provide notice of the amount spent on Eligible Capital Improvements to the applicable taxing authorities. Increases to Affordable Resale Price due to Capital Improvements may be subject to a depreciation policy and schedule.
 - ii. Damages. The Affordable Resale Price shall be decreased by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by HHKC, including, without limitation, amounts attributed to making necessary structural, mechanical, electrical, and plumbing repairs that would require the issuance of a building permit; and repairing or replacing built-in appliances and fixtures; however, damages may not include reasonable wear and tear to items such as painted surfaces, drapery, flooring or carpeting, or other normal and customary repairs for which a building permit from the City is not required.
 - iii. Independently Appraised Value. The Affordable Resale Price must be decreased to the appraised value if a current independent appraisal provided by a Texas certified licensed residential appraiser determines a lower value.
9. HHKC’s Right to Acquire Owner’s Interest prior to foreclosure.
- a. Lender shall give HHKC written notice of any default by Owner of the requirements set forth in the Deed of Trust at the same time such notice is given to Owner. Additionally, Owner shall give to HHKC written notice within three (3) business days from the date any notice of default and/or foreclosure is provided to the Owner or any foreclosure is commenced against the Property under the Deed of Trust or any other instrument encumbering the Property.

- b. If Owner has not cured the default under the Deed of Trust within ten (10) business days prior to a scheduled foreclosure sale by Lender, then HHKC may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure of the Property. Upon making any such payment, HHKC shall succeed to all beneficial rights of the Owner to the Property and shall assume all of the Owner's rights and obligations under the Deed of Trust, subject to the terms of this Covenant. In such event, the Owner shall relinquish possession thereof to HHKC.
- c. [Reserved]
- d. Provided that HHKC declines to exercise its right to assume the Owner's interest in the Property, Lender's foreclosure under a Deed of Trust terminates this Covenant as to the Property, HHKC has no right to acquire the Property after a foreclosure sale, and Lender has no obligation to account to, remit proceeds or otherwise deal with HHKC as a result of any foreclosure sale. Notwithstanding anything herein to the contrary, HHKC's declination to assume Owner's interest in the Property also constitutes a declination to acquire the Owner's interest in the Property.
- e. Notwithstanding the language of Subsection 9.D of this Covenant, if Lender forecloses under a Deed of Trust and the proceeds from such foreclosure sale exceed the amount Lender would be entitled under the loan documents executed by the Owner in connection with a Deed of Trust, then any such surplus shall be divided between the Owner and HHKC as follows:
 - i. The Owner shall receive such surplus proceeds in an amount that does not exceed the Affordable Resale Price, as determined on the date immediately before the date of the foreclosure sale.
 - ii. HHKC shall receive all surplus proceeds that exceed the Affordable Resale Price, as determined on the date immediately before the date of the foreclosure sale.

Owner and Lender acknowledge that it would be contrary to the purposes of this Covenant if, in the event of a foreclosure, a sale generates proceeds in excess of the amount Lender is legally entitled to and Owner receives more than the Affordable Resale Price. Therefore, Owner hereby covenants the following: (i) there shall be an assignment of certain surplus proceeds to HHKC, as prescribed in the above bullet points, and that Owner, at the time of such foreclosure sale shall execute all documents reasonably necessary to effectuate the assignment and shall instruct Lender to distribute any such surplus in accordance with this Subsection, and Lender agrees to distribute such surplus accordingly; and, (ii) in the event that the amount of surplus proceeds for which HHKC is entitled is inadvertently paid to Owner, Owner shall pay such amount to HHKC promptly. It is not the intent of the Owner for the covenants set out in this Subsection to in any way impair Lender from its recovery of all outstanding principal and interest, penalties, attorney's fees, and other fees and penalties it may be lawfully entitled in prosecuting such foreclosure, and the effect of this Covenant is limited in scope to only such proceeds generated in surplus of that which Lender is legally entitled to recover.

- 10. Subordination of Covenant. The provisions of this Covenant are subordinate to the Deed of Trust lien to secure a loan to purchase the Property made by Lender. This Covenant does not impair the rights of Lender, or such lender's assignee or successor in interest, to exercise its remedies under the Deed of Trust in the event of a default by an Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed in lieu of foreclosure.
- 11. Re-Financing of the Deed of Trust or Financing Eligible Capital Improvements. Owner may not mortgage, refinance or in any other manner encumber any of its interest in the Property without the prior written consent of HHKC, which shall be in HHKC's sole and absolute discretion, with the exception of the Deed of Trust in favor of Lender. If Owner wishes to refinance the senior mortgage, or sell the Property, Owner must (a) give notice to HHKC, and (b) deliver to HHKC copies of every document to be recorded in connection with the refinancing or sale in advance of the closing. **THESE RESTRICTIONS PROHIBIT AN OWNER FROM GETTING ADDITIONAL LOANS THAT USE THE PROPERTY AS COLLATERAL, INCLUDING, WITHOUT LIMITATION, LOANS TO REPAY CREDIT CARD DEBT, LOANS TO PURCHASE AUTOMOBILES, HOME**

EQUITY LOANS, DEBT CONSOLIDATION LOANS OR LOANS TO FINANCE THE PURCHASE OF OTHER PERSONAL PROPERTY. Owner acknowledges and agrees that the requirements of these Restrictions to Financing Section are necessary to ensure the continued affordability of the Property to Eligible Buyers and to minimize the risk of loss of the Property through default and foreclosure. Owner shall pay to HHKC, at HHKC's option, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by HHKC in connection with approving any mortgage or refinancing. Any lien purported to be granted by an Owner to any party in violation of these Restrictions to Financing Section is absolutely void.

Owner, with HHKC's prior written consent, may only re-finance the Deed of Trust or finance Eligible Capital Improvements, so long as the total amount of such re-financing and/or financing of Eligible Capital Improvements does not exceed ninety-three percent (93%) of the Affordable Resale Price determined on the date of the re-financing of the Property. Such re-financing must be with a lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

12. Taxes, Assessments and Utilities

- a. Taxes, Assessments and Utilities. Owner shall pay, at Owner's sole expense, when due, all taxes, governmental assessments and charges of every kind against the Property. Owner shall also pay, when due, all other service bills and utility charges that relate to the Property, including, without limitation, all charges for water, sewer, heat, air conditioning, gas, light, garbage, electricity, telephone service, power, and all other public and private services and utilities.
 - b. Owner's Right to Contest. Owner may, in good faith and with reasonable diligence, contest the amount or validity of any taxes relating to the Property if, during any such contest, the enforcement of the lien related to such taxes is stayed.
 - c. Payments in Event of Delinquency. If Owner fails to pay the taxes or other amounts specified in this Section 12 when due, Owner holds HHKC harmless from and against any liens arising out of any failure to pay the taxes or other amounts specified in this Section.
 - d. Proof of Compliance. Annually, Owner shall provide evidence of payment of taxes to HHKC within thirty (30) business days after payment. Within ten (10) business days after payment of any liens arising out of the non-payment of taxes or utilities, Owner shall provide evidence of payment to HHKC.
13. Maintenance of Property. Owner shall, at Owner's sole expense, maintain the Property in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules, and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Property. Owner is not be required to obtain any permission from HHKC for normal and customary repairs and maintenance of the Property; provided, however, Owner is obligated to obtain any required building permits for Eligible Capital Improvements if such Eligible Capital Improvements are subject to the requirement to obtain building permits for same by applicable City building codes or ordinances.
14. Repair Requirements. Upon transfer or sale of a Property, HHKC expects owner to transfer or sell such property in substantially the same condition as when they purchased it. See Exhibit "2" attached hereto.
15. Eligible Capital Improvements. Any post-purchase construction, excluding normal and customary repairs and maintenance, in, on, or about the Property requiring issuance of a permit is subject to the following conditions: (a) such construction may not commence without the prior written consent of HHKC; (b) all costs shall be borne and paid for by Owner; and (c) all construction shall be performed in a good and workmanlike manner and shall comply with applicable laws.
16. Prohibited Liens. If any statutory, mechanic, laborer, or materialman's lien is filed against the Property, Owner shall cause the lien to be discharged of record within sixty (60) calendar days thereafter by

payment, deposit, bond, order of a court of competent jurisdiction, or as otherwise permitted by law. If Owner fails to cause such lien to be discharged within the 60-day period, then, in addition to any other right or remedy, HHKC is not obligated to pay any sums secured by the lien. Owner agrees to indemnify, defend and hold HHKC harmless from and against any liens arising out of any construction or other work on the Property.

17. Use of Property as Owner's Primary Residence

- a. Occupancy. At or before the time when title is transferred to the Property, each Owner shall certify to HHKC in writing his or her intent to occupy the Property as the Owner's primary residence; and, Owner must declare the Property as the Owner's residential homestead, as provided in Texas Tax Code Chapter 11, as may be amended, revised or recodified. Except for leasing allowed by this Section 16, Owner shall reside at the Property for the duration of the Owner's possession of the Property.
- b. Leasing. Owner may not lease the Property except as provided in this Subsection 16.B.
 - i. Requirements for all leases. Any lease of the Property must be approved by HHKC before it may become effective. At its sole discretion, HHKC may approve the leasing of the Property only if: (1) the lease is in writing and conforms with Texas law; (2) the lease requires the tenant to maintain the Property in good condition and prohibits subleasing; (3) the rent for the Property does not exceed the Owner's monthly cost of principal and interest on the loan secured by the Deed of Trust to Lender, property insurance, and property taxes assessed against the Property; and (4) the lease is required for hardship reasons.
 - ii. Requirements for leases that do not exceed a term of three months. Provided that Owner complies with the primary residency requirements, Owner may lease the Property for a period that does not exceed three (3) months during a calendar year; provided further that Owner complies with the requirements for all leases, as stated in Subsection 16.B.(i) above.
 - iii. Leases greater than 3 months. Except for Leases that do not exceed 3 months during a calendar year, Owner may not lease the Property during the first 5 years of ownership. Upon the 5th anniversary of Owner's ownership of the Property, Owner may lease the Property, provided that: (i) the lease term does not exceed 12 months and is not renewable; (ii) no more than 1 lease term occurs within a 7 year period of ownership; (iii) Owner first provides HHKC with notice that the Property is available for lease and obtains certification that such Property has been inspected and is in compliance with all applicable statutory and regulatory housing requirements; and (iv) Owner complies with the requirements for all leases, as stated in subsection 16.B.i above. In the event that a maximum lease term of twelve (12) months presents a condition of economic hardship on Owner because of military deployment, health problems or another reason causing Owner to be required to leave the area temporarily, HHKC may grant a temporary waiver to Owner not to exceed 24 months of the requirement to continuously occupy and reside in the Property. Documentation substantiating the economic hardship must be submitted in writing for HHKC to review. HHKC will provide Owner with a response within a reasonable time period. HHKC's decision is final.

18. Liability, Insurance, Damage Eminent Domain

- a. Owner's Liability. Owner assumes sole responsibility and liability to all persons and authorities related to Owner's possession, occupancy, and use of the Property. HHKC, and its successors, are not be liable to Owner or any third party for any losses, costs, damages, harms, claims, or lawsuits connected with the Property.
- b. **Indemnification of HHKC**. OWNER SHALL, AND DOES HEREBY, INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS HHKC, AND ITS DIRECTORS, AGENTS, EMPLOYEES, OFFICERS, SUCCESSORS, DESIGNEES, AND ASSIGNS,

FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, OBLIGATIONS, LOSSES, CAUSES OF ACTION, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS) ARISING DIRECTLY OR INDIRECTLY FROM: (A) OWNER'S USE OF THE PROPERTY, OR ANY ACTIVITY, WORK, OR OTHER THINGS DONE, PERMITTED, OR SUFFERED BY OWNER IN, ON, OR ABOUT THE PROPERTY; (B) OWNER'S BREACH OF THIS COVENANT OR VIOLATION OF ANY APPLICABLE LAWS; (C) ANY ACT OR OMISSION OF OWNER, OR ANY GUEST OR INVITEE OF OWNER, OR ANYONE CLAIMING BY, THROUGH, OR UNDER OWNER; OR (D) ANY CAUSE IN, ON, OR ABOUT THE PROPERTY. OWNER HEREBY ASSUMES ALL RISK OF DAMAGE TO PROPERTY OR INJURY TO PERSONS IN, ON, OR ABOUT THE PROPERTY, FROM ANY CAUSE, AND OWNER HEREBY WAIVES ALL CLAIMS IN RESPECT THEREOF AGAINST HHKC, AND THEIR RESPECTIVE DIRECTORS, AGENTS, EMPLOYEES, OFFICERS, SUCCESSORS, DESIGNEES, AND ASSIGNS.

19. Insurance. Owner shall, at Owner's sole expense, keep the Property continuously insured against loss or damage by fire and extended coverage hazards for its full replacement value. Owner shall keep the Property continuously insured throughout the Covenant Term in such amounts and against such risks and liabilities as Lender requires, or, if there is no lender, in such amounts and against such risks and liabilities as HHKC may reasonably require, provided that such insurance shall specifically insure Owner against all liability assumed under this Covenant and imposed by law. All insurance policies shall name HHKC as an additional insured and shall also contain endorsements providing that they may not be canceled, reduced in amount of coverage, or otherwise modified in any material respect, without prior written notice to HHKC of at least thirty (30) days. At HHKC's request, Owner shall provide copies of all policies and renewals of policies or other evidence of insurance. Owner shall pay the insurance premiums as they become due, and shall comply with all insurance requirements at any time in force; provided, however, Owner's compliance, in whole or in part, with this Section does not limit, in any way or to any extent, the liabilities or obligations of Owner to HHKC under the terms of this Covenant. Notwithstanding anything herein to the contrary, Owner is deemed to have satisfied its obligation to make the insurance payments required by this Section and tax payments required by Section 12 so long as Owner is making such payments through an escrow established by Lender for such purposes, in which case Owner shall provide HHKC copies of any annual escrow accounting provided to Owner by Lender promptly upon HHKC's written request.

20. Damage and Destruction.

- a. Obligation to Restore. Except as provided in Subsection B below, if the Property is damaged by fire or any other cause, Owner shall immediately give written notice to HHKC, and Owner shall promptly repair or restore the Property, as nearly as practicable, to its condition immediately prior to the damage and this Covenant shall remain in full force and effect. Owner shall also promptly and with due diligence take all steps necessary to ensure that the Property does not constitute a danger to people or property.
- b. Termination of Covenant and Distribution of Insurance Proceeds. If repair or restoration is not economically feasible, or is otherwise prohibited under Lender's instruments, then Owner may terminate this Covenant by delivering written notice to HHKC within sixty (60) calendar days after the date of the damage. Subject to the terms of Lender, any insurance proceeds shall be applied in the order provided for in Subsection 9.E, with the Affordable Resale Price determined as of the date immediately before the damage in accordance with Subsection 8.A.

21. Eminent Domain.

- a. Obligation to Restore. Except as provided in (B) immediately below, in the event of any taking under the power of eminent domain, or conveyance in lieu of condemnation, Owner

shall promptly apply the proceeds of any such taking to the repair or restoration of the Property, as nearly as practicable, to its condition as of the date immediately before the taking and this Covenant shall remain in full force and effect.

- b. Termination of Covenant and Distribution of Condemnation Award. In the event of a total taking (or partial taking, if repair or restoration is not economically feasible or is otherwise prohibited under Lender's instruments), the Covenant shall terminate as of the date Owner is required to give up possession of the Property. Subject to the terms of the Lender's instruments, any condemnation award shall be applied in the order provided for in Subsection 9.E, with the Affordable Resale Price determined as of the date immediately before the taking in accordance with Subsection 8.A.

22. Enforcement of this Covenant

- a. Owner hereby grants and assigns HHKC the right to enforce compliance with this Covenant.
- b. Monitoring may be conducted by HHKC. Monitoring may take the form of a desk review and consist of the following:
 - i. Review of property records to determine if property taxes are current;
 - ii. Review of appraisal district records to review chain of title for transfers of ownership and name and/or address inconsistencies;
 - iii. Review of City utility records to verify occupancy and name inconsistencies;
 - iv. Review Bureau of Vital Statistics to verify death.
- c. Compliance may be enforced by HHKC by any lawful means, including without limitation, specific performance.
- d. If HHKC is required to pursue legal action to enforce this Covenant, then in such event, HHKC is entitled to an award of reasonable and necessary attorney's fees and other reasonable and necessary costs incurred in the enforcement of this Covenant.
- e. Venue for a suit enforcing compliance is proper in Kerr County, Texas.

23. Transfer for value exceeding the Affordable Resale Price. If ownership of the Property is transferred for any reason for consideration exceeding the Affordable Resale Price, including but not limited to, foreclosure or deed-in-lieu of foreclosure, the appropriate taxing authority may raise the taxable value of the Property to the market rate, and the Property may no longer receive taxation benefits of the Affordable Resale Price.

24. Miscellaneous

- a. This Covenant shall run with the Property. It shall bind during its term, and the benefit hereof shall inure during its Covenant Term to Owner, Owner's heirs, legal representatives, executors, successors in interest, assignees, transferees, devisees, and grantees, and to HHKC and its successors, designees, or assignees.
- b. The Property is held and hereafter shall be held, conveyed, encumbered (except to the Deed of Trust), leased, rented, and occupied subject to these covenants, conditions, restrictions, and limitations. All of the herein-stated covenants, conditions, restrictions, and limitations are intended to constitute both equitable servitudes and covenants running with the land.
- c. Any purchaser, devisee, grantee, or transferee of the Property or of any portion thereof or interest in the Property, by acceptance of a deed therefor, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions, and limitations set forth herein.
- d. Notices to HHKC shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by HHKC by like notice:

Habitat For Humanity – Kerr County
Mary Campana, Executive Director
P.O. Box 2140
Kerrville, Texas 78029-2140

Notices to Lender shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by Lender by like notice:



Notices to Owner may be given in like manner addressed to Owner as shown on the City's tax rolls.

- e. If any provision of this Covenant is held by a court of proper jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions shall survive and their validity, legality, or unenforceability may not in any way be affected or impaired thereby.
- f. The captions of the Sections in this Covenant are for convenience only and may not be used to interpret the meaning of any provision hereof.
- g. The conditions of this Covenant shall be interpreted so as to avoid speculation on the Property and to insure to the greatest extent possible that its purchase price and mortgage payments remain affordable during the Covenant Term to persons and families of low or moderate income.
- h. This Covenant may not be revised, amended, repealed, or otherwise modified without the written approval of HHKC, Lender, and Owner; and any such modification must be recorded in the Official Records of Kerr County, Texas before becoming effective.
- i. If HHKC is no longer willing or able to, or opts not to, fulfill its obligations or exercise its rights under this Covenant, the City has the right, but not the obligation, to take any action HHKC may take under this Covenant and be fully subrogated to any rights HHKC has under this Covenant.
- j. Whenever reasonable interpretation of the context of this Covenant requires, the use of the singular of any word is deemed to include the plural and vice versa.
- k. This Covenant applies to the Property in addition to the terms and conditions of the HOA Declaration and Affordable Housing Restrictive Covenant that is applicable to the Property.

(remainder of page intentionally left blank; signature pages follow)

IN WITNESS WHEREOF, HHKC, Lender, and Owner have executed this Covenant to be effective as of the Effective Date first set forth above.

Habitat for Humanity – Kerr County:

By: _____
Name: Mary Campana
Title: Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF KERR §

The foregoing instrument was acknowledged before me this ____ day of _____, by Mary Campana, Executive Director of Habitat for Humanity – Kerr County, on behalf of Habitat for Humanity – Kerr County.

NOTARY PUBLIC, STATE OF TEXAS

Lender

By: _____

Its: _____

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____
_____, 2024 by _____

NOTARY PUBLIC, STATE OF _____

OWNER:

Name: _____

Name: _____

THE STATE OF TEXAS §
 §
COUNTY OF KERR §

This instrument was acknowledged before me on this the _____ day of _____, by
_____ and _____.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT 1

HOMEOWNER'S ACKNOWLEDGMENT OF AFFORDABILITY RESTRICTIONS

TO: Habitat for Humanity – Kerr County (“HHKC”)

DATE: _____, 20__

I am giving this letter to the Habitat for Humanity – Kerr County to be made an exhibit to a Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income (“Covenant”) by and among HHKC, _____ [Lender], and me. I am buying the home located at _____, which will be subject to the Covenant.

I understand how the terms and conditions of the Covenant affect my rights as a homeowner, now and in the future. In particular, I understand and agree that:

- Long-Term Affordability. The purpose of the Covenant is to keep housing affordable for future generations of low- and moderate-income households. I support this goal.
- Resale Restrictions. HHKC controls the resale of my home. If I want to sell my home, I must sell it to another income-eligible buyer (or to HHKC) for a restricted resale price determined in accordance with the resale formula in the Covenant. If I violate the resale restrictions, the Covenant gives HHKC the right, among other remedies, to sue for damages or terminate the Covenant and recover any sale proceeds. I realize this limits my ability to resell my home (a “restraint on alienation”), but I agree that this limitation is reasonable under the circumstances set forth in the Covenant and in light of the below-market price at which I am purchasing my home.
- Refinancing Restrictions. The Covenant may keep me from obtaining a home equity loan, debt consolidation loan, car loan or a similar loan that would use the home as collateral. I acknowledge that this constitutes a restraint on alienation, but likewise agree that it is a reasonable restraint under the circumstances of the Covenant and in light of the below- market price at which I am purchasing my home.
- Principal Residence. I must occupy and use my home as a principal residence. I may only lease it under the provisions under the Covenant, and if I move out, I must sell it. I cannot continue to own the home as an absentee owner.

I will honor the terms of the Covenant. I consider these terms fair to me and others.

By: _____

Exhibit “2”

REPAIR REQUIREMENTS

Upon transfer or sale of a Property, HHKC expects Owners to transfer or sell the Property in substantially the same condition as when they purchased it. Specifically, HHKC expects that:

- Mechanical and electrical systems will be in good working order;
- Photovoltaic system will be in good working order (if applicable);
- Geothermal system will be in good working order (if applicable);
- Plumbing will be in good working order and free of stoppages or leaks;
- Floor, wall, ceiling and countertop finishes will be clean, in good condition, and free of gouges, holes and noxious odors;
- Original appliances and fixtures will be present, clean and in good working order, or replaced with an appliance of comparable quality in good working order;
- There will be no evidence of pest or vermin infestations;
- Gutters will be in good working order (if applicable);
- Fencing will be in good condition (if applicable);
- Landscaping, grading, and drainage will be in good condition (if applicable);
- HVAC system will be in good working order and will have been satisfactorily serviced within

one year prior to transfer; and

- Any home inspection performed by a licensed home inspector will reveal no other significant damages or damages beyond normal wear and tear.

Upon receiving a Notice of Intent to Sell from Homeowners, HHKC will inspect the Property and require that Owner make repairs as needed so that the Property meets the standards described above before resale.

Owners may recommend contractors and suppliers to HHKC for the repairs, subject to HHKC’s approval.

Exhibit "3"

NOTICE OF INTENT TO SELL (FORM OF NOTICE)

*(As described in Section 6. A. of the **RESALE RESTRICTIONS AGREEMENT AND COVENANT LIMITATION ON RESALE PRICE AND BUYER INCOME** must be in a form substantially equivalent to the example here.)*

NOTICE OF INTENT TO SELL

I, the undersigned Homeowner of _____ am hereby giving Habitat for Humanity – Kerr County (HHKC) notice of Intent to Sell as outlined in Section 6. A. of the Resale Restrictions Agreement. The terms and conditions of such intended sale are as follows:

I understand that after HHKC's receipt of this notice, it may notify me that a market valuation of the Property (an appraisal) must be commissioned, as provided for in Section 8.c.iii of the Resale Restrictions Agreement.

I further understand that HHKC may either:

1. exercise its option to purchase on the terms and within the time period set forth in Section 6.b. of the Resale Restrictions Agreement; or
2. assign the purchase option to an income-qualified person as set forth in Section 6.b. ii. of the Resale Restrictions Agreement.

Signature of Homeowner

Date: _____