



The HEARTLAND
at TAPATIO SPRINGS

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

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HEARTLAND AT TAPATIO SPRINGS

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS §
 §
COUNTY OF KENDALL §

Vaqueros del Mar, LLC., hereinafter called the Declarant, owns 25 acres, more or less, tract of land as shown and described on the Plat (as hereinafter defined); and

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

Declarant desires to create and carry out a plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property.

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

ARTICLE I DEFINITIONS

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

1.1 Architectural Review Committee (ARC). "Architectural Review Committee" or "ARC" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property and perform such other tasks as is herein provided.

1.2 Articles. "Articles" shall mean the Articles of Incorporation of Heartland at Tapatio Springs Property Owners Association, Inc., which shall be filed in the office of the Secretary of the State of Texas, as from time to time amended.

1.3 Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

1.4 Association. "Association" shall mean and refer to Heartland at Tapatio Springs Property Owners Association, Inc., a Texas non-profit corporation, its successors and assigns.

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

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

1.7 Heartland at Tapatio Springs Restrictions and Rules. "Heartland at Tapatio Springs Restrictions and Rules" shall mean, collectively (i) this Declaration, together with any and all Supplemental Declarations, as the same may be amended from time to time, (ii) any Design Guidelines, (iii) any rules and regulations promulgated by the Association or the Architectural Review Committee in accordance with the provisions of the Declaration or the Bylaws, and (iii) the Articles and Bylaws from time to time in effect, as the same may be amended from time to time.

1.8 Common Properties. "Common Properties" shall mean the portion of the Property owned by the Association for the common use and enjoyment of the Members of the Association including, but not limited to, all private streets, signs, gates, fountains, statuary, parkways, medians, islands, guardhouse, walls, bridges, safety lanes, trails, parks, arena, skeet deck, gymnasium, equestrian facilities, sports courts, lakes, greenbelts, recreational facilities, community facilities, pumps, landscaping, sprinkler systems, pavement (to the extent not owned by appropriate governmental authorities), walkways, pipes, wires, conduits and other public utility lines situated thereon (to the extent not owned by appropriate governmental authorities or by local utility companies). The Common Properties to be owned by the Association shall include: (i) those areas of land shown on any recorded plan or its equivalent of the Property or any portion thereof filed or approved by Declarant and identified thereon held as open space for passive or recreational purposes for the benefit of all Owners, (ii) the streets within the Subdivision, and (iii) those areas of land and improvements thereon deeded to the Association by Declarant. Declarant reserves the right to effect redesigns or reconfigurations or deletions of the Common Properties by any means including, without limitation, any amendatory plat of all or any portion of Heartland at Tapatio Springs.

1.9 Declarant. "Declarant" shall mean Vaueros del Mar, LLC. , its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Vaqueros del Mar, LLC. as Declarant must be expressly set

forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

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

1.11 Design Guidelines. "Design Guidelines" shall mean and refer to any additional criteria and guidelines established by the Architectural Review Committee applicable to architecture design, construction, placement, location, alteration and maintenance of Improvements, landscaping and vegetation, as the same may be adopted and/or amended from time to time, by the Architectural Review Committee in accordance with Section 6.8 of the Declaration.

1.12 Design Requirements. "Design Requirements" shall mean and refer to those particular standards, restrictions, and specifications applicable to architecture design, construction, placement, location, alteration and maintenance of Improvements, landscaping and vegetation, contained in Article VII of the Declaration, as the same may be amended from time to time, and any additional criteria and guidelines established by the Architectural Review Committee from time to time.

1.13 Development. "Development" shall mean the real property more particularly described in Exhibit "A" attached hereto and incorporated herein, which Declarant proposes to develop and subdivide in phases for residential and other purposes and to be known as Heartland at Tapatio Springs, a subdivision in Kendall County, Texas.

1.14 Greenbelt or Amenity Area. "Greenbelt or Amenity Area" shall mean all areas designated by Declarant to be held as open space or for passive or active recreational purposes for the benefit of all Owners, including but not limited to areas described as park or trail areas.

1.15 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind located on the Property, including but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, basketball goals, swimming pools, garages, storage buildings, fences, trash enclosures, animal enclosures, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

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

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

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

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

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

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

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

1.23 Plat. "Plat" shall mean the final recorded subdivision plat recorded in Volume , Pages of the Plat Records of Kendall County, Texas, and any amending plat or replat of the property shown on such final recorded plat.

1.24 Property. "Property" shall mean that real property which is subject to the terms of this Declaration initially described as that certain 25 acres, more or less, tract of land containing Heartland at Tapatio Springs, a subdivision in Kendall County, Texas as a portion thereof, and as more particularly described on the Plat, and any additional real property which may be hereafter incorporated or annexed under the terms of this Declaration.

1.25 Subdivision. "Subdivision" shall mean and refer to that portion of the Development that has been subdivided and shown on a map or plat or record in the Official Records of Kendall County, Texas and brought within the scheme of this Declaration in accordance with the provisions of Article II of this Declaration.

1.26 Supplemental Declaration. "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded hereafter in order to (i) subject any area of the Property to further covenants, conditions

or restrictions, (ii) withdraw land from the Property, or (iii) annex additional land into the Development.

ARTICLE II ADDITIONS TO THE PRPOERTY

2.1 Phased Subdivision

A. Incorporation. N/A

B. Annexation. Additional properties may be annexed into the Development at any time with the consent of sixty-seven percent (67%) of all of the Members of the Association and the written approval of Declarant.

C. Filing Supplemental Declaration. To evidence the incorporation or annexation of additional property, Declarant shall record a Supplemental Declaration which shall incorporate this Declaration by reference and which may supplement or modify this Declaration with such additional covenants, restrictions and conditions which may be appropriate for those properties.. Following such incorporation or annexation and the recordation of such additional plat or maps, then and thereafter the Owner of all Lots in the Subdivision shall have the rights, privileges and obligations set forth in this Declaration and each applicable Supplemental Declaration.

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

ARTICLE III GENERAL RESTRICTONS

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

3.1 Antennae. No antenna, mast, dish or other apparatus or equipment intended for the reception of radio, television, satellite, cellular or other media may be

placed or maintained on any Lot, except by Declarant, without the prior written consent of the Architectural Review Committee, EXCEPT that a disk or antenna intended for the reception of satellite television which is one meter or less in diameter may be placed on a Lot without prior written consent of the Architectural Review Committee if located in a place shielded from view from the street or other Lots to the maximum extent possible to allow an acceptable quality signal. The Architectural Review Committee is hereby empowered to regulate the placement and required screening of any such media receptors to the full extent permissible without violating any applicable federal law or Federal Communications Commission rules or regulations.

3.2 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests herein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Review Committee and Declarant; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Review Committee. Without limiting the generality of the foregoing, The Architectural Review Committee, in its sole and arbitrary discretion, may elect to withhold its consent to further subdividing any Lot. Any and all future subdividing shall comply with the rules, regulations and guidelines promulgated by the Commissioner's Court of Kendall County, Texas, and any other law or statute pertaining to the subdivision of real property as the same may be in full force and effect at the time of such subdividing.

3.3 General Signage Standards. Except as may be specifically permitted by this Declaration or the Architectural Review Committee, no signs of any kind shall be erected, placed or permitted to remain on any Lot except that (i) one sign of advertising the Lot for sale may remain on a Lot up to ten (10) days after the closing of the related sale; and (ii) one political sign per candidate or ballot item may be placed on a Lot up to ninety (90) days preceding the election and may remain on the Lot until ten (10) days after the election. No such permitted sign shall be larger than three feet (3') by three feet (3'). All such permitted signs must be mounted in the ground and may not be attached to trees, shrubs, other vegetation, light poles, street signs or other such materials. No balloons, lights or other decorative items, components or displays are allowed. **All permitted signs shall be in good taste and shall be subject to the approval of the Architectural Review Committee with respect to design, location, language and graphics.** An easement on, over and across the Common Properties is hereby retained by Declarant for placement of project signs, project monuments, directional signs, and marketing signs.

3.4 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise there from so as to render such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. All refuse, garbage and trash shall be collected, at the expense of Owner, by the service provider chosen by the

Association. In the event the Owner shall fail or refuse to keep, or cause to be kept, such Owner's Property or any Improvements thereon free from rubbish or debris or any kind, and such failure or refusal shall continue for fifteen (15) days after delivery of written notice thereof, then the Association may enter upon such Property and remove or correct the same at the expense of the Owner and such entry shall not be deemed a trespass.

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

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

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

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

3.9 Roofing Materials. Subject to the requirements of Section 7.1.5, all roofing material shall be subject to the approval of the Architectural Review Committee.

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

in writing by the Architectural Review Committee or model homes or construction trailers; and further provided that this provision shall not apply to existing utilities installed along the perimeters of the Property or utilities installed by Declarant offsite as may be necessary to serve the Property. The duration of any temporary overhead use otherwise allowed hereunder shall not exceed one (1) year without the consent of the Architectural Review Committee. The installation method, including but not limited to; location, type of installation, equipment, trenching method and other aspects of installation, for both temporary and permanent utilities shall be subject to review and approval by the Architectural Review Committee.

3.11 Drainage. There shall be no interference with the established drainage patterns over any of the Property including, without limitation, any drainage areas shown on the Plat, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Review Committee.

3.12 Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property. No open fires shall be lighted or permitted except (i) within safe and well-designed interior fireplaces and/or exterior fire pits; (ii) within contained barbecue units while attended and in use for cooking purposes; or (iii) in compliance with ordinances, regulations and permit requirements of local governmental authorities. Hunting, whether with firearms or cross bows, shall be prohibited on the Property.

3.13 Temporary Structures. No tent, shack or other temporary building, Improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Review Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration and location of such structure.

3.14 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth. Declarant reserves the right to designate one or more drilling sites on the Property including any Lot or Lots owned by Declarant or any portion of the Common Properties for exploration and removal of oil, gas and other minerals.

3.15 Unightly Articles; Vehicles No article deemed to be unsightly by the Architectural Review Committee shall be permitted to remain on any Lot so as to be visible from any other portion of the Property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, busses, motorcycles, motor scooters, and garden or yard maintenance equipment shall be kept at all times, except when in actual use, in

enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs) except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have garage space sufficient to house a minimum of two (2) automobiles. Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Property for any period in excess of forty-eight (48) hours. No automobiles or other vehicles may be parked overnight on any roadway within the Property. Service area, storage area, loading area and compost piles shall be appropriately screened from view from public or private thoroughfares and other properties and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view from public or private thoroughfares and adjacent properties.

3.16 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) hours.

3.17 Fences. No fencing will be permitted in front yards. The design, construction, materials and specifications of backyard fences will be provided to the Architectural Review Committee and a sample will be constructed. The Architectural Review Committee may, in its discretion, prohibit the construction of any proposed fence, or specify the materials of which any proposed fence must be constructed, or require that any proposed fence be partially screened by vegetation. Common cement fences, cinder block fences and chain link fences are specifically prohibited. Fence maintenance shall be the responsibility of the Owner and all damage shall be repaired within thirty (30) days of written notification by the Association. It shall be a violation of this Declaration to maintain a fence in such a manner as to allow (i) any portion of a fence to lean so that the fence's axis is more than five (5) degrees out of vertical alignment, (ii) missing, loose, or damaged stone or wood rails in the fence, (iii) symbols, writings, and other graffiti on the fence, and (iv) broken or loose wires. All fencing constructed across drainage lows shall not obstruct flow and shall be built in accordance with floodplain requirements.

3.18 Animals and Household Pets. No animals, including pigs, pot bellied pigs, hogs, swine, pigeons, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. Not more than two (2) dogs per ½ acre and two (2) cats per ½ acre may be kept, maintained or cared for on any Lot. A maximum of four (4) domestic pets (i.e. cats and dogs) are allowed per Lot. All other animals shall require the prior written consent of the Architectural Review Committee. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, no domestic pets will be allowed on any portion of the Common Property, and no kennels or breeding operation

will be allowed. Barking between the hours of 10:00 p.m. and 6:00 a.m. shall be deemed a nuisance. No animal shall be allowed to run at large and all animals shall be kept within enclosed or fenced areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all time. Such enclosed or fenced area shall be constructed in accordance with and approved by the Architectural Review Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof.

3.19 Maintenance of Lawns and Planting. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot (including any Greenbelt platted as part of such Owner's Lot and any Greenbelt located between such Owner's Lot and publicly dedicated roadway) mowed, trimmed, weeded and maintained in a clean, attractive manner and free of trash and other unsightly material. All dead grass and other vegetation must be removed and replaced. Lawns must be 100% sodded within 60 days of owner occupancy of home.

3.19.1 Efficient Irrigation Practices and Regionally Appropriate Landscape must be used on each residential lot, notwithstanding the foregoing, drip and efficient irrigation systems are not limited to a square foot limit.

- a. Regionally Appropriate Landscape means a landscape consisting of drought tolerant grass species such as Common Bermuda, Hybrid Bermuda, Emerald Zoysia, El Toro Zoysia, Jamur Zoysia, Floratam St. Augustine, Raleigh St. Augustine, Stampede Buffalo, 609 Buffalo. The remaining landscape must incorporate a combination of low-water-using, drought-tolerant plants and trees, and/or pervious hardscape(s) such as mulched areas or permeable rockscapes, pavers, or patio materials.
- b. Efficient Irrigation Practices means that no more than four thousand (4,000) square feet of any lot, regardless of size or use, will be irrigated using irrigation systems that use potable water supplied by SJWTX, and all such irrigation will comply with the following standards: no spray irrigation in medians, verges, or drainage ditches; Smart Water Controllers with rain shutoff sensors will be installed at homes and amenity centers; flower bed, planters, and trees will be irrigated with a drip irrigation system; sprinkler heads will not be installed within ten (10) feet of a sidewalk, road, driveway or other impervious surface; landscapes shall be comprised of drought tolerant or adaptive species. Only high efficiency spray nozzles will be installed on the Property.

3.19.2 Homeowners, either individually or through the Property or Homeowner's Association (HOA), must audit on an annual basis any in-ground irrigation systems in community green spaces in designated developments.

Completed audits should be returned to SJWTX by email at conservation@clwsc.com no later than May 31, annually, and;

3.19.3 Any real property granted to SJWTX under this Agreement shall be exempt from HOA fees or similar fees, assessments, building or improvement restrictions, or encumbrances of any kind under the CCRs.

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

3.21 Compliance with Provisions of the Heartland at Tapatio Springs Restrictions and Rules. Each Owner shall comply strictly with the provisions of the Heartland at Tapatio Springs Restrictions and Rules as the same may be amended from time to time. Failure to comply with any of the Heartland at Tapatio Springs Restrictions and Rules shall constitute a violation of this Declaration, and subject to the requirements of Chapter 209 of the Texas Property Code, shall give rise to a cause of action to recover sums due for fines, penalties, Assessments, damages or injunctive relief or both, asserted by the Board on behalf of the Association or by an aggrieved Owner.

3.22 Construction in Place. All dwellings constructed on the Property shall be built in place on the applicable Lot and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Review Committee.

3.23 Unfinished Structures. All structures shall be completed within a reasonable time based on the size and scope of the structure but in no event later than one (1) year after the start of construction.

3.24 Set-back Requirements. Minimum set-back requirements shall be the more restrictive of (a) those set forth on any Plat, or (b) front set-backs of 40', side set-backs of 10' and rear set-backs of 25'; provided, however, the Architectural Review Committee, in its sole discretion, shall have the right to grant variances from the minimum set-back requirements to accommodate specific lots.

3.25 Rentals. Nothing in the Declaration shall prevent the rental of any entire Lot and the Improvements thereon, by the Owner thereof; provided, however, that the Owner shall remain responsible for any violations of the Heartland at Tapatio Springs Restrictions and Rules or other governing documents by the tenant and shall at all times provide the Association with a current mailing address for Owner.

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

ARTICLE IV USE RESTRICTOINS

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

4.2 Common Properties. No land within the Common Properties shall be improved, used or occupied, except in such manner as shall have been approved by the Association, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and Improvement. Access to any of the Common Properties may be limited to persons currently paying Assessment fees and other charges, or otherwise conditioned or restricted, or made available to Owners, all on such terms and conditions as the Association may determine, in its sole discretion. The Association reserves the right to promulgate reasonable use restrictions for the Common Properties.

4.3 Recreational Improvements. Any proposed construction of recreational improvements within the Common Properties shall be subject to approval by the Architectural Review Committee and the Association.

4.4 Vehicles on Common Properties. No motorcycles, all-terrain vehicles, golf carts, motorbikes or other motorized vehicles (except those used for maintenance, repairs and upkeep of the Common Properties) shall be permitted on the Common Properties owned by the Association or Declarant. Nothing contained in this section is

intended nor shall be construed to prohibit the operating of typical passenger vehicles, such as cars, trucks and automobiles, on designated streets and parking areas constituting the Common Properties. No unlicensed vehicles of any type shall be permitted on any roads within the Common Properties.

4.4.1 Vehicles Allowed on Common Properties. The following types of motorized vehicles may be operated on the Common Properties provided they comply with the rules in Section 4.4.2 below:

- a. Vehicles used for maintenance, repairs and upkeep of the Common Properties; and
- b. All-terrain vehicles which are bench-seated and have four operable wheels.
- c. Golf Carts

4.4.2 Rules for Allowed Vehicles on Common Properties. The vehicles described in Section 4.4.1 may be operated on the Common Properties owned by the Association or Declarant, provided that, at all times, the operator shall comply with each of the following rules and restrictions:

- a. The speed limit shall not exceed ten miles per hour (20 mph);
- b. The noise of such motorized vehicle shall not constitute a nuisance to other Owners;
- c. The motorized vehicle and its operator must be in compliance with all rules and laws relevant thereto, including, but not limited to, any laws regarding the use of helmets, age of operators, and passenger and vehicular licensing requirements;
- d. Such motorized vehicles shall not trespass on the Lot of any Owner or other property owned by the Declarant;
- e. Such motorized vehicles must operated in accordance with the guidelines, rules and operating manual application to each such motorized vehicle;
- f. Such motorized vehicles must, at all times, yield the right-of-way to pedestrian, bicycle and other vehicular traffic; and
- g. The operator of such motorized vehicles shall confine the operations of such motorized vehicles to designated streets, vehicular driveways and parking areas and the operation of such shall not damage or destroy any

grass, shrubs, vegetation, trees or other landscaping on any portion of the Common Properties.

4.4.3 Speed Limit. No vehicle may be operated on any portion of the Common Properties at a speed exceeding twenty miles per hour (20 mph). Any violator will be subject to fines as may be determined by the Association.

ARTICLE V

HEARTLAND AT TAPATIO SPRINGS OWNERS ASSOCIATION

5.1 Organization. Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Association as a non-profit corporation under the laws of the State of Texas. The Association shall be created for the purposes, charged with the duties, governed by the provisions and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject, by covenants or record, to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from any ownership of any Lot which is subject to Assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Any Mortgagee or lienholder who acquired title to any Lot which is a part of the Property through judicial or non-judicial foreclosure, shall be a Member of the Association. It is understood that the Development may be developed in phases or sections, and such completed sections or phases or any part thereof shall, at the option and election of Declarant, be incorporated within the scheme of this Declaration and become bound hereby and a part hereof, which incorporation shall be evidenced by the filing of the Supplemental Declaration; provided, however, in the event that Declarant shall sell all or a portion of the Development to an unrelated third party purchaser without having first developed the same, such third party shall have the right to elect whether or not it desires such land to be incorporated herein pursuant to the terms of Section 2.1.

5.3 Voting Rights. The Association shall have two (2) classes of voting memberships.

A. Class A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned.

B. Class B. The Class B Member(s) shall be Declarant, and its successors and assigns, and shall be entitled to five (5) votes (i) for each Lot owned by it, and (ii) for each five (5) acres of the Development not then subject

to a recorded plat ("Future Lot"); provided that the Class B membership shall cease and be converted to Class A membership (subject to reversion back to Class B membership upon the annexation of additional land) on the happening of either of the following events, whichever occurs earlier:

1. the complete development of the Development and sale of all developed lots described on Exhibit "A" attached hereto;
2. January 1, 2030

From and after the occurrence of one of the above events, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot and one (1) vote for each Future Lot then owned by such Class B Member. The Class B membership shall be immediately reinstated upon annexation of any additional land. Such reinstatement of the Class B Member shall in any event cease in accordance with the limitations set forth on January 1, 2030.

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

A. Heartland at Tapatio Springs Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Heartland at Tapatio Springs Rules, including but not limited to traffic rules, parking rules, rules related to use of the Common Properties, and a schedule of fines and penalties for violations, and Heartland at Tapatio Springs Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

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

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

D. Assessments. To levy and collect Assessments as provided in Article VIII below. An Assessment as defined as that sum which must be levied in the manner and against the Property set forth in Article VIII hereof in order to raise the total amount for which the levy in question is being made.

E. Right of Entry and Enforcement. To enter at any time in an emergency (or in the case of a non-emergency, after twenty-four (24) hours

written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Heartland at Tapatio Springs Restrictions and Rules or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Heartland at Tapatio Springs Restrictions and Rules and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and upon the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VIII hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of an on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Heartland at Tapatio Springs Restrictions and Rules; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

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

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

1. parks, parkways, trails, lakes, greenbelts or other recreational facilities or structures;
2. Fountains, statuary, walls, bridges, fences and other facilities and structures;
3. Roads, streets, walks, driveways, trails and paths;
4. Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
5. Sewers, water systems, storm water drainage systems; sprinkler systems and pipelines; and/or
6. Any similar public, quasi-public or private improvements or facilities;

Provided, however, that the Association shall not convey fee simple title in and to, or mortgage all or any portion of any Common Properties without the consent of at least sixty-seven (67%) percent of the Owners (excluding Declarant), except as may otherwise be permitted hereunder to effect redesigns, reconfigurations or deletions of the Common Properties by Declarant.

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

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

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

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

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

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

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

O. Loans. To borrow funds (including without limitation the borrowing of funds from the Declarant and/or its affiliates) to pay the costs of operation, secured by such assets of the Association as deemed appropriate by the Board.

5.5 Maintenance and Landscape Authority. The Association shall maintain all streets and roadways within the Property, which have been completed but not accepted by the appropriate governmental entity for maintenance. In addition, the Association shall be authorized to landscape, maintain and repair all access easements, rights-of-way, median strips, sidewalks, paths, trails, lakes, detention ponds and other areas of the Property, as appropriate. The Association shall maintain all Greenbelt or Amenity Areas dedicated to the Association for maintenance by or with the consent of Declarant. The Association shall also maintain any landscaped medians and boulevard areas, not fronting lots, located on private roads within the Property. All signage, plant materials and Improvements, except Declarant's, used in said medial or boulevard area must be approved by the Architectural Review Committee.

5.6 Lighting. The Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain the lighting, including street lights within street rights-of-way and Greenbelt and Amenity areas and on Common Properties.

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

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

B. Construction. To construct, maintain, repair and replace landscape improvements and irrigation systems within rights-of-way pursuant to agreement(s) with the local governmental authorities and any recorded plat.

C. Assessments. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

D. Mortgage. Upon the approval of sixty-seven percent (67%) of each Class of Members, to execute mortgages, both construction and permanent, for construction of facilities, including Improvements on property owned by or leased to the Association. Additionally, the Association may accept lands in Greenbelt or Amenity Areas, whether or not improved, from Declarant subject to such

mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien as shall be deemed appropriate by borrower, whether Declarant or the Association, on the Improvement or other facility to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenue generated by dues, use fees or Assessment paid by the Members of the Association, as the case may be, but subject to the limitations imposed by this Declaration.

E. Insurance. To take out and maintain current a policy of liability insurance coverage insuring Declarant and the Association and covering accidental bodily injury and/or death caused by the use and enjoyment of the Common Properties, as well as casualty coverage on all real and personal property owned by the Association, if an in such amounts as the Board shall deem appropriate.

5.8 Controlled Access. Declarant and the Association hope that the access gate and private streets concept will discourage undesired and unauthorized vehicular and pedestrian traffic within the Property and foster a higher degree of peace and tranquility. Although Declarant and the Association reasonably believe that the existence of a controlled access point may discourage the commission of criminal acts (e.g., burglary, theft, etc.) within the Property, nevertheless, neither Declarant nor the Association warrant or guarantee that such acts will not be attempted or actually occur within the Property.

Each Owner, Member and resident of the Property expressly understands, covenants and agrees with Declarant and the Association as follows:

A. No Liability. Neither Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner, Member and resident of the Property.

B. Maintain Insurance. Each Owner, Member and resident of the Property shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Member's and resident's own selection to select, purchase, obtain, and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner, Member and resident covering his or her real and personal property.

C. Release of Claims. Each Owner, Member and resident of the Property releases Declarant and the Association and their respective agents,

attorneys, employees, officers, Directors, and partners from any liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all aspects of the Property.

5.9 Private Streets. The entry gates, streets, esplanades, and sidewalks within the Property are private and constitute a portion of the Common Properties which are subject to the jurisdiction of and administration by the Association. The Board is specifically authorized to recommend, adopt, implement, and enforce rules, regulations, mechanisms, and procedures governing use of the entry gates and streets, covering items such as (but not necessarily limited to):

A. identification and entry programs for Members, their respective immediate families, their guests, and vehicles owned or driven by any of them;

B. speed limits, designated parking areas, restricted parking areas, and no-parking areas;

C. signs and graphics to provide announcements to unauthorized persons concerning potential criminal trespass matters;

D. a "fines" system through which the Association can levy and collect fines from its Members and its Members' guests, invitees and contractors for violations of the applicable rules and regulations; and

E. disclaimers of liability for any and all matters or occurrences on or related to the Common Properties.

5.10 Rules of the Board of Directors. All Members, residents and their families and guests shall abide by any reasonable rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies.

5.11 Indemnification. THE ASSOCIATION SHALL INDEMNIFY ANY PERSON WHO WAS OR IS A PARTY, OR IS THREATENED TO BE MADE A PARTY TO ANY THREATENED, PENDING OR COMPLETED ACTION, SUIT OR PROCEEDING, WHETHER CIVIL, CRIMINAL, ADMINISTRATIVE OR INVESTIGATIVE BY REASON OF THE FACT THAT HE IS OR WAS THE DECLARANT HEREIN OR A DIRECTOR, OFFICER, COMMITTEE MEMBER, EMPLOYEE, SERVANT OR AGENT OF THE ASSOCIATION AGAINST EXPENSES, INCLUDING ATTORNEYS' FEES, REASONABLY INCURRED BY HIM IN CONNECTION WITH SUCH ACTION, SUIT OR PROCEEDING UNLESS IT IS FOUND AND DETERMINED BY THE BOARD OR A COURT THAT HE (1) ACTED IN BAD FAITH AND IN A MANNER HE REASONABLY BELIEVED NOT TO BE IN, OR OPPOSED TO, THE BEST INTERESTS OF THE ASSOCIATION, AND (2) WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE HIS CONDUCT WAS UNLAWFUL. THE TERMINATION OF

ANY ACTION, SUIT OR PROCEEDING BY SETTLEMENT, OR UPON A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT, SHALL NOT OF ITSELF CREATE A PRESUMPTION THAT THE PERSON DID NOT ACT IN GOOD FAITH OR IN A MANNER WHICH HE REASONABLY BELIEVED TO BE IN, OR NOT OPPOSED TO, THE BEST INTERESTS OF THE ASSOCIATION, AND WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE THAT HIS CONDUCT WAS UNLAWFUL. THE BOARD MAY PURCHASE AND MAINTAIN INSURANCE ON BEHALF OF ANY PERSON WHO IS OR WAS THE DECLARANT HEREIN OR A DIRECTOR, OFFICER, COMMITTEE MEMBER, EMPLOYEE, SERVANT OR AGENT OF THE ASSOCIATION, AGAINST ANY LIABILITY ASSERTED AGAINST HIM OR INCURRED BY HIM IN ANY SUCH CAPACITY, OR ARISING OUT OF HIS STATUS AS SUCH, WHETHER OR NOT THE ASSOCIATION WOULD HAVE THE POWER TO INDEMNIFY HIM AGAINST SUCH LIABILITY HEREUNDER OR OTHERWISE. ADDITIONALLY, THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DECLARANT AND ITS PARTNERS, AGENTS AND EMPLOYEES AGAINST ANY EXPENSE OR LIABILITY, INCLUDING REASONABLE ATTORNEY'S FEES, EXPERT WITNESS OR OTHER FEES AND COSTS OF COURT INCURRED BY ANY OF THEM IN CONNECTION WITH OR ARISING OUT OF (1) THE USE OF THE PRIVATE ROADWAYS WITHIN THE PROPERTY OR ANY OTHER PORTION OF THE COMMON PROPERTY BY ANY PARTY PRIOR TO ITS CONVEYENCE TO THE ASSOCIATION, AND (2) THE DESIGN, MANNER OR TYPE OF CONSTRUCTION OR MAINTENANCE OF THE ROADWAYS OR OTHER IMPROVEMENTS ON OR WITHIN THE PROPERTY.

ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEE (ARC)

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

A. Authority of ARC. The ARC shall have full authority to review and approve or disapprove all plans and specifications for all Improvements in accordance with the terms of this Declaration and any other Governing Document. This review will be solely for purposes of enforcing compliance with the terms of this Declaration and any other Governing Document and shall not constitute an implicit or explicit representation or warranty of any kind by the ARC concerning the quality of fitness of the construction.

B. Standards of Review. The ARC, in reviewing the plans, specifications and materials submitted to it for proposed Improvements on a Lot, shall consider the suitability of the proposed Improvement for the Lot on which it will be located; the quality, type and color of the materials to be used in

construction; the impact of the proposed Improvement on the Development; the views from other areas of the Development; the location and placement of the proposed Improvement on the Lot, the orientation of the proposed Improvement and the harmony of exterior design and aesthetics with other Improvements in the Development. The ARC shall have the right to disapprove such plans, specifications and materials for any reason that the ARC determines appropriate, including, but not limited to, inappropriate architectural style, color or material, type or quality, orientation or location on the Lot. No building shall be constructed on a Lot unless said building is a dwelling or livestock barn. The right of the ARC to exercise discretion in approving or withholding approval of any proposed Improvement shall not be subject to review or to any external or objective standards.

C. Right to Enter for Inspection. There is reserved to the Association, the Board, members of the ARC and their duly appointed agents and contractors, a right of ingress and egress upon and over each Lot at any reasonable time or times to inspect the progress or status of any construction, alteration or other work.

6.2 Membership of Architectural Review Committee. The Architectural Review Committee shall consist of not less than two (2) or more than four (4) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as Declarant or its successors or assigns deems appropriate.

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

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

6.5 Term. Each member of the Architectural Review Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein.

6.6 Declarant's Right of Appointment. Declarant, its successors or assigns shall have the right to appoint and remove all members of the Architectural Review Committee. Declarant may delegate his right to the Board by written instrument. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Review Committee.

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

6.8 Design Guidelines. The Architectural Review Committee may, from time to time, adopt Design Guidelines which are not inconsistent with the Design Requirements contained in Article VII. Any such Design Guidelines shall be recorded in the real property records of Kendall County, Texas. All Improvements shall be constructed in accordance with the Design Guidelines and the Design Requirements, and the Architectural Review Committee shall have the authority to disapprove any proposed Improvements based on the restrictions set forth in the Design Guidelines. Any decision of the Architectural Review Committee pursuant to this Section shall be final and binding so long as it is made in good faith. In the event of a conflict between the Design Guidelines and this Declaration (or any Supplemental Declaration) this Declaration shall control. The Architectural Review Committee may charge Owners a reasonable fee for each set of Design Guidelines supplied to any Owner.

PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE, AND OWNER IS STRONGLY ENCOURAGED TO CONTACT THE ARCHITECTURAL REVIEW COMMITTEE TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT.

THE DESIGN GUIDELINES MAY CONTAIN STANDARDS, REQUIREMENTS, OR LIMITATIONS IN ADDITION TO THOSE EXPRESSLY SET FORTH OR REFERRED TO IN THIS DECLARATION AND MORE STRINGENT STANDARDS, REQUIREMENTS, OR LIMITATIONS THAN ANY SPECIFIC STANDARD, REQUIREMENT OR LIMITATION SET FORTH OR REFERRED TO IN THIS DECLARATION.

6.9 Review of Proposed Construction. Whenever in this Declaration, or in any Supplemental Declaration, the approval of the Architectural Review Committee is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts and information which, in its sole discretion, it considers relevant, and may require an Owner to provide such other information as it deems relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefore shall be submitted to the Architectural Review Committee, and construction thereof may not commence unless and until the Architectural Review Committee has approved such Plans and Specifications in writing. The Architectural Review Committee may postpone review of the Plans and Specification until such time as the Architectural Review Committee has received all information requested. In the event the Architectural Review Committee fails to approve or disapprove such Plans and Specifications within thirty (30) days after the submission

of all information requested by the Architectural Review Committee, the Plans and Specifications shall be deemed approved without any further action required. The Architectural Review Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Review Committee. The Architectural Review Committee shall not be responsible for reviewing any proposed Improvement nor shall its approval of any Plans and Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes of governmental regulatory authorities.

6.10 Variances. The Architectural Review Committee may grant variances from compliance with any of the provisions of this Declaration or any Supplemental Declaration, when, in the opinion of the Architectural Review Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument, in recordable form, and must be signed by at least two (2) Members of Vaqueros del Mar, LLC. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof. Notwithstanding the foregoing, such variances shall not vary any local governmental ordinance unless a variance or special exception has been first granted by the respective local governmental authority.

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

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

6.13 Address. Plans and Specifications shall be submitted to the Architectural Review Committee at the offices of Declarant on the Property, or such other address as may be designated by Declarant, its successors and assigns, from time to time.

6.14 Fees. The Architectural Review Committee shall have the right to require a reasonable submission fee not to exceed \$100.00 for each set of Plans and Specifications submitted for its review.

6.15 Certificate of Compliance. Upon completion of any Improvement approved by the Architectural Review Committee and upon written request by the Owner of the Lot, the Architectural Review Committee shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the Architectural Review Committee pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the Architectural Review Committee of the actual construction of the Improvements or of the workmanship or material thereof. The Owner is hereby notified that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the Architectural Review Committee of the construction workmanship, materials or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the Lot.

ARTICLE VII DESIGN REQUIREMENTS

7.1 Design Requirements. All Plans and specifications for any new residence, garage or other building or any addition to an existing building, unless otherwise permitted by the Architectural Review Committee ("ARC"), shall be prepared by a licensed architect and shall include: (a) site plan; (b) specifications; (c) a floor plan; (d) a roof plan; (e) an elevation plan meeting the requirements of Section 7.2.

7.1.1 Building Quality. It is the intent and purpose of these restrictive covenants to require that all buildings constructed in this Development shall be of the highest quality workmanship and materials and shall conform to the Hill Country character of the Development.

7.1.2 Residences. Therefore, all residences must be of new construction and new materials and must conform to all applicable governmental requirements. The total floor area of the residence shall be not less than 2,500 square feet for a one story dwelling and 3,000 square feet if more than one-story with the ground floor having not less than 2,400 square feet. Total floor area will be exclusive of open porches, breezeways, carports, garages and other outbuildings. All residences must be constructed on a permanent concrete foundation and must have permanently attached steps or porch. Not more than twelve inches (12") of concrete slab shall be exposed to view; any excess shall be concealed by masonry.

7.1.3 Roofs. The roof of the residence must have at least twelve inch (12") eaves that extend horizontally outward from the outside wall of the residence. Roof fans, attic fans, attic ventilators, or other roof penetrations must be installed on the portion of the roof having the least visibility from the street or other adjoining Lots.

7.1.4 Garages. All residences must have an attached or detached garage of the same design, composition and materials as the residence. Each garage must be able to accommodate at least two (2) but no more than five (5) vehicles. All garages must be constructed for side entry unless the topography of the Lot requires front entry or the residence is not fronting a private street. Access to the garage shall be achieved by a paved driveway with a minimum width of ten feet (10'). The garage and paved driveway must be completed before occupancy as part of the original construction of the residence.

7.1.5 Materials. The ground floor of all residences constructed on any Lot must be constructed of 100% masonry on the front and each side exterior wall, except that if the orientation or construction of the residence results in a different wall or floor being the most visible to the street or other Lots, the ARC may require 100% masonry on such other wall or floor in lieu of the masonry requirement on a less visible wall or floor. Unless otherwise required, the second or other floor and all detached garages, barns or other outbuildings may have wood or other siding of a type and design approved by the ARC. Masonry is defined as native stone, traditional concrete stucco (plaster) or brick. Synthetic or prefabricated masonry and masonry veneers or panels are prohibited. In keeping with the Hill Country character of the Development, materials such as native stone, plaster or stucco are strongly encouraged. No external roofing materials except standing seam metal or tile are permitted on any residence or garage. Roofs of other outbuildings may be of other materials as approved by the ARC. Driveways must be constructed entirely of concrete or other materials approved by the ARC.

7.1.6 Minimum Set-back Lines. Minimum set-back requirements shall be the more restrictive of (a) those set forth on any Plat, or (b) front set-backs of 40', side set-backs of 10' and rear set-backs of 25'; provided, however, the Architectural Review Committee, in its sole discretion, shall have the right to grant variances from the minimum set-back requirements to accommodate specific lots.

7.1.7 Utilities. All lines, cables, pipes and other service or utility extensions to the residence or any other outbuilding must be underground at a location approved by the ARC. All propane or other gas tanks must be located behind the residence and either buried or screened from view of the streets or adjoining Lots. All screening must be approved by the ARC. The placement and location of all tanks and service meter poles must be approved by the ARC.

7.1.8 Lighting. The number and location of exterior lights must be approved by the ARC so as not to cause light pollution or unnecessary lighting of any adjacent Lots. All exterior lights located or placed on any Improvement or on the Lot must have housings which can shield or directionally focus the light source downward; no exposed bulb or wrap around lens ("yard lights") are permitted; all exterior light fixtures must be shrouded, and installed on a downward angle of not more than thirty degrees (30°); the light bulb in any exterior light fixture may not exceed one hundred (100) watts. Lighting for tennis courts, sports courts, athletic facilities, arenas or any other facility requiring strong lighting will require approval of the ARC.

7.1.9 Fencing. No front yard fencing is permitted. Backyard must be fenced at time of home construction per Section 3.17.

a. Sample Fence. Heartland will construct a sample of fencing to be completed by each owner on rear of each lot. There will be no exceptions to the design and materials to be used for the backyard fencing.

b. Side and Rear Fencing. Per Section 3.17.

c. Interior Fence. Per Section 3.17.

NOT APPLICABLE

all comply with

7.2 Submittal Requirements. All plans and specifications for any new residence, garage, or other building or any addition to an existing building, unless otherwise permitted by the ARC, shall be prepared by a licensed architect, shall conform to the requirements of Section 7.1 and shall include the following required submissions to the ARC. Each Owner submitting plans and other information for approval to the ARC will be responsible for the accuracy of all information contained therein.

7.2.1 Site Plan. Two sets of the site plan containing a scale of not less than one inch (1") equal forty feet (40') must be submitted on a twenty-four inch by thirty-six inch (24" x 36") or a thirty inch by forty-two inch (30" x 42") sheet. The site plan must show existing and proposed topographic elevations; the pattern of surface water drainage on and over the Lot and adjacent Properties; proposed construction staging areas; the location of the proposed Improvements on the Lot (including relationship to other Improvements); the location thereof with reference to structures on adjoining Lots; the number and location of all driveways on the Lot; any additional parking areas; location of patios, decks, pools, walls; a detailed description of the location of all utility facilities, line routes and connections; site grading, including existing and proposed contours at two

foot (2') intervals; elevations of all building floors, patios and other features shown in relation to the site contour elevations; location and description of all vegetation to be removed; plans for erosion control; areas of all proposed landscaping; and any exterior trash container areas to be utilized on the Lot.

7.2.2 Specifications. Two sets of specifications showing the nature, kind, shape, height, material, colors and samples for all proposed Improvements.

7.2.3 Floor Plans. Two sets of floor plans at a scale of one-fourth inches (1/4") equal one foot (1') showing the square footage of space to be heated or cooled.

7.2.4 Roof Plans. Two sets of roof plans at a scale of not less than one-eighth inches (1/8") equals one foot (1'). Roof plans must show areas of sloped and flat roofs (if any), porch roofs, roof mounted equipment, and all other roofing features.

7.2.5 Exterior Elevations. Exterior elevations of the residence and all other buildings of the same scale as the floor plan, with both existing and proposed grade lines shown and all dimensions, exterior color scheme, and specification of all exterior materials for all outside walls and the roof indicated. Elevations of all roof ridge cupolas or parapets must be shown.

7.2.6 Additional Items. Any other drawings, materials or samples required by the ARC.

7.2.7 Staking. To the extent required by the ARC, preliminary staking at the location of the corners of the proposed Improvement and at such other locations as the ARC may request.

7.2.8 Builder. The name and references of the proposed builder, if already chosen. If not chosen prior to the initial submittal, Owner or other applicant shall submit this information as soon as possible. All builders must be approved in writing prior to commencement of construction including, without limitation, the cleaning, grading or disturbance of the soil. Neither Declarant, the Association nor the ARC, however, in approving any builder, makes any implicit or explicit representations or warranties of any kind concerning the performance, quality of actual construction, or fiscal soundness of any approved builder.

7.3 Procedure Following Submission of Plans. Within fifteen (15) days following the submission of the information set forth in Section 7.2, the ARC may request additional and/or supplemental plans, specifications and/or materials or other information be submitted to the ARC for purpose of aiding its review.

7.3.1 Written Response. Within twenty (20) business days after the date when all required and requested plans, specifications and other materials have

been delivered to it (including those supplemental plans, specifications and other materials and other required information which may have been requested by the ARC), the ARC shall provide Owner or other applicant with a written response. Should the plans, specifications or materials contain any unusual feature, the ARC may extend this response period for a reasonable time to allow professional review of the submission. The ARC shall provide the Owner or other applicant of the extension in writing within the original response period. Failure to send notice of disapproval of any submitted plans, specifications or materials shall not be deemed to have been an approval.

7.3.2 Retention of Documents. Following final unconditional or accepted conditional approval by the ARC, the two (2) sets of plans, specifications and materials which have been approved shall be initialed by a representative of the ARC and the submitting party. One set shall be retained by the ARC (unless the right thereto is waived by a representative of the ARC in writing), and one set shall be retained by the submitting party.

7.3.3 Subsequent Changes. Any changed to the approved plans, specifications and materials made before, during or after construction of the proposed Improvement(s) must first be submitted for approval by the ARC.

7.4 Completion of Construction. Construction of any Improvement on a Lot by any party other than Declarant shall be completed within a reasonable time based on the size and scope of the Improvement but in no event later than eighteen months after the start of construction. Failure to complete any Improvement within the above time limits shall operate to automatically revoke the ARC's approval of applicable plans, specifications and materials, and, upon demand by the ARC, the Lot upon which such construction or alteration of any Improvement was undertaken shall be restored as nearly as possible to its state existing prior to commencement of any construction or alteration of the Improvement.

7.5 Minimization of Impact on Properties. Any construction shall be conducted in such manner as to minimize damage to the existing vegetation and interference with, access to, upon and within the Properties (including access to and from any street). Construction staging areas (including, without limitation, areas occupied by temporary construction office facilities, portable toilets, trash receptacles, stored materials and construction vehicles and equipment) for any party other than Declarant shall be restricted to areas approved in advance by the ARC, which approval shall not be unreasonably withheld. The location of any construction staging area must, to the extent possible, be located out of sight from the street and adjacent Lots. All temporary structures and facilities utilized in the construction must be removed immediately upon completion of construction. Portable toilets are required during construction and must be serviced on a regular basis during construction. . All trash, debris, excess construction materials and excess excavation materials must be timely hauled away from the Development. Trash, debris and excess construction materials must be kept in enclosed containers until removed from the Properties. No outdoor fires

will be allowed during construction except as specifically authorized in writing by the ARC. Daily working hours for any construction within the Development will be thirty minutes before sunrise to thirty minutes after sunset of each day except Sunday unless other hours are specified in writing by the ARC.

7.6 Construction without Approval: Remedies. If any Improvement shall be commenced, altered, erected, placed, installed or maintained without any required approval by the ARC pursuant to the provisions of this Article, such commencement, alteration, erection, placement, installation or maintenance shall be deemed to have been undertaken in violation of this Article and, upon written notice from the ARC any such Improvement so commenced, altered, erected, placed, installed or maintained in violation hereof shall be extinguished, removed or re-altered by and at the expense of such Owner so as to extinguish and abate such violation. The Association shall be entitled to recover from such Owner all costs incurred by the Association in enforcing the provisions of the Declaration or other governing documents of the Association including, without limitation, all attorneys' fees, and shall have full right and authority to pursue any and all remedies allowed by law or in equity.

7.7 Repair/Restoration of Approved Improvements. Notwithstanding the foregoing provisions of this Article, Improvements which are damaged or destroyed may be repaired, restored, replaced and/or reconstructed in strict conformance with previously approved plans, specifications and materials without the necessity of submitting additional plans and specifications or obtaining the ARC's approval. Any variation or deviance from previously approved plans, specifications and materials must first be submitted for approval by the ARC.

7.8 Repair of Common Facilities. In addition to any other similar obligations set forth herein, Owner shall be responsible, at Owner's expense, for the prompt repair, restoration and/or replacement of any Common Property or facilities including the streets, which are damaged or destroyed by the Owner, any resident, or their agents, contractors, or employees during the course of constructing or placing any Improvement on Owner's Lot. Should such Owner or other responsible party fail to satisfactorily and promptly make any such repair, restoration or replacement requested by the Association, the Association may do so at the cost and expense of the Owner, and any resulting cost and expense shall be added to the assessments which are assessed against the responsible Owner and to the Lot and shall be enforceable and collectible as an assessment.

7.9 Liability of Declarant, ARC and Association. Provided that Declarant, the ARC, the Association and any person or entity to whom authority has been properly delegated, act in good faith and with due diligence, neither Declarant, the Association, the ARC nor any officer, director, employee, agent or representative of Declarant or the Association, shall be liable to the Association, any Owner, any resident or any other person for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, specifications or materials relating to any property within the Development, including, but not limited to, surface water drainage plans, whether or

not pursuant to approved plans, specifications and materials; the development or manner of development of any property within the Development; the execution or recording of a form or notice of approval, disapproval or withdrawal or expiration of approval whether or not the facts stated therein are correct; the performance of any other function pursuant to the provisions of this Declaration or any governing document of record or hereafter placed of record against or with respect to any property within the Development; or any other act or omission of Declarant, the Association, the ARC or any officer, director, employee, agent or representative of Declarant or the Association or any party to whom any ARC or Association authority has been properly delegated. Declarant, on behalf of all future Owners, hereby waives, and each Owner accepting title to a Lot or any interest therein, whether or not it shall be expressed in the deed or other instrument conveying title, shall be deemed to waive any right of recovery against any of said parties by reason of or on account of any such acts or omissions undertaken in good faith and with due diligence. The Association may provide for the exculpation, indemnification and/or insuring of directors, officers, members, Association employees, agents, contractors and other persons and entities in its Articles of Incorporation and/or Bylaws.

ARTICLE VIII FUNDS AND ASSESSMENTS

8.1 Assessments.

A. Assessments established by the Board pursuant to the provisions of this Article VIII shall be levied on a uniform basis against each Lot within the Property, except for any Lots owned by Declarant. No Assessment shall be due by Declarant for any Lots owned by Declarant, Future Lots, or any acreage owned or held by Declarant. The Common Properties shall be subject to Assessments.

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

C. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose to the duration of the Assessment year or other period remaining after said date. Such proration shall be calculated on a per diem basis.

8.2 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this

Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

8.3 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Heartland at Tapatio Springs Restrictions and Rules, including but not limited to, the cost of all maintenance, the cost of providing street lighting, the cost of enforcing the Heartland at Tapatio Springs Restrictions and Rules, and a reasonable provision for contingencies, a reserve fund for road maintenance, and appropriate replacement reserves for all Common Properties and facilities less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in either annual or semi-annual installments on or before the due date as set by the Board, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the regular annual Assessment per Lot for year 2022 exceed the sum of \$1,200.00. Thereafter, with the majority approval of the Board, the regular annual Assessment permitted hereunder may be increased by up to ten percent (10%) per year.

8.4 Special Assessments. In addition to the regular annual Assessments provided for above, the Board, with the approval of sixty-seven percent (67%) of the votes of each Class of Members, may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under the Heartland at Tapatio Springs Restrictions and Rules. The amount of any special Assessments shall be at the reasonable discretion of the Board and all such special Assessments shall be due and payable to the Association within thirty (30) days of the date of written notice of such special Assessment.

8.5 Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments, and any fines and penalties provided for herein, shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, fine or penalty, the Owner of the Lot shall be obligated to pay interest on the amount of the Assessment from the due date at a percentage rate of eighteen percent (18%) per annum, together with all costs and expenses of collection, including reasonable attorneys' fees.

8.6 Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall together with interest as provided in Section 8.5 hereof and all costs of collection, including attorneys' fees as herein provided,

thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for:

A. All liens for taxes or special assessments levied by the applicable city, county or state government, or any political subdivision or special district thereof;

B. All liens securing all amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the date any Assessment became due and payable; and

C. All liens including, but not limited to, vendor's liens, deeds of trust and other security agreements which secure any loan made by any lender to a Member for any part of the purchase price of any Lot when the same are purchased from a builder, or for any part of the cost of constructing, repairing, adding or remodeling any Improvements utilized for residential purposes.

Notwithstanding the above, no lien shall be deemed or held superior to the lien hereby created unless the Association is made a party to any court proceeding to enforce any of the above listed liens. The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination may be signed by an officer of the Association. To evidence the aforesaid assessment lien, the Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Kendall County, Texas; provided, however, no such written evidence shall be necessary for the creation or attachment of such lien. Such lien for payment of Assessment shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by either (i) the Association foreclosing against the defaulting Owner's Lot under a power of sale in like manner as a mortgage on real property, as provided in the Texas Property Code, subsequent to the recording of a notice of assessment lien as provided above, or (ii) the Association instituting suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to such Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

ARTICLE IX EASEMENTS

9.1 Reserved Easements. All dedications, limitations, restrictions and reservations shown on a Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights, made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property and other property in the Development. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for access, ingress and egress for public utility purposes (including, without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of thirty (30) feet on each side of such Lot line. An easement over the Common Properties shown on any recorded plat is hereby retained by Declarant, its successors and assigns or designees, for the benefit of the Development. Declarant reserves the right to drill water wells on any portion of the Common Properties to provide for irrigation of the Common Properties or for use in connection with a community water system.

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

9.3 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Review Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage

easements or natural creeks as defined in this Declaration and shown on the plat. There shall be no construction of Improvements, temporary or permanent in any drainage easement or natural creeks, except as approved in writing by the Architectural Review Committee.

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

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

9.6 Greenbelt or Amenity Areas. Each Owner shall have an easement of use and enjoyment in and to all Greenbelt or Amenity Areas which shall be appurtenant to and shall pass with title to such Owner's Lot.

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

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

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

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

E. The right of the Association to contract for services with third parties on such terms as the Association may determine.

ARTICLE X GENERAL PROVISIONS

10.1 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until January 1, 2030, unless amended as herein provided. After January 1, 2030, this Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners, excluding Declarant, of at least sixty-seven percent (67%) of the Lots within the Property then subject to this Declaration.

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

10.3 Amendment.

A. By Declarant. This Declaration or any Supplemental Declaration may be amended by Declarant acting alone without the necessity of notice to or the approval of the Association or any Members, to correct typographical and grammatical errors, and ambiguities.

B. By Owners. In addition to the method in Section 10.3A, this Declaration may be amended by the recording in the Official Records of Kendall County, Texas an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by the Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast pursuant to Section 5.3 hereof.

10.4 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made

by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

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

10.6 Mergers and Consolidations. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger, consolidation or annexation shall have the consent (in writing or at a meeting duly called for such purpose) of those Members entitled to cast not less than sixty-seven percent (67%) of the votes of the Association.

10.7 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Review Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities to construct any and all other types of improvements anywhere within the Property, however, the construction of sales and leasing offices and the posting of signs advertising the sale and leasing of Lots by Declarant shall be limited to Lots owned by Declarant and the Common Properties.

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

10.9 Enforcement and Nonwaiver.

A. **Right of Enforcement.** Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce all of the provisions of the Heartland at Tapatio Springs Restrictions and Rules. All claims, demands, disputes, differences, controversies and misunderstandings arising under, out of, in connection with or in relation to this Declaration shall be submitted to, and shall be determined by binding arbitration in accordance with, the provisions of the Texas Uniform Arbitration Act, V.T.C.A., Civ. Prac. & Rem. Code §§171.001 to 171.020.

B. Nonwaiver. The failure to enforce any provision of the Heartland at Tapatio Springs Restrictions and Rules at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

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

10.10 Construction

A. Restrictions Severable. The provisions of the Heartland at Tapatio Springs Restrictions and Rules shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

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

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

10.11 Disclaimer by Declarant. EXCEPT AS SPECIFICALLY STATED HEREIN, DECLARANT HAS NOT MADE, DOES NOT MAKE AND DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, OR CONCERNING (I) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING BUT NOT BY WAY OF LIMITATION, THE WATER, SOIL, GEOLOGY AND THE SUITABILITY THEREOF, AND OF THE PROPERTY, FOR ANY AND ALL ACTIVITIES AND USES WHICH OWNER MAY ELECT TO CONDUCT THEREON OR ANY IMPROVEMENTS ANY OWNER MAY ELECT TO CONTRUCT THEREON, EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ANY OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME; (II) THE MANNER OF CONSTRUCTION AND CONDITION OF ANY OF THE IMPROVEMENTS ON COMMON AREAS CONSTRUCTED BY DECLARANT; AND (III) THE DESIGNATION OR LOCATION OF GREENBELT OR COMMON AREAS OR THE TYPE OR NATURE OF ANY AMENITIES OR IMPROVEMENTS THAT COULD BE CONSTRUCTED THEREON OTHER THAN ANY AMENITIES OR IMPROVEMENTS SHOWN ON ANY RECORDED PLAT.

10.12 Limitation of Liability for Activities in Common Properties and Facilities. ACTIVITIES THAT MAY BE CONDUCTED ON THE COMMON PROPERTIES BY AN OWNER, FAMILY MEMBER, GUEST, OR INVITEE, POSE AN

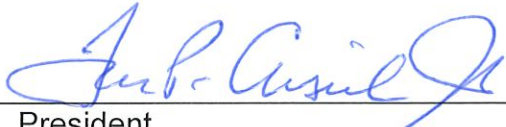
INHERENT RISK AND DANGER. SUCH ACTIVITIES INCLUDE, WITHOUT LIMITATION, SKEET SHOOTING, HORSEBACK RIDING, SWIMMING AND OTHER WATER SPORTS, HIKING, JOGGING AND OTHER ACTIVITIES. ALL OWNERS, FOR THEMSELVES AND ON BEHALF OF THEIR FAMILY MEMBERS, GUESTS AND INVITEES, DECLARANT AND THE ASSOCIATION AGREE TO RELEASE AND HOLD EACH OTHER, THEIR HEIRS, REPRESENTATIVES, AGENTS, EMPLOYEES, PARTNERS, DIRECTORS, OFFICERS, MEMBERS AND EQUITY INTEREST HOLDERS, HARMLESS FROM ANY LIABILITY WHATSOEVER WHICH RESULTS FROM THE USE OF SUCH COMMON PROPERTIES INCLUDING, WITHOUT LIMITATION, ANY LIABILITY INCURRED IN WHOLE OR IN PART AS A RESULT OF THE NEGLIGENCE OF THE RELEASED PARTY.

IN WITNESS WHEREOF, Declarant and the Association have executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions to be effective as of the day and year of the recording hereof in the Official Records of Real Property of Kendall County, Texas. The Association hereby certifies that this Amended and Restated Declaration of Covenants, Conditions and Restrictions has been duly approved in accordance with Section 10.3 B.

By: VAQUEROS DEL MAR
A Texas Limited Liability Company,
It's General Manager

By: 
Tom P. Cusick, Jr., Manager

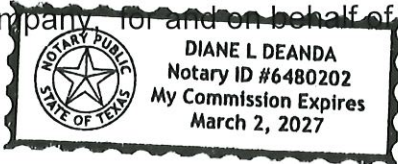
Heartland at Tapatio Springs Property Owners
Association, Inc.

By: 
President

By: 
Secretary


STATE OF TEXAS §
 §
COUNTY OF KENDALL §

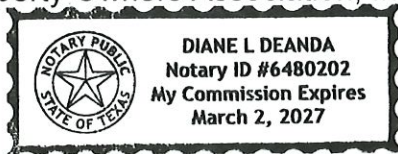
This instrument was acknowledged before me on May 2, 2022, by Tom P. Cusick, Jr., as Manager of Vaqueros del Mar, LLC., a Texas Limited Liability Company, for and on behalf of such limited partnership.



Diane L. Deanda
Notary Public for the State of Texas

STATE OF TEXAS §
 §
COUNTY OF KENDALL §

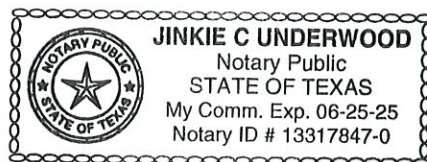
This instrument was acknowledged before me on May 2, 2022 by Tom P. Cusick, Jr., President of Heartland at Tapatio Springs Property Owners Association, Inc.



Diane L. Deanda
Notary Public for the State of Texas

STATE OF TEXAS §
 §
COUNTY OF KENDALL §

This instrument was acknowledged before me on May 2, 2022 by Diane Deanda, Secretary of Heartland at Tapatio Springs Property Owners Association, Inc.



Jinkie C. Underwood
Notary Public for the State of Texas



VG-190-2023-380431

Kendall County
Denise Maxwell
Kendall County Clerk

Instrument Number: 380431

Real Property Recordings

Recorded On: May 31, 2023 11:43 AM

Number of Pages: 45

" Examined and Charged as Follows: "

Total Recording: \$198.00

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 380431
Receipt Number: 20230531000023
Recorded Date/Time: May 31, 2023 11:43 AM
User: Christine M
Station: CCLERK02

Record and Return To:

Vaqueros Del Mar LLC



STATE OF TEXAS

Kendall County

I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Kendall County, Texas

Denise Maxwell
Kendall County Clerk
Kendall County, TX

Denise Maxwell