



**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR VILLAGE OF GLORIETA (A PART OF ESPERANZA PHASE 3A)**

May 2024

*This Declaration of Covenants, Conditions, and Restrictions (the "Restrictions") are imposed on all of the property located within The Village of Glorieta (a part of Esperanza Phase 3A). Esperanza Phase 3A is part of a larger master-planned community known as Esperanza and is governed by the Esperanza Community Association, Inc. These restrictions are in keeping with a common plan and theme of development throughout Esperanza and to provide one mechanism for implementing that overall plan. Another purpose of these Restrictions is to establish rules for land use in the Village of Glorieta and maintenance of common areas in all of Esperanza for the good of the residents. Owners in the Village of Glorieta and elsewhere in Esperanza are assessed fees for the care of common areas and the enforcement of these Restrictions. This and the other declarations affecting the Esperanza community allow a single homeowner's association to protect the rights of all Esperanza residents while addressing the individual needs of each specific area of the community.*

*These Restrictions apply only to the Village of Glorieta (a part of Esperanza Phase 3A). Esperanza, Phase 1, Phase 1B, 1C, 2A, 2B, 2C, 2D, 2E, 2F, 2G and all other villages/neighborhoods are covered by separate Restrictions; copies of the separate Restrictions can be found on the Esperanza Community Association's website at [www.esperanzahoa.com](http://www.esperanzahoa.com). All Sections of Esperanza are subject to the same Rules, Policies, and Guidelines.*

**THIS DECLARATION is hereby imposed on and governs all Lots described on EXHIBIT B attached hereto. The Declarant is Lookout Development Group, L.P. by The Lookout Group, Inc., who presently has a controlling interest in the Association and the ability to create and/or restate these Covenants, Conditions and Restrictions pursuant to their terms. The purpose of these Covenants, Conditions and Restrictions is to ensure the best and highest use and most appropriate development of the Property, protect Owners against improper use of surrounding Lots, provide for an artful streetscape, preserve, so far as is practical, the natural beauty of the Property, guard against erection of poorly designed or proportioned structures of improper or unsuitable materials, encourage erection of attractive improvements in appropriate locations on each Lot, secure and maintain proper setbacks, and in general, provide for high quality development of the entire Property.**



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## I. DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases shall have the meanings hereinafter specified:

- 1.01 **“Air-Conditioned Square Footage (“ACSF”)”** shall mean the total gross area of the proposed structure, measured from the outside of the exterior wall surface, exclusive of air conditioning duct space, garages, exterior storage, and unfinished attic storage areas not designed to be converted into usable floor area.
- 1.02 **“Articles”** means the Articles of Incorporation of the Association (aka Certificate of Formation).
- 1.03 **“Assessments”** means any assessment, cost or fee levied by the Association under the terms and provisions of this Declaration.
- 1.04 **“Association”** means the Esperanza Community Association, Inc., a Texas nonprofit corporation.
- 1.05 **“Board”** means the Board of Directors of the Association.
- 1.06 **“Bylaws”** means the Bylaws of the Association, as adopted by the Board, and as amended from time to time. A copy of the current Bylaws may be obtained from the Association or Association’s management company.
- 1.07 **“Common Area(s)”** means all real and personal property leased, owned, or maintained by the Association for the use and benefit of the members of the Association. Common Area may include any pools, amenity centers, recreational facilities, entrance monuments, access gates, perimeter walls, drainage facilities and detention ponds, esplanade and right-of-way landscaping, and any improvement areas lying within indicated public easements or rights-of-way, as determined by the Board.
- 1.08 **“Declarant”** refers to Lookout Development Group, L.P., a Texas Limited Partnership, and its assignees and other affiliated, lawful successors in interest.
- 1.09 **“Declarant Control Period”** means the period during which the Declarant intends to develop or sell any portion of the Property. The Declarant Control Period will end only upon written notice from the Declarant to the Board that Declarant has developed and sold all of the Property owned by Declarant or intended to be developed and sold by Declarant.
- 1.10 **“Declaration”** or **“Restrictions”** refers to this instrument, as it may be amended or restated from time to time.
- 1.11 **“Improvement”**, is defined in Section 3.02 G.
- 1.12 **“Lot”** means any parcel of land within the Subdivision shown as a subdivided lot on a plat of part or all of the Property, together with all improvements located thereon. Reference herein to “lots” or “lots in the Property” (with a lower case “l”) refers to all lots on the entire Property (see also Section 1.16 and Exhibit A). A **“Commercial Lot”** shall be a Lot designated in a plat or other restriction for use for commercial purposes. It is contemplated that the Property will contain residential Lots and Commercial Lots. The total number of Lots that may be made subject to this Declaration is **3,600**.

Declarant reserves the right to subject any portion of the Property to a **condominium regime** pursuant to Texas Property Code Chapter 82, and to form a sub-association to the Association, with the Association being the master association for such regime. In the event that any portion of the

Property is made subject to a condominium regime, each dwelling unit within such regime shall be considered a Lot for purposes of Assessments, architectural control (ACC) requirements, voting rights, and all other purposes herein unless otherwise provided in the document by which Declarant annexes such portion of the Property.

- 1.13 **“Masonry”** means brick, natural stone, or stucco.
- 1.14 **“Owner(s)”** means any person holding a fee simple interest in any portion of the Subdivision, excluding Declarant; a mortgagee is not an Owner.
- 1.15 **“The Village of Glorieta (a part of Esperanza Phase 3A)”** means all of the lots more completely described by the property description contained in **Exhibit B** attached hereto and incorporated herein, for all purposes.
- 1.16 **“Property”** means all of the land to be developed or developed by Declarant or its affiliates in Kendall County, Texas: being the master-planned community commonly known as Esperanza and such other land as Developer may choose to include in Esperanza. At the time of filing of these Restrictions, the land that is contemplated to be ultimately annexed into the Association and made subject to similar Restrictions, is depicted on the attached **Exhibit A**.

At the time of filing these Restrictions, the other subdivisions located in Esperanza that have been annexed into the Association through separate Restrictions, include Esperanza Phase 1, Phase 1B, Phase 1C, Phase 2A, Phase 2B, Phase 2C, Phase 2D, Phase 2E, Phase 2F and Phase 2G. Notwithstanding anything to the contrary contained herein, only the land described on **Exhibit B** is made subject to these Restrictions.

Declarant may at any time during the Declarant Control Period, in a document signed by Declarant and filed of record in the Kendall County Official Public Records, add land to (aka annex) or withdraw land from the Association (may remove land from being subject to the Declaration and subject to membership in the Association), including adding land in the form of subsequent phases or otherwise, to be subject to the Declaration. Such document may impose additional or alternate restrictions on the added property as the Declaration, as further described in any such filing.

- 1.17 **“Voting Representatives”** shall mean and refer to the representatives selected by the Declarant, or after the Declarant Control Period, the Owners of Lots in Esperanza Phase 3A and Owners of lots in other portions of the Property, such representatives being responsible for casting all votes attributable to Lots in the Property for election of directors, amending this Declaration or the Bylaws, and all other votes of the Owners provided for in this Declaration and in the Bylaws unless such Owners’ votes are expressly made exercisable by the Owners themselves in the Declaration, Bylaws or other governing documents. Declarant in Declarant’s sole discretion shall determine the number of Voting Representatives Esperanza Phase 3A and each other portion of the Property made subject to the Declaration shall be entitled to elect, any may alter the number of Voting Representatives Esperanza Phase 3A or any portion of the Property shall be entitled to elect from time to time. All such determinations and alterations thereto shall be in written form, signed by Declarant, and filed of record in the Kendall County Official Public Records.
- 1.18 **“Voting Representative Neighborhood”** shall mean any portion of the Property that is designated by Declarant pursuant to §1.17 as entitled to elect Voting Representative(s) to represent that particular portion of the Property.

## II. GENERAL PROVISIONS AND RESTRICTIONS

2.01 Nuisance and Hazardous Activities.

- A. No activities shall be conducted in the Property and no improvements shall be constructed or allowed to remain in the Property, which are or might be unsafe or hazardous to any person or property.
- B. Without limiting the generality of the foregoing, the following shall apply:
  - 1. No firearms shall be discharged upon any part of the Property;
  - 2. No explosives shall be kept or used on any part of the Property (other than in the ordinary course of construction of improvements thereon);
  - 3. No open fires shall be lighted or permitted except under carefully monitored and controlled circumstances;
  - 4. No toxic or hazardous substances shall be dumped or discharged into any part of the Property; and
  - 5. Nothing shall be done or kept in the Property, which would materially increase the rates of insurance or cause the cancellation of insurance on any Lot or other portion of the Property or any of the improvements located thereon.

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

2.03 Temporary Structures.

- A. No temporary or portable structure/building shall be placed in the Property without the prior written approval of the Board.
- B. Temporary structures necessary for storage of tools and equipment and for office space for architects, builders, and foremen during actual construction of residences and for sales trailers may be approved by the Board.

2.04 Lot Subdivision. No Lot in the Property may be further subdivided, except by the Declarant, except Commercial Lots as further described herein (see §5.08).

2.05 Sanitary Sewers.

- A. No outside, open or pit type toilets will be permitted in the Property; and
- B. Except for portable toilets, bladders and temporary holding tanks used during construction and approved by the Declarant, all dwellings constructed in the Property must have a sewage disposal system, including a grinder pump, if required, installed by the Owner to comply with the requirements of all appropriate governmental agencies.

2.06 Property Rights. Except as otherwise provided herein, every Owner and the other Owners in the Property shall have a right and easement of ingress and egress, use and enjoyment of Common Areas, which shall be appurtenant to and shall pass with the title to every Lot (including any condominium unit created within the Property), subject to the following provisions:

- A. The right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter constructed or situated upon Common Areas and to impose reasonable limits on the number of guests who may use those facilities;
- B. The right of the Association to suspend an Owner's right to use the Common Area for any period during which any Assessment against that Owner remains unpaid, and for violation of this Declaration, the declaration of any other land within the Property and/or the Association's



- bylaws, rules and regulations, or any other governing document by an Owner, for the duration of that violation;
- C. The right of the Board, on behalf of the Association, to grant easements to the Common Areas to any public agency, authority or utility for such purposes as benefits the Association, the Property, or portions thereof and Owners or Lots contained therein;
  - D. The right of the Association, by majority vote of the board of directors, to borrow money for the purpose of improving the Common Areas, or any portion thereof, for acquiring additional Common Areas, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage covering all or any portion of the Common Area. The lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or Owner, or the holder of any mortgage irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Property;
  - E. The right of the Association to dedicate or transfer all or any portion of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant, or after the Declarant Control Period, by at least two-thirds (2/3) vote of the Voting Representatives;
  - F. The right of the Board, acting on behalf of the Association to prescribe rules and regulations as they may be expanded, amended, or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of the Owner's Lot may be affected by this provision and that the rules and regulations may change from time to time. The Board has the authority to enforce the Declaration, Bylaws, rules and regulations and other governing documents by all appropriate means, including but not limited to the imposition of fines, damage assessments (for damages caused by Owner or his or her residents, guests, tenants, or invitees) and liens. An Owner found to have violated the Declaration, Bylaws, rules and regulations or other governing documents shall be liable to the Association for all damages and costs, including reasonable attorney's fees, collection costs, costs of court and other costs. Notwithstanding, during the Declarant control period, Declarant has the sole right to amend the rules and regulations and may do so as it deems necessary or appropriate; and
  - G. The right of the Association to charge a transfer fee to be set from time to time by the Board on each sale or transfer of a Lot. Owners of Commercial Lots shall not be entitled to use any recreational facilities of the Association, including any pool, park, or other similar facility, unless the Board determines otherwise by resolution.

## 2.07 Easements and Access.

- A. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of Esperanza Phase 3A or any other portion of the Property.
- B. Within these easements no structure, planting, fence, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or, in the case of drainage easements, which may change or impede the direction of flow of water through drainage channels in such easements.
- C. The easement area of each Lot, if any, and all improvements in such area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
- D. Neither the Association, Declarant nor any utility company using the easements herein or referred to shall be liable for any damages done by them nor their assigns, agents, employees or servants to shrubbery, streets, flowers, or other property of the Owners or others claiming through Owners situated on the land covered by said easements.
- E. There is hereby created a right of ingress and egress across, over, and under the Property in favor of Declarant and the Association, for the sole purpose of installing, replacing, repairing,

- and maintaining all facilities for utilities, including, but not limited to, water, sewer, reclaimed water, telephone, cable TV, internet, electricity, gas, and appurtenances thereto.
- F. An easement is hereby extended and acknowledged to all police, fire protection, ambulance, garbage and trash collector pickup vehicles, and all similar persons to enter upon the Common Area in performance of their duties.
  - G. Each Lot is conveyed subject to all easements, conditions and reservations shown on the plat and each Owner shall take notice of all such easements, conditions, and reservations.
  - H. No Owner shall maintain any condition or improvements in any platted easement which will significantly interfere with the intended use of the easement.

### **III. USE, MAINTENANCE AND CONSTRUCTION RESTRICTIONS**

*Declarant's Vision: The purpose of these Restrictions is to establish the aesthetic vision of Esperanza by weaving a thread of residential design continuity that complements the natural environment and enhances the quality of life and property character. These Restrictions not only provide architectural framework regarding height, color, massing, building materials, landscaping, site planning, setback distances, fencing, etc. but also extend to such matters as the Association's and the City of Boerne's plan review processes, and the required approvals and permits.*

Commercial Lots. Many provisions herein are not appropriate for and not intended to be applicable to Commercial Lots. Declarant, or after the Declarant Control Period any ACC, shall in their discretion have the authority to grant a variance to any covenant herein other than (1) applicable governmental requirements and (2) assessment payments, for any Commercial Lots. Any waiver must be documented in writing. By approving Commercial Lot plans submitted to Declarant, or after the Declarant Control Period to the ACC, the Declarant or ACC shall be deemed to have granted a variance for such plans to the extent of any conflict between such plans and the terms of the Declaration or other governing document.

#### 3.01 City of Boerne Rules, Regulations and Approvals.

- A. In addition to the Restrictions, the Property is subject to the existing development regulations and zoning requirements for the City of Boerne (the "City") which are applicable to Esperanza including those set forth in the Development Agreement between the City of Boerne and the prior Owner of the Property, MA Boerne Partners, LP, (the "Development Agreement"), as revised from time to time. The Development Agreement has an effective date of February 12, 2008, and is evidenced by a Memorandum of Development Agreement recorded as Document No. 00274382 in Volume 1361, Page 834, in the real property records of Kendall County, Texas, as revised from time to time. Wherever there is a conflict between the applicable Boerne rules, regulations, and ordinances (the "Applicable Boerne Rules") and these Restrictions, the most stringent applications shall apply.
- B. It is strongly recommended that builders and Owners of lots in Esperanza make a thorough review of these Restrictions as well as the Development Agreement and the Applicable Boerne Rules.
- C. These Restriction and the Applicable Boerne Rules govern all residential property in Esperanza.
- D. **Unless otherwise specified in these Restrictions, all construction projects, design issues and Improvements erected on a residential Lot must be approved by the Esperanza Architectural Control Committee ("ACC") and the City before any construction activities begin.**
- E. There are two submittal processes that the builder must complete in order to construct a home or other improvement in Esperanza. The first is the Esperanza ACC process. The second is the City of Boerne Permit process.

- F. The Board or ACC may determine a non-refundable review fee for review of any plans submitted and may determine a non-refundable project fee. The project fee is intended to supplement Association reserves to, without limitation, assist in funding road or other maintenance costs exacerbated by construction. Fees in no way limit or affect an Owner's responsibility for damages inflicted by the Owner or his agents during any construction process. **Any applicable fees must be submitted in conjunction with the project submittal as a condition of review of plans.** It is the submitter's responsibility to determine any then-applicable fees from the Association's managing agent.
- G. The ACC may decline to review any plans during any period of time where a violation of the governing documents (including Declaration, Bylaws, Rules, or Landscape Design Standards and Guidelines) is present. Once the Esperanza ACC completes its review of the construction plans and provides written approval of such plans, the plans may then be submitted to the City for their review, approval, and issuance of a Building Permit.
- H. While the following information regarding the Applicable Boerne Rules are intended to be a helpful guide, it is ultimately the builder's and Owner's responsibility to conduct their own due diligence investigations with respect to all requirements imposed by the City and other public entities:

In accordance with the terms of the Development Agreement, the following Applicable Boerne Rules apply to the Property:

- a. The following provisions of the City's Code of Ordinances, as amended:
  - i. Chapter 5, "Buildings and Building Regulations".
  - ii. Chapter 8 "Fire Prevention and Protection", only Articles 2 and 3.
  - iii. Chapter 9 "Flood Damage Protection".
  - iv. Chapter 14 "Nuisances".
  - v. Chapter 22 "Utilities", only Article 1.
- b. The following ordinances, rules, and regulations:
  - i. Ordinance No. 2006-26 (regarding "Sign Regulations") as of the Effective Date. A copy is attached as Exhibit C.
  - ii. To the extent the City is the retail provider of the services described therein, the "City of Boerne Utilities Rules and Regulations" as amended, and "Chapter 22 of the City of Boerne Code of Ordinances" as amended.
  - iii. Ordinance No. 2005-01, Article III, Section 2 "Outdoor Lighting" as of the Effective Date. A copy is attached as Exhibit D.
  - iv. Ordinance 2007-61 regarding certain City fees as follows, as amended: Code Enforcement (pages 8 – 12); Utilities (pages 25 thru 32); Public Works (page 32); Planning and Zoning Commission (page 32 & 33).
  - v. Ordinance 2008-01 "Sewer Lateral Ordinance" as amended.
  - vi. Ordinance 2005-77 "Water Conservation and Emergency Drought Ordinance" as amended.
  - vii. Ordinance 77-5 "Discharging of Industrial Wastes" as amended.
  - viii. Ordinance 2007-64, Article 4 "Landscape Requirements" (now titled "Tree Preservation Requirements") as amended, using terms defined by Article 1, Section 6 of the Zoning District Use Regulations set forth in City of Boerne Ordinance No. 2005-01 as of the Effective Date. A copy of Article 1, Section 6 is attached as Exhibit E.
  - ix. Ordinance No. 2007-56, as amended.
- c. If the version of the Applicable Boerne Rule is "as of the Effective Date," a copy of such rule, regulation or ordinance is included as an EXHIBIT to these Restrictions.
- d. If the version of the Applicable Boerne Rule is "as amended," then the builder must comply with the most current version of such rule, regulation, or ordinance. A copy of the current City rules, regulations and ordinances can be found on the City's website at [www.ci.boerne.tx.us/](http://www.ci.boerne.tx.us/).

3.02 Architectural Control Committee (“ACC”).

- A. The Village of Glorieta (a part of Esperanza Phase 3A) is part of a larger master planned community, Esperanza.
- B. Esperanza has one master association, the Association, and may, after the Declarant Control Period, elect at the Board’s discretion to have separate architectural control committees for each phase or any other portion(s) of the Property. The Declarant, or after the Declarant Control Period the Board, may in its discretion also create a separate ACC for Commercial Lots.
- C. After the Declarant Control Period has ended, the Board will appoint the ACC including any Commercial ACC. In the absence of such appointment by the Board, the Voting Representative(s) will serve as the ACC.
- D. However, during the Declarant Control period, the Declarant has the sole right to act as or to appoint all members of the ACC.
- E. The ACC shall be free from liability for actions within the scope of the ACC’s function.
- F. **No building or any structure or Improvement of any kind shall be constructed, erected, or placed on any Lot or any portion of the Property nor shall any exterior additions or changes or alterations be made prior to written approval by the ACC as to quality and workmanship and materials, harmony of external design and location in relation to surrounding structures and topography, and compliance with the Restrictions.** This provision shall not be applicable to Common Areas. The Board, pursuant to its right and duty to manage the Common Areas, shall in its sole discretion determine alterations, additions or repair needs or other appropriate action regarding the Common Areas. No Owner may alter the Common Areas (including, but not limited to greenbelts and open space) or store or place anything thereon unless expressly allowed herein or unless approval in writing is granted by the Board. Removal or altering existing shrubs, trees, grass, and plantings that are not located on an Owner’s Lot is strictly prohibited.
- G. For purposes of this Declaration, “Improvement” is defined as every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, awnings, gazebos, large umbrellas, patios, tennis or sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, mailboxes, yard art, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, reclaimed water, sewer, gas, electric, telephone, regular or cable television, internet, or other utilities (any exterior change visible from the roadway or adjoining property).
- H. Landscaping is not considered an Improvement by the ACC and prior review and approval of landscape plans by the ACC is not necessary; provided, however, all landscaping must comply with these Restrictions and all other deed restrictions including community rules and the landscaping guidelines (“**Landscape Design Standards and Guidelines**”) for Esperanza adopted by the Association, a copy of which is available from the Association and also from the Association’s website. **However, landscape plans may be required to be submitted to and approved by the City of Boerne.**
- I. Final plans and specifications, including site plan, must be submitted to, and approved in writing by the ACC prior to any construction.
- J. Plans and specifications for initial construction of residences and the accompanying improvements, along with any applicable application and project fee (see §3.02 L.) shall be filed with the ACC by delivery to the Esperanza Community Association office or such other location as Declarant or Association may designate from time to time. It is the Owner’s responsibility to obtain the then-current submittal location and instructions for submittal from the Association’s managing agent as well as the then-current application fee. **Plans must be submitted for approval to the ACC Reviewer at [ACCReview@thelookoutgroup.com](mailto:ACCReview@thelookoutgroup.com).**

**Plans will not be reviewed until a complete submittal including payment of all applicable fees is received.**

Plan submittals must include the following:

- a. Master Plans – 2 electronic copies of each master plan must be submitted, including all elevations, options and roof plans. Each elevation must show the exterior materials used including the type of masonry and % of clay brick used on the front elevation (or any elevation that faces a street). All Master Plans must be accompanied by a Master Plan Submittal Application Form signed by the Applicant; and
  - b. Plot Plan and Plan/Masonry/Color Selections – one electronic copy of the Plot Plan showing the building footprint (including options) and subject setbacks. The plan series, plan number and elevation number must be provided along with any options selected. For masonry/color selections – all elevations showing the types of masonry, including the clay brick % on all front elevations and any elevation that face a street. Color palettes must be provided for all exterior surfaces. All Plot Plan and Plan/Masonry/Color Selections must be accompanied by a Submittal Application Form for Plot Plan and Plan/Masonry/Color Selections signed by the Applicant
- K. All other plans, such as modifications to existing residences, are to be filed with the management company for the Association or a Reviewer designated by Declarant or the Association along with the then-current application fee. It is the Owner’s responsibility to obtain the then-current submittal location and instructions for submittal from the Association’s managing agent as well as the then-current application fee. **Plans will not be reviewed until a complete submittal including payment of all applicable fees is received.** Owner is responsible for ensuring that all of the applicant’s representatives, including the applicant’s architect, engineer, contractors, subcontractors, and their agents and employees, are aware of all requirements imposed by these Restrictions as a condition of approval.
- L. Upon completion of all Improvements, Owner must notify the ACC Reviewer at [ACCReview@thelookoutgroup.com](mailto:ACCReview@thelookoutgroup.com) and an ACC Final Completion Compliance Inspection shall be performed to ensure conformance with the approved submittals. Evidence of conformance and compliance with these ACC guidelines, including the Landscape Design Standards and Guidelines, shall be in the form of a completed and executed ACC Final Completion Compliance Inspection provided by the ACC Reviewer. During the final inspection, the ACC Reviewer has the discretion to approve the landscaping, including the tree and shrub sizes and required number of plants, which are less than the Landscape Requirements listed in the Landscape Design Standards and Guidelines due to constraints such as lack of available room (lot size), topography and existing trees. Due to constraints, some planting beds may be approved by the ACC that are smaller than the requirements listed in the Landscape Design Standards and Guidelines. The current ACC Final Completion Compliance Re-Inspections fees are as follows:
- |   |          |
|---|----------|
| Final Completion Compliance Re-Inspections Fees -             |          |
| 2 <sup>nd</sup> Final Inspection                              | \$150.00 |
| 3 <sup>rd</sup> Final Inspection                              | \$300.00 |
| 4 <sup>th</sup> Final Inspection (and subsequent inspections) | \$500.00 |
- M. The ACC Reviewer has up to 30 days to review and approve each Master Plan and each Plot/Site Plan after the plan and related fees have been submitted and paid to the ACC Reviewer. The ACC Reviewer requires a minimum of 7 days written advance request for each inspection and re-inspection. The ACC Reviewer can be contacted at [ACCReview@thelookoutgroup.com](mailto:ACCReview@thelookoutgroup.com).
- N. Approval may be granted by a single signature on the final, complete construction plans by any of the ACC members (or by Declarant if Declarant is serving as ACC).
- O. In the event that a fully completed ACC application and any applicable fees are submitted as provided herein, and the ACC shall fail either to approve or reject, in writing, such application

for a period of thirty (30) days following such submission, then approval is presumed denied. It is the duty of the applicant to confirm receipt of the application by the ACC.

- P. When all of the lots in the Property are sold by the Declarant (including any additional land which may become subject to the Restrictions pursuant to Section 3.39 hereof) and the Declarant has no intention of adding any additional land to the Property (as evidenced by a statement in writing from Declarant to the Board), or at any sooner time the Declarant so determines in a written statement delivered to the Board, the term of any Declarant-appointed ACC shall be deemed to have expired, and the ACC shall be constituted in accordance with subsection C above.
- Q. In the absence of such appointment, the Voting Representatives shall serve as the ACC.
- R. Persons serving on the ACC shall serve until removed by the Board or until they resign.
- S. Any member may resign at any time for any reason and such resignation shall be effective upon notice thereof to the Board.
- T. The Board shall appoint subsequent members of the ACC within sixty (60) days, if applicable.

3.03 Residential and Commercial Property.

**Per the development agreement between Esperanza and the City of Boerne, all Lots must obtain a Building Permit and receive a certificate of occupancy from the City and all lots must follow certain Boerne ordinances further described herein and in the development agreement, including the City’s Tree Preservation Requirements. Landscaping must be installed in accordance with not only the Landscape Design Standards and Guidelines but also all applicable City ordinances including the City's Tree Preservation Requirements and Chapter 22, Article II, Division 1 and 2 of the City of Boerne Code of Ordinances and these Restrictions. This is the case regardless of whether the Lot is located within the City.**

- A. Except as expressly provided in this Declaration to the contrary, each Lot other than Commercial Lots will:
  - 1. Be used exclusively for single-family residential purposes;
  - 2. Contain only structures and improvements approved by the ACC that are compatible with and generally found in single-family residential neighborhoods; and
  - 3. No more than one primary residence and one guesthouse may be constructed on each Lot. All improvements shall be constructed in an appropriate location on the Lot, as determined by the ACC in its discretion.

3.04 Lot Classification. For purposes of applying these Restrictions and the Applicable Boerne Rules, the following three (3) Lot Classification Tables must be used to determine a Lot’s (other than Commercial Lots) “Classification”:

<b>Lot Classification Table (Minimums)</b>			
<b>Lot Type</b>	<b>Lot Classification</b>	<b>Lot Width</b>	<b>Lot Sq. Ft.</b>
SF	<i>Town Lot</i>	50'	5,500
SF	<i>Traditional Lot</i>	60'	6,500
SF	<i>Manor Lot</i>	65'/70'	8,000
SF	<i>Estate Lot</i>	80'	10,800
SF	<i>Large Estate lot</i>	90'	12,500
SF	<i>Country Estate Lot</i>	100'	20,300

<b>Lot</b>	<b>Estate</b>	<b>Large Estate</b>
<b>Classification</b>	<b>Lot</b>	<b>Lot</b>
<b>BLOCKS, LOTS</b>	BLOCK 6, LOTS 20, 22 BLOCK 26, LOTS 18-23 BLOCK 27, LOTS 1-3, 5-6, 8-11 BLOCK 28, LOTS 6-7 BLOCK 29, LOTS 1-6 BLOCK 30, LOTS 1-2	BLOCK 6, LOTS 17-19, 21, 23 BLOCK 7, LOTS 7-14 BLOCK 26, LOTS 1-2 BLOCK 27, LOTS 4, 7, 12-14 BLOCK 28, LOTS 5, 8

<b>Lot Classification</b>	<b>Estate Lot</b>	<b>Large Estate Lot</b>
<b>Village Name</b>	<b>Glorieta</b>	<b>Glorieta</b>

3.05 Motif; Building Materials; Dwelling Sizes.

*Declarant's Vision: The Declarant has planned Esperanza as a place where residents and guests can enjoy an authentic Texas experience in a spectacular Hill Country environment. Esperanza is designed as a Master Planned Community, which could include a variety of uses, including attached and detached single-family and multi-family residential (both for sale and for rent units), amenities, retail, office, other commercial uses, schools, and other municipal buildings (fire station), where residents can live, work, play and shop without ever leaving Esperanza. The natural terrain and amenities of the site provide a unique opportunity for an attractive and vibrant residential community that is planned in harmony with the natural environment. Esperanza combines the best of community planning principles with an integration of nature and open space. Water features, parks, community centers, schools and other amenities are all located within the community and thoughtfully connected by a system of hike and bike trails. The site is designed to preserve the beauty of the surrounding terrain while creating an artful sense of place which is respectful of Boerne's Texas heritage.*

*The goal of these Restrictions is to create neighborhoods that reflect the distinct Texas Hill Country setting of Esperanza and at the same time allow Owners the opportunity to develop a residence that reflects their individual style.*

*Declarant envisions masonry buildings where the primary material is native stone, stucco or clay brick accented with native stone, stucco, or clay brick in an earth-tone shade. Exterior colors of paint and stain for stucco and wood trim are earth tone colors. "Earth-Tone" colors are neutral tans, grays, browns, taupe, ecru, and other more neutral background colors; provided, however, darker colors, such as black, burgundy, bottle green, navy, terra cotta, and other deep tones may be appropriate, but require ACC approval. Muted pastels may be used only for accentuation of detail and to further enhance design motifs, but may not be used for large exterior areas. The intention is to avoid loud, obtrusive, excessively contrasting, or bold colors and to use color to enhance the design as opposed to overwhelming the architectural effect. Composite shingles shall be of a continuous earth-tone shade or pattern. Enhanced architectural designs, including vertical articulation enhancements, may allow variances to be granted (exterior materials, colors, roof pitches and repeat plans/elevations) at the sole discretion of the ACC. For additional information and background on Hill-Country architecture, the ACC may, upon request, provide Owners and builders a bibliography list of reading material to aid in design.*

*In addition to the "standard" Texas Hill Country elevations and exterior building materials, Declarant encourages the use of some creative elevations and exterior building materials not found in other communities. Creative elevations such as mid-century modern, modern farmhouse, and prairie-style architecture, may allow variances to be granted (exterior materials, colors, roof pitches, and repeat plans/elevations) at the sole discretion of the ACC.*

- A. Approved Size of Principal Residence. The Principal Residence on each Lot must be built within the Approved Size Range based on the ACSF as shown on the following table:

<b>Approved Size of Principal Residence "Air Conditioned Square Footage ("ACSF")"</b>						
<b>Lot Classification</b>	<i>Town Lot</i>	<i>Traditional Lot</i>	<i>Manor Lot</i>	<i>Estate Lot</i>	<i>Large Estate Lot</i>	<i>Country Estate Lot</i>
<b>Minimum</b>	1,250	1,800	2,100	2,600	3,000	2,800 (one-story) 3,400 (two-story)
<b>Maximum</b>	2,950	3,800	4,250	5,000	5,000	none

Building Materials, Building Heights, Number of Stories and Colors.

*DECLARANTS VISION: A variety of exterior colors and material combinations are encouraged to create an interesting and diverse street scene. Individual home design should respect the design and character of historic Texas Hill Country structures and be sensitive to materials, color, and scale of adjacent homes. Building colors shall reflect the regional architecture. Complementing colors should be used to create visual interest in building facades.*

1. All buildings upon the Lots shall be of traditional Texas Hill Country design/appearance and quality construction and shall be constructed of approved building materials.
2. "Approved building materials" for exterior walls shall be 100% high quality masonry, including, but not limited to native stone, "three-part" stucco, and clay brick; provided, however, no more than 50% of the front elevation can be built from clay brick, except 100% white painted brick is allowed for the exterior elevations if all the exterior elevations are made of white painted brick. Calculations for the masonry requirement percentages do not include doors, recessed entryways, windows, dormers, gables, and other architectural features. The sides and rear elevations may be constructed from any of the approved building materials, or any combination thereof, with no limit on the use of any of the approved building materials. If any side or rear elevation(s) faces a street, then the use of clay brick for the construction of such exterior walls is limited to 50% of the side or rear elevation(s) that faces a street, except for homes that are 100% white painted brick on all of the exterior elevations. However, the 50% limitation on the use of clay brick does not apply to any side or rear elevation facing a street, if such side or rear elevation is separated from the street by a 6-foot masonry fence (Type "A") constructed by the master developer or its designee.
3. Any masonry used on the front elevation that extends to the sides of the home must extend at least five feet on the side elevations from the front corners.
4. Other materials may be used for architectural details, but only if approved by the ACC in writing.
5. Concrete brick will not be considered.
6. Exterior colors of paint and stain for stucco and wood trim are earth tone colors. "Earth-Tone" colors are neutral tans, grays, browns, taupe, ecru, and other more neutral background colors.
7. For multilevel homes that back up to a Primary Collector, no multilevel home may be constructed adjacent to another multilevel home. The objective is to eliminate the look of a "tunnel effect" and to create a more organic streetscape from view of the Arterials and Primary Collectors. Also, for all homes that back up to a Primary Collector, the rear elevation of homes that are viewed from the Primary Collector should be varied to create a more organic streetscape. For multilevel homes that back up to a Primary Collector, if the second story massing is located in the front of the home, the Declarant, in its sole



discretion, may determine that the home is not considered to be a multilevel home for purposes of this Section 3.05.B.7. Such determine must be provided in writing by the Declarant. Also, for multilevel homes on corner lots, consider locating the one-story portion of the home at the street corner to help reduce a “tunnel effect.”

8. The minimum front slab widths for each lot size are as follows:

<b>Lot Size</b>	<b>Minimum* Width of Slab</b>
55' AQ	39 feet
65' AQ	49 feet
75' AQ	59 feet
50' SF	34 feet
60' SF	44 feet
65'/70' SF	49 feet
80' SF	54 feet
90' SF	64 feet
Custom	69 Feet

\* Excludes the width of the brick lug totaling 1 foot

9. Vertical and horizontal articulation is encouraged on all sides/elevations, but is more important on the front elevation, and to a lesser degree, on any side or rear elevation that faces a street. The use of recessed windows and columns and beams that create a shadow and texture are encouraged to establish a sense of residential scale. On a two-story home, the objective should be to limit the amount of two-story vertical walls on a single plane, especially on the front elevation, and to a lesser degree, on any side or rear elevation that faces a street. Vertical articulation can be achieved through a combination of methods, including offsetting the second story floor by at least five feet from the first floor, setbacks, recessed areas, and pop-outs, etc. Also, offsets should be considered where rooflines change. Articulation can also be provided through the use of broad overhanging eaves, long covered porches/verandas/balconies, semi-enclosed courtyards, and outdoor covered passages.
10. Building height is measured from the finished grade at the front of the building to the highest point on the building, excluding chimneys and ventilators. On sloping Lots, the average finished grade adjacent to the front of the residence shall be used as a basis to calculate the height limit. All buildings must comply with the following table regarding building heights and the number of stories:

Lot Classification	Maximum Building Height and Number of Stories					
	Town Lot	Traditional Lot	Manor Lot	Estate Lot	Large Estate Lot	Country Estate Lot
Maximum Height - Principal Residence	up to 35'	up to 35'	up to 36'	up to 36'	up to 36'	up to 36'
Maximum Stories - Principal Residence	2 story	2 story	2.5 story	2.5 story	2.5 story	2.5 story
Maximum Height - Detached Garage	up to 20'	up to 20'	up to 20'	up to 20'	up to 20'	up to 20'
Maximum Stories - Detached Garage	2 story	2 story	2 story	2 story	2 story	2 story
Maximum Height - Other Detached Accessory	up to 15'	up to 15'	up to 15'	up to 15'	up to 15'	up to 15'
Maximum Stories - Other Detached Accessory	1 story	1 story	1 story	1 story	1 story	1 story

11. Inappropriate architectural details that will not be allowed include large areas of white surfaces, such as white stucco, excessively pitched roofs or turrets, vivid exterior colors, non-native stone, stone which appears to be glued on, exposed foundation walls (see Section 3.07), exposed white or bubble skylights, tall/massive elevations, stove pipe chimneys, enormous front door assemblies or imported or exotic architectural elevations.
  12. The ACC shall approve all exterior colors.
  13. The use of paper blinds and sheets are prohibited as window coverings.
  14. The calculations for the masonry requirement do not include doors, recessed entryways, windows, dormers, gables, and other architectural features.
  15. If the City of Boerne imposes higher masonry requirements on new construction, that higher requirement will be in effect for purposes of these restrictions.
  16. The ACC has the right to disapprove exterior elevations, which it deems inappropriate for any reason, in its sole and absolute discretion even though plans may comply with all other restrictions.
  17. The ACC also has the right to approve exterior elevations at its sole discretion if it deems that the masonry percentages and architecture substantially conform to the restrictions.
- B. Utility Boxes, Panels and Meters. All utility boxes, panels and meters attached to the sides of the homes must be painted the same color as the exterior materials of the house to blend in and not be as visible. If the dominant exterior material is stucco, the paint color for the utility boxes, panels and meters must match the color of the stucco. If the dominant exterior material is stone, the paint color for the utility boxes, panels and meters must be a complimentary color to the exterior stone.
- C. Gutters and Downspouts. Gutters and downspouts must be a complimentary color to the exterior materials of the house.
- D. Eaves and Overhangs. Eaves and overhangs designed to afford protection from elements and provide shadow relief are encouraged.
- E. Chimneys.
1. All exterior and interior chimneys shall be constructed of stucco or native stone and must complement the exterior material on the residence in color and material.
  2. Chimney height must be designed as required by all applicable building codes and governing jurisdictions with regards to venting and fire safety.
  3. All chimneys for wood burning fireplaces (indoor and outdoor) require spark arrestors and chimney caps. See EXHIBIT G for the chimney cap specifications.
  4. All exterior colors must be approved by the ACC in writing.
- F. Roofs.
1. Roofs must have pitched slopes that are residential quality.
  2. Maximum roof pitch is 10 to 12 for all homes.
  3. Minimum roof pitch is 5 to 12.
  4. Lower pitches for accent elements, including shed roofs when used as a secondary element in the overall roof composition, may be allowed if complimentary to the overall design, and must be submitted to and approved by the ACC.
  5. Roof venting stacks, piping, and other penetrations or appurtenances must not detract from the overall roof elevation appearance.
  6. Projections must be trimmed square and clean.
  7. Roof projections should be minimized as much as possible.
  8. All roof projections must match the color of the surface from which they project or must be an approved color.

9. All exposed venting, stacks, and piping should not penetrate the roof on any roof slope facing a street so that such devices are not visible from the street except as noted below:
  - a. In locations where the backside of the residence abuts a street, all exposed venting, stacks, and piping should penetrate the roof on the interior side-yard facing elevations (where roof design allows); and
  - b. Fixed dormer attic ventilating devices.
10. All projections or fixtures mounted to or penetrating the roof should be minimized from view.
11. Any solar collectors and skylights must be submitted to the ACC for review and approval.

G. Roofing Materials.

1. Approved building materials for roofs are slate, non-reflective standing seam metal (dull finish), tile, or dimensional composite shingles made of fiber glass. **Composite shingles are not allowed on Country Estate Lots.**
2. For **Country Estate Lots**, approved building materials for roofs are slate, non-reflective standing seam metal (dull finish) or tile (composite shingles are not allowed).
3. Wood shingles of any character are expressly prohibited.
4. Where allowed, composite shingles must:
  - a. Have a minimum warranty rating of thirty (30) years (meaning having a manufacturer's warranty of at least 30 years) and meet the "Architectural" specifications.
  - b. "Weigh" a minimum of 230 pounds per square
  - c. Approximate color of either muted brown, weathered wood or grey.
  - d. Any other colors must be approved by the ACC in writing.

H. Landscaping.

1. Also, see Sections 3.32, 3.46, 3.51 and 3.54.
2. All landscaping must comply with the Landscape Design Standards and Guidelines for the Association, as adopted, or amended by the ACC.
3. During the Declarant Control Period, Declarant has the sole right to adopt or amend the Landscape Design Standards and Guidelines.
4. Copies of the Landscape Design Standards and Guidelines are available from the Association.
5. All landscaping must comply with Chapter 22, Article II, Divisions 1 and 2 of the City of Boerne Code of Ordinances (includes the City's Drought Management Plan and other water saving requirements) and Article 4 "Tree Preservation Requirements" of the City of Boerne Zoning Ordinance, as amended, using terms defined by Article 1, Section 6 of the Zoning District Use Regulations set forth in City of Boerne Ordinance No. 2005-01 as of the Effective Date (see a copy of Ordinance No. 2005-01 attached as Exhibit E).
6. See Section 3.46 for required screening of electrical on-ground transformers, pedestals, and air-conditioning units.

I. Sidewalks.

1. Also, see Section 3.30 and the Landscape Design Standards and Guidelines for additional information.
2. Builders will be responsible for installation of entry walkways, sidewalks in the front of and on the side of Lots owned by the builder per subdivision construction plans.
3. Owners are responsible for maintenance of driveways and sidewalks that are in front of and on the side of their property.

- J. ACC Approvals. In addition to other considerations outlined herein and in the Bylaws, Rules, and other governing documents, the ACC (including the Declarant acting as the ACC) may but has no duty to, when considering approval or denial of plans, including those for both residential or commercial portions of the Property, exercise discretion over building materials,

elevations, grading, exterior colors, building heights, building placement on a Lot, roof color and shingle type, location of Improvements, number of Improvements, height of Improvements (for example, fences and outbuildings) and materials for Improvements. The ACC may take into consideration existing Improvements in the Property in determining whether a proposed Improvement is harmonious with existing Improvements, and if not may deny approval for such a proposed Improvement.

### 3.06 Elevation and Masonry Type/Color Repetition.

*Declarant's Vision: A wide range of building facades and house types should be provided to create neighborhood diversity and streetscape variety.*

- A. Location of house designs should be carefully reviewed to avoid excessive repetition in the street scene. The intent is to avoid the negative “look-alike” effect of frequent repetition, but still allow sufficient latitude in satisfying market demand.
- B. For all Lots other than **Country Estate Lots** - If a plan is to be repeated with the same front elevation design, it must not occur more frequently than every 4<sup>th</sup> consecutive Lot. Thus, where this situation exists, at least two (2) other homes must occur between the next repeated front elevation, including the three (3) homes located across the street (consisting of the home located directly across the street and the two (2) homes on either side of it). Masonry and trim color in this situation must be different.
- C. For **Country Estate Lots Only** - a plan with the same front elevation design may not be repeated in the same custom home village.
- D. ***The ACC reserves the right to reject an elevation or masonry type/color that closely resembles that of a nearby house or in any way detracts from the overall street scene. Additionally, identical uses in masonry type/color and trim color are prohibited on homes which are adjacent to one another, including homes located across the street from one another. Builders and Owners are responsible for adhering to the restrictions to prevent elevation and masonry type/color repetition.***

### 3.07 Exposed Foundations.

*Declarant's Vision: Minimize the amount of exposed foundation to create an attractive streetscape.*

- A. All exposed portions of the foundation (front, sides, and rear) must be underpinned. Exposed portions of the foundation (including, but not limited to stairs, driveways, sidewalks, porches or any other projection on the front elevation or any other elevations facing a street), must be concealed by extending the stone or brick to within at least eighteen (18”) of the finished grade. If the primary exterior masonry is stucco, the exposed portions of the foundation (including, but not limited to stairs, driveways, sidewalks, porches, or any other projection on the front elevation or any other elevations facing a street) must be concealed by painting the foundation the same color as the stucco to within at least eighteen (18”) of the finished grade.
- B. If a side or rear elevation does not face a street, but the exposed portion of the foundation on the side or rear elevations (including, but not limited to stairs, driveways, sidewalks, porches or any other projection) has an exposed foundation in excess of eighteen inches (18”) that can easily be seen from a street, the ACC may require the exposed foundation be concealed by extending the stone or brick to within at least eighteen (18”) of the finished grade. If the primary exterior masonry is stucco, the exposed portions of the foundation (including, but not limited to stairs, driveways, sidewalks, front porches, or any other projection) must be concealed by painting the foundation the same color as the stucco to within at least eighteen (18”) of the finished grade.

- C. If a side or rear elevation backs up to a Primary Collector and the exposed portion of the foundation on the side or rear elevations (including, but not limited to stairs, driveways, sidewalks, porches or any other projection) in excess of thirty-six inches (36”) can be seen from the Primary Collector, the exposed portions of the foundation must be concealed by extending the stone or brick to within at least thirty-six inches (36”) of the finished grade. If the primary exterior masonry material is stucco, the exposed portions of the foundation (including, but not limited to stairs, driveways, sidewalks, porches, or any other projection) must be concealed by painting the foundation the same color as the stucco to within at least thirty-six inches (36”) of the finished grade.
- D. The ACC, in its sole discretion, may also approve (such approval must be in writing) the installation of shrubs to screen excess exposed foundations.

3.08 Business Activities. This section shall not be applicable to Commercial Lots. No part of the Property shall be used or improved for any purpose except for one detached dwelling unit for one family per each respective Lot, in conformity with this Declaration, the ACC Rules, and all applicable State, County and Municipal laws, rules, regulations, codes or ordinances. Provided, however, “Home Occupations” incidental to residential use, as permitted in single family residential zoning districts under the zoning jurisdiction of the City of Boerne, Texas, shall be permitted on the Property, but only to the extent that any such Home Occupation is in compliance with the applicable zoning regulations of the City of Boerne, as amended, and is additionally in compliance with the following limitations:

- A. The incidental use shall never be permitted as a principal use;
- B. No business shall be permitted that principally involves the resale of tangible personal property at the business;
- C. No person other than a family member who resides in the dwelling unit shall participate in the home occupation on the premises;
- D. The home occupation use shall not utilize more than 25% of the gross floor area of the building;
- E. The residential character of the Lot and dwelling unit shall be maintained. Neither the interior nor the exterior of the dwelling unit shall be structurally altered so as to require compliance with non-residential construction codes to accommodate the home occupation. No construction features shall be permitted which are not customarily found in a dwelling. No additional buildings shall be added on the Property to accommodate the home occupation;
- F. The home occupation shall not generate customer related vehicular traffic in excess of three vehicles per twenty-four-hour day;
- G. No direct selling of merchandise shall occur on the Property;
- H. No equipment or materials associated with the home occupation shall be displayed or stored where visible from neighboring property or from any street;
- I. There shall be no exterior storage of equipment or materials used in the home occupation at any time;
- J. The home occupation shall not produce external noise, vibration, smoke, dust, odor, heat, glare, fumes, electrical interference, or waste run-off outside the dwelling unit;
- K. No vehicle used in connection with the home occupation which requires a commercial driver’s license to operate shall be parked on the Property or on any street adjacent to the Property;
- L. The home occupation shall not be advertised by any signs on the Property, nor shall the street address of the home occupation be advertised through signs, internet, billboards, television, radio, or newspapers;
- M. Nothing herein shall be construed to allow the following businesses or occupations as home occupations: animal hospitals, animal breeding, automobile engine or transmission, or small engine or service work, barber shop, beauty shop, carpenter shop, electrician shop, plumber shop, radio shop, sign painting, clinics, hospitals, contractors’ yards, dancing schools, junk yards, bed & breakfast, lodging-house residential uses, massage parlors, restaurants, rental outlets, manufacturing, industrial use or vehicle repair shops;
- N. A day care nursery shall be limited to a maximum of five (5) children;

- O. The home occupation must be conducted entirely within a permanently enclosed building, except for those necessary outdoor activities related to a day-care nursery. A private garage which is not completely enclosed shall not be utilized as part of a home occupation; and
- P. Model homes used exclusively for the marketing and selling of homes within the community are allowed with Declarant approval.

3.09 Minimum Setback Lines.

*Declarant's Vision: The creation of an interesting and engaging streetscape through the variation in a home's front setback from the adjacent homes' front setback(s). Setback variations set up a rhythm in the spatial quality of the streetscape zone. In addition, homes should be oriented on a Lot to maintain compatible relationships with adjacent homes and the street frontage.*

No structure of any kind and no part thereof shall be placed on any Lot within the setbacks as shown on the tables below or the Final Recorded Plat. For the purposes of this Section 3.09, structure is defined as those portions of the Improvements that are within the vertical plane created from the outer most points of the foundation. All setbacks are measured from property lines.

- A. Front of Lot. For the purposes of these Restrictions, the front of each Lot shall be the portion of the Lot facing the street of the Lot's address. Unless otherwise approved in writing by the Declarant or ACC, each main residence building shall face the front of the Lot.
- B. Setback Variances. If the Declarant or ACC, in their sole discretion, determines that the minimum building setback is impractical due to topography, grade, location of trees or other conditions, then the Declarant or ACC may grant a variance to the required minimum building setback for that Lot.

Minimum Building Setbacks (Principal Residence)						
Lot Classification	Town Lot	Traditional Lot	Manor Lot	Estate Lot	Large Estate Lot	Country Estate Lot
<b>FRONT *</b>	15'	20'	20'	30'	30'	40'
<b>FRONT - Garage Front Setback</b>	GARAGE FRONTS THAT FACE THE STREET SHALL BE SETBACK A MINIMUM OF 25 FEET FROM THE PROPERTY LINE. ALSO SEE GARAGES IN SECTION 3.28 BELOW.					
<b>SIDE - Minimum 1 Side/Minimum Combined Both Sides</b>	5'/10'	5'/10'	5'/10'	10'/20'	10'/20'	15'/30'
<b>SIDE - Minimum For Street Side Of Corner Lots</b>	10'	10'	10'	10'	15'	15'
<b>REAR</b>	15'	15'	15'	25'	25'	25'

\* Builders are highly encouraged to vary a residence's front setback from the adjacent residences' front setback(s) by at least 5 feet to create a more organic-looking streetscape. However, in no event can any residence be located any closer to the front property line than the minimum front setback as shown in the table above.

<b>Minimum Building Setbacks (Detached Accessory)</b>						
<b>Lot Classification</b>	<i>Town Lot</i>	<i>Traditional Lot</i>	<i>Manor Lot</i>	<i>Estate Lot</i>	<i>Large Estate Lot</i>	<i>Country Estate Lot</i>
<b>FRONT</b>	5' behind rear	5' behind rear	5' behind rear	5' behind rear	5' behind rear	5' behind rear
<b>SIDE</b>	5' *	5'	5'	5'	10'	10'
<b>SIDE - Minimum For Street Side Of Corner Lots</b>	25'	25'	25'	25'	25'	25'

\* 0 if zero lot side

- C. The residential plat and/or the Supplemental Design Guidelines and/or the City of Boerne may require minimum building setbacks, with in which above ground development is not permitted. The most restrictive setback shall govern. Development and use of the setback area as an attractive green space is encouraged. The following Improvements are typically allowed within the minimum building setback areas, but such allowable Improvements may not encroach on an easement:
1. Structures below and covered by the ground, including utility facilities approved by the appropriate governing entity;
  2. Limited encroachment into the front and rear setbacks shall be permitted for eaves, roof overhangs, unenclosed patios and porches, and minor architectural details such as fireplaces and bay windows. They may encroach into the front setback by a maximum of three (3) feet and into the rear setback by a maximum of 10 feet;
  3. Steps, walks, driveways, and curbing;
  4. Retaining walls and planters if submitted to and approved by the Declarant or ACC; and
  5. Landscaping.

### 3.10 Maintenance of Improvements and Wastewater Grinder Pump Specs.

#### A. Maintenance of Improvements.

1. Any Owner of any Lot shall have the duty of and responsibility for keeping the Property they own or occupy, and the Improvements thereon, in a well maintained, safe, clean, and attractive condition at all times.
2. Maintenance shall include, but not be limited to –
  - a. All visible exterior surfaces of the Improvements;
  - b. Prompt removal of paper, debris, and refuse;
  - c. Removal of dead and diseased trees and plantings from the Lot;
  - d. Prompt replacement of dull and/or peeling paint from the exterior of the Improvements; and
  - e. During construction, the cleaning of dirt, construction debris, and other construction related refuse from street and storm drains and inlets as often as deemed necessary by either the Association or the ACC.
3. Owners must comply with the Landscape Design Standards and Guidelines, a copy of which is available from the Association and the Associations website.
4. If no Improvements have been built or are under construction, Owners need not install landscaping in accordance with the Landscape Design Standards and Guidelines, but at all times Owners must keep their Lot in a neat and attractive appearance.
5. If any Improvement is made (including earth moved/disturbed by construction activity or in preparation for construction activity), the Landscape Design Standards and Guidelines must be complied with.
6. The ACC has sole discretion to determine whether a Lot is being maintained in a neat and attractive appearance.

B. Wastewater Grinder Pump Specifications.

1. It may be necessary for a builder to install an individual wastewater grinder pump on a Lot;
2. The power supply for the grinder pump will be the same as that serving other Improvements on the property; and
3. Interruption of that power supply will impede the operation of the grinder pump;
4. The maintenance of the grinder pump is the responsibility of the Owner, not the responsibility of the Developer, homebuilder, City of Boerne, or the Esperanza Community Association;
5. Specifications for the Wastewater Grinder Pumps (referred to as grinder pump) are included in EXHIBIT F;
6. The Owner shall operate and maintain the grinder pump servicing the Owner's Lot in good condition and good working order at all times;
7. The duty to maintain the grinder pump shall include repair and replacement of the grinder pump;
8. Neither the Association nor any government entity (including the City of Boerne or the Texas Commission on Environmental Quality) has any duties with regard to these grinder pumps, the grinder pump being the sole responsibility of the Owner; and
9. The duty to operate and maintain the grinder pump in compliance with this Section 3.10 shall be a covenant running with the land.

3.11 Litter, Rubbish, Debris, and Garbage Pick-Up.

A. Litter, Rubbish and Debris.

1. No litter, refuse piles, rubbish, debris, or trash (other than that to be timely picked up by a collection/disposal or recycling service) shall be kept or stored on any Lot;
2. No odors shall be permitted to arise therefrom so as to render that Lot or any portion thereof a nuisance, unsanitary, offensive, or detrimental to any other nearby property or to its occupants.
3. Refuse, garbage, and trash shall be kept at all times in covered containers with tightly fitting lids; and except at times of pickup, such containers shall be kept to the rear of each residence or commercial building (or to an area that is screened from view from the street). For residences, the containers can be stored behind the exterior air-conditioning unit if the exterior air-conditioning unit is screened from view from the street by shrubs (or shrubs have been planted that will screen the air-conditioning unit and containers from the street within 24 months after the house closing date).
4. Under no circumstance shall trash be disposed of through burning or burying on any Lot.
5. Any compost pile must be –
  - a. Properly maintained;
  - b. Not visible from any street; and
  - c. Located no closer than 25 feet from any adjoining Lot.

B. Garbage Pick-Up.

1. The City of Boerne's Solid Waste and Sanitation Contractor is designated as the as the entity responsible for the solid waste removal for the Property and each Owner of the property within (however, the City may elect not to provide garbage services to Commercial Lots);
2. The City shall bill each property Owner concurrent with the City's utility bills to such property Owner;
3. The City may, from time to time, change the solid waste and sanitation contractor;
4. In exchange for the City's coordination of solid waste and sanitation services to the Property, the Declarant grants the City the right to receive the applicable franchise fee from the solid waste and sanitation contractor for the Property;
5. All Owners hereby agree to the utilization of the City of Boerne to provide solid waste and sanitation services to the Property, either directly or through an outside contractor, and to



grant the City the right to receive the applicable franchise fee from the solid waste and sanitation contractor;

6. Trash will be collected at least weekly;
7. Trash containers shall be placed on the street for pickup no earlier than the evening before the scheduled trash pickup day; and
8. Trash containers shall be returned to the rear of the residence (or to an area that is screened from view from the street) within eight (8) hours after pickup.

3.12 Sports/Recreational Facilities. All sports/recreational facilities, equipment and structures must be submitted and approved by the ACC before construction or installation.

- A. Swimming pools, children's play structures, swing sets and similar permanent or semi-permanent sports/recreational facilities must be –
  1. Located to the rear of the primary residence on a Lot;
  2. Shall not encroach on an easement;
  3. Cannot be located within 5' of any property line; and
  4. Must not be readily visible from the street.
- B. Basketball courts, sport courts and tennis courts must be –
  1. Located behind the primary residence;
  2. Shall not encroach on an easement;
  3. Cannot be located within 5' of any property line; and
  4. Cannot be illuminated for nighttime play, unless approved by the Declarant or ACC.
  5. Portable basketball goals on wheels must be located no more than twenty feet (20') from the garage and shall never be located on any street; and
  6. Any other placement of basketball backboards or goals on a Lot is strictly prohibited.

3.13 Mobile Homes. Except as provided herein, no mobile homes, modular homes or manufactured housing shall be parked or placed on any part of the Property or used as a residence, either temporary or permanent, at any time. Temporary sales or construction trailers if approved by the Declarant are allowed.

3.14 Tanks, Wind Generators.

- A. Tanks: No exterior propane tanks (other than propane tanks contained within or attached to residential barbecue units), butane tanks, or other tanks of any kind or nature shall be placed or maintained upon any Lot.
- B. Wind Generators: Wind Generators are not allowed.

3.15 Pool Equipment. All swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and adjoining Lot Owners. Also see the Rules and Regulations and Landscape Design Standards and Guidelines for restrictions and additional information. Also, see Section 3.34 regarding swimming pools.

3.16 Noise. No loud exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any portion of the Property. The discharge of fireworks and firearms is prohibited. No leaf blowers or power mowers shall be used before 9:00 a.m. on weekends.

3.17 Animals – Household Pets.

- A. No animals, including pigs, swine, 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;

- B. No animal shall be allowed to make an unreasonable amount of noise, interfere with the use or enjoyment of other residents, or to become a nuisance;
- C. All dogs must be within a fenced enclosure of a Lot, inside a residence, or on a leash held by a person capable of controlling the dog;
- D. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed;
- E. All animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. Such enclosed areas shall be constructed in accordance with plans approved by the ACC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, The Board may require any such area to be screened so as not to be visible from any other portion of the Property;
- F. Electronic “Invisible” Fencing for securing family pets is encouraged;
- G. All dogs and cats must be vaccinated for rabies and tagged for identification; and
- H. A maximum of four dogs and cats, in any combination (i.e., four dogs and zero cats, three dogs and one cat, etc.) exclusive of unweaned offspring, will be allowed on any Lot;
- I. The Declarant, or after the Declarant control period, the Board, may adopt additional rules regarding animals, including prohibiting certain breeds of dog;
- J. The Board may require permanent removal of any animal when in the Board’s discretion such action is warranted.

3.18 Farming. Farming, including row crops is not permitted. Personal gardens may be located behind the residence.

3.19 Commercial Trucks.

- A. Tractor-trailer type trucks or dump trucks or other similar large commercial-type trucks or construction machinery or farm equipment, livestock trailers or vehicles shall not be parked on any Lot at any time, except temporarily while such machinery or vehicles are being used in the construction of Improvements in the Property.
- B. None of the vehicles, trucks or machinery described above, may be left overnight on any street in the Property.

3.20 Construction Activities.

- A. Land development and home construction activities will occur within and around the Property, and such activities will create noise, dust, traffic disruption, and general inconvenience to the Esperanza residents or other portions of the Property including the purchaser;
- B. This Declaration is not intended to prevent or unreasonably interfere with normal construction activities during the construction of Improvements (including Declarant) upon any Lot in the Property;
- C. Construction activities shall not be deemed to constitute a nuisance or a violation of this Declaration by reason of normal construction noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that plans for such construction are approved by the Declarant and/or the ACC and such construction is actively pursued to completion with reasonable diligence;
- D. In no event shall any structure be allowed to remain uncompleted for more than one year after construction has commenced;
- E. During construction of any structure, the contractor is required to keep adjoining roadways, roadway easements and thoroughfares free from debris and mud, including promptly cleaning up any debris or mud in such areas;
- F. No construction material of any kind may be placed on another Lot or on the roadway for any amount of time;

- G. All builders/contractors shall provide convenient access to portable toilet facilities for all employees and subcontractors. Doors of such portable toilet facilities shall not be visible from the street and shall be located as to be as unobtrusive as possible to occupied residences;
- H. In the event that construction upon any Lot does not conform to the requirements set forth herein or otherwise does not conform to usual good construction practices in the area as determined by Declarant and/or the ACC in its/their sole judgment, Declarant and/or the ACC shall have the authority to seek and obtain an injunction to stop such construction;
- I. Owner, at Owner's expense, will maintain each Lot until the Lot is sold and closed to a 3<sup>rd</sup> party with a residence constructed thereon. Owner shall protect each Lot from all waste and damage, keeping it in a clean and slightly manner, and mowing grass or weeds thereon;
- J. An Owner shall additionally be held responsible and liable for any and all damages to the Property caused by the Owner's contractors, agents, invitees, or employees, including but not limited to roadways, gates, signs, and fences. The party responsible for the damage shall be determined in the sole reasonable discretion of the Board;
- K. In the event of default in the payment of such sums described above in this Section 3.20, within thirty days after demand thereof has been made, the Owner of the Lot shall be obligated to pay interest at the highest lawful rate on all sums due hereunder, and all costs of court, other costs, and fees, including late fees and reasonable attorneys' fees. All such amounts will be a lien against the Lot enforceable in accordance with these Restrictions;
- L. The Board and Declarant may assess fines against an Owner and the Owner's Lot related to construction activity infractions outlined herein or the Bylaws, Rules, or any other governing document;
- M. All construction must be completed, including landscape installation, **within one year of construction commencement**. Commencement of construction is defined as completion of the foundation for the residence.
- N. In addition to all other requirements outlined herein and in other governing documents, the following rules shall apply, and the Declarant, or after the Declarant Control Period, the Board, shall have the authority to amend these rules from time to time:
  - 1. No construction is to commence until written approval of house and site plan is given from the Declarant or ACC, as applicable;
  - 2. Speed limit is 25 miles per hour;
  - 3. General cleaning of construction site must occur daily;
  - 4. Lots adjacent to the job site are not to be encroached upon with silt fence, debris, building material or trash bins;
  - 5. As each Lot is private property, construction workers are not allowed on any other Lot other than their own site;
  - 6. No adjacent Lot is to be used for access to, or parking for, the building site;
  - 7. No oil changing on any vehicle or equipment on a Lot;
  - 8. Concrete suppliers and contractors must not clean their equipment on any Lot other than the jobsite or a designated site approved by Declarant;
  - 9. No materials, including but not limited to plant material, topsoil, or similar items, may be removed from any property of others;
  - 10. Temporary construction signs shall be limited to one sign per site;
  - 11. No burning of any type shall occur on any Property;
  - 12. No construction materials (including dirt, gravel, wood, brick, etc.) may be placed on a roadway for any length of time;
  - 13. Construction vehicles and equipment are only allowed to park on a roadway and on the Lot upon which work is being performed. Vehicles parked on a roadway may not have any part of the vehicle extending off of the roadway (for example, no tire may be off of the roadway itself – a vehicle cannot be parked partially on the roadway and partially on a Lot) and may not block the roadway; *and*
  - 14. Construction activities of Builders and Owners, including employees, agents, suppliers, contractors, and sub-contractors are limited to the following hours: (i) 7:00 a.m. to 7:00 p.m. each Monday through Friday (except for holidays); (ii) 8:00 a.m. to 6:00 p.m. each

Saturday; and (iii) no construction activities can be performed on Sundays or holidays. Holidays shall be defined as New Year's Day, Easter, Memorial Day, Fourth of July "Independence Day," Labor Day, Thanksgiving Day, Christmas Eve, and Christmas Day.

3.21 Camping. No overnight camping will be permitted.

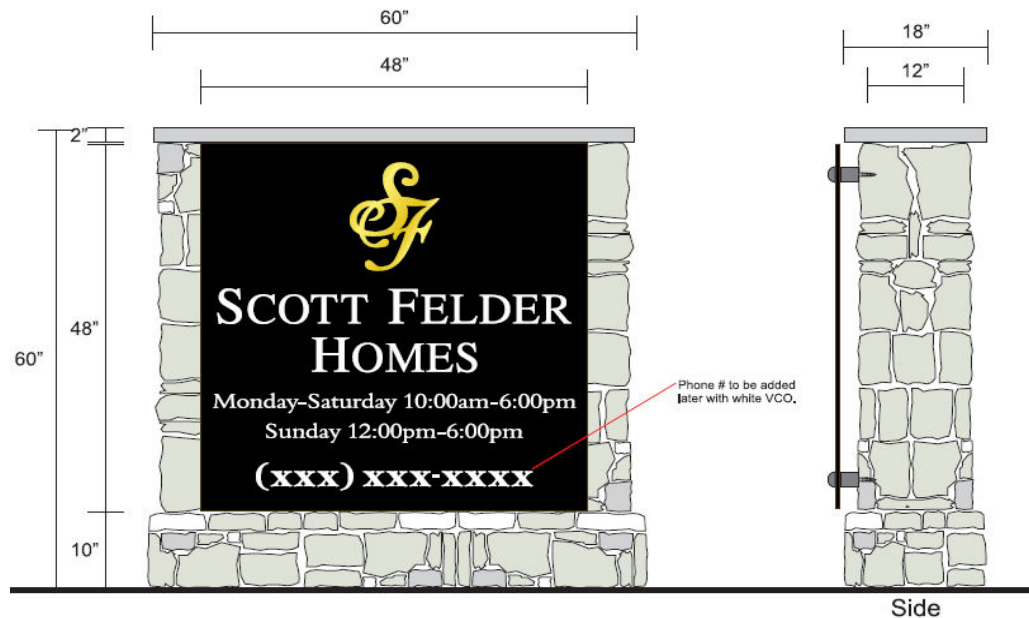
3.22 Stored Motor Vehicles and Junk.

- A. Non-operational, abandoned, unlicensed or junked motor vehicles may not be stored on any portion of the Property or street in the Property (both private and public) unless enclosed in a garage;
- B. An abandoned or junked motor vehicle is one without a current, valid state inspection sticker and license plate or that otherwise is deemed by the Board to be unsightly;
- C. No junk, refuse or debris of any kind or character, or dilapidated structure or building of any kind or character, may be kept, or allowed to remain on any portion of the Property;
- D. Accessories, parts, or objects used with cars, boats, buses, trucks, trailers, house trailers or the like, shall not be kept on any portion of the Property other than in a garage or similar enclosed structure;
- E. Storage of equipment, materials or any other product is strictly prohibited prior to construction of primary residence; and
- F. Any vehicle under repair or any vehicle that is being restored must be kept in a garage or similar enclosed structure.

3.23 Signs.

*Declarant's Vision: Declarant desires to provide clear sign information in an unobtrusive manner while reinforcing the overall theme of Esperanza. Controlling the locations and type of signs within Esperanza maintains aesthetic standards that will benefit all Esperanza residents.*

- A. All signs within the Property must comply with Boerne Ordinance No. 2006-26 (regarding "Sign Regulations"). See a copy of such ordinance attached as EXHIBIT C.
- B. Unless otherwise provided herein, only signs, billboards or other advertising devices displayed by Declarant (or any related real estate entity controlled or permitted by the Declarant) shall be displayed to the public view on any Lot or Common Area.
- C. Only if allowed below, Builders, Realtors and Owner's signs on an Owner's Lot must be earth tone in color, must be made of wood, corrugated plastic or aluminum and must be non-glare, non-reflective.
- D. No "homemade" hand-painted or spray-painted signs are allowed.
- E. Only the following signs are allowed:
  - 1. "For Sale" signs – improved property. Builders, Realtors or Owners may display one (1) for sale sign of not more than 2' x 3' at a height not to exceed 4' above the ground on a Lot improved with a residence to advertise the Lot and the residential structure situated thereon for sale. The sign must be located in front of the front building setback;
  - 2. Builder signs. Builders may place one sign at any model home approved by Declarant. The material, colors, design, and size must be approved by the Declarant. The standard approved builder sign shall not exceed an overall dimension of five feet by five feet, with the overall dimensions of the vinyl portion to be limited to four feet by four feet. Stone columns to match the house must be used as the frame of the sign unless otherwise approved by Declarant. An example of the approved sign is shown below:



3. *Builder flagpole(s) at model home(s)* – Builders may install up to two flagpoles, not to exceed 20’ in height, at approved model home(s). A maximum of two flags are allowed on a flagpole, with a maximum of 3 flags allowed if two flagpoles are utilized. The only flags allowed are the U.S. flag, the State of Texas flag, an official or replica flag of any branch of the U. S. armed forces, and the builder’s flag. In addition to this restriction, the builders must follow the Rules and Regulations of the Esperanza Community Association, Inc. regarding flags, except as modified herein. Prior to sale of a model home to an owner who will use the home as a residence, at least one flagpole must be removed. Failure to do so shall be a violation of these covenants for which Builder and the then-lot Owner shall be jointly and severally liable.
4. *“For Sale” signs – unimproved property.* One “For Sale” sign of not more than 2’ x 3’ at a height not to exceed 4’ above the ground is allowed to advertise an unimproved Lot “For Sale”.
5. *Common Area signs.* The Association may display such signs, as it may deem necessary for the efficient use of the Common Areas or beneficial to the members. Only signs approved by the Association may be placed in the Common Areas.
6. *Signs in medians/rights-of-way.* No signs of any nature, other than those permitted by the Declarant for the purpose of directing traffic for new home and lot sales, shall be located in the esplanades and right of ways.
7. *Owner Signs.* The following signs are allowed for use by Owners on their Lot. The sign must be no more than 2’ x 3’ at a height not to exceed 4’ above the ground and the sign must be located in front of the building setback:
  - a. One sign per child in support of the Lot Owner’s or resident’s child or children’s scholastic or athletic activities is allowed on a Lot;
  - b. Temporary signs for 24 hours or less, such as “Birthday” and “Anniversary”; and
  - c. Temporary signs for “New Baby” are allowed for seven (7) days.
8. *“For Rent”/“ For Lease/Foreclosure/Auction” signs.* No “For Rent,” “For Lease,” “Foreclosure,” or “Auction” signs are allowed on any Lot or home (including the windows).
9. *Off-Premises signs, which are commonly known as “Bandit” signs.* “Bandit” signs are not permitted within the Property.
10. *Sign removal.* Declarant or Association is specifically granted the right to enter on any Lot to remove signs not permitted by these Restrictions.

11. No signs of any character displayed in the Property shall be of the “home made” variety, and all signs displayed must be neat and orderly in appearance.
  12. No sign or banner of a derogatory or negative nature will be allowed at any time anywhere in the Property.
  13. Only those signs described in this Section 3.23 are allowed in the Property.
  14. Also see the Rules and Regulations and Landscape Design Standards and Guidelines for additional restrictions and information.
- 3.24 Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines of any public or private street shall be placed or permitted to remain on any Lot.
- 3.25 City of Boerne Potable Water, Reclaimed Water, Sanitary Sewer, Solid Waste and Natural Gas. Each residence will be required to purchase potable water, reclaimed water, sanitary sewer, solid waste, and natural gas services through the City of Boerne, which will have a public utility easement containing utility lines in the Property. Since Esperanza is not located within the Boerne City limits, the City of Boerne may charge a higher out-of-city rate for the provision of utility services to residences and properties located within the boundaries of Esperanza.
- 3.26 Private Roads; Maintenance and Assessment of Private Roadway Easements.
- A. The Association or its designee shall have the obligation to provide comprehensive general liability insurance, in an amount necessary to adequately protect the Association and its officers and directors, and shall further have the obligation to maintain, and levy and collect assessments (see also Section 5.03 below) for insuring and maintaining, all internal private roadway easements located in any portion of the Property (collectively, the “Private Roadway Easements”) and the roads thereon (“Private Roadways”), as those Private Roadway Easements are depicted on any plat, and any entry gates or other devices controlling access (the “Entry Facilities”) to the Private Roadway Easements.
  - B. The City of Boerne shall have the power and the authority to judicially enforce the covenants herein requiring the Association to maintain and repair the Private Roadways and the Private Roadway Easements and to levy and collect adequate assessments for the maintenance and repair of the Private Roadways and the Private Roadway Easements (the “Private Roadway Covenants”).
  - C. The City of Boerne is hereby designated as a representative under Section 202.004(b), Texas Property Code, and may enforce the Private Roadway Covenants by specific performance or other equitable legal remedy in any court of competent jurisdiction, and the City of Boerne shall have the right to recover any attorney’s fees and other expenses incurred in such judicial enforcement.
  - D. This Section 3.26 shall not create in the City of Boerne any affirmative duty to police, control, or enforce the Private Roadway Covenants or to maintain the Private Roadway Easements or the Private Roadways.
  - E. An express easement is hereby granted across the Private Roadways and any adjoining Common Areas for the use of the surface for all governmental functions, vehicular and non-vehicular, including fire and police protection, electrical, gas and water utilities and cooperatives, solid and other waste material pick up and any other purpose any governmental authority deems necessary, and the Association further agree that all government entities, their agents or employees, shall not be responsible or liable for any damage occurring to the surface of the Private Roadways and Common Area as a result of vehicles performing governmental functions traversing over same.
  - F. Prior to the adoption of this amendment, certain assessments (“Infrastructure Assessments”) were collected by the Association for certain infrastructure expenses. All funds held by the Association and collected in the past as Infrastructure Assessments may be transferred to the operating account for the Association and used in the same manner as other operating funds (see Section 5.03).

### 3.27 Land Clearing.

*Declarant's Vision: Preserve the existing vegetation, maintain the native Hill Country community character, and fire prevention.*

- A. Also, see Section 3.51 and the Landscape Design Standards and Guidelines for additional information.
- B. In an effort to preserve the natural beauty and integrity of the Property, no Lot or tract shall be clear-cut of all native foliage and/or vegetation.
- C. Existing trees should be saved whenever possible.
- D. Cut or piled brush on occupied or non-occupied Lots must be disposed of within twenty-four (24) hours of cutting.
- E. Approved disposal methods are on site chipping or hauling to an off-site location for burning or composting.
- F. No burning of brush is allowed in the Property or in the City limits of Boerne.
- G. Owners are encouraged to keep trees and shrubs pruned to follow "Fire wise" principles, and to consider xeriscaping.

### 3.28 Garages and Garage Location.

*Declarant's Vision: Since garages doors constitute a major portion of the streetscape, Owners should minimize the number of garage doors that face the street. Declarant strongly encourages Owners to construct three car garages or two car garages oversized for large sport utility vehicles, trucks, or boats. If three cars are not required, the additional garage space can be used for bicycles, lawn equipment and storage.*

#### A. Attached Garages, Garage Door Orientation.

- 1. All residences, with the exception of Country Estate Lots, must have an enclosed garage, architecturally similar to the residence. The garage must be at least a two-car garage with a minimum of twenty feet (20') in interior depth.
- 2. A variety of garage doors are encouraged in each neighborhood, including double doors and side-by-side single doors.
- 3. Twin single garage doors are encouraged as an alternative to one large double door. No more than two garage bays facing the front street is preferred, but in no case shall a residence have more than three (3) garage bays facing the street.
- 4. In order to create architectural variety, in cases where three (3) garage bays facing the street are allowed, at least one (1) garage bay shall be offset by at least 2 feet (2') so that no more than two (2) garage bays are in the same vertical plane or adjacent to each other.
- 5. Garages fronts that face the street shall be set back a minimum of twenty-five feet (25') from the front property line.
- 6. Swing garages with two (2) side load garage bays and one (1) front load bay are allowed on all Lots.
- 7. Under no circumstance may any vehicle be parked or stored on non-paved areas of any Lot at any time.
- 8. Interior walls of all garages must be finished (i.e., drywall must be taped, bedded, and painted at a minimum).
- 9. All garage doors must be of a sectional type with raised panels only.
- 10. Garage doors must be upgraded to be constructed of wood, or metal doors finished to appear as if they are painted or stained wooden doors, with carriage type hardware. The intent is to avoid production grade metal garage doors with no hardware or upgrades. Common stamped metal garage doors with no accessories will not be allowed.
- 11. All garage doors shall have appropriate decorative hardware installed by the Builder and

maintained by the Owner.

12. Each garage must have a minimum of a 20'-0" apron from the property line.
  13. A remote control opening and closing device will be installed on all garage doors unless otherwise approved by the ACC.
  14. **For Country Estate Lots Only** - a) Must have an enclosed garage, architecturally similar to the residence. The garage(s) must hold at least 3 full-sized vehicles with a minimum of twenty feet (20') in interior depth; b) Either circular drives or hammerheads that include parking pads for two cars are required to allow for unblocked ingress/egress to the garage; and c) in no case shall a residence have more than one (1) garage bay facing the street (attached garages only).
- B. Houses on Corner Lots. Houses on corner Lots are encouraged to be planned so that garages are constructed at the opposite corner of the Lot from the street corner (i.e., the garage is encouraged to be located on the side of the Lot opposite the street corner).
- C. Detached Garages.
1. Detached garages are encouraged and may have street or front-loading doors if placed in the rear of the home;
  2. Are considered "accessory buildings" and must be constructed using the same masonry requirements, materials, and color scheme as the main structure;
  3. Must be constructed in accordance with the building heights and number of stories as shown in Section 3.05 of this Restriction; and
  4. Must comply with the setbacks shown on the recorded plat and Section 3.09 of this Restriction.
- D. Use.
1. No garage may be enclosed for living or used for purposes other than storage of automobiles and other common residential uses, unless another approved garage is built, construction plans are approved by the City of Boerne and the ACC, and a building permit is obtained; and
  2. All garage doors shall be kept closed when not in use.

### 3.29 Erosion/Sedimentation Controls and Interior Lot Drainage.

*Declarant's Vision: Minimize cuts and fills to preserve existing vegetation and the natural landform.*

- A. Nothing shall be erected, placed, maintained, done, or permitted to remain on any Lot which interferes with surface water runoff in such a manner as to cause such water run-off to be diverted to any material degree across any other Lot or which causes flooding or erosion to any other Lot or to any street, ditch, or Common Area.
- B. It will be the responsibility of each builder to provide adequate drainage for each Lot. Caution should be used to ensure that all the Lots have positive drainage away from the house foundations and that all Lots drain to the drainage system provided for that Lot.
- C. Any topsoil and/or sandy loam that are imported to a Lot must be immediately covered with sod or the area must be contained with silt-fence to prevent topsoil and/or sandy loam from running off the property.
- D. If easements are located on any Lot line or in any building setback lines, the Owner must mow and maintain such area. However, an Owner may not alter the area to the extent it would fail to function for its purpose, nor shall said area be cemented, paved, or otherwise made impervious with the exception of a single driveway on each Lot, not to exceed twenty feet (20') in width.
- E. Declarant and the Association retain the right to maintain all easement areas, even if they are upon a Lot at that Lot Owner's sole cost and expense.
- F. Notwithstanding anything contained herein to the contrary, current runoff and drainage patterns are acceptable and approved.



- G. Any excavations, "cuts" or fills in the existing terrain to accommodate a home site or other improvements must be promptly paved or revegetated with ground cover to prevent erosion and to avoid an unnatural appearance.
- H. Upon any Lot closing, the Owner shall assume responsibility for erosion controls on any driveway cuts, home pads and fill sites prepared by the Declarant.
- I. Also see the Landscape Design Standards and Guidelines for additional information.

3.30 Driveways, Sidewalks, Entry Walks, Walkways and Parking.

A. Concrete Flatwork. For Country Estate Lots Only:

- 1. All concrete flatwork (i.e., driveways, sidewalks, entry walks and walkways) that are visible from the street shall be upgraded from the standard broom finished or smooth trowel concrete, to a salt finish.
- 2. All other upgrades to concrete flatwork (i.e., staining, stamped concrete, decorative masonry, tile, or concrete pavers) that are visible from the street must be approved in advance, in writing by the ACC.
- 3. The concrete work must be maintained by the Owner, and power washed as needed (at the discretion of the ACC).

B. Permanent Driveways, Sidewalks, Entry Walks, Walkways and Parking.

- 1. Each Owner shall construct and maintain at its expense a concrete driveway from the garage to the abutting street, with a minimum width equal to the width of the garage doors and a maximum approach width of eighteen (18') from the sidewalk to the abutting street (normal driveway flare in the approach is allowed), and the Owner shall repair at his expense any damage to the street occasioned by connecting the driveway thereto.
- 2. Space for two conventional passenger cars must be provided on the driveway without encroaching on the street or sidewalk.
- 3. Driveways and parking areas must be constructed of broom or smooth trowel finish concrete as a minimum level finish. Enhanced finishes are encouraged, but must be approved by the ACC.
- 4. Maximum exposed surfaces on driveways shall not exceed twelve inches (12") in height or must be treated as a vertical wall and veneered in masonry or screened with permanent landscaping.
- 5. Driveway apron must be "saw cut" (not broken) and transitioned cleanly into existing curb.
- 6. Driveways must permit entry by all passenger vehicles without "bottoming out" in the transition area between curb and property line as well as the driveway area between property line and garage.
- 7. No permanent driveways, sidewalks, entry walks, walkways or parking spaces may be constructed of asphalt.
- 8. Except for Garden Lots, all driveways must maintain at least 5' distance from the side property line. Garden Lots must maintain at least 18" distance from the side property line.
- 9. Turnaround or circular drives are encouraged unless excessive amounts of existing trees would be sacrificed and must be approved by the ACC.
- 10. Under no circumstances may an entire front yard be paved as a driveway. A minimum of seventy-five percent (75%) of a front yard is to be planted in shrubs, ground cover, trees, or turf when a turnaround drive or motor court is used.
- 11. Stamped and colored concrete, salt finish, interlocking pavers, concrete with brick borders, and exposed aggregate concrete paving may be used with written approval from the ACC.
- 12. Sidewalks are required on both sides of the street as shown on the final plat.
- 13. The sidewalks must be five feet (5') wide and must be located to provide for a seven-foot (7') Planter Strip landscape-planting area measured from the face of the curb.
- 14. The Planter Strip landscape-planting area must be planted and maintained as required by the Esperanza Landscape Design Standards and Guidelines.

15. Except for Country Estate Lots (see Section 3.30.A. above), sidewalks, entry walks and walkways must be constructed of broom or smooth trowel finish concrete as a minimum level finish. Enhanced finishes are required for Country Estate Lots (see Section 3.30.A. above) and are encouraged on all other lots, but must be approved by the ACC.
16. If the driveway to the garage is connected to the street in front of the house, an entry walk connecting the primary building entry to the driveway must be constructed by the builder on all such lots.
17. If the driveway to the garage is connected to the street on the side of the house, an entry walk connecting the primary building entry to the front sidewalk and a walkway connecting the front street to the sidewalk are required to be constructed by the builder on all such lots except for **Country Estate lots**. Builders are highly encouraged to construct curvilinear entry walks.  
**For Country Estate Lots Only** – Entry walks connecting the primary building entry to the front sidewalk are optional for Country Estate lots. However, a **walkway** connecting the front street to the sidewalk is required on every **Country Estate** lot. If the Owner of a Country Estate lot chooses to construct an entry walk connecting the primary building entrance to the front sidewalk, the materials and finish of both the entry walk and walkway must match the other concrete flatwork that is visible from the street. Please see the Landscape Requirement section of the Landscape Standards and Design Guidelines for the location of the entry walk and walkway, if required, and additional information. The entry walk may be routed to save trees and/or adjusted for severe slopes.
18. All entry walks and walkways must be a minimum of four feet (4') wide.
19. Exposed foundations on sidewalks up to twelve inches (12") from finished grade must be finished with either a) plaster, underpinning, or stucco in a color that matches or complements the color of the masonry of the residence; or b) faced with brick, stone, or similar material that matches or blends with the exterior colors of the residence.
20. In situations where the sidewalk/entry walk is raised six feet (6') above finished grade, the exposed sides of the sidewalk/entry walk must be screened using additional fill and landscape planter areas with approved landscape plants per the Esperanza Landscape Design Standards and Guidelines.
21. The sidewalk, entry walk, and the Planting Strip landscape-planting area must be completed by the builder prior to closing and occupancy by the resident.

3.31 Buses, Trailers and Boats. Trailers, buses, boats, travel trailers, recreational vehicles, motor homes, or any other similar item or other vehicle, equipment, or machinery deemed unsightly by the Board, are not permitted to be parked on the driveway or stored in public view. The Board may prohibit or restrict via rule commercial vehicles even if they are of the standard passenger-vehicle size.

3.32 Fencing and Walls/Prohibition of Wood Fencing.

*Declarant's Vision: Attention must be paid to fencing in order to ensure that desired privacy and security for individual lots does not diminish the natural setting of Esperanza. Solid wood fencing create many problems, such as hindering views, warping with age, non-uniform color and stains, high maintenance costs, must be replaced at 6 – 10 years, helps disburse a wildfire, introduces termites and insects into a community of masonry homes, may lean or fall, creating a hazard, causes ongoing enforcement issues with the Association, creates a grid-like appearance and a "tunnel-effect" in the community, and provides no room for creativity on the parts of Owners and no sense of a common aesthetic. **For these reasons, solid wood fencing is prohibited in Esperanza.** Instead, black steel picket fencing or masonry walls are allowed in Esperanza. The steel picket fence can be enhanced by planting flowers, vines, shrubs, and trees to provide color during the various seasons and privacy.*

A. Also, see Sections 3.46, 3.51 and 3.54 and the Landscape Design Standards and Guidelines for additional information.

- B. In the interest of protecting viewscales, wood fencing is not permitted.
- C. When a perimeter fence is desired, the Owner may install four (4) sides of black, see-through steel pickets, commonly called wrought iron.
- D. All steel picket fences shall be constructed as depicted in the Landscape Design Standards and Guidelines of the Association.
- E. No materials (i.e., screening, wire mesh) shall be attached to the steel picket fence.
- F. The community intent is to leave the hillsides in their most natural state, and to encourage vegetation along Lot lines.
  - 1. If desired, visual privacy can be accomplished through the installation of a “Living Fence.” The Living Fences used throughout the community will provide an upgraded sense of privacy from the vertical board fence while at the same time being non-flammable, preventing the spreading of wildfires and eliminating the ongoing maintenance of stain for wood fencing.
  - 2. One common method is a combination of the 5’ steel picket fencing with an ornamental vine and/or native Texas landscape plantings to achieve a lush natural barrier between home sites.
  - 3. The Coral Honeysuckle and Confederate Jasmine, among others, will provide flourishing growth along the rails of the fence to achieve the desired natural screening between homes.
  - 4. The ornamental vines shall be maintained in such a way to encourage vertical growth on the picket fence and prevent horizontal growth on the ground.
  - 5. In addition to ornamental vines, there are a variety of options available using plant materials from the approved plant list in the Landscape Design Standards and Guidelines of the Association.
- G. Walls may be built in some situations with specific ACC approval, provided that they match the existing home, are of limestone, stucco or approved natural rock, and do not obstruct views from any roadway or adjoining property in any manner.
- H. If a lot backs up to an Esperanza boundary line, the builder is required to construct a 5’ Type “B” steel picket fence along the rear lot line. Please see the Fence Type and Heights section in the Landscape Design Standards and Guidelines of Esperanza Community Association, Inc. For the Village of Glorieta (a part of Esperanza Phase 3A), the builder is required to construct a 5’ Type “B” steel picket fence along the rear lot line of the following lots: none.

3.33 Dedication of Common Areas.

- A. All of the areas designated as common areas on the Plat are hereby dedicated as Common Areas for the use and benefit of all persons and entities owning Lots or an interest in any Lot in the Property, and to purchasers of Lots in the Property.
- B. Ownership of Common Areas –
  - 1. Common Areas shall be conveyed to the Association when all of the Lots, including any and all lots which may become part of the Property pursuant to Section 3.39 hereof, have been sold and Declarant has no intention of adding additional lots or sections to the Property; or
  - 2. At such earlier time as Declarant may decide in its sole and absolute discretion.

3.34 Swimming Pools. Permanent, above ground swimming pools are not allowed under any circumstance. Traditional in-ground pools must be located to the side or rear of the primary residence and must have a security fence approved by the City of Boerne and the ACC. Also, see Section 3.15 regarding pool equipment.

3.35 Window Air Conditioners. No window air conditioners shall be permitted to be used, erected, placed, or maintained on or in any building in any part of the Property, provided that the Declarant or ACC may, at its discretion, permit window air conditioners if such unit, when installed, shall not be easily visible from a street, such permission to be granted in writing.

3.36 Commencement and Completion of Construction.

*Declarant's Vision: Minimize the construction time to reduce the inconvenience to surrounding homes.*

- A. The Lot Owner must commence construction of a residence on any Lot within twenty-four (24) months after the Lot is acquired.
- B. Once construction of a residence has commenced, construction efforts must be pursued to completion with reasonable diligence.
- C. The residence or commercial improvement, including all Improvements contained on the construction plans approved by the ACC, must be completed no later than twelve (12) months after Commencement of Construction (as defined herein below) occurs on such Lot.
- D. Commencement of Construction is defined as the date the concrete foundation, which has been approved in writing by the ACC, is poured on such Lot.

3.37 Protection of Property Pins.

- A. The Declarant shall initially install all property pins.
- B. Subsequent to the purchase of any Lot, the Owner shall be responsible for placing visible markers or posts immediately adjacent to all property pins he wishes to protect.
- C. Any pins subsequently damaged, lost or removed after a Lot has been purchased shall be replaced at the Owner's expense.
- D. Property pins located in the private roadways may be damaged or lost during road re-surfacing projects.

3.38 Variances. The Declarant or the Board may approve any variance or deviation from any of the Restrictions or other governing documents (including Bylaws, Rules, or Landscape Design Standards and Guidelines). Any such variance must be in writing.

3.39 Additions to and Withdrawal from Property.

- A. The Declarant may add or annex additional land to the Property at any time and such additional land may be used for voting purposes hereunder.
- B. Notice of annexation along with a legal description of the annexed land and any additional governing documents for the annexed land shall be filed of record in Kendall County.
- C. Upon the filing of a Notice of Addition of Land cross referencing this declaration (as it may be subsequently amended), this Declaration and the Covenants, Conditions and Restrictions set forth herein shall apply to the added lands, and the rights, privileges, duties, and liabilities of the persons subject to this declaration will be the same with respect to the added lands as with respect to the lands originally covered by this declaration.
- D. A Notice of Addition of Land may be, but need not be combined with a Supplemental Declaration.
- E. A Supplemental Declaration may be recorded at any time by the Declarant during the Declarant Control Period in order to impose additional restrictions or limit restrictions on specific areas of land in the Property.
- F. Declarant may at any time during the Declarant Control Period withdraw land from the Property and remove any deed restriction previously imposed by Declarant on the withdrawn Property (including any declaration or other governing documents) by filing in the Kendall County records a notice of withdrawal of land along with a legal description of the withdrawn lands and the terms of the withdrawal.

3.40 Utility Easements and Underground Utility Requirements.

- A. Declarant, for and on behalf of itself and the Association, reserves easements for installation and maintenance of any and all utilities and drainage facilities as shown on any plat of the Property.
- B. The easements are for the purpose of installing, using, and maintaining public utilities.
- C. The easements are for the general benefit of the Property and the Owners and are reserved and created in favor of all utility companies serving the Property.
- D. In the general interest of protecting viewsapes and reducing visual clutter, all Owners shall install electrical, cable, internet, and phone lines underground from the utility company feeds in the utility easements at the front or rear of the Lots to all Improvements.
- E. No overhead utilities of any character are allowed within the subdivision except those approved by Declarant.
- F. Builders may use temporary overhead lines during the construction of any Improvements, but such overhead lines must be removed upon completion of the Improvements.

3.41 Gas Appliance Requirements.

- A. The City of Boerne is the sole provider of natural gas to the Property.
- B. All Owners who wish to use natural gas in their improvements will use the City of Boerne (or its assigns) to provide such service.
- C. All residences constructed on the Property must have a connection to the gas distribution system and each residence must be plumbed with natural gas lines for a minimum of space heating, cooking, and water heating in each new home.
- D. In the alternative, the builder can pay the City a non-utilization of gas fee according with the then-current fee schedule. At the time of filing of this Declaration, such fee is \$1,500.00. Such fee must be paid at the time a building permit is issued if such plumbing is not to be included in that residence.

3.42 Municipal Facility Payment.

- A. Upon the original sale of each residential Lot with Improvements thereon to an End-Buyer, the seller of such Lot and Improvements shall pay to the City of Boerne an amount equal to three quarters of one percent (0.75%) of the gross retail sales price of the residential Lot and Improvements as shown on page 1 of the Closing Disclosure or the Sales/Purchase Price as shown on the ALTA Settlement Statement (or other similar disclosure or settlement statements used by the title company or escrow agent) for the closing of the sale of such Lot and completed home thereon (the "Municipal Facility Payment"). For purposes of this Section 3.42, Improvements are defined as a completed house, townhouse, condominium, duplex, or other residential structure.
- B. This Restriction creates a lien upon each residential Lot and Improvements to secure payment of the Municipal Facility Payment. In the alternative, the Association may demand payment of said Municipal Facility Payment to the Association, and upon receipt of payment Association shall promptly remit payment to the City. This Municipal Facility Payment shall be considered an Assessment owing to the Association and shall be treated as such for all purposes of collection, including lien rights.
- C. The title company or escrow agent managing the closing of the original sale of each residential Lot with Improvements thereon to an End-Buyer shall deduct the Municipal Facility Payment from the amount otherwise due the seller and shall forward the Municipal Facility Payment directly to the City of Boerne (together with a copy of the closing statement).

- D. Notwithstanding anything in this section to the contrary, the foregoing payment requirements and deed restrictions shall not apply to (i) any sale of a residential lot with Improvements thereon that occurs subsequent to the original sale of such Lot with Improvements thereon to an End-Buyer or (ii) any non-residential property.
- 3.43 Seasonal Lighting. Decorative Christmas/holiday lighting shall not be permitted earlier than Thanksgiving and must be removed no later than January 15. Also see the Rules and Regulations regarding holiday decorations and Landscape Design Standards and Guidelines for additional restrictions and information.
- 3.44 Storage/Sheds/Out Buildings.
- A. Any storage/shed/out building must be built onsite, on a slab, behind the main structure;
  - B. These structures are considered “accessory buildings” and must be constructed using the same masonry requirements, materials, and color scheme as the main structure on that Lot (See Section 3.05);
  - C. Any storage/shed/out building must be constructed in accordance with the building heights and number of stories as shown in Section 3.05.B.10. of this Restriction;
  - D. Any storage/shed/out building must comply with the setbacks shown on the recorded plat and Section 3.09 of this Restriction; and
  - E. Temporary construction buildings made of any material and color scheme (both prefabricated and site-built) are allowed during construction only if approved by the Declarant. Temporary construction buildings approved by the Declarant are **not** considered “accessory buildings.”
- 3.45 Yard Art.
- A. No Owner shall be allowed to place or maintain excessive amounts of freestanding outside structures of an artistic nature that are visible from any street;
  - B. Typical yard art includes but is not limited to statues, concrete birdbaths, fountains, windmills, animal figures or abstract man-made sculptures; and
  - C. Artistic use of native rocks found on-site is encouraged. Appropriate uses for native rocks include tree wells, dry-stack berms, retaining walls and rock walkways.
  - D. Also see the Rules and Regulations and Landscape Design Standards and Guidelines for additional restrictions and information.
- 3.46 Screening of Electrical On-Ground Transformers, Pool Equipment and Air Conditioning Units.
- A. All land-based electric transformers, pool equipment, and residential air conditioning units which are visible from any street shall be screened by evergreen vegetation while leaving some access for service;
  - B. Screening plants must be at least twenty-four inches (24”) tall at installation and full screening must be achieved within 24 months of initial planting;
  - C. Service providers need the ability to access their equipment for maintenance and repair issues – please make sure the evergreen screening plants are located so they will not impede the service providers’ ability to access their equipment for servicing, including room for plant growth at maturity. PEC prohibits any shrubs from being planted in front of the transformers to allow access to the door, and requires 5-feet of clearance on all other sides of their transformers and high voltage junction boxes and 10-feet in the back of the large pad-mounted transformers. Please remember to allow room for plant growth at maturity.
  - D. Another approved method of screening is the use of faux rock covers from a manufacturer such as DeKorra Rocks, which blend into the landscape and provide total screening of the utility.
  - E. Also see the Rules and Regulations and Landscape Design Standards and Guidelines for additional restrictions and information.

3.47 Exterior Site Lighting/Dark Sky Lighting/Light Pollution.

*Declarant's Vision: Lighting standards are provided to ensure a dark sky community while promoting nighttime safety and livability.*

- A. All exterior lighting within the Property must comply with Boerne Ordinance No. 2005-01, Article III, Section 2 "Outdoor Lighting" (attached as EXHIBIT D) as follows:
  - 1. All lighting fixtures designed or placed so as to illuminate any portion of a site shall meet the following requirements:
    - a. A light pole and fixture shall be no taller than 30 feet.
    - b. The light source shall be completely concealed within an opaque housing and shall not be visible from any street right-of-way.
    - c. Only incandescent, fluorescent, or metal halide may be used. The same type must be used for the same or similar types of lighting on any one site throughout any master-planned community.
    - d. Fixtures must be designed and mounted in such a manner that the cone of light does not cross any property line of site.
- B. In addition, permanent exterior lighting is to be minimized to avoid "light pollution" on starry nights, encourage "dark" skies and to maintain a rural, private atmosphere for all residents.
- C. The light source shall be completely concealed within an opaque housing and shall not be visible from any street right-of-way.
- D. No bare lamps shall be visible from any street or from adjoining neighbors.
- E. Soffit and tree lights shall be shielded or directed toward vegetation to eliminate off-site glare and source visibility.
- F. HID, sodium, or mercury vapor yard lights are not allowed.
- G. Incandescent, fluorescent, and metal halides are allowed.
- H. The intent is to avoid security lights that are illuminated all night.
- I. Colored lenses, or colored light bulbs, fluorescent and neon lighting are not allowed.
- J. Compact fluorescent bulbs concealed with the confines of a fixture are allowed.
- K. Owners desiring exterior security lighting shall install motion detectors so that the fixtures are mounted in such a manner that the cone of light does not cross any property line.
- L. These restrictions for permanent exterior site lighting do not apply to the decorative/seasonal lighting described in Section 3.43.
- M. Free standing decorative light pole fixtures no taller than 30 feet (30') are acceptable, but must be approved by the ACC.
- N. Owners are encouraged to learn more about light pollution and proper outdoor lighting options by visiting [www.darksky.org](http://www.darksky.org)
- O. Also see the Rules and Regulations and Landscape Design Standards and Guidelines for additional restrictions and information.

3.48 Parking.

- A. No regular parking of automobiles or any other type of vehicle or machinery will be permitted on any street in the Property at any time.
- B. Owners, tenants, and other residents may not park on the street at any time.
- C. Guests, invitees, and contractors may park on the street for no longer than 10 hours in any 24-hour period, and in no cases for more than 3 consecutive days for any length of time, without prior consent of the Board of Directors. All guest, invitee, and contractor vehicles must be parked in front of the Lot they are visiting, rather than in front of a neighboring lot.
- D. Vehicles parked on the street must be parked entirely on the street and not on any part of the Lot or Common Area other than the street.
- E. Parking partially on the street and partially on a Lot is prohibited.
- F. Vehicles may not be parked in any manner that blocks a driveway or sidewalk.

- G. Owners are responsible for seeing that their guests, tenants, and invitees comply with all governing documents, and are responsible for any fines or other charges assessed due to their guests,' tenant's, or invitee's violations.
- H. Vehicles parked on Lots must not be parked on dirt or grass and must be confined at all times to garages, driveways, parking pads or improved parking spaces defined in Section 3.30.
- I. Boats and trailers are never to be parked on the roadway or on driveways but must be parked and stored in garages. Brief parking solely for the purpose of loading and unloading is permitted.
- J. All provisions of this Section 3.48 apply to all streets, both private and public.

3.49 Right-of-Way Maintenance/ Street Monuments.

- A. As ownership of the roadways and road easements in many portions of the Property is private, each Owner will maintain the non-paved portions of the right of ways.
- B. If a street monument is located on a Lot, the Owner must keep the landscape area adjacent to the sign neat in appearance and free of weeds.

3.50 Mailboxes. To maintain an uncluttered roadside appearance, no mailboxes will be allowed on any Lot unless approved by the ACC and the U.S. Postal Service. See the Landscape Design Standards and Guidelines for additional information.

3.51 Landscaping, Lawn Maintenance, and Irrigation Systems.

*Declarant's Vision: The creation of a residential community in harmony with its magnificent natural environment. The focus of this Restriction is the preservation and selection of native plant materials, natural feature, adaptive and sustainable practices in planting and irrigation that distinguish Esperanza as an environmentally friendly community.*

*Esperanza is located in the heart of the Texas Hill Country. Owners are encouraged to help amplify the "Texas Hill Country" theme in their landscape plan by using native materials to build dry stack entries, retaining walls and limestone edgings around large tree stands. The landscape goal of each home site is to have it blend in with its neighbors and the surrounding environs. The front yard should have an amorphous, natural looking landscape that blends uniformly with the neighbor's landscape. The sod, grasses and plants should be massed and curvilinear, mimicking nature. Proper site planning should preserve existing trees and large shrubs wherever possible, creating a basis for a landscape design that emphasizes the use of low maintenance, drought tolerant native plants. Simply planting sod from property line to property line and creating a grid like street scene should not be the goal. The community motivation should be towards retaining the natural look and feel of the hill country.*

*Owners are encouraged to use xeriscape oriented or drought tolerant plants. Plants should be native to the Texas Hill Country and on the approved plant list in the Rules and Regulations and Landscape Design Standards and Guidelines. Tropical or non-indigenous plants and trees like palm trees, magnolia trees, banana trees, bamboo and other non-native species are not allowed. To secure a list of approved plants, trees, vines, and flowers, see the homeowner association website and the Landscape Design Standards and Guidelines.*

Landscaping and Lawn Maintenance.

- A. All landscaping within the Property must comply with the terms of City Ordinance 2007-64, Article 4 "Tree Preservation Requirements" as amended, using terms defined by Article 1, Section 6 of the Zoning District Use Regulations set forth in City of Boerne Ordinance No. 2005-01 (attached as EXHIBIT E). Go to [www.ci.boerne.tx.us/](http://www.ci.boerne.tx.us/) to obtain a copy of City Ordinance 2007-64, Article 4 "Landscape Requirements" (now titled "Tree Preservation Requirements").



- B. Owners must comply with the terms of Chapter 22, Article II, Divisions 1 and 2 of the City of Boerne Code of Ordinances (includes the City's Drought Management Plan and other water saving requirements).
- C. Each Owner shall keep all shrubs, trees, grass, and plantings of every kind on such Owner's Lot (including any greenbelt or easements platted as part of such Owner's Lot) cultivated, pruned, watered, mowed and free of trash, weeds, and other unsightly material.
- D. Each Owner shall keep all shrubs, trees, grass, and plantings of every kind (including any adjoining greenbelt or open space located between such Owner's Lot and any public roadway, or any adjoining greenbelt or open space containing a sidewalk located between such Owner's Lot and an adjoining residential Lot) cultivated, pruned, watered, mowed and free of trash, weeds, and other unsightly material.
- E. Owner shall promptly treat oak trees on their Lots that show symptoms of oak wilt or other life-threatening diseases in a manner consistent with good horticultural practice.
- F. All landscaping on all Lots (other than Common Area) must comply with the Landscape Design Standards and Guidelines of the Association.
- G. It is the Owner's responsibility to secure a copy of the Landscape Design Standards and Guidelines prior to implementing any landscape project and to quickly respond to landscape modifications and maintenance requests made by the ACC.
- H. St. Augustine grass is prohibited.
- I. Wooden fences are not allowed on any Lot; only black steel picket fences or stone walls are allowed on the Property, unless a variance is granted by the Declarant in writing. (See Section 3.32 regarding steel picket fencing requirements).
- J. Also see the Rules and Regulations and Landscape Design Standards and Guidelines for additional restrictions and information.

Landscape Irrigation System Requirements.

- K. All automatic irrigation systems must be connected to the reclaimed water system. No automatic irrigation system may be connected to the potable water system;
- L. All residential and commercial Owners, except for the BISD school sites, must use drought tolerant plant materials approved by the ACC;
- M. Must comply with Chapter 22, Article II, Divisions 1 and 2 of the City of Boerne Code of Ordinances (including the City of Boerne's Drought Management Plan);
- N. "Turf grass" watering is allowed only by an automatic irrigation system which can only be connected to the reclaimed water system;
- O. Automatic irrigation systems must have rain sensors; and
- P. The drilling of private water wells for any purpose, including irrigation purposes, is strictly prohibited.
- Q. Also see the Rules and Regulations and Landscape Design Standards and Guidelines for additional restrictions and information.

3.52 Garage Sales. Individual owner garage sales, yard sales, auctions and estate sales of any character are prohibited; however, the Association may schedule a maximum of two Community-Wide Garage Sales per year.

3.53 Address Markers.

- A. For 911 emergency purposes, Owners must have visible address identification on their property.
- B. Prior to the issuance of a certificate of occupancy, the builder must install an address identification number using the design, location and materials approved by the ACC.
- C. No other address identification numbers are permitted.

- D. Also see the Landscape Design Standards and Guidelines for additional information and the address marker specifications.

3.54 Retaining Walls and Decorative Rock Features.

- A. Also, see Section 3.32, 3.46 and 3.51.
- B. The ACC shall be entitled to require the construction of retaining walls on each Lot, the location of which shall be determined by the ACC in its sole and absolute discretion.
- C. Retaining walls visible from the street shall be constructed in dry-stack or mortared limestone. Retaining walls faced in limestone are required at any driveway slope cuts which results in slope steeper than 1:3 gradient. Retaining walls which are not visible from any street may be constructed only with materials that are approved by the ACC and must be structurally engineered to withstand the weight and load of the specific retaining wall.
- D. The maintenance and repair of any retaining walls, including retaining walls that are constructed in whole or in part in the private street right-of-way, shall be the sole obligation of the Owner of the Lot on or adjacent to which the retaining wall is located. This does not apply to walls constructed by Declarant during road construction which will be maintained by the Association.
- E. The Owner's failure to maintain any retaining wall located upon the Owner's Lot in good repair shall be a violation of this Declaration, subject to the Association's and Declarant's powers of enforcement granted by the Declaration.
- F. Any rock features or walls installed by Declarant regardless of location may not be removed or altered without ACC or Declarant approval in writing.
- G. Retaining walls should be constructed with randomly sized native limestone boulders, common field stone, rough cut limestone in random sizes, or large boulders or stone slabs that blend into the Hill Country landscape (see examples in the Landscape Design Standards and Guidelines).
- H. CMU blocks and concrete are not allowed as retaining wall materials unless clad in stone as described above.
- I. For the purposes herein, courtyards that enclose private retreat areas contiguous to the home are considered to be part of the home's architecture and will be allowed if approved by the ACC.
- J. Also see the Landscape Design Standards and Guidelines for additional information.

3.55 Interior Window Coverings and Exterior Burglar Bars.

- A. No buildings on the Lots shall have temporary interior window coverings of any character at any time. This includes, but is not limited to paper, aluminum foil, bed sheets, flags, or plastic sheeting. Additionally, materials of any kind may not be stacked in front of windows as to be readily visible from the street or an adjacent Owner.
- B. All interior window coverings shall be made of quality materials using traditional design/appearance that are approved by the ACC.
- C. No exterior burglar bars will be permitted on any doors, windows or other openings on a dwelling situated on the Property.
- D. Burglar bars, if installed, must be situated within the interior of such dwelling, and may not be seen from any street.

3.56 Rainfall Harvesting Devices. Rainfall harvesting techniques, facilities, design, and location shall be approved in advance by the ACC. The maintenance and repair of all rainfall harvesting facilities located on any Lot shall be the sole responsibility of the Owner of such Lot.

3.57 Neighborhood/Village Gate Closure.

- A. The Developer, the Declarant, the Association and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property.
- B. Each Owner is solely responsible for his own person and property, and assumes all risks for loss or damage to same.
- C. The Developer, the Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no, and hereby disclaim all representations and warranties relative to any fire, burglary, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property.
- D. Specifically, and not by way of limitation, any controlled access gates within the Property are not security devices, and each Owner is expressly deemed to have accepted all risks to person and property as a result of any use and/or ingress and egress through any controlled access gate.
- E. Neither the Developer, the Declarant, the Association or their respective directors, officers, committees, agents, and employees is liable for any loss or damage by reason of failure to provide security, the effectiveness of security measures undertaken, or the use of any controlled access gates within the Property.
- F. The 24-hour closing of any controlled access gate(s) is planned to take place only upon 100% occupancy of homes in the community. However, Declarant or Board may but shall have no obligation to elect to close such gates at a sooner or later time, including closing only at night, or at any other hours as determined by the Declarant or Board. For example, when occupancy reaches a certain percentage, the Declarant or Board may elect to close the gate(s) during the night hours only. ***Owners are hereby notified that gate(s) may remain open in the discretion of Declarant including for sales and construction purposes.***
- G. Access gates may be nonfunctional at any time and shall not be relied on as a warranty or representation of security. Each Owner's security is the responsibility of the Owner and law enforcement.

3.58 Representations by Others.

- A. Declarant is not responsible for, nor does it assume or warrant as true, any representation made by any person, other than the Declarant or its authorized agents, who may be associated with the marketing and sale of property within Esperanza.
- B. Views from any portion of the property within Esperanza are not protected, and no guarantee is provided to Purchaser that any such view will remain the same.

3.59 Undeveloped Areas. Except for specifically marked resident nature trails which may be built by the Developer, access to or use of any area outside of the existing platted and/or developed portions of the Property is prohibited.

3.60 Auction Sales Prohibition. Except for foreclosure sales held by a lien holder in conjunction with foreclosing on a deed of trust or other lien right, no Lot may be sold by public auction process. For the purposes of this Section, "public auction process" is considered to be the sale of property by competitive bid.

3.61 Sex Offenders/Criminal Record Prohibition. (a) no person may reside on any Lot, or in any home, in the subdivision if they are registered as a sex offender of any state, local, or other governmental list of registry ("Offender"). This applies to Owners, family members of Owners, tenants, and any other person residing in the community as a permanent or temporary resident for more than three (3) days in any one (1) month. Any Offender found to be residing in the Subdivision, and any Owner of a Lot permitting an Offender to reside in the Subdivision, will be subject to fines, assessments on their Lot, and any other enforcement action permitted by law or these Restrictions.

If any person residing in the community is, or becomes an Offender, the Owner of the Lot must, within five (5) days after receipt of notice from the Declarant or Association, cause the Offender to be relocated out of the Subdivision.

A violation of this provision will give rise to the following rights (but will impose no obligation on the Association) of the Association and Declarant: (1) the right of injunction to enforce this provision; and (2) if the Offender is a Lot Owner, or the Lot Owner fails or refuses to evict an Offender residing on their Lot, the right to require a sale of the Lot and all Improvements to the Declarant or Association, at Declarant or Association's option, at one hundred percent (100%) of the county tax appraisal value of the Lot and Improvements; (3) if the Offender is not a Lot Owner, the right to evict, or cause the eviction of the Offender. In this regard, the Association shall be deemed an "aggrieved party" for eviction suit purposes, and the Association shall be entitled to possession (i.e., dispossession of the particular offending person) of the dwelling subject to the condition that if the Association does recover possession in an eviction suit, the Association shall upon execution of a writ of possession, immediately relinquish possession of the dwelling to the dwelling's Owner and shall not enter the dwelling. The Owner will be responsible for all costs associated with such eviction; and (4) all other rights under this Declaration and other law. Any one or more of these remedies may be used in combination with another; any judicial ruling on the enforceability of one or more of these remedies shall not cause invalidation of this section or limit any legal remedies available to the Declarant or the Association.

### 3.62 Leasing.

**IMPORTANT NOTE TO OWNERS AND TENANTS:**

**The purpose of these leasing restrictions is to help ensure the right to peaceable enjoyment of the community by all residents, tenants, Owners, and other occupants. It is important that all Owners who desire to lease their property read and follow these restrictions to avoid inadvertent violation.**

**The leasing restrictions follow. Among the more important provisions are:**

- \*All leases must be in writing; 6 – month minimum lease term.**
- \*Copies of all fully executed lease documents must be provided to the Association prior to any occupancy by tenants or other occupants living with tenant.**
- \*Prior to leasing, criminal background checks must be performed by the Owner on all prospective tenants and occupants. Owners should use their own legal judgment in determining criminal history disqualifications, but registered sex offenders are NOT allowed to be occupants in Esperanza, per the deed restrictions.**
- \*Tenants must comply with all governing documents of the Association.**
- \*Owners are responsible for any violations by tenants, occupants, or their guests.**

- A. Definition of Leasing. A Lot is deemed "leased," and its occupants deemed "tenants," for purposes of this Section 3.62 and other leasing-related provisions in the governing documents, except when: (i) the Lot is occupied by the Owner, (ii) the Lot is occupied by a person immediately related to the Owner by blood, marriage or adoption, (iii) the Lot is vacant, or (iv) title to the Lot is held by a corporation, trust, partnership, or other legal entity, with the primary purpose of providing occupancy to the current long-term occupant. This definition applies irrespective of whether there is a written agreement between the Lot Owner and the occupant(s) or whether any financial consideration has been provided for the right of occupancy.
- B. General Lease Conditions; advertising. The leasing (including subleasing) of Lots is subject to the following general conditions:
1. No Lot may be rented for transient or hotel purposes or for an initial lease term of less than 6 months, except that the Board shall have the sole discretion on a case-by-case basis

- to grant prior written consent for a shorter lease term;
- 2. no Lot may be subdivided for rent purposes, and not less than an entire home may be leased;
- 3. the maximum occupancy for leased Lots is one person per bedroom, except that the maximum occupancy for Lots leased to tenants who legally constitute a family under federal Fair Housing laws is two persons per bedroom plus one child 2 years of age or younger per bedroom;
- 4. all leases must be in writing and must be made subject to the governing documents;
- 5. an Owner is responsible for providing his tenants with copies of the governing documents and notifying them of changes thereto; Owners are responsible for all governing documents violations by their tenants, occupants, or their guests;
- 6. each tenant is subject to and must comply with all provisions of the governing documents, federal and State laws, and local ordinances;
- 7. **an Owner must provide the Association a complete and legible copy of the fully executed lease prior to occupancy by a tenant.**
- 8. **No Owner may advertise the lease of any Lot for a term of less than the minimum lease term.** All advertisements for the lease of a Lot must clearly state that the minimum lease term required by this Section 3.62 (or any longer term the Owner wishes to apply). Daily or weekly rates (or any rate less than monthly) may not be advertised. Fines will be assessed for any violation of this rule, regardless of whether the advertised Lot is actually leased for a period of less than the minimum lease term.

C. Screening of Tenants and Occupants; Proof of Screening. Prior to leasing to anyone or allowing anyone except the Lot Owner, or an individual related to the Owner by marriage, blood or adoption, to occupy a Lot, an Owner must assess the criminal background of potential occupants and without limitation obtain a report based upon Texas Department of Public Safety criminal history and sex offender searches both for the named tenants/occupants under the lease and all unnamed persons whom the Owner knows, or comes to know, are occupying or will occupy the leased Lot. (Criminal reports may be purchased from the DPS website at [www.txdps.state.tx.us](http://www.txdps.state.tx.us)). *If a Lot is being leased at the time of the adoption of this Section 3.62, the Owner must perform the due diligence outlined above within 15 days of being sent a notice of the adoption of this provision.* **An Owner must provide proof of screening within three days of a request from the Association. Owners should consult their own attorneys in determining criminal history disqualifications, but to the maximum extent allowed by law, sex offenders who are required to register as such with the Texas Department of Public Safety are not allowed to be occupants in Esperanza, per the deed restrictions.**

E. Eviction of Tenants. Every lease agreement on a Lot, whether written or oral, express, or implied, is subject to and is deemed to include the following provisions:

- 1. Violation Constitutes Default. Failure by the tenant or his invitees to comply with the governing documents, federal or State law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the tenant, subject to the terms of this paragraph.
- 2. Association as Attorney-in-Fact. Notwithstanding the absence of an express provision in the lease agreement for enforcement of the governing documents by the Association, each

Owner appoints the Association as his attorney-in-fact, with full authority to act in his place in all respects, solely for the purpose of enforcing the governing documents against his tenants, including but not limited to the authority to institute forcible detainer proceedings against his tenant on his behalf, provided the Association gives the Owner at least 10 days' notice, by certified mail, of its intent to so enforce the governing documents.

3. Association Not Liable for Damages. The Owner of a leased Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the governing documents against his tenant, including attorney's fees, and including costs of any eviction. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the governing documents against the Owner's tenant.

#### **IV. THE ASSOCIATION**

4.01 Organization. The Association is a Texas non-profit corporation.

4.02 Membership. Upon becoming an Owner of a Lot, a person shall automatically become a member of the Association, so long as he remains an Owner. Membership in the Association is mandatory, appurtenant to, and shall run with the ownership of the Lot that entitles the Owner thereof for membership. Membership in the Association may not be severed from the ownership of a Lot or in any way transferred, pledged, mortgaged, or alienated except together with the fee simple title to said Lot. Declarant is a member of the Association. Property Owners in other portions of Esperanza made subject to the Declaration are also members of the Association, in accordance with any covenants and restrictions specifically imposed on those subdivisions. Declarant may add additional land to the Esperanza development and to the Association.

4.03 Voting Rights and Registration.

A. Classes of Membership. The Association has two (2) classes of membership:

1. 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. When more than one person holds an interest in a Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Class A members may also be Owners in other portions of the Property, according to their respective declarations or other annexation documents.
2. Class B: The Class B member shall be Declarant, its successors and assigns, which shall be entitled to one vote for each Declarant-owned Lot plus four (4) votes for each Lot owned in the Property by each Class A member (see plan attached as Exhibit A and on file with the City of Boerne). The Class B membership ceases and converts automatically to Class A Membership when all the Property is sold to someone other than the Declarant or when the Declarant voluntarily converts its membership to Class A membership by executing and filing a Statement of Conversion to Class A membership in the Kendall County Official Property Records.
3. Notwithstanding the voting rights described in this Section 4.03(A), Declarant shall have the right to appoint all Board members until Declarant has sold 75% of the Lots in the Property that Declarant intends to develop or sell in the Property, and Declarant shall have the right to appoint a majority of the Board members for so long as Declarant owns any of the Property (all as further described in the Bylaws). The remaining board members not elected or appointed solely by Declarant shall be elected by the Voting Representatives as further described herein and in the Bylaws.

- B. Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote for each Lot owned by a Class “A” Member shall be exercised by the majority vote of the Voting Representatives of the Voting Representatives Neighborhood, as provided herein and further described in the Bylaws. (For example, if there are 150 Lots in the Voting Representative assigned neighborhood not owned by the Declarant, Voting Representatives, by majority vote, will determine how the 150 votes are voted). The Voting Representatives, by majority vote, may cast all such votes as they, in their discretion, deem appropriate; provided, unless the Board otherwise permits, the Voting Representative shall cast all of the votes which they are entitled to cast as a block and shall not split the votes.
- C. Phases. Every Lot shall be located within a phase or other portion of the Property as described in Article I. Due to the number of Lots anticipated to be developed in Esperanza, the governing documents provide for a representative system of voting. The Owners of Lots within each Voting Representatives Neighborhood shall elect Voting Representatives to cast all Class “A” votes attributable to their Lots on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the By-Laws. Voting Representatives shall be elected for a three-year term. However, after the Declarant Control Period has ended, the Owners in the Voting Representatives Neighborhood, by majority vote of Owners present and voting in person or by proxy, may alter the term of the Voting Representatives and provide for staggered terms for the Voting Representatives.

Until such time as a Lot is assigned to a Voting Representatives Neighborhood, the Lot Owner shall be entitled personally to cast the votes attributable to the Owner’s Lot on any issue requiring a membership vote under the Declaration, Bylaws, Rules, or other governing documents.

After the first election of Voting Representatives from a Voting Representatives Neighborhood thereafter, the Board shall call for an election of Voting Representatives for each Voting Representatives Neighborhood as necessary (for example, if all Voting Representatives have a non-staggered three year term, meetings for election need only be called every three years) either by written ballots cast by mail, computer, and/or at a meeting of the Class “A” Members within such Voting Representatives Neighborhood, as the Board determines. Upon written petition signed by Class “A” Members holding at least 20% of the votes attributable to Lots within any Voting Representative Neighborhood, the election for that Voting Representative Neighborhood shall be held at a meeting. During the Declarant Control Period, the Declarant shall have sole authority to nominate Voting Representatives for election. After the Declarant Control Period, Voting Representatives may be nominated by the Board, a nominating committee which the Board may appoint, or from the floor at any meeting at which such election is to be held.

The presence, in person or by proxy, or the filing of ballots by Class “A” Members representing at least 20% of the total Class “A” votes attributable to Lots in the Voting Representative Neighborhood shall constitute a quorum at any such neighborhood meeting or election.

For any Voting Representative Neighborhood vote, including a vote to elect Voting Representatives, each Class “A” Member shall be entitled to one equal vote for each Lot which such Owner owns in the Voting Representative Neighborhood. The candidates who receive the greatest number of votes for Voting Representatives shall be elected as Voting Representatives. The Voting Representative shall serve a term of three years and until their successors are elected.

Any Voting Representative may be removed, with or without cause, by the Declarant during the Declarant Control Period or upon the vote or written petition of Owners of a majority of the total number of Lots owned by Class “A” Members in the Voting Representatives Neighborhood. In the event that the position of a Voting Representative becomes vacant (due

to removal, sale of a Lot, death, resignation, or otherwise), his or her successor shall be appointed by majority vote of the remaining Voting Representatives for that Voting Representatives Neighborhood. Replacements appointed in this manner shall serve out the remaining term of the person they replaced. However, during the Declarant Control Period, any replacement appointed must first be approved by the Declarant in writing.

- D. Registration with the Association. In order that the Association can properly determine voting rights and every Lot purchase and every Owner and resident of the Property with these Restrictions and the day-to-day matters within the Association's jurisdiction, each Owner and resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as: (a) the full name and address of each Owner, resident and any fiduciary for same; (b) the business address, and telephone number of each resident; (c) the description and license plate number of each automobile owned or used by a resident and brought within the Property; (d) the name, address and telephone numbers of other local individuals who can be contacted (in the event the resident cannot be located) in case of an emergency; and (e) such other information as may be reasonably requested from time to time by the Association. In the event any Owner or resident of the Property fails, neglects, or refuses to so provide, revise, and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner and resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

4.04 Powers and Duties of the Association. The Association shall have all the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration or the Articles. The Association shall further have the power to do, perform and delegate any and all acts which may be necessary, desirable, or proper for or incidental to the exercise of any of the powers expressly granted to it by the laws of Texas or by this Declaration. Except where expressly provided to the contrary by this Declaration or by other applicable law, all management and decision making of the Association shall be by the Board. Without in any way limiting the generality of the three preceding sentences, the Association (acting through the Board) shall have the following powers and responsibilities:

- A. Assessments and Collections. The Association shall levy and collect Assessments. In furtherance of its duty and authority to collect Assessments and other sums due the Association, the Board may establish payment policies, set due dates, impose and enforce penalties (including late fees and collection fees), and take all other lawful action necessary or appropriate for collection of Assessments and all other sums owed to the Association.
- B. Rules and Bylaws. The Association may promulgate, amend, repeal and/or re-enact the Bylaws and such rules not in conflict with this Declaration, as it deems proper, covering any and all aspects of its functions, including the use, occupancy, and preservation of Association property. The Declarant, and after the Declarant control period the Board, may without limitation adopt rules for the purpose of administering the Association, including obtaining compliance by Owners and their family, guests, and tenants with the Declaration, the Bylaws, and the provisions of any other law or applicable rule.
- C. Records. The Association shall keep books and records of the Association's affairs and make such books and records, together with current copies of the Restrictions, available for inspection by the Owners pursuant to the Association's Records Retention and Production Policies.
- D. Professional Services. The Association may retain and pay for management, legal, accounting, engineering, and other professional services necessary or proper in the operation of the Association.
- E. Contracts; Property Ownership. The Association may enter into contracts and may acquire, own, lease, and dispose of all manner of real and personal property on such terms as the Board



shall in the exercise of reasonable business judgment deem advisable, provided however, that a majority vote of all Voting Representatives is required to sell any Common Area.

- F. Change in Lot Lines and Utilities. The Board shall have the power to approve, on behalf of the Association, any replatting or relocation of Lot lines or utilities for Lots and the Property.
- G. Discretionary Enforcement. If an Owner or other person with standing complains of a violation of the Declaration or Bylaws and the Board determines that the alleged violation is of doubtful character and/or of such limited scope or impact as not to warrant the expenditure of Association funds, the Board may decline to enforce such violation and leave enforcement to the complaining party.
- H. Frivolous Complaints. The Association shall not be required to expend time or other resources on patently frivolous, unmeritorious, or harassing complaints; and the Association may recover all of its costs, including reasonable attorney's fees, for responding to or defending against such complaints/requests.
- I. Self-help remedies; Maintenance and Repair Duties. If, in the opinion of the Association, the Owner or occupant is failing in any duty or responsibility of the governing documents, including maintenance and repair duties outlined in Sections 3.10 and 3.11 or elsewhere in the Declaration, Bylaws, Rules or other governing documents, then the Association may give the Owner (and may in its discretion also provide a copy to any occupant), written notice of such violation(s). Notice may be given via mail, overnight mail, email, or fax. The Owner must, within five (5) days of the date of such notice, cause such violation(s) to be cured, including as applicable undertaking the care and maintenance required to restore the Lot, Improvements, or both, to a safe, clean, properly functioning, and attractive condition.

If the Owner fails to fulfill this duty after such notice, then the Association or the Association's managing agent on behalf of the Association, shall have the right and power, but not the obligation, to cure any violation(s), and the Owner shall be liable for the cost of any such work and shall promptly reimburse the Association for the cost thereof. Such costs shall constitute a lien on the Lot on which the work was performed and shall be enforceable as any other assessment lien in the manner provided for in the Declaration. These self-help remedies are in addition to any other available remedies including without limitation fining or other enforcement action. The Association's managing agent, Association attorney, or other authorized agent of the Association is granted authority to conduct self-help remedies on behalf of the Association, in accordance with any procedure described in this Declaration or other governing documents.

- 4.05 Rights and Remedies. The Association shall have the power and authority, in its own name and on behalf of itself and the Owners, to commence, maintain, or defend legal actions to enforce or construe the Declaration or Bylaws or its actions or to restrain and enjoin any breach or threatened breach of the Declaration or Bylaws. The Association shall have the right to file liens, file and defend suits for injunctive relief, damages, and/or other relief on behalf of the Association and/or the Owners or the Board. Relief includes, without limitation, removal or modification of any improvement constructed or modified in violation of the Declaration. The Association is also authorized to settle claims, enforce liens, and take all other action that it deems necessary or reasonable and expedient to enforce the Declaration or Bylaws and/or to perform the duties of the Association or the Board set forth in the Declaration, Articles, or Bylaws. Except where expressly provided to the contrary by this Declaration or by other applicable law, all management and decision making of the Association shall be by the Board. The Association may enforce all duties and obligations now and/or hereafter imposed by the Declaration or the Bylaws by all lawful means, including without limitation the following:

- A. Collection Charges. The Association may assess late charges and collection charges for late payment of amounts due the Association hereunder, and returned check charges for each returned check until acceptable payment is received. These charges shall not exceed any maximum charge permitted under applicable law.

- B. Attorney's Fees. If a delinquent account or other violation is turned over to an attorney, the delinquent Owner shall be liable for all costs and attorney's fees incurred by the Association in collection, filing liens, foreclosing liens, releasing liens, prosecuting lawsuits, and/or otherwise enforcing or interpreting the rules and policies of the Association, the Declaration, and Bylaws. All such sums shall be a continuing lien and charge upon the delinquent Owner's Lot(s), as well as the personal obligation of said Owner; and this obligation may be enforced in the same manner and to the same extent as provided herein for Assessments.
  - C. Application of Payment. To the maximum extent allowed by law, without notice and regardless of notations or instructions on checks or otherwise, the Association may apply unapproved partial payments made to non-assessment items first, may apply payments to the most delinquent balance, or any method of application deemed appropriate by the Association.
- 4.06 Rules and Policies. The Declarant, and after the Declarant control period the Board of Directors, shall have wide latitude in adopting and implementing rules governing the appearance and use of Lots and in establishing policies for enforcement of the Declaration and Bylaws.

## V. ASSESSMENTS

- 5.01 Covenant to Pay Assessments. Each Owner of a Lot, excluding Declarant owned lots and Common Area Lots, hereby covenants and agrees to pay to the Association all fees, assessments and costs set out in the Declaration, Bylaws, Rules or other governing documents, including but not limited to; (a) Regular Assessments (as defined in Section 5.03 hereof), (b) Special Assessments (as defined in Section 5.05 hereof), (c) Neighborhood Assessments (applicable only as defined in Section 5.06 hereof), (d) late charges, collection costs and attorney's fees(as specified in Section 5.07 hereof), and (e) all amounts set out in Section 4.05, and transfer fees, fines, damage assessments, attorney's fees, other amounts as set out in Section 2.06 above for each Lot that he/she owns, and any other amount owed under the governing documents (including Bylaws, Rules, or otherwise). All such Assessments and charges shall be established and collected from time to time as herein provided. Each Owner further covenants to pay to the Association reasonable attorney's fees, costs of court, other costs, and expenses incurred in connection with enforcement or defense of these Restrictions or collection of Assessments.

Declarant may but shall have no duty to supplement the budget of the Association by providing funds to the Association.

- 5.02 Purpose of Assessments. The Board shall set and levy Assessments, as needed, for the purposes of (a) promoting the comfort, health, safety, and welfare of the Owners, and the Property, (b) enforcing and defending this Declaration, the Association, the Board, its rules and policies and the Bylaws, and (c) promoting the purposes of the Association as stated herein or as provided in the Articles or Bylaws.
- 5.03 Regular Assessments for Commercial and Non-Commercial Lots.
- A. Regular Assessments for Non-Commercial Lots. There shall be a Regular Assessment set by the Board applicable to all Lots in the Property (except Common Area lots and lots owned by the Declarant) and payable in an equal amount by all non-Commercial Lots. The Board is required to use good faith efforts in budgeting in order meet Association needs (including maintenance of Common Area, including boulevards, Private Roadways, Private Roadway Easements, entry improvements and landscaping and any community amenities existing or hereafter constructed, regardless of whether such improvements are located in a controlled-access (for example, privately-gated) area); administrative costs; insurance costs; and all other costs necessary or appropriate in the Board's discretion). The Board may adjust Regular Assessment from time to time. The due date of Assessments shall be paid either monthly, quarterly, or semi-annually at the discretion of the Board. An Owner is obligated to pay

Assessments regardless of whether the Owner actually receives a bill, invoice, or other notice of any such Regular Assessment.

- B. Regular Assessments for Commercial Lots. There shall be a Regular Assessment set by the Board applicable to all Commercial Lots in the Property. The Commercial Lot Regular Assessments shall be determined on an acreage basis. Such assessments shall be determined by using the Commercial Lot's acreage as the numerator and the total acreage of all property subject to this Declaration as of the date of calculation (including property subsequently annexed/added) as the denominator and multiplying this fraction by the total amount of Regular Assessments levied under an approved Association budget. Such Commercial Lot Regular Assessments shall be adjusted from time to time to reflect any change in budget.

5.04 Adjustments to Regular Assessments: The Board may, at its discretion, adjust the Regular Assessment (as defined in Section 5.03) by up to 15 percent per year without authorization of the Owners, and may cumulate said increase over the years if the maximum increase is not made each year. Any adjustment of these fees greater than 15 percent per year (cumulative) must be authorized and approved by a 2/3 vote of the Voting Representatives.

5.05 Special Assessments Infrastructure Assessments, Working Capital Assessments, and Community Enhancement Assessments. In addition to the Regular Assessments authorized herein, the Association may, by vote of the Board, set and levy Special Assessments, Infrastructure Assessments, Working Capital Assessments, and Community Enhancement Assessments in order to conduct any of the purposes of the Association or otherwise to benefit the Association. The due date(s) and delinquent date(s) of any such Assessments under this Section shall be fixed by the resolution authorizing such Assessment. Assessments shall be assessed equally on all Lots other than Commercial Lots. Assessments payable by Commercial Lots shall be determined on the same basis as Regular Assessments for Commercial Lots, namely: Acreage of individual Commercial Lot / Total acreage subject to declaration = total amount of Assessment.

5.06 Neighborhood Assessments<sup>1</sup>. A “**Neighborhood**” for purposes of a Neighborhood Assessment means a group of Lots designated as a separate Neighborhood pursuant to the terms of this Declaration, for purpose of receiving benefits or services from the Association which are not provided to all Lots. A Neighborhood may be comprised of more than one housing type and may include noncontiguous Lots. A Lot may be assigned to more than one Neighborhood for purposes of additional services provided. All costs associated with the provision of the benefits or services outlined in the Notice of Neighborhood Designation, and at the Board's option, a reasonable administrative charge in such amount as the Board deems appropriate, will be assessed against each Lot within the Neighborhood. All costs shall be assessed equally against all Lots in the Neighborhood.

Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Neighborhood, reflecting the estimated costs of providing the benefits and services to the Neighborhood, as described in the Notice of Neighborhood Designation (plus an administrative fee in the board's discretion). The total amount of all estimated Neighborhood expenses for the year will be allocated equally among all the Lots in the Neighborhood and levied as a Neighborhood Assessment. All amount collected by the Association as Neighborhood Assessments will be held and expended solely for the benefit of the Neighborhood for which they were collected and will be accounted for separately from the Association's general funds. Neighborhood Assessments shall be paid either monthly, quarterly, or semi-annually at the discretion of the Board. An Owner is obligated to pay a Neighborhood Assessment regardless of whether the Owner actually receives a bill, invoice, or other notice of any such Neighborhood Assessment.

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<sup>1</sup> Private Roadways and Private Roadway Easements are not funded through Neighborhood Assessments but rather through regular assessments. See §5.03.

- A. Neighborhood Designation during Declarant Control Period. A Neighborhood may be designated during the Declarant Control Period only by the Declarant's filing of record in the Kendall County Official Public Records a Notice of Neighborhood Designation, cross referencing this Declaration, and meeting the requirements of this Section 5.06. Affected Lots, and benefits or services to be provided to a Neighborhood shall be described in the Notice of Neighborhood Designation, and such benefits or services may include items such as landscaping, courtesy patrols, security monitoring, or any other benefit or service, including an enhanced level of already-provided services. During the Declarant Control Period, Declarant shall have the exclusive right to amend any Notice of Neighborhood Designation, and may unilaterally amend any Notice of Neighborhood Designation, including adding, removing, or altering benefits or services to be provided to a Neighborhood pursuant to a Notice of Neighborhood Designation. The cost and administrative charges associated with the benefits and services will be assessed against the Lots within the Neighborhood as a Neighborhood Assessment.
- B. Neighborhood Designation after the Declarant Control Period. After the Declarant Control Period, any group of Owners may petition the Board to designate their Lots as a Neighborhood for purposes of additional benefits and services, such potential benefits and services as further described in subsection (A) above. Upon receipt of a petition signed by Owners of a majority of Lots within the proposed Neighborhood, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Neighborhood of such terms and the estimated charge to be made therefore, and shall propose a Notice of Neighborhood Designation in a form described in subsection (A) (including a description of affected Lots and the benefits and services to be provided.) Upon written approval of the Notice of Neighborhood Designation by at least 67% of all Lots within the proposed Neighborhood, the Association will file the Notice of Neighborhood Designation of record and provide the requested benefits and services on the terms set forth in such notice. The cost and administrative charges associated with the benefits and services will be assessed against the Lots within the Neighborhood as a Neighborhood Assessment.
- C. Amendment to Neighborhood status, benefits, and services. During the Declarant Control Period, Declarant shall have the sole authority to amend any Notice of Neighborhood Designation. After the Declarant Control Period, a Notice of Neighborhood Designation may be amended only by approval of at least 67% of all Lots within the Neighborhood.
- 5.07 Late Charges, Collection Costs, and Attorney's Fees. If any Assessment or any other amount due under the Declaration, Bylaws, Rules, or other governing documents, is not paid before becoming delinquent, the Owner responsible therefore may be required to pay a late charge at such rate as the Board may designate and interest at the rate of 18% per annum. Each Owner shall also be liable for payment of all costs, fees, and expenses, including returned check charges, reasonable attorney's fees, and recording fees incurred in collection of Assessments and/or other sums owed by the Owner to the Association or in otherwise enforcing the Declaration, Bylaws, Rules, or other governing document. Said charges and fees shall be both an obligation of the Owner and the Lot(s) owned by such Owner, running with the land, collectible in the same manner as herein provided for collection of Assessments. An Owner's non-receipt of a statement or other notice that Assessments are due shall not be a defense to the imposition of late charges and other costs of collection, including Attorney's fees.
- 5.08 Lot Consolidation, Replatting. No combination, consolidation, or replatting of Lots shall alter the Assessments due for each original Lot involved unless the same (a) occurs at the instance of Declarant, (b) involves extraordinary circumstances and receives the unanimous approval of the Board, or (c) approved in writing by the Declarant prior to formation of the Board. However, this provision shall not apply to Commercial Lots, which may be replatted with Declarant approval, or after the Declarant Control Period has ended, with Board approval.

5.09 Violations of Covenants and Restrictions:

- A. Non-assessment items first. To the maximum extent allowed by law, all monies received from an Owner may be applied first to obligations of the Owner, other than Assessments, such as fines, late charges, returned check charges, attorney's fees, user fees, damages, etc., regardless of notations on checks and transmittal letters.
- B. The Declarant, or after the Declarant Control Period, the Board, may adopt rules for deed restriction enforcement including fining rules for violation of the Declaration, Bylaws, rules, or other governing document. Owners shall be liable for all violations committed by their co-residents, guests, invitees (including contractors), or their tenants or their guests or invitees (including contractors). The Board may authorize the association's managing agent or other authorized representative to conduct deed restriction enforcement actions.

5.10 Enforcement. The Association may assess the Owner's account for any damages caused by the Owner, or the Owner's residents, tenants, guests, or invitees. The Owner may be held responsible for all enforcement costs, including attorney's fees, to the maximum extent allowed by law, regardless of whether suit is filed. If an Owner, or its heirs, executors, administrators, successors, assigns or tenants, shall violate or attempt to violate any of the Restrictions set forth in this Declaration, in addition to all other available remedies it shall be lawful for the Association, Declarant, or any Owner subject to this Declaration, to prosecute any proceedings against the person or persons violating or attempting to violate any such Restrictions. The failure of any Owner or tenant to comply with any restriction or covenant will result in irreparable damage to Declarant and other Owners; thus, the breach of any provision of this Declaration may not only give rise to an action for damages at law, but also may be enjoined or may be subject to an action for specific performance in equity in any court of competent jurisdiction. In the event an action is instituted to enforce the terms hereof or prohibit violations hereof, and the party bringing such action prevails, then in addition to any other remedy herein provided or provided by law, such party shall be entitled to recover court costs and reasonable attorney's fees. Neither the ACC, Association, or Declarant shall be charged with any affirmative duty to police, control or enforce the terms of this Declaration and these duties shall be borne by and be the responsibility of the Owners.

**VI. LIABILITY AND INDEMNITY**

6.01 Liability of Association Representatives. Association directors, officers, employees, and ACC members (collectively the "Association Representatives") shall not be liable to any Owner or other person claiming by or through any such person for any act or omission of such Association Representative in the performance of his/her Association duties unless such act or omission (a) is an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, or (b) involves a transaction from which an Association Representative receives an improper personal benefit, whether or not the benefit resulted from an action taken within the scope of the Association Representative's office/position, or (c) is conduct for which the liability of the Association Representative is expressly imposed by a statute.

6.02 Indemnification. The Association shall indemnify and hold harmless every past and present Association Representative from all costs, expenses, fees (including attorney's fees), liabilities, claims, demands, actions and proceedings and all expenses associated therewith unless such indemnity would contravene the provisions of this Declaration or Texas statute. Such indemnification payments shall be a common expense of the Association. This indemnity shall extend to all expenses (including attorney's fees, judgments, fines, costs of court, other costs and amounts paid in settlement) actually and reasonably incurred by such person in connection with such proceeding if it is found and determined by the Board or a court that such person: (a) acted in good faith and in a manner which such person reasonably believed to be consistent with the best interests of the Association, or (b) with respect to any criminal action or proceeding, had no

reasonable basis to believe such conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of no lo contendere or its equivalent, shall not of itself create a presumption that the person breached the immediately preceding requirements. The Board may purchase and maintain insurance on behalf of any person who is or was an Association Representative against any claim asserted against or incurred by such person in any such capacity or status, whether or not the Association would have the power to indemnify such person against such liability. The premium for such insurance is a common expense, and the Board of Directors is authorized and directed to modify the Association's Articles and Bylaws to the extent necessary to facilitate the purchase of such insurance.

- 6.03 Amendment of Liability and Indemnity Provisions. Notwithstanding any other provision in this Declaration, the Board may amend this Article 6, without the concurrence of the members or Mortgagees, in order to conform to changes in applicable law.

## VII. MISCELLANEOUS

- 7.01 Construction. This Declaration shall be liberally construed to promote its express and implicit purposes. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision or portion. Unless the context requires a contrary construction, use of the singular, plural, and/or a designated gender shall be of no consequence in construing this Declaration. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the sections hereof.
- 7.02 No Warranty of Enforceability. While Declarant has no reason to believe that any of the terms and provisions of this Declaration are in any respect invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such terms or provisions. Any Owner acquiring a Lot shall assume all risks of the validity and enforceability thereof and, **by acquiring the Lot, agrees to hold Declarant, and its respective successors and assigns, harmless therefrom.**
- 7.03 Compliance with Declaration. Each Owner shall comply strictly with the provisions of this Declaration and the rules and policies set out by the Board. Failure to comply with any part of this Declaration may give rise to a cause of action for damages, attorney's fees, and/or injunctive relief.
- 7.04 Lien for Enforcement: All sums due under this Declaration, the Bylaws, Rules, or other governing documents shall be a continuing lien and charge upon the subject Lot(s) as well as the personal obligation of the Owner and his/her successors in interest. The aforesaid lien shall be superior to all other liens and charges against said Lot, except only for ad valorem tax liens and any amount unpaid on a first mortgage lien of record encumbering the Lot. To evidence the aforesaid lien, the Association or Declarant may prepare a written notice of 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 an Association representative or the Declarant and may be recorded in the office of the County Clerk in Kendall County, Texas. Such lien shall automatically attach upon the filing of this Declaration with the priority set forth above, and the Association or Declarant may thereafter institute suit against the subject Owner personally and/or for judicial or non-judicial foreclosure of the aforesaid lien. The Association is hereby granted a power of sale for such foreclosure.
- 7.05 Amendment. The Declarant shall have the sole right to amend this Declaration as long as Declarant owns any of the Lots in any portion of the Property, or any other portion of the Property. After such time, the Declaration may be amended by a 2/3 vote of all Voting Representatives. No amendment shall be effective until it has been recorded in the Official Public Records of Kendall County, Texas.

Either the Declarant or a simple majority of the Voting Representatives for the Property may amend this Declaration for the sole and strictly limited purpose of making this Declaration comply with financing eligibility requirements of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, Veterans Land Board, Federal Housing Administration, or comparable federal or state agencies.

- 7.06 Governmental Requirements. By acceptance of a deed to a Lot, or initiating construction of a residence or improvements to a Lot, each Owner, including on behalf of Owner's builder and contractor, assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable governmental rules, regulations, and permits, including, but not limited to any promulgated or issued by the Environmental Protection Agency and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 et seq.), and for the responsibility of ascertaining and complying with any regulations, rules, rulings, and determinations of the Texas Water Development Board and Texas Water Commission, related to each Lot. The foregoing references are made for the benefit of builders and contractors and do not in any way limit the terms and requirements of this covenant and the requirement that all Owners comply with all governmental regulations. Each Owner on behalf of Owner's builder and contractor, by acceptance of a deed to a Lot, agrees to hold harmless and indemnify Declarant and Association all costs, loss, or damage, including attorney's fees occasioned by the failure to abide by any applicable governmental statute, rule, regulation or permit related to the Properties. In the event Governmental Requirements differ from requirements of the Association's governing documents (including the Declaration, Bylaws, rules (including Landscape Guidelines)), the more restrictive provision shall control.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Declaration on this 20<sup>th</sup> day of May 2024.

LOOKOUT DEVELOPMENT GROUP, L.P.  
A TEXAS LIMITED PARTNERSHIP  
By: The Lookout Group, Inc.  
Its General Partner

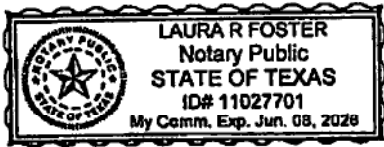
By: [Signature]  
Michael D. Siefert, President

STATE OF TEXAS

COUNTY OF WILLIAMSON

This instrument was acknowledged before me on the 20<sup>th</sup> day of May 2024, by Michael Siefert, President of the Lookout Group, Inc., the general partner for Lookout Development Group, L.P.

[Signature]  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



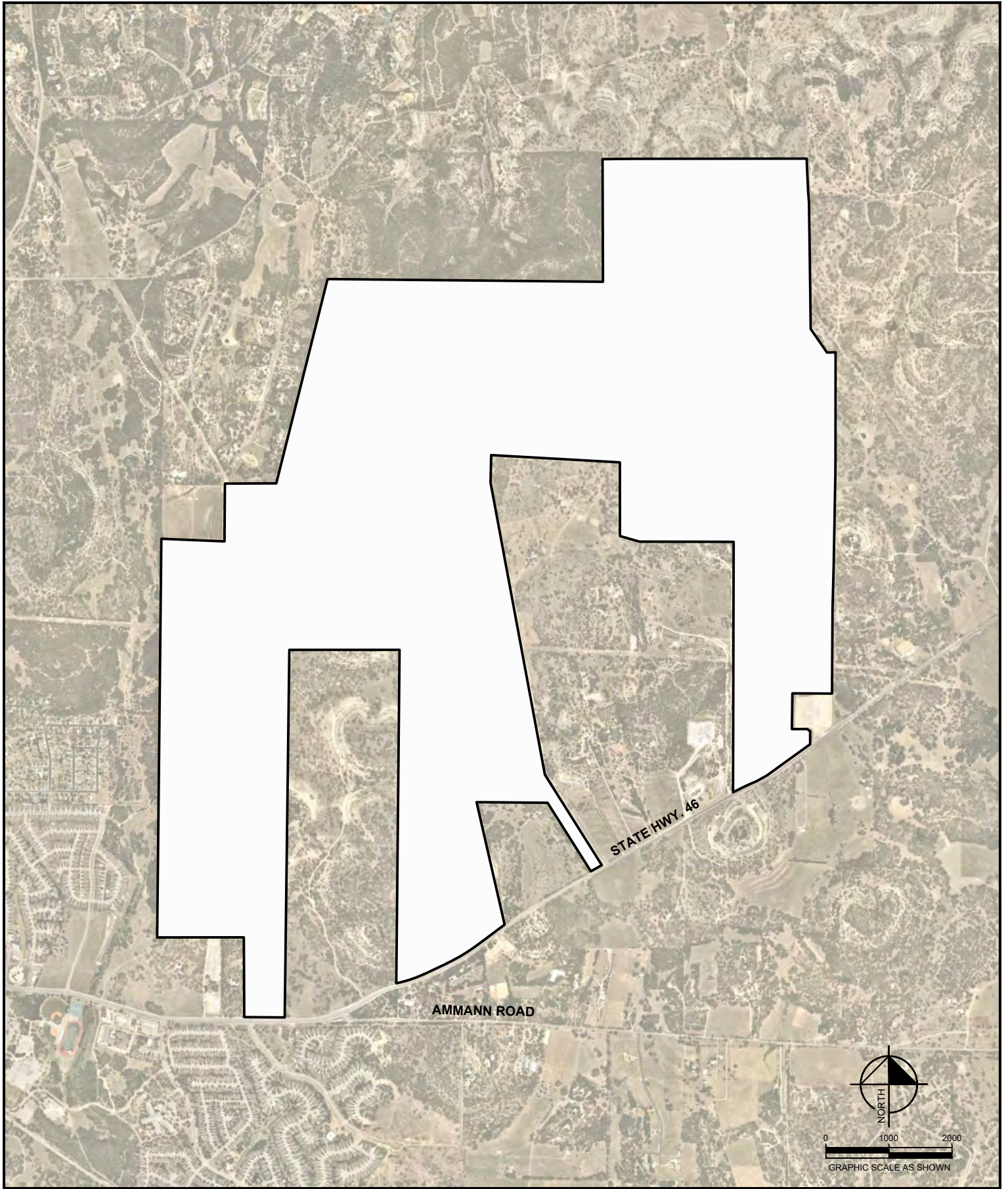
My commission expires: 6-6-26  
Printed Name: Laura Foster

AFTER RECORDING RETURN TO:  
Michael Siefert  
Lookout Partners, L.P.  
1001 Crystal Falls Pkwy  
Leander, TX 78641

- EXHIBIT A: Esperanza
- EXHIBIT B: Legal Description for The Village of Glorieta (a part of Esperanza Phase 3A)
- EXHIBIT C: Ordinance No. 2006-26 (regarding "Sign Regulations")
- EXHIBIT D: Ordinance No. 2005-01, Article III, Section 2 "Outdoor Lighting"
- EXHIBIT E: Article 1, Section 6 of the Zoning District Use Regulations set forth in City of Boerne Ordinance No. 2005-01
- EXHIBIT F: Typical Grinder Pump Installation
- EXHIBIT G: Chimney Cap Specifications
- EXHIBIT H: Omitted
- EXHIBIT AA: List of additional applicable documents
- EXHIBIT BB: Omitted



**EXHIBIT A**  
**ESPERANZA**



THIS DOCUMENT, TOGETHER WITH THE CONCEPTS AND DESIGNS PRESENTED HEREIN, AS AN INSTRUMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. REUSE OF AND IMPROPER RELIANCE ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND ADAPTATION BY KIMLEY-HORN AND ASSOCIATES, INC. SHALL BE WITHOUT LIABILITY TO KIMLEY-HORN AND ASSOCIATES, INC. COPYRIGHT KIMLEY-HORN AND ASSOCIATES, INC. 2022



## **EXHIBIT B**

### **LEGAL DESCRIPTION – THE VILLAGE OF GLORIETA (A PART OF ESPERANZA PHASE 3A)**

1. The following lots: Block 6, Lots 17-23 and Lots 107-108; Block 7, Lots 7-14 and Lot 100; Block 24, Lots 101-102; Lot 200 Private Streets; Block 26, Lots 1-2 and Lots 18-23; Block 27, Lots 1-14; Block 28, Lots 5-8; Block 29, Lot 100 and Lots 1-6; and Block 30, Lots 1-2; all part of the Subdivision Plat Establishing Esperanza Phase 3A, a subdivision according to the Official Records of Kendall County, Texas recorded in Doc Number 2024-388880 on 05/09/2024 3:18:22 pm, in the Plat Records (2 pages).

**EXHIBIT C**

**ORDINANCE NO. 2006-26 (regarding “Sign Regulations”)**

Ordinance No. 2006-26

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF BOERNE, TEXAS, BY REPEALING AND REPLACING CHAPTER 18, SIGN REGULATIONS AND PROVIDING FOR PENALTIES NOT TO EXCEED \$1,000.00 WHEREAS, from time to time, it becomes necessary to amend or repeal and replace certain ordinance in the best interest of the citizens; NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:

The Code of Ordinances, City of Boerne, Texas, is hereby amended by repealing and replacing Chapter 18, Sign Regulations with the following ordinance:

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 97-03, AND ALL ORDINANCES AMENDING SAID ORDINANCE, CAPTIONED "AN ORDINANCE PROVIDING FOR THE REGULATION OF THE INSTALLATION AND MAINTENANCE OF SIGNS WITHIN THE CITY OF BOERNE, TEXAS, AND WITHIN THE EXTRA-TERRITORIAL JURISDICTION OF THE CITY; PROVIDING FOR DEFINITIONS, LOCATIONS, SIZE AND HEIGHT RESTRICTIONS; PROHIBITING CERTAIN TYPES OF SIGNS; REQUIRING PERMITS; PROVIDING A MEANS OF VARIANCE HERETO; PROVIDING A REPEALING SECTION; PROVIDING A SEVERABILITY CLAUSE: AND PROVIDING FOR PENALTIES NOT TO EXCEED \$1,000.00"

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**SECTION 1. IN GENERAL**

No sign shall be erected, reconstructed, repaired, maintained or used after the effective date of this ordinance unless such erection, reconstruction, repairs, maintenance or use meets all the

provisions of this or any other applicable ordinance adopted by the City Council of the City of Boerne, Texas.

## **SECTION 2. PURPOSE**

The City Council finds that to protect the health, safety, property and welfare of the public it is necessary to prevent the unregulated proliferation of signs while at the same time respecting the public's right to freely engage in constitutionally protected speech. The purpose of these rules and regulations is to provide uniform sign standards and regulations in order to improve pedestrian and traffic visual safety, to provide for safe construction, location, erection, and maintenance of signs, to prevent proliferation of unauthorized signs, to minimize the possible adverse effect of visual clutter on nearby public and private property, and to promote a positive City image reflecting order, harmony and pride, thereby strengthening the economic stability of Boerne's commercial, cultural, historical and residential areas.

## **SECTION 3. DESIGN GUIDELINES**

It is the policy of the City to encourage signage which is appropriate to the Hill Country setting and the rural scale of the city, and to discourage signs which are in conflict with the established character of the community. To this end, all sign owners are encouraged to conform to the following guidelines for sign location, configuration, design and materials.

- A. Signs should be located with sensitivity to preserving the natural landscape and environment. Signs should be incidental complements to the principal use of a site, and should never be allowed to visually dominate a site.
- B. The height, width and area of a sign should all be in proportion to the dimensions of a building to which the sign is attached and in architectural harmony with surrounding structures. Sign dimensions should respect the size, scale and mass of a building facade, the height of the building, and the rhythms and sizes of window and door openings.
- C. No sign should be placed upon a building or structure in any manner which would disfigure, damage or conceal any window opening, door, or significant architectural feature or detail of the building.
- D. Sign materials should be predominantly natural, such as native stone, rough cedar, pine or other types of wood, metal, or materials that simulate natural materials.

## **SECTION 4. JURISDICTION**

The provisions of this ordinance shall apply within the City Limits and within the extra-territorial jurisdiction (ETJ) of the City as defined by state law.

## **SECTION 5. DEFINITIONS**

Words and phrases used in this ordinance shall have the meanings set forth in this section. For the convenience of the reader, these defined words and phrases are indicated by **bold print and underlining**, but the absence of such indications does not imply a different meaning. Words and phrases which are not defined in this ordinance but are defined in the Zoning Ordinance of the City of Boerne shall be given the meanings set forth in the Zoning Ordinance. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this ordinance.



## A. General Definitions.

Area: As applied to any sign, the square foot area enclosed by the perimeter of the sign face with each face contributing to the aggregate area. The area to be measured encompasses the extreme limits of the writing, representation, emblem or other display together with any material or color forming an integral part of the background of the display or used to differentiate the sign material from the backdrop or structure against which the sign is placed, but excludes any sign supports or supporting framework, and any finials, decorations or scrollwork entirely outside the area of substantive sign content. In cases where a sign, or a portion of a sign, is composed only of letters, figures, or other characters standing against no sign face background or secured to a monolith, then the sign face area is the area of the smallest simple imaginary figure (circle, triangle, rectangle, or other) which fully contains the sign content. The area of a sign with more than one face is the sum of the areas of all sign faces visible from any one point. However, a sign structure with two (2) faces back-to-back, oriented in opposite directions and separated by not more than three feet, with the same copy on both sides, shall be counted only as the area of one face.

Bed & Breakfast Identifier: A sign located on the property that includes a bed & breakfast (as defined in the City of Boerne Zoning Ordinance.)

Central Area: The B-3 zoning district, the River Corridor zoning district and the River South Arts & Design District.

City Manager: The City Manager or his/her duly authorized representative.

Commercial Complex: Any development such as a shopping center, office park or industrial park, which consists of two or more establishments on a single platted lot; or on two or more contiguous lots, which may be separated only by a street or drainage rights of way.

Directional Sign, River Corridor: An off-premise sign that gives directions to an establishment located in the River Corridor Zone.

Establishment: A use of land for any purpose which requires a building on the land, regardless of the commercial, nonprofit or public nature of the activity, but excluding a residence or active agricultural use in any form.

Handheld Sign: A sign which is not permanently or temporarily attached to the ground or to a permanent structure, and which is designed to be transported or carried by an individual.

Height: As applied to any sign, the vertical distance between the highest attached component of the sign or of its supporting structure, whichever is higher, and the average established ground level beneath the sign. The established ground level beneath the sign is the lower of (1) the existing grade prior to construction of the sign or (2) the newly established grade after construction, exclusive of any filling, berming, mounding or excavating solely for the purpose of locating the sign, unless the curb elevation at the street in front of the sign is higher than the established ground level, in which case the height shall be measured from curb level.



Non-residential Area: Inside the city limits, the area within any non-residential zoning district; in the City's extra-territorial jurisdiction, any lot or tract of land which is the site of an **establishment or commercial complex**.

Residential Area: Inside the city limits, the area within any residential zoning district; in the City's extra-territorial jurisdiction, any lot or tract of land which is vacant or in any form of agricultural use, or in which the principal use of the land is as a residence.

Responsible Party: The person, firm, organization or other entity whose product, service, activity or enterprise of any character is announced or advertised by the sign, or whose message is carried by the sign, and/or the owner of the land upon which the sign is located.

## **B. Types of Signs.**

For the purposes of this ordinance, a sign means any letters, figures, symbols, trademarks, or devices designed either to inform people or to attract the attention of people to an individual, firm, profession, business, organization, institution, commodity, service, activity, cause or purpose, and which is recognizable from any public right-of-way. Particular types of signs are defined both by their purpose or use, by their location, and by the nature of their construction, and therefore any one actual sign may be encompassed by multiple definitions and subject to the regulations in multiple sections of this ordinance. Types of signs which are regulated by this ordinance are defined as follows.

Auxiliary Sign: A sign of any construction, not exceeding one square foot in area, which is not part of another sign and which is customarily secondary and incidental to the principal use of any non-residential premises, such as one indicating hours of operation, credit cards accepted, or restrictions of sale to minors, or which is customarily secondary and incidental to a residence, such as "no soliciting" or "beware of the dog."

Awning Sign: A sign painted on or attached to the outside of an awning, canopy or any similar structure such as is typically extended in front of a window or door or over a patio, deck or walkway as a protection from the sun or rain, regardless of whether the structure is retractable. A sign which is suspended from or projects into the space beneath an awning, canopy or similar structure, or which is painted on, attached to or suspended from an interior surface, so as to be read from within the area enclosed by the structure, is a canopy sign.

Balloon: Includes balloons, inflatable signs, and inflatable devices of any other kind as well as devices supported by rushing air.

Banner: A flexible sign intended to be hung or mounted either with or without frames, made of paper, plastic, fabric or any other flexible material, and which is used by its colors, characters, lettering, illustration or ornamentation to call attention to an **establishment** on the site or to a community, civic or other event either on or off the site. **Flags** are distinguished from **banners** for the purposes of this ordinance.

Beacon: Any light with a beam directed into the atmosphere or directed at a point which is not on the same lot or tract of land as the light source, or a light with one or more beams that rotate or move.

Billboard: Any sign which is used or designed to be used to advertise or call attention to any product or service which is produced at a place other than on the premises on which the sign is located, or to advertise or call attention to any establishment which is not located on the same premises as the sign.

Bulletin Board: A sign which is principally devoted to posting announcements of interest to the members or clientele of an organization concerning the activities of the organization, such as is customarily erected by a church, social club, society or charitable organization.

Canopy Roof Sign: A sign which is mounted above a canopy roof parallel to the facing wall and which may not project higher than the main roof of the building.

Canopy Sign: A sign which is suspended from the underside of an awning or canopy structure or which projects into the space enclosed within or beneath an awning or canopy structure. A sign which is painted on or attached to the outside of an awning or canopy structure is an awning sign.

Central Business District: The zoning designation B-3, the limits of which are reflected in the official City of boerne zoning map.

Changeable Copy Sign: A sign or part of a sign on which characters, letters or illustrations can be changed or rearranged without altering the face or surface of the sign, such as a theater marquee, a gasoline price sign, or a sign identifying the occupants of a shopping center. A sign on which the only copy that changes is a matter of general public information, such as the current time and temperature or an index of stock market averages, and which contains no other commercial message, is a public service sign. Any other sign on which the message changes more than once per day is a flashing sign.

Commercial Complex Identifier: A monument sign not to exceed thirty-two (32) square feet, five (5) feet in height, located on property that may be separated from the principal development; however, the property on which it is located shall be part of the same PUD or subdivision. The Identifier shall contain the name of the commercial complex and shall not advertise for individual establishments.

Commercial Sign: Any sign, regardless of its location or construction, whose wording or other contents, directly or indirectly, names, advertises or calls attention to any business, product, service, institution, organization, event, cause, purpose or other activity.

Community Service Sign: A temporary sign which solicits support for, or participation in, a non-profit, non-political, community, public or social purpose, cause, event or activity, such as one marking a holiday or holiday season, or one supporting school activities, charitable programs, religious activities, or events of community interest.

Construction Sign: A sign placed on a construction site identifying or announcing the character of the project and/or the names of the owners, developers, financiers, architects, engineers, contractors, leasing agents and others associated with the project.

Directional Sign: A sign which is separate from other signs, incidental and secondary to the principal use of the land on which it is located, and whose primary purpose is to give directions such as to parking lots, exits, entrances, or drive-through windows, or directives such as "no parking" or "loading only."

Event Sign, Off-Site: A sign giving directions to an occasional event at another location, other than a business event at a commercial establishment, such as directions to a civic or other non-commercial ceremony, to an event for the members of an organization, or to an event at a residence such as a garage sale, home for sale, real estate open house, or private party.

Event Sign, On-Site: A sign which is placed to advertise or mark the location of an occasional event on the same site, such as the location of a civic or other non-commercial ceremony, of an event for the members of an organization, or of an event at a residence such as a home for sale, real estate open house, or private party.

Flag: A flag adopted by a business, institution or other organization and containing the name, logo or other symbolic emblem of that business, institution or organization.

Flashing Sign: A sign with flashing, blinking, moving, rotating or traveling lights, or with lights that change in color or intensity, whether the sign is directly or indirectly illuminated or a sign which uses lights to form traveling messages or messages which change more than once per day, except for a public service sign.

Free Standing Sign: Either a monument sign or a self supported sign.

Governmental Flag: Flags of the United States, the state, the city, foreign nations having diplomatic relations with the United States, and any other flag adopted or sanctioned by an elected legislative body of competent jurisdiction.

Integral Sign: A sign indicating the name of a building, as distinct and clearly distinguished from the name of a business, institution or other entity occupying the building, or indicating the date or other information of historical interest about the building's construction, when such sign is cut or molded into a masonry surface which forms part of a wall of the building or when it is constructed as a plaque or tablet of bronze or other incombustible material and permanently mounted on the face of the building.

Lighted Sign: A sign that is back-lighted or lighted from within, or a neon sign, but not a sign that is only illuminated by external lights that shine upon it.

Model Home Sign: A sign which is located on the same lot as a model home in a residential subdivision and which calls the attention of prospective buyers to the model home.

Monument Sign: A sign which is built as a monument on the ground, independent of any other structure for its support Monument Sign, Changeable Copy: A monument sign which incorporates a changeable copy feature into the sign.

Moving Sign: A sign or any part of a sign which rotates, moves, or uses lighting to simulate motion.

Name Plate: A sign, mounted flat against the wall of a building and not projecting more than one inch from the face of the wall, indicating the name and/or address of the building, and/or the name of an occupant thereof, and/or the practice of a permitted home occupation therein.

Neon Sign: Gas filled glass tubing sign.

New Business Sign: A temporary sign advertising the opening of a new business in an existing structure.

Nonconforming Sign: A sign that does not conform to all of the regulations of this or other City ordinances.

Political Sign: A sign which is primarily political in nature or which supports or opposes any candidate for public office or any proposition to be voted upon at an election, or which makes a political statement in the nature of constitutionally protected non-commercial free speech.

Portable Sign: Any sign which is not permanently attached to the ground or to a permanent structure, or a sign designed to be transported, whether on attached wheels or otherwise, but excluding construction signs, on-site event signs, off-site event signs, realty signs and sidewalk signs.

Projecting Sign: Any sign, other than an awning sign or canopy sign, whose outside edge extends more than four (4) inches from the face of a wall to which it is attached, or which extends at any point above or beyond a wall to which it is attached.

Public Service Sign: A sign or part of a sign which is devoted to changeable messages of general public information without other commercial content, such as the current time and temperature or an index of stock market averages. Realty Sign: A sign which advertises the property on which it is located for sale, lease, or rent.

Residential Development Sign: A sign at the entrance to a residential development, such as a series of townhouses, an apartment complex or a residential subdivision, which identifies the name and/or the address of the residential development.

River Corridor District Directional Sign: An off-premise sign that provides directions to an establishment located within one block of Main Street or located in the River Corridor District.

Roof Sign: Any sign that is mounted on or above the roof of a building, but excluding a projecting sign, whose principal support fixtures are attached to a wall and a wall sign which is either painted directly on a sloping roof or mounted directly on a sloping roof in the same plane as the roof.

Self-Supported Sign: A permanent sign which is erected on supports placed on or anchored in the ground. The supports may be enclosed by a non-supporting veneer approved by the City Manager.

Sidewalk Sign: A sign, regardless of its construction, which is designed to be placed on the ground or sidewalk adjacent to an establishment in order to advertise or call attention to the goods or services offered at that establishment.

Single Family Address Sign: A sign, other than a name plate, which identifies the name of the occupants and/or the address of a single family or duplex residence, but excluding any commercial sign.

Special Event Sign: Signs or banners which announce or advertise a community event.

Vehicular Sign: A vehicle, whether motorized or a trailer, which is mounted above the ground as a sign or part of a sign, or any sign attached to or painted on such a vehicle which is mounted above the ground or which is parked so as to be visible from a street when such vehicle is not actually used for transportation in the day-to-day affairs of its owner. However, this term does not include a customary sign in a vehicle window advertising the vehicle itself for sale or containing an incidental non-commercial statement by the vehicle owner.

Wall Sign: A sign, other than a name plate, painted on or mounted parallel to the face of any building, provided that the sign does not project over any public land or street right-of-way, or extend more than four (4) inches from the face of the wall to which the sign is mounted, or extend at any point above or beyond the end of such wall. A sign which is painted on a sloping roof or mounted on a sloping roof in the same plane as the roof is also a wall sign.

Window or Door Sign: Any sign which is painted or placed inside or upon a window or door, or mounted against a window or door and oriented so as to be read from outside the building.

## SECTION 6. EXEMPTIONS FOR CERTAIN TYPES OF SIGNS

The following types of signs are exempt from regulation under this ordinance:

- A. Any sign inside a building, or a window or door sign, except for a lighted window or door sign.
- B. Commemorative plaques and historical markers mounted on the face of a building or erected on a site as a free-standing monument, when placed by a governmental entity, historical society or other civic organization to commemorate a person, event or other matter of historical interest.
- C. Any sign erected or required to be erected by any governmental entity or public utility to give information, directions or warnings to the general public, regardless of the sign's location on public or private property.
- E. Signs that advertise sales or "help wanted" not to exceed four (4) square feet, limited to one per street frontage.
- D. Signs that provide directions to the Convention and Visitors Bureau.
- E. Handheld signs of a non-commercial nature which do not rest on or otherwise touch the ground.

F. Any sign authorized by this ordinance displaying a commercial message which is subsequently substituted for a non-commercial message in place of the previous commercial message, or previous non-commercial message.

#### **SECTION 7. CENTRAL AREA GUIDELINES AND RESTRICTIONS**

- A. For maximum height for all signs (monument and self supported) refer to Section 10. Subsections S and BB.
- B. Maximum size for a self supported sign is thirty-two (32) square feet and a monument sign is forty-eight (48) square feet.
- C. Pennants shall be prohibited with the exception of special theme events which are held in the Central Area that may be sponsored by the City, Chamber of Commerce or Merchant Association and approved by the City Manager.
- D. Banners and pennants shall not be erected for more than 10 days in succession; the responsible party must remove them within no more than three (3) days following the event to which they call attention.
- E. Projecting signs shall be limited to twenty-four (24) square feet if attached to the first floor of a building or thirty-two (32) square feet if attached to the second floor of a building.
- F. Wall Signs are limited to 10% of wall space.
- G. Signs and banners advertising sales, space rental, employment opportunities and other temporary signs shall not exceed four (4) square feet.
- H. The following sign is prohibited:
1. Changeable copy monument signs

#### **SECTION 8. HISTORIC DISTRICT RESTRICTIONS**

The following provisions shall apply within the Historic District:

- A. Within the Historic District, the provisions of this Section 8 shall prevail over any conflicting provisions elsewhere in this ordinance.
- B. No free standing sign, wall sign or projecting sign shall be permitted without the approval of the Historic Landmark Commission. In making its decision whether to approve such a sign, the Historic Landmark Commission shall consider the following criteria:
1. the purposes of this ordinance stated in Section 2;
  2. the compatibility of the sign with the historic and architectural character of the establishment for which the sign is proposed;
  3. the compatibility of the sign with the historic and architectural character of other buildings adjacent to the establishment;
  4. the compatibility of the proposed sign with the Historic District and other signs, buildings and structures within the Historic District;
  5. the visibility of architectural, historic and esthetic elements within the Historic District;
  6. the general design, arrangement, materials, textures and colors of the sign and their relation to other signs in the Historic District, and
  7. whether the scale, height and mass of the sign are appropriate for its intended use in the Historic District.
- C. Upon application to the Historic Landmark Commission for a sign in the Historic District, the applicant shall provide to the Commission sufficient information such that the Commission is able to make a determination regarding the merits of the application pursuant to the criteria referenced herein.

D. Any decision of the Historic Landmark Commission under this Section 8 may be appealed to the City Council under Article VIII, Section 11 of the Zoning Code.

## **SECTION 9. AUTOMOBILE DEALERSHIPS**

Automobile dealerships that have frontage along the Interstate Highway shall be subject to the following guidelines:

1. Poles that are used for onsite lighting may have banners or flags attached to them. No more than two (2) banners or flags per pole that are no more than three (3) feet wide and eight (8) feet long.
2. Each dealership may have a banner at its entrance indicating which day of the weekend they are open.
3. Balloons may be used. The balloons must be spherical and not more than twenty-four (24) inches in diameter and held in place by a tether not to exceed ten (10) feet in length, balloons and tethers shall not be tied in sequence to form a longer balloon system and shall not fall into a state of disrepair (deflated).
4. Additional temporary signage may be utilized for national promotional events.
5. Automobile dealerships are limited to two types of moving signs, balloons and flags; the use of more than one of these at a time is prohibited.
6. The dealership may have an additional free standing sign for each three hundred (300) feet of frontage on the Interstate.

## **SECTION 10. RESTRICTIONS ON CERTAIN TYPES OF SIGNS**

### **A. Awning Signs.**

One-third of the area of an awning sign shall be counted toward the limit on the total area of wall signs on the wall to which the awning is attached.

### **B. Banners.**

Banners must be securely attached to a building or other permanent structure and they must be kept in good repair throughout the time of their display. Banners shall not be erected for more than twenty (20) days in succession; the responsible party must remove them within no more than three (3) days following the event to which they call attention.

Banners shall not be placed on any site more than eight (8) times within a calendar year.

### **C. Bed & Breakfast Identifier.**

Bed & Breakfast Identifiers shall be erected on the property at which a bed & breakfast that is registered with the City of Boerne and the State Comptroller's Office as a bed & breakfast is located. The identifier shall not exceed two (2) square feet and not exceed four (4) feet in height.

### **D. Bulletin Boards.**

Bulletin boards shall be located only on the premises of the institution or organization to whose activities it pertains. A bulletin board shall not exceed thirty-two (32) square feet in area.

### **E. Canopy Roof Signs.**

1. Only one canopy roof sign shall be permitted per establishment.
2. Allowed only as business identifier mounted parallel to the building wall face on top of a canopy roof which may not extend above the main building roof line. Canopy roof sign area will count against allowed wall signage at the establishment and will only be allowed in lieu of a projecting sign or wall sign.

3. A **canopy roof sign** cannot exceed eighteen (18) inches in height with a maximum length of five (5) feet or ten percent (10%) of the width of the establishment whichever is greater.

F. **Canopy Signs.**

1. Only one (1) **canopy sign** shall be permitted per entrance to an **establishment**.
2. No **canopy sign** shall extend beyond an edge of the canopy structure to which it is attached. Except at a street corner, no **canopy sign** shall be closer than five (5) feet from the end of the longer side of the canopy structure.
3. A **canopy sign**, which is perpendicular to a building face, shall not exceed two-thirds (2/3) of the width of the canopy structure. A minimum spacing of ten (10) feet must be provided between such **canopy signs**.
4. A **canopy sign**, which is parallel to a building face, shall not exceed two-thirds (2/3) of the length of the canopy structure.
5. No **canopy sign** shall extend more than two feet either above or below the horizontal underside of the canopy structure. No **canopy sign** shall be less than seven (7) feet from ground clearance.

G. **Community Service Signs.**

A **Community Service Sign** shall be erected only by a unit of government, school, Chamber of Commerce, religious organization or other non-profit agency. The area of a **community service sign** shall not exceed six (6) square feet in a residential area or thirty-two (32) square feet in a non-residential area. A **community service sign**, which promotes any particular event, shall not be erected more than fourteen (14) days prior to the event and shall be removed by the **responsible party** not more than three (3) days after the event.

H. **Construction Signs.**

1. A **construction sign** may not exceed thirty-two (32) square feet in a nonresidential area or sixteen (16) square feet in a residential area, except that a **construction sign** for an establishment that is located along an interstate highway and has actual frontage on the highway right-of-way may have an area of three hundred (300) square feet with a maximum height of fifteen (15) feet.
2. A **construction sign** must be removed at the time of the installation of the permanent sign or within thirty (30) days after the City issues a Certificate of Occupancy for the project whichever comes first.
3. **Construction signs** which are larger than three (3) square feet in area and not securely mounted on a wall shall be set back at least ten (10) feet from the property line.
4. Only one **construction sign** may be permitted per street fronting a building or other project under construction, reconstruction or repair, except that one additional sign, not exceeding three (3) square feet in area, may be placed on the site by any individual contractor or subcontractor working on the project and not acknowledged on the principal sign.

I. **Directional Signs.**

1. A **directional sign** may not contain any commercial message except the name, logo or other symbolic identification of the establishment to which the sign is secondary. The area of a **directional sign** may not exceed six (6) square feet.
2. A **River Corridor District Directional Sign** identifying an establishment in the River Corridor Zone shall not exceed twelve (12) square feet. With the prior approval of the City Manager, these signs may be located off-premises, and may be added to nonconforming



signs. These signs may also be placed in areas designated by the City Manager to include rights-of-way.

J. Event Signs, Off-Site.

An **off-site event sign** shall not exceed an area of three (3) square feet and shall not be lighted. Such signs shall be placed only on private property and only with the consent of the owner of the property. No more than three (3) such signs may be used to give directions to the same event. Such signs shall not be placed more than fourteen (14) days prior to the event and the responsible party must remove all such signs within one day after the conclusion of the event.

K. Event Signs, On-Site.

An **on-site event sign** shall not exceed an area of three (3) square feet at a residence or thirty-two (32) square feet at any other location. Such sign shall not be placed more than fourteen (14) days prior to the event, and the responsible party must remove it within one (1) day after the conclusion of the event.

L. Flags.

Three flags are allowed per location, with a combined square footage equal to the permitted square footage for the **self-supported sign** for that establishment. The area of any additional flags shall be counted toward the total square footage for the **self-supported sign**. Any flagpole that does not fly a **governmental flag** shall not exceed thirty (30) feet in height.

M. Free Standing Signs.

1. Only one (1) **freestanding sign** shall be permitted per individual **freestanding establishment**.
2. Only one (1) **free standing sign** shall be permitted for a **commercial complex**, identifying the name and/or address of the complex and/or listing the individual tenants in the complex, except that a **commercial complex** with a land area of two (2) acres or more may have one (1) such **free standing sign** along each street which borders the complex for a distance of two hundred (200) feet or more. If the **commercial complex** is made up of separate lots (i.e.; business park/industrial park), the **free standing sign** may be an off premise sign; however, it shall be located on one of the lots within the complex. A separate **free standing sign** for an individual **establishment** located within a **commercial complex** may be permitted only if the **establishment** meets both of the following conditions:
  - (a) The **establishment** is located along a street bordering, or within, the complex and in a separate building from the principal building of the complex; and
  - (b) The **establishment** has a separate parking area from the principal parking area of the complex, which may connect with the principal parking area but is visually set off from that area by fencing or landscaping.
3. If a landscaped area is installed at the base of a **free standing sign**, this landscaped area shall be protected from damage by pedestrian and vehicular traffic by a retaining wall or other barrier or method of separation acceptable to the **City Manager**. The plants in such landscaped area shall be maintained in a healthy condition, and the responsible party shall keep the area free of weeds, trash and debris.

N. Governmental Flags.

**Governmental flags** are permitted in all zoning districts provided that they meet the following requirements.

1. United States flags shall be flown in accordance with the protocol established by the Congress of the United States for the Stars and Stripes, Title 4, Chapter 1 – The Flag.

2. When a flagpole is located on the top of a roof, the placement and attachment of the pole shall meet the building code for wind and structural loading requirements. The plan design criteria shall provide the proposed location, attachment method to the structure and wind load resistance. A

building permit shall be required for this type of installation.

3. Within Zoning Districts B-2 and I, ground mounted flagpoles shall not exceed fifty (50) feet. In the RC zone the flagpole may not exceed the maximum building height of thirty-eight (38) feet. In all other zones the flagpole cannot exceed thirty (30) feet in height. The height is measured from the base of the pole to the top.

O. Handheld Signs.

The area of a **handheld sign** shall not exceed six (6) square feet. Handheld signs displaying a commercial message shall not be permitted on an establishment if the square footage of the **handheld sign** combined with the square footage of any lawfully permitted permanent sign exceeds the total allowable square footage of signage for that establishment.

P. Integral Signs.

The area of an **integral sign** shall not be counted toward the limit on the area of wall signs on the same wall, provided that the **integral sign** contains no commercial message substantially duplicating another sign.

Q. Lighted Signs.

An establishment shall only have one lighted window or door sign per store front, not to exceed three (3) square feet. These signs shall be turned off when the establishment is not open for business.

R. Model Home Signs.

A **model home sign** shall be erected only on the actual site of a model home, and only one such sign may be erected on the site. The area of a **model home sign** shall not exceed sixteen (16) square feet, and the height of a **model home sign** shall not exceed six (6) feet. A **model home sign** shall not be internally illuminated. All **model home signs** must be removed within thirty (30) days after ninety (90) percent of the homes in the subdivision are sold.

S. Monument Signs.

1. The area of a **monument sign** for an individual establishment shall not exceed:

- a. Residential zoning district - sixteen (16) square feet
- b. NBO zoning districts – sixteen (16) square feet
- c. Central area – forty-eight (48) square feet
- d. Other zoning districts – sixty-four (64) square feet
- e. Extra-territorial jurisdiction (ETJ) – sixty-four (64) square feet

2. The area of a **monument sign** for a commercial complex shall not exceed:

- a. Residential zoning district - sixteen (16) square feet
- b. NBO zoning districts – sixteen (16) square feet
- c. Central area - forty-eight (48) square feet
- d. B-2 zoning district – eighty (80) square feet
- e. I-industrial zoning district – eighty (80) square feet
- f. Extra-territorial jurisdiction (ETJ) – eighty (80) square feet

3. The height of a monument sign shall not exceed eight (8) feet.

4. **Changeable copy monument sign.** A monument sign that contains the primary name of the establishment, as well as, a changeable copy feature, the changeable copy portion of the sign shall not exceed eight (8) square feet. **Changeable copy monument signs** shall not be permitted in the Central area or Historic District.

T. Name Plates.

The area of a name plate shall not exceed one (1) square foot in a residential area or two (2) square feet in a non-residential area. Only one (1) name plate may be permitted per residence or establishment.

U. New Business Signs.

**New Business Signs** or banners shall be no larger than thirty-two (32) square feet and must be removed upon installation of the permanent sign or within thirty (30) days after the City issues a Certificate of Occupancy for the project, whichever comes first.

V. Political Signs.

A political sign that contains primarily a political message and that is located on private real property shall not have an area greater than thirty-six (36) square feet, shall not be more than eight (8) feet in height, shall not be a **lighted sign** and shall not have any moving elements. Political signs may be placed on property only with the consent of the property owner. No political sign may be placed in, on or over any street or publicly owned land. A political sign which refers to a candidate or issue on the ballot in an election must be removed by the **responsible party** within three days after the election.

W. Portable Signs.

Portable signs may be used only to promote a non-profit community event. Such signs shall not be illuminated, either by internal or external means, and shall not exceed an area of thirty-two (32) square feet. Such signs may be placed on private property only with the permission of the owner of such property, on City property only with the approval of the City Manager, or on other public property only with the permission of the agency owning the property. Such signs shall not be erected more than fourteen (14) days prior to the event, and all such signs must be removed by the **responsible party** not more than three (3) days after the event.

X. Projecting Signs.

1. Only one projecting sign shall be permitted per establishment, except that in the B-3 and RC zoning districts, an establishment which is located on the corner of a street intersection or at the end of a building in a commercial complex may have one (1) projecting sign on the front wall and one (1) projecting sign on the side wall of the building.

2. The area of a projecting sign shall not exceed sixteen (16) square feet in any residential zoning district and in the NBO and B-1 zoning districts, or thirty-two (32) square feet in any other zoning district and in the extraterritorial jurisdiction.

3. No projecting sign shall exceed a height of twenty (20) feet, and in the B-3 zoning district no projecting sign shall extend vertically above the window sill of a second story.

4. No projecting sign shall extend, either above the roof of the building or beyond the end of the wall to which it is attached, by more than four feet at the point of attachment, except that a theater marquee may extend completely across the sidewalk below the marquee.

5. A projecting sign attached to a building on private property shall not extend over any public land except a sidewalk adjacent to a building which is lawfully built up to the public right-of-way.

Y. Public Service Signs.

A **public service sign** shall be placed only in a **non-residential area** and only on the same lot or tract of land as the **establishment** sponsoring the sign. The area of a **public service sign** shall not exceed thirty-two (32) square feet, regardless of whether the **public service sign** is a separate sign or integrated as a component of another sign.

Z. Realty Signs.

Realty signs may be placed only upon the premises to which they refer, and only one such sign shall be permitted per street fronting the lot or tract. The area of a **realty sign** shall not exceed six square feet in a **residential area**, and shall not exceed thirty-two (32) square feet in a **non-residential area**. The size of a realty sign on properties that have frontage on Interstate IH 10 shall not exceed three hundred (300) square feet and fifteen (15) feet in height.

AA. Residential Development Signs.

1. In addition to the name and/or the address of the residential development, a **residential development sign** may incorporate incidental leasing information and/or the contents of a **directional sign**.

2. For a residential development with six (6) or fewer residential units, the area of a **residential development sign** shall not exceed thirty-two (32) square feet. For a residential development with more than six (6) residential units, the area of a **residential development sign** shall not exceed the smaller of either five (5) square feet per residential unit or fifty (50) square feet in total.

3. A **residential development sign** shall not be internally illuminated.

4. For a **residential development sign** in a condominium development or in a subdivision in which the sign is common property of the subdivision homeowners, the condominium regime or restrictive covenants must provide adequate assurance, in the judgment of the **City Manager**, that the

landscaped area, if present, at the base of the sign will be properly maintained by the condominium owners association or homeowners association.

BB. Self-Supported Signs.

1. **Self-supported signs** are permitted only in the Central area, B-2, B-1, industrial zoning districts and in the extra-territorial jurisdiction. The supports for **self-supported signs** may be enclosed by a nonsupporting veneer approved by the **City Manager**.

2. The area of a **self-supported sign** shall not exceed:

a. a single **establishment** – thirty-two (32) square feet.

b. a **commercial complex** in the **Central Business District** – thirty-two (32) square feet

c. a **commercial complex** located in the City limits or ETJ – sixty-four (64) square feet

d. a **commercial complex** with a land area of two (2) acres or more and frontage of two hundred (200) feet or more on each of two (2) or more streets - the total area of all **self-supported signs** shall not exceed one hundred twenty-eight (128) square feet.

e. a **commercial complex** located within one hundred (100) feet of the right-of-way line, on the same lot or tract of land as the **commercial complex**, and the sign is oriented so as to be read from the interstate highway - one hundred fifty (150) square feet

3. The height of a **self-supported sign** shall not exceed:

a. in the **Central Business District** – eight (8) feet

- b. Along Main Street from River Road south to Oak Park and Johns Road north to Frederick Street - twelve (12) feet
- c. Interstate highway frontage – if the sign is located within one hundred (100) feet of the right-of-way line and the sign is oriented so as to be read from the interstate highway - forty (40) feet.
- d. All others – twenty (20) feet

**CC. Sidewalk Signs.**

Sidewalk Signs are permitted only for establishments in the Central Area, and only one such sign is permitted per establishment. A sidewalk sign may be placed or used only during the actual business hours of the establishment to which it refers. It shall be prohibited to erect or cause to be erected a sidewalk sign in any public right-of-way or sidewalk in a manner that endangers public safety, creates a pedestrian or traffic hazard, creates an obstacle or barrier in a sidewalk or public right-of-way such that the sidewalk or public right-of-way fails to comply with any relevant provision of the Americans with Disabilities Act. Sidewalk signs are limited to eight (8) square feet in area and a maximum width of two (2) feet.

**DD. Single Family Address Signs.**

In addition to the name of the occupants and/or the address of the residence, a single family address sign may contain an incidental personal message from the occupants, but it shall not contain any commercial sign. The area of a single family address sign shall not exceed two (2) square feet.

**EE. Special Events Signs.**

Special Events Signs shall not be displayed more than seven days before and three days after said event and must otherwise comply with the terms of this ordinance.

**FF. Wall Signs.**

1. A wall sign which is not painted directly on the surface of a wall must be securely mounted to and supported by the wall throughout the length and width of the sign.
2. Only one wall sign shall be permitted per establishment in any residential zoning district and in the NBO, B-1, and RC zoning districts.
3. The area of all wall signs on any single wall, including one-third of the area of any awning signs which are attached to the wall and required to be counted, shall not exceed: 16 square feet in any residential zoning district and in the NBO zoning district; or ten (10) percent of the area of the wall, exclusive of the area of doors and windows in the wall.

**SECTION 11. PROHIBITED SIGN TYPES**

The construction, placement, existence, or use of signs of the following nature are prohibited by this ordinance.

- A. **Balloons.** With the exception of those areas identified in section 9.
- B. **Beacons.**
- C. **Billboards.** With the exception of commercial complex signs described in Article I, Section 5.A, General Definitions.
- D. **Changeable Copy Signs** except in the categories of gasoline pricing signs, and changeable copy monument signs.
- E. **Flashing signs.**
- F. **Moving signs.**
- G. **Neon signs.** Exterior Neon Signs shall not be permitted.
- H. **Roof signs.**
- I. **Vehicular signs.**

J. Posters, pennants, ribbons, streamers, spinners, or other similar devices, provided that **flags** and **banners** as regulated in Section 8 are not included in this prohibition.

K. Signs, banners or posters which contain statements, words or pictures of an obscene, indecent, or immoral character or which offend public morals or decency.

L. Signs which by reason of their proximity to a public or private street, highway, alley, lane, parkway, avenue, road, sidewalk, or other right-of-way, constitute a hazard to vehicular or pedestrian traffic either because their location interferes with the safe operation of a vehicle, or because they obstruct the view of traffic, or because their design or content may be confused with any authorized traffic sign, signal or device.

M. **Commercial signs** of any character, in any form of construction, and at any location except as regulated by this ordinance.

N. Signs, to include **handheld signs** which, by reason of their proximity to a public or private street, highway, alley, lane, parkway, avenue, road, sidewalk, or other right-of-way, constitute a hazard to vehicular or pedestrian traffic either because their location interferes with the safe operation of a vehicle, or because they obstruct the view of a traffic sign, signal, or device, or the view of other vehicular or pedestrian traffic, or because their design or content may be confused with any authorized traffic sign, signal or device.

## SECTION 12. PROHIBITED SIGN LOCATIONS

No sign shall be located anywhere in the City or the City's extra-territorial jurisdiction except in accordance with the following provisions.

A. No sign shall be placed on or attached to any tree.

B. No sign shall be placed on or attached to any utility pole or pedestal, except by a utility company owning the pole or pedestal or operating facilities mounted on the pole or in the pedestal.

C. No sign shall be placed or kept in use to advertise an activity, business or service no longer conducted on the premises upon which the sign is located.

D. No sign or part of a sign, including mounting fixtures and supporting structures, shall be located on or above any public land to include rights of way, except as regulated by other provisions of this ordinance.

E. No sign or part of a sign, including mounting fixtures and supporting structures, which is mounted above or projects over any sidewalk, street, drive or parking area, whether on public or private land, shall be hung with less than seven (7) feet of vertical clearance above the sidewalk or less than twelve (12) feet of vertical clearance above the street, drive or parking area.

F. No sign shall be located on any sidewalk or in any unpaved walkway intended for public use so as to allow less than three feet in radius of horizontal clearance on at least one side of the sign.

G. No sign or part of a sign frame shall be located between two (2) feet and ten (10) feet above the established ground level within the area of a clear sight triangle for traffic extending twenty-five (25) feet in each direction from the point of a street intersection.

H. No sign shall be located closer than six feet laterally to a secondary power line or closer than fifteen (15) feet laterally to a primary power line. I. No lighted sign, and no permanent sign shall be mounted or placed on or extend above the side wall or rear wall of any building, or be located in the side yard or rear yard of any lot or tract of

land, when such sign faces upon and is visible from a contiguous residential area not separated from the building, lot or tract containing the sign by a public street or alley.

### SECTION 13. SIGN PERMITS

#### A. Permit and Fee Required.

Except as provided in Subsection B of this Section, no person shall erect, install, place, alter, repair or relocate any sign without first obtaining a sign permit from the **City Manager**. Each application for a sign permit must be accompanied by the appropriate fee established by City Council and by such drawings, descriptions and specifications as are reasonably determined by the **City Manager** to be necessary for proper review of the application. Upon receipt of a completed application accompanied by the requisite fee(s), the **City Manager**, upon the recommendation of the Historic Commission, if applicable, shall approve or deny said permit within thirty (30) days of receipt thereof.

#### B. Approval by the Historic Landmark Commission:

Those signs that require approval of the Historic Landmark Commission will require the applicant follow the provisions set forth in the City of Boerne Zoning Ordinance, Article VIII, Section 10, which sets forth procedures to obtain approval of a Certificate of Appropriateness.

#### C. Exemptions from Permit Requirement.

The following types of signs are exempt from the requirement to obtain a sign permit, provided the signs are not lighted, either internally or externally, and provided the signs comply with all other provisions of this ordinance and other applicable codes: **auxiliary signs, construction signs with an area of three square feet or less, off-site event signs, on-site event signs with an area of three square feet or less, flags, name plates, political signs, residential realty signs, single family address signs, community services signs and handheld signs.** The following actions are also exempt from the requirement of a sign permit: repainting or replacing letters or characters on an existing sign, provided that the area of the sign is not enlarged and that the height of the sign is not increased, and that the sign does not advertise or announce a new business; changing the copy on a **bulletin board or changeable copy sign**; and replacing the fabric or other material of an **awning sign** when no other change is made in the sign.

#### D. Expiration of Certain Permits.

A sign permit for any sign whose use is limited to a time period specified by this ordinance, or whose removal is required at a certain time by this ordinance, must be for a specified term which shall not exceed the time limit established by this ordinance.

#### E. Enforcement.

After a sign permit has been issued by the **City Manager**, it shall be unlawful to change, modify, alter or otherwise deviate from the terms and conditions of the permit without prior approval by the **City Manager**. Whenever the **City Manager** has evidence of a sign that after the effective date of this ordinance was erected, constructed, altered, repaired or relocated in violation hereof, the **City Manager** shall require the **party responsible** for such sign to remove it. If the **responsible party** fails to remove the sign within seventy-two (72) hours after being notified to do so, or if it appears to the **City Manager** that the illegal sign placement poses an immediate danger to the public, then such sign may be removed by the City and the City's actual cost of removal shall be charged to the

responsible party. Any sign so removed shall be impounded and shall not be returned to the party responsible until all applicable charges are paid. If any sign remains unclaimed for a period of more than thirty (30) days, the City may destroy, sell, or otherwise dispose of the sign.

#### SECTION 14. SIGN MAINTENANCE

##### A. Maintenance Required.

All signs must be maintained in a structurally safe condition, freshly painted and/or in good repair. The City Manager shall notify, by certified mail, the responsible party for any sign not so maintained, and the responsible party shall be required to perform the necessary maintenance or repairs within 30 days of the postmark on the notice. Any sign not repaired within the allotted time may be removed by the City and the actual cost of such removal shall be charged to the responsible party for the sign. If an unmaintained or unrepaired sign is removed by the City and the sign remains unclaimed for a period of more than thirty (30) days, the City may destroy, sell, or otherwise dispose of the sign.

##### B. Removal of Hazardous Signs.

Any sign which in the judgment of the City Manager has become an imminent hazard to public safety, either because of an incident of damage or because of neglect of maintenance, shall be repaired or removed by the responsible party without delay. Notice of the existence of the hazard shall specify the maximum time which may be allowed for repairs or removal in order to insure public safety, and the notice may be served upon the responsible party by any means available. A hazardous sign which is not repaired or removed within the time specified in the notice shall be removed by the City and the cost of such removal shall be charged to the responsible party. If a sign has been removed by the City as a hazardous sign and the sign remains unclaimed for a period of more than thirty (30) days the City may destroy, sell, or otherwise dispose of the sign.

#### SECTION 15. NONCONFORMING SIGNS

##### A. Continuation in Use.

The lawful use of signs in existence at the time of passage of this ordinance, although such use or sign does not conform to the regulations contained in this ordinance, may be continued: but if the use of a nonconforming sign is discontinued for a period of ninety (90) consecutive days or more, then the sign must be removed by the responsible party without compensation and any future use of the sign must be in full compliance with this ordinance, except that signs displaying a commercial message that substitute that message for a noncommercial message are not subject to this section.

##### B. Limitations on Modification.

No nonconforming sign shall be enlarged in area, increased in height, moved, altered, or remodeled unless and until its construction, area, height and location are all in conformity with the ordinance. A lawfully existing sign may be repainted and the letters or characters on the sign may be rearranged or replaced, however the changes cannot be made to advertise a new business.

##### C. Removal of Damaged Signs.

A nonconforming sign which is damaged by any cause to the extent of fifty (50) percent or more of its value must be removed by the responsible party without compensation and within thirty (30) days of the damage. A nonconforming sign damaged to the extent of



fifty (50) percent or more of its value shall not be replaced or rebuilt except by a sign that is constructed and located in full conformity with this ordinance.

## **SECTION 16. VARIANCES**

### **A. Application and Fee Required.**

Any person, business or other organization desiring to continue in use, locate, construct or otherwise place any sign which does not conform to the provisions of this ordinance may make application to the City Council for a variance to continue in use, locate, construct or otherwise place such a sign. The application shall be filed with the **City Manager**, accompanied by the appropriate fee established by City Council and by a drawing or sketch in sufficient detail to determine the location and type of construction for the proposed sign. Upon receipt of a completed application accompanied by the requisite fee(s), the City Council, upon the recommendation of the Landmark Commission, if applicable, shall approve or deny said variance within thirty (30) days of receipt thereof.

### **B. Conditions of Variances.**

The City Council may impose such conditions or requirements in a variance as are necessary in the City Council's judgment to protect the overall character of the community and to achieve the fundamental purposes of this ordinance. A violation of such conditions or requirements shall constitute a violation of this ordinance. If a variance is granted and the sign so authorized is not substantially under construction within six months of the date of approval of the variance, the variance shall lapse and become of no force or effect.

## **SECTION 17. RELATION TO OTHER ORDINANCES**

This ordinance shall not be construed to require or allow any act that is prohibited by any other ordinance. This ordinance is specifically subordinate to any ordinance or regulations of the City pertaining to building and construction safety or to pedestrian and traffic safety.

## **SECTION 18. SEVERABILITY**

If any portion of this ordinance or any section or subdivision thereof be declared unconstitutional or in violation of the general laws of the state, such declaration shall not affect the remainder of this ordinance which shall remain in full force and effect.

## **SECTION 19. VIOLATIONS AND PENALTIES**

Wherever by the provisions of this ordinance the performance of any act is required or the performance of any act is prohibited, or wherever any regulation, dimension or limitation is imposed on the location, design or use of any sign, a failure to comply with the provisions of this ordinance shall constitute a violation of this ordinance. The **City Manager** may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, relocation, alteration, repair or use of any sign, and to restrain, correct or abate such violation. Every day on which a violation exists shall constitute a separate violation and a separate offense. The penalty for each offense shall not exceed one thousand dollars (\$1,000.00).

**EXHIBIT D**

**ORDINANCE NO. 2005-01, ARTICLE III,  
SECTION 2 “OUTDOOR LIGHTING”**

**ARTICLE III**

**GENERAL PROHIBITIONS AND REQUIREMENTS**

**SECTION 1. GENERAL REGULATIONS**

Except as provided in this ordinance:

- no building or structure shall be erected, reconstructed or structurally altered, nor shall any building, structure or land be used, for any purpose other than is permitted in the district in which such building, structure or land is located;
- no building or structure shall be erected, reconstructed or structurally altered to exceed a height or bulk limit or setback requirement herein established for the district in which such building or structure is located;
- no lot area shall be reduced or diminished so that the yards or other open spaces shall be smaller than prescribed by this ordinance;
- nor shall a yard or open space provided about any building or structure for the purpose of complying with the provisions of this ordinance be considered as providing a yard or open space for any other building or structure.

Every building hereafter erected shall be located on a lot.

**SECTION 2. ILLUMINATION OF USES**

All lighting fixtures designed or placed so as to illuminate any portion of a site shall meet the following requirements:

- A. A light pole and fixture shall be no taller than 30 feet.
- B. The light source shall be completely concealed within an opaque housing and shall not be visible from any street right-of-way.
- C. Only incandescent, fluorescent, or metal halide may be used. The same type must be used for the same or similar types of lighting on any one site throughout any master-planned development.
- D. Fixtures must be designed and mounted in such a manner that the cone of light does not cross any property line of the site.

**SECTION 3. TEMPORARY USE OF TRAVEL TRAILERS**

The City Manager may grant approval to locate and occupy a travel trailer in any district for no more than two weeks at a time if the City Manager determines that such temporary occupancy would have no significant impact on surrounding properties.

**EXHIBIT E**

**ARTICLE 1, SECTION 6 OF THE ZONING DISTRICT USE  
REGULATIONS SET FORTH IN CITY OF BOERNE  
ORDINANCE NO. 2005-01**

# EXHIBIT E

## Article 1, Section 6

### Zoning District Use Regulations

City of Boerne Ordinance No. 2005-01

#### SECTION 6. DEFINITIONS

For the purpose hereof, certain words and terms in this ordinance are defined as follows:

**Accessory Building or Accessory Structure:** A subordinate building or structure on the lot occupied by the main building having an incidental use in connection with the main building.

**Accessory Dwelling:** A building of up to 1200 square feet of living area in a residential zone that may be occupied by either the property owner or by no more than 3 other persons.

**Administrative Office:** An office which is not an accessory to another use and which is devoted primarily to the management of the affairs of a business or other organization, as distinguished from the actual production of goods or services by that business or organization.

**Adult Bookstore:** A business which has a substantial or significant portion of its stock in trade in, or which has as its main purpose the offering for sale or rent of books, magazines, pamphlets, pictures, drawings, photographs, motion picture films, video or sound recordings, or printed, visual or audio material of any kind, which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities; or a business which offers for sale books, magazines, pamphlets, pictures, drawings, photographs, motion picture films, or sound recordings, or printed, visual or audio material of any kind, which entire business establishment, because of the depiction or descriptions of specified anatomical areas or specified sexual activities in the materials offered for sale or rent, is restricted to adults, or is advertised or promoted as being restricted to adults.

**Adult Entertainment Establishment:** A business where live entertainment is provided for patrons, or a portion of a business set aside for providing live entertainment to patrons, in which a significant portion of the entertainment is characterized by an emphasis on the exhibition, depiction, or description of specified anatomical areas or specified sexual activities; or a place where entertainment is provided to patrons wherein, because of the exhibition of specified anatomical areas or specified sexual activities, admittance is limited to adults, or admittance is advertised or promoted as being restricted to adults.

**Adult Motion Picture Theater:** A business where motion pictures are shown to paying customers when such place is used for presenting material having as its dominant theme, or distinguished or characterized by, an emphasis on the depiction or description of specified anatomical areas or specified sexual activities for observation by patrons, and where admittance to such showings is totally limited to adults.

**Adult or Sexually Oriented Business:** An adult bookstore, adult entertainment establishment, or adult motion picture theater.

**Agriculture:** A farm, orchard or similar use of land in horticulture, or a ranch or similar use of land to raise animals as livestock, including as an accessory use the seasonal or incidental sale of products grown or raised on the property, but excluding retail plant nurseries, kennels, stables and feedlots.

**Alley:** A minor way which is used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.

**Alteration:** See "Structural Alteration."

**Automobile Parts Sales:** A business selling parts and accessories for automobiles or other motor vehicles provided that no installation of the parts and accessories and no servicing of vehicles are conducted on the premises.

**Automobile Rental, Sales and Service:** A business renting, leasing, repairing, servicing or selling automobiles, motorcycles or light trucks, or selling, installing and servicing their parts and accessories, but excluding gas stations and large vehicle and machinery rental, sales and service establishments.

**Bed & Breakfast:** Providing tourist lodging services within rooms of a residence or within a separate accessory structure on the same lot and served by the same water meter and electric meter as the principal structure.

**Building:** A structure designed, built, or occupied as a shelter or roofed enclosure for persons, animals, or property, except such structures as may be otherwise specifically defined herein. See also "Accessory Building" and "Office Building."

**Building Code:** City Ordinance No. 86-1 as amended.

**Building Line:** A line, established by law, beyond which a building shall not extend, except as specifically provided by law.

**Business Park:** A mixed-use development which includes a number of separate office, commercial, wholesaling, and compatible laboratory, industrial and other uses, and which is designed and developed as an integrated unit. Each of the individual establishments or uses contained within the business park must be a permitted use in the district in which the business park is located, and all on-site functions or operations of these uses must be conducted entirely inside a building.

**Caliper:** The diameter of the main trunk of a tree measured 48 inches above natural grade level for existing trees and measured at six inches above the ground level for replacement trees.

**Church:** A building designed for public worship, including a separate parsonage or rectory and/or a community meeting hall, but excluding a school, a community athletic field, or a developed athletic field or stadium, all of which are considered distinct uses.

**Clear Cutting:** The indiscriminate cutting of trees and vegetation.

**Clinic:** See "Health Clinic" and "Veterinary Clinic."

**Club or Lodge:** A building housing an association of persons for the promotion of some non-profit common object, as literature, science, politics, good fellowship, etc., meeting periodically, limited to members, with residential occupancy accounting for not more than one-third of the gross floor area occupied by the use.

**Commercial Communications System:** Any installation such as a radio, microwave or cellular telephone tower, antenna or related switching equipment in which the principal use is the transmission of information as a business, as distinguished from an antenna which is incidental to the remote monitoring or operation of a utility plant, industrial site or governmental facility.

**Commercial Office:** A retail service business in which the service is produced or delivered in an office setting rather than a store or shop setting, such as a real estate office, travel agency, insurance agency, or property management business.

**Commercial Vehicle:** A motor vehicle, other than a motorcycle, that has a manufacturer's rated capacity in excess of one and one-half (1.5) tons including related commercial equipment designed or used primarily to transport property.

**Community Athletic Field:** A noncommercial facility for active outdoor recreation and organized sports, including a facility which is an accessory use to a school, but excluding any facility with lighted fields or permanent buildings for refreshment stands, locker rooms or shower facilities.

**Condominium:** A multifamily dwelling unit, within which designated units or apartments are conveyed fee simple title, with an undivided interest in the building's common elements, to include, but not be limited to, halls, stairs, elevators, roof, parking space, and the land when the building is not constructed on leased land.

**Construction Vehicle:** Means mobile construction equipment, including but not limited to, dump trucks, graders, back-hoes, front-end loaders, skid loaders, and other similar equipment.

**Contractor:** A business which involves the outdoor storage of materials for use at another location, or the outdoor storage of equipment which is intended for use by the business at another location or for rent, as distinguished from any trade in which all activity on the site is conducted inside a building.

**Convenience Restaurant:** A restaurant such as a soda fountain, ice cream parlor, sandwich shop, cafe, or coffee shop, excluding any restaurant offering live entertainment or alcoholic beverages for on-premise consumption.

**Convenience Store:** A retail store of no more than 3,600 square feet specializing in a limited selection of food and personal and home care items, or a combination of such items and the sale of automotive fuels, but excluding any business selling alcoholic beverages for on-site consumption.

**Convenience Store, Neighborhood:** See "Neighborhood Convenience Store."

**Corner Lot:** A lot at the point of intersection of and abutting on two or more intersecting streets, the angle of intersection being not more than 135 degrees. It is the land occupied or to be occupied by the corner building and its accessory buildings. A corner lot, the rear of which abuts upon the side of another lot, whether or not across an alley, is a "reversed corner lot."

**Day Care Nursery:** A business or institution where organized care or instruction is imparted to children under the age of seven years.

**Depth:** As applied to the dimensions of a lot, the average horizontal distance between the front and rear lot lines; as applied to a front, side or rear yard, the average horizontal distance between the front, side or rear wall of a building, other than an accessory building, and the front, side or rear lot line, as appropriate.

**Detached:** As applied to a building or structure, one having no party or common wall with another building or structure except an accessory building or structure.

**Developed Athletic Field or Stadium:** A facility for active outdoor recreation and organized sports which is operated as a business or which includes lighted fields, permanent grandstands, or permanent buildings for refreshment stands, locker rooms or shower facilities.

**District, or Zoning District:** A section of the City for which regulations governing the area, height, design or use of buildings and structures and the uses of land are established by this ordinance.

**District, Historic:** See "Historic District."

**Duplex:** A two-family dwelling.

**Dwelling:** A **building** designed or used as the living quarters for one or more **families**. See "Single Family Dwelling," "Two-Family Dwelling," "Multi-Family Dwelling," "Garden Home," "Townhouse," "Mobile Home" and "Modular Home."

**Easement:** An acquired right to use land owned by another for a limited purpose, or an interest or privilege short of ownership in land owned by another, such as easement of light, of building support or maintenance, or right of way.

**Enclosed Retail Store or Shop:** Any individual business, store, or shop (1) which is not either defined separately in this ordinance or enumerated as a distinct **use** in a Table of Permitted Uses, and (2) in which (a) services are performed or goods are rented or sold exclusively at **retail**, (b) no **wholesaling**, **manufacturing** or **processing** is carried on, other than repair services or incidental packaging, (c) no goods, materials, equipment or supplies are stored or displayed outside a **building**, other than incidental sidewalk display during business operating hours, and (d) all operations on the site are conducted inside a **building**. Examples of **uses** which are intended to be encompassed by this definition are antique stores, art galleries, bookstores, dance studios, drugstores, flower shops, gift shops, interior decorating studios, retail laundries and dry cleaners, opticians, physical fitness studios, reducing salons, tailor shops, radio and television studios, and studios for artists, musicians and photographers.

**Entrance Corridors:** The primary vehicular entrances to Boerne, i.e. Interstate 10 east and west, Highway 46 east and west, US 87 north and south, and FM 474 in which established parameters are set for properties.

**Extended Retail Store or Shop:** Any individual business, store, or shop (1) which is not either defined separately in this ordinance or enumerated as a distinct **use** in a Table of Permitted Uses, and (2) in which (a) services are performed or goods are rented or sold exclusively at **retail**, (b) no **wholesaling**, **manufacturing** or **processing** is carried on, other than repair services or incidental packaging, (c) sales and service operations on the site are conducted inside a **building**, (d) merchandise for rent or sale is stored or displayed either inside or outside a **building**, but (e) no other materials, equipment or supplies are stored or displayed outside a **building**. Examples of **uses** which are intended to be encompassed by this definition are boat and marine sales, lawn and garden supply stores, residential accessory portable building sales, and retail building material supply and lumber yards.

**Family:** A single individual, living upon the premises as a separate housekeeping unit, or a collective body of persons living together upon the premises as a separate housekeeping unit, whether or not they are living in a domestic relationship based upon birth, marriage, or other domestic bond. A family is distinguished from a group occupying a **rooming or boarding house**, **club or lodge**, or living in a **hotel or motel** or other arrangement by the fact that they function together as a single housekeeping unit.

**Front Yard:** A **yard** between the front **building line** and the **street line** of the **lot**.

**Garage:** See "Private Garage" and "Parking Lot or Parking Garage."

**Garden Home:** A **dwelling** designed to be occupied by a single **family**, built on a **lot line** but separated from any other **building** by **open space** on all sides.

**Gas Station:** A **retail** business which is principally devoted to the sale of motor vehicle fuels, and which may include as accessory **uses** the sale of automotive lubricants, tires, batteries and accessories, automotive service, short term rental of light trucks and trailers, and the sale of a limited range of food and consumer items for the convenience of travelers, but excluding any sale of alcoholic beverages for on-site consumption.

**General Restaurant:** A **restaurant** which offers live entertainment with amplified sound or sells alcoholic beverages as an accompaniment to meals, provided that such beverages produce less than 50



percent of the gross revenue of the business. A business in which the sale of alcoholic beverages produces 50 percent or more of gross revenue is a bar or nightclub.

**Gross Floor Area:** The sum of the gross horizontal area of the several floors of a **building**, including interior balconies and mezzanines. All horizontal dimensions are to be measured between the exterior faces of walls, including the walls of roofed porches having more than one wall. The floor area of a **building** shall include the floor area of **accessory buildings**, on the same **lot**, measured in the same manner.

**Health Clinic:** An establishment in which one or more physicians, dentists, or other health care professionals and their allied professional assistants are associated for the purpose of carrying on their professions. A health clinic may include a dental or medical **laboratory**, after hours emergency care, but it may not include in-patient care or operating rooms for major surgery.

**Height:** As applied to a **building**, the vertical dimension measured from the average elevation of the finished **lot** grade at the front of the **building** to the highest point of the ceiling of the top **story** in the case of a flat roof, to the deck line of a mansard roof, and to the ridge of a gable, hip or gambrel roof.

**Heritage Tree:** A tree that is one half the caliper for that species as listed in the Texas Forest Service (<http://txforestservicetamu.edu>) Champion list for species native or naturalized to Texas in the Texas Big Tree Registry; or a Live Oak Tree that has 36 inches or larger caliper.

**Historic District:** A **district** designated by City Council under this ordinance as an area containing significant concentrations, linkage or continuity of **buildings, structures**, sites, areas or lands which are united by architectural, historical, archaeological or cultural importance or significance such that the area requires protection and preservation.

**Historic Landmark:** Any **building, structure**, site, area or land of architectural, historical, archeological or cultural importance or value, which the City Council has determined to have sufficient significance, balancing public and private interests, to require that it be protected and preserved.

**Home Occupation:** A business which is carried on entirely within a **dwelling** as an accessory **use** to the resident's principal **use** of the **dwelling** as a home.

**Hospital:** An institution providing health services, primarily for inpatients, and medical or surgical care of the sick or injured, including as an integral part of the institution, such related facilities as **laboratories**, outpatient departments, training facilities, central service facilities and staff offices.

**Hotel or Motel:** A business other than a **bed & breakfast** or a **rooming or boarding house** in which rooms are rented, generally for short-term occupancy by transient guests, together with incidental meeting rooms, **restaurants** and recreation facilities for the primary benefit of the guests.

**Household Care Facility:** A facility which provides residence and care to not more than nine persons, regardless of legal relationship, who are either elderly, or disabled, or orphaned, abandoned, abused or neglected children, or victims of domestic violence, or temporarily homeless due to fire, natural disaster or financial setbacks, living together with not more than two supervisory personnel as a single housekeeping unit.

**Included Structure:** Any **building** or **structure** which is located in whole or in part in any **historic district**, whether or not the **building** or **structure** itself is designated as an **historic landmark**.

**Industrial Park:** A development which is intended to be the site for a number of **manufacturing, industrial, warehousing** and related **uses**, and which is designed and developed as an integrated unit. Each of the individual establishments or **uses** contained within the industrial park must be a permitted **use** in the **district** in which the industrial park is located.

**Industry, or Industrial:** A land use involving processing, manufacturing, or warehousing, or the outdoor storage of goods or materials intended for processing or manufacturing, or the outdoor storage of machinery or equipment to be used by the business at another location rather than being offered for sale or rent, all as distinguished from wholesale or retail trade and services. A laboratory which is not incidental or accessory to another use, such as a health clinic or a hospital, is also an industrial use.

**Junk:** Any worn out, cast off, or discarded article or material which is ready for destruction or has been collected or stored for salvage, recycling or conversion to some use. Any article or material which, unaltered or unchanged and without further reconditioning, can be used for its original purpose as readily as when new shall not be considered junk.

**Junk Yard:** The use of any lot for the storage, keeping or abandonment of junk, whether inside or outside a building.

**Kennel:** Any lot or premises, other than a veterinary clinic, on which four or more domestic animals more than four months of age are housed, groomed, bred, boarded, trained or sold.

**Laboratory:** Any business or free-standing establishment in which the principal activity involves testing or analysis of any material, and which is not an accessory to another use, such as an accessory to a manufacturing or processing plant or a hospital or health clinic. No manufacturing is conducted on the premises except for experimental or testing purposes.

**Landmark:** See "Historic Landmark."

**Landscape Plan:** A map or site plan which illustrates the general layout of proposed buildings, structures, driveways and off-street parking areas on a lot or tract of land, along with the design of landscaped areas, including detail of the location, species and caliper of all protected trees, other existing trees which are to be retained or removed, and trees which are to be planted as replacement or additional trees.

**Landscaped Area:** The area of a lot which is devoted to and consists of plant material adaptable to this region, including but not limited to grass, trees, shrubs, flowers, vines, ground cover, and other native plant materials, along with planters, brick or stone walkways, natural forms, water forms, aggregate or mulch beds, and other landscape features, but not including any paved area of smooth concrete or asphalt.

**Large Vehicle and Machinery Rental, Sales and Service:** A business renting, leasing, repairing, servicing or selling buses, motor homes, trucks larger than standard pickup trucks, or off-road machinery or equipment of any character, or selling, installing or servicing parts and accessories for such vehicles, machinery or equipment.

**Limited Restaurant:** A restaurant which offers live entertainment without amplified sound or which sells beer or wine but not other alcoholic beverages as an accompaniment to meals, provided that at least 75% of the gross floor area of the business including preparation and serving area is dedicated to the retail sale of food.

**Lodge:** See "Club or Lodge."

**Long Term Care Facility:** An institution such as a hospice, nursing home, sanitarium or rehabilitation center, in which patients are attended for a relatively extended period, as distinguished from a hospital or other institution for acute care and short term therapy.

**Lot:** An undivided tract or parcel of land having frontage on a public **street** and which is, or in the future may be, offered for sale, conveyance, transfer or improvement, which is designated as a distinct and separate tract; and/or which is identified by a tract or lot number or symbol in a duly approved **subdivision** plat which has been properly filed on record. See also "Corner Lot."

**Lot Line:** A property boundary line separating one **lot** from another or from a **street** or **alley**. Any lot line which is not a **street line** or a rear lot line is a side lot line.

**Manufacturing:** All operations of fabrication, such as assembling, stamping, cutting or otherwise shaping processed materials into useful objects, as opposed to the refining or other initial **processing** of basic raw materials such as metal ores, lumber or rubber. Excludes products used for on site sales or consumption.

**Medical Office:** An establishment in which one or more physicians, dentists, or other health care professionals and their allied professional assistants are associated for the purpose of carrying on their professions. A medical office may include a dental or medical **laboratory**, but may not include in-patient care or operating rooms for major surgery and may not be open for after-hours emergency care.

**Mini-Warehouse:** A business in which separate storage units are rented to individuals who are entitled to exclusive and independent access to their respective units.

**Mobile Home:** Any vehicle used, or so constructed as to permit being used as a conveyance upon the public **streets** or highways and duly licensable as such, and constructed in such a manner as will permit occupancy thereof as a **dwelling** or sleeping place for one or more persons, provided further that this definition shall refer to and include all portable contrivances used or intended to be used generally for living and sleeping quarters and which are capable of being moved by their own power, towed or transported by another vehicle.

**Mobile Home Ordinance:** City Ordinance No. 81-11 as amended.

**Mobile Home Park:** Any premises where one or more **mobile homes** are parked for living and sleeping purposes, or where they are connected to any utility, or any premises used or set apart for the purpose of supplying to the public parking space for one or more **mobile homes** for living and sleeping purposes, including any **buildings, structures**, vehicles, or enclosures used or intended for use as a part of the equipment of such mobile home park.

**Modular Home:** A **dwelling** that:

1. Is manufactured in two or more modules at a location other than the home site;
2. Is designed to be used as a residence when the modules are transported to the home site, joined together and installed on a permanent foundation in accordance with the **Building Code** Requirements of the City of Boerne;
3. Meets all the requirements of the Texas Manufactured Housing Standards Act, and;
4. Contains the plumbing, heating/air conditioning and electrical systems within the **structure**.

The term "modular home" does not apply to a **mobile home** as defined in this ordinance and the Texas Manufactured Housing Standards Act, nor does it include building modules incorporating concrete or masonry as a primary component.

**Multi-Family Dwelling:** A **dwelling** or group of **dwellings** on one **lot** containing separate living units for three or more **families**. A multi-family dwelling may have joint services or facilities, but it is distinguished from other forms of housing by the fact that each **family** lives as an independent housekeeping unit with separate kitchen and bathroom facilities.

**Museum:** A nonprofit, noncommercial establishment operated as a repository for a collection of natural, scientific or literary curiosities or objects of interest or works of art, not including the regular sale or distribution of the objects collected.

**Nameplate:** A sign indicating the name and/or address of a building, or the name of an occupant thereof, and/or the practice of a permitted home occupation therein.

**Neighborhood Convenience Store:** A retail store of no more than 2,000 square feet specializing in a limited selection of food and personal and home care items, but excluding any business selling automotive fuels or alcoholic beverages for on-site consumption.

**Non-Conforming Structure:** A structure or part thereof, lawfully existing on the effective date of this ordinance that does not conform to all the regulations of the district in which it is located.

**Non-Conforming Use:** A use of a building, structure or land, lawfully existing on the effective date of this ordinance, which does not conform to all the regulations of the district in which it is located.

**Nursery:** See "Day Care Nursery" and "Plant Nursery."

**Office:** See "Administrative Office," "Commercial Office" and "Professional Office."

**Office Building:** A building which is used or designed to be occupied by multiple tenants who lease space for any combination of administrative, commercial and professional offices, and including customary accessory uses for the benefit of the office workers such as a coffee shop or newsstand. Each of the individual establishments or uses contained within the office building must be a permitted use in the district in which the office building is located.

**Office Park:** A development containing a number of separate office buildings, supporting accessory uses and open space, which is designed and operated as an integrated unit. Each of the individual establishments or uses contained within the office park must be a permitted use in the district in which the office park is located.

**Open Space:** An area included in any side, rear or front yard or any unoccupied space on the lot that is open and unobstructed to the sky, except for the ordinary projection of cornices, eaves or porches.

**Ornamental Tree:** A tree which is indigenous or adapted to this region of Texas, such as Crepe Myrtle, Redbud, Madrone, Possumhaw, Cherry or Mountain Laurel, and which normally reaches a height at maturity or is trimmed to maintain a maximum height of 20 feet or less.

**Ornamental Tree, Multi-Stem:** An ornamental tree with multiple stems, the caliper of multi-stem ornamental trees should be determined by adding together the caliper of the main stem and 1/2 of the total caliper of the secondary stems.

**Outparcel:** An individual tract of land designated as part of a nonresidential group development, such as a retail mall or shopping center, not physically connected and secondary in nature to the primary development.

**Owner:** The person or entity who has legal title to property, or who has effective custody and control of property.

**Parking Lot or Parking Garage:** A facility, whether outdoors or in a building or structure, in which the parking of motor vehicles is the principal use rather than an accessory to another use.

**Planned Unit Development or PUD:** A subdivision which includes a mixture of housing types and/or mixed land uses, along with dedicated community open space and common area facilities owned and managed by an association of the property owners in the subdivision.

**Plant Nursery:** A use of land to grow plants of any kind for transplanting to another location or for sale as live plants rather than as crops, including the sale of related gardening equipment and supplies.

**Portable Building Sales:** A business selling either mobile homes or other portable buildings or structures larger than residential accessory storage sheds, whether in finished or kit form.

**Private Garage:** A building or part thereof, accessory to a main building, for the storage of automobiles as an accessory use, and in which no occupation or business for profit is carried on.

**Processing:** Any operation changing the nature of material or materials, such as their chemical composition or physical qualities, as distinguished from the fabrication operations defined as manufacturing.

**Professional Office:** An office which is not an accessory to another use and which is primarily used by professional practitioners and their assistants to perform or deliver professional services, but excluding a health clinic or a veterinary clinic.

**Protected Tree:** An ornamental tree with a caliper of 4 inches or more, or shade tree having a caliper of 8 inches or more when located in the front or side yard setback, and 12 inches when located elsewhere on the lot.

**PUD plan:** The general plan or map of a planned unit development subdivision that is submitted for a recommendation by the Planning and Zoning Commission and approved by City Council as the basis for development of preliminary and final subdivision plats.

**Rear Yard:** A yard, unoccupied except by an accessory building, extending for the full width of the lot between the main building and the rear lot line.

**Recreational and Entertainment Facility:** Any business or establishment (1) which is not defined separately in this ordinance or enumerated as a distinct use in a Table of Permitted Uses, and (2) in which the primary use is the provision of recreational opportunities or the production of entertainment for paying customers.

**Remove, Removal:** As applied to a protected tree, the uprooting of the tree, the severing of the main trunk of the tree, or any other act which causes, or may reasonably be expected to cause the tree to die.

**Restaurant:** Any business engaged in the preparation and retail sale of food and beverages. See "Convenience Restaurant," "General Restaurant" and "Limited Restaurant."

**Retail:** Sale of goods or services to the ultimate consumer for direct consumption and not for resale.

**Retail Store or Shop:** See "Enclosed Retail Store or Shop" and "Extended Retail Store or Shop."

**Retirement Community:** A residential development which includes separate dwelling units specifically designed to meet the needs of the elderly, together with incidental recreation and support facilities for the benefit of the residents.

**Reversed Corner Lot:** (See Corner Lot)

**Rooming House or Boarding House:** A business in which three or more persons who are not members of the **family** residing in a **dwelling** are provided lodging or furnished rooms for hire within the **dwelling**, with or without meals. This **use** is distinguished from a **Bed & Breakfast** by its clientele of short-term or permanent residents of the community, rather than tourists.

**Root Protection Zone:** An area surrounding the base of the trunk of a tree which is to be protected from disturbance during grading and construction. This area shall have an average radius of one foot for each inch of tree **caliper**, provided that it need not exceed 2,000 square feet for any tree. The area need not be exactly centered around the tree or circular in shape, but it shall be positioned so that no disturbance may occur closer to the tree than one-half the radius of the zone or within five feet of the tree, whichever is less.

**School:** An institution of learning which offers and maintains a course of instruction leading to degrees or certificates of graduation recognized by the Texas Education Agency, including a **community athletic field** as an accessory **use**, but excluding a **developed athletic field or stadium**, which is considered a distinct **use**. See also "Trade School."

**Setback:** The amount of **open space** required between the **lot line** and the **building line** or the amount of land required surrounding improvements.

**Shade Tree:** A tree which is indigenous or adapted to this region of Texas, such as American Elm, Cedar Elm, Pecan, Cottonwood, Sycamore, and all varieties of Oak and Cypress, and which normally reaches a height at maturity of more than 20 feet.

**Shop:** A place or **building** devoted primarily to the **retail** sale of a service or product, in which the service is performed, or the product to be sold is prepared, in its finished form, on the premises.

**Shopping Center:** A development containing a combination of **retail** business establishments, **restaurants**, **recreational and entertainment facilities**, **offices** and related **uses**, which is designed and operated as a single unit. Each of the individual establishments or **uses** contained within the shopping center must be a permitted **use** in the **district** in which the shopping center is located.

**Side Yard:** A **yard** between a **building** and a side **lot line**, extending through from the **street line** to the rear **lot line** of the **lot**, including overlapping portions of the **front yard** and **rear yard**.

**Sign:** Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, pictures, trade names or trademarks by which anything is made known, such as are used to designate an individual commodity or product, which are visible from any public **street** or right-of-way and designed and displayed to attract attention. The term "sign" shall not include the flag, pennant or insignia of any nation, state, city or other political unit, or of any political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, monument or event.

**Signature Tree:** A **shade tree** having a caliper of 24 inches or more, that does not qualify as a Heritage Tree.

**Single Family Dwelling:** A **detached** house designed for and occupied exclusively as the residence of a single **family** living as an independent housekeeping unit.

**Spot Zoning:** The re-zoning of a small parcel of land for a **use** classification incompatible with that of the surrounding area, for the benefit of the **owner** of such property and to the detriment of other **owners** or the community, or without any substantial public purpose.

**Stable:** Any business or institution in which horses or other livestock are housed, groomed, bred, boarded, trained or sold.

**Store:** A use devoted exclusively to the retail sale of a commodity or commodities.

**Story:** That portion of a building included between the surface of any floor and the ceiling above.

**Street:** A public way for vehicular traffic, other than an alley, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or however otherwise designated. For the purposes of this ordinance, a street extends from lot line to lot line, and includes all of the parkways, sidewalks, driveways and other areas within the public right-of-way.

**Street Line:** A lot line dividing a lot from a street.

**Structural Alteration:** Any change or rearrangement in the structural parts or supporting members of a building or structure, such as bearing walls, columns, beams or girders, or any enlargement of a building or structure, whether by extending on a side or by increasing in height, or the moving of a building or structure from one location or position to another.

**Structure:** Anything which is built or constructed and which requires permanent location on the ground or which is permanently attached to something having a location on the ground; a building of any kind. See also "Accessory Building or Structure," "Included Structure" and "Non-Conforming Structure".

**Subdivision:** A division of a tract of land into two or more parts for the purpose of laying out a subdivision of the tract or an addition to the City, or to lay out suburban, building or other lots, or to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

**Subdivision Ordinance:** Currently adopted City of Boerne Subdivision Ordinance.

**Townhouse:** An attached dwelling of one to three stories, designed for occupancy by a single family, utilizing common wall construction with other townhouse units constructed in a series or group of two units or more.

**Trade School:** A business or institution which offers instruction in any occupation, skill or trade, as distinguished from an institution of academic learning.

**Trailer Court:** Any premises designated for the purpose of parking travel trailers and recreational vehicles overnight or on a short term basis and providing public restrooms, temporary water and electrical hookups, and similar services.

**Transitional Use:** The transitional use designation may be utilized when a use is to be removed from a zoning district and the City Council, following recommendation of the Planning and Zoning Commission, deems it appropriate to allow property owners, their heirs or assigns, a designated period of time in which the use may be implemented before the use is removed from the Table of Permitted Uses.

**Transitional use** shall be designated by the placement of a "T" in the appropriate zone and use in the City of Boerne Zoning Ordinance Table of Permitted Uses.

**Travel Trailer:** A recreational vehicle or other mobile vehicle designed for travel and short term living and sleeping of a recreational nature.

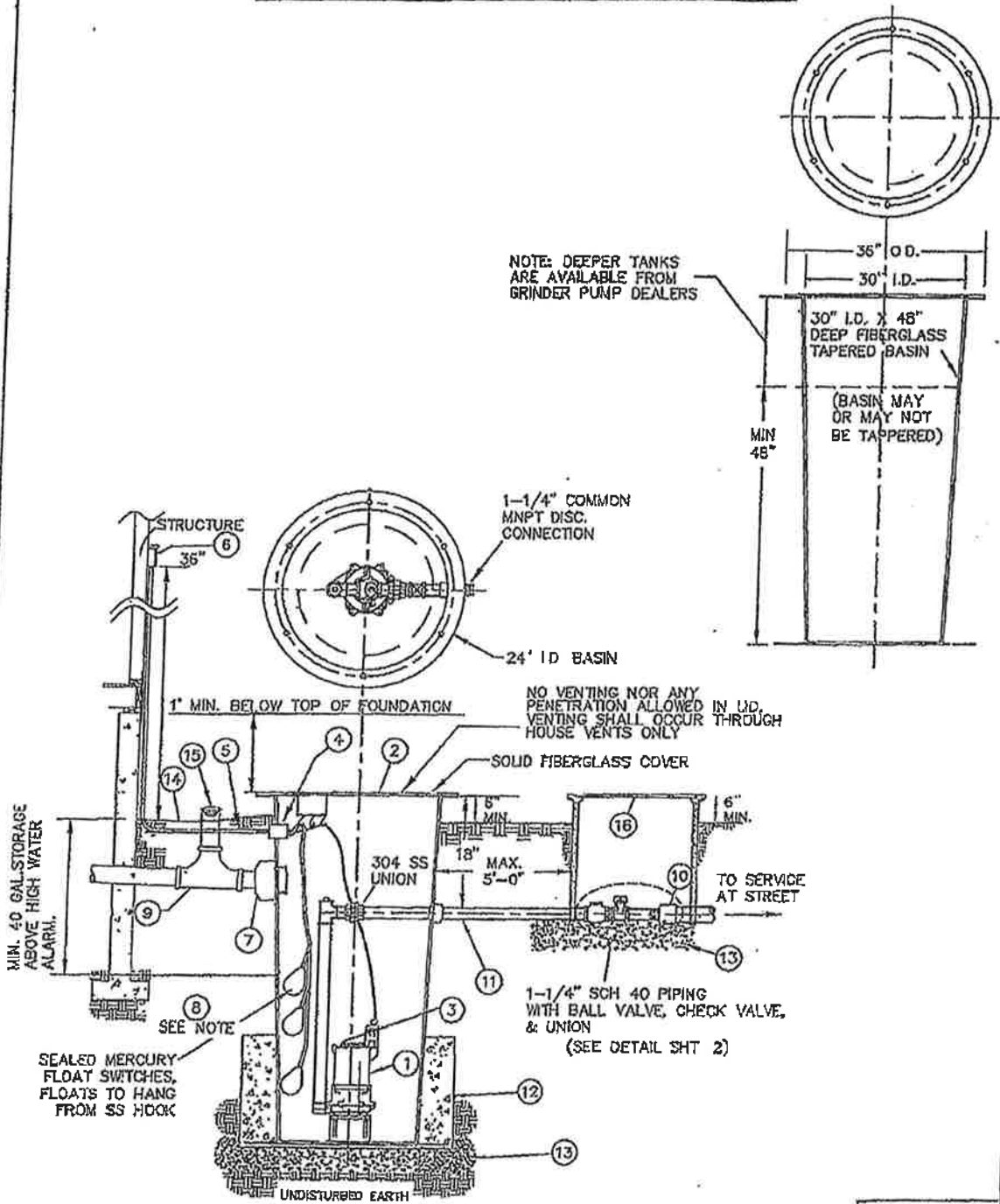
**Tree:** See "Ornamental Tree," "Protected Tree" and "Shade Tree."

**EXHIBIT F**  
**TYPICAL GRINDER PUMP INSTALLATION**



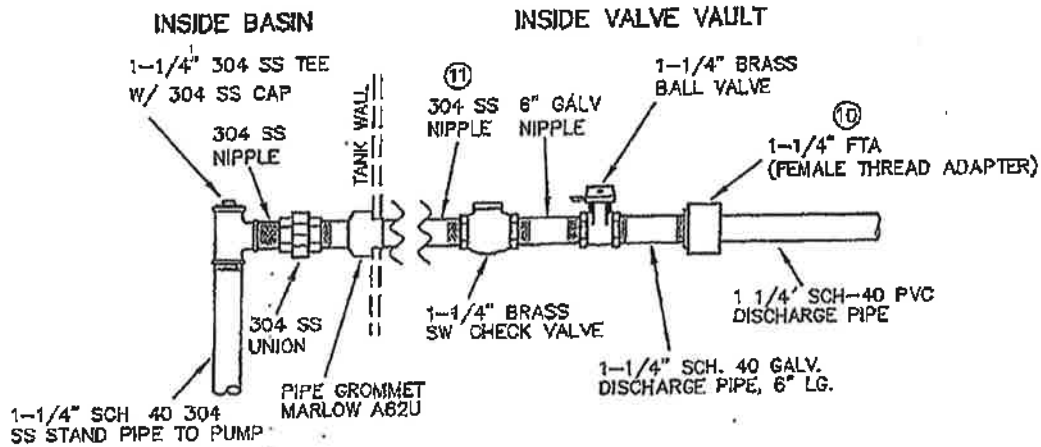
EXHIBIT F

TYPICAL GRINDER PUMP INSTALLATION



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# TYPICAL GRINDER PUMP INSTALLATION



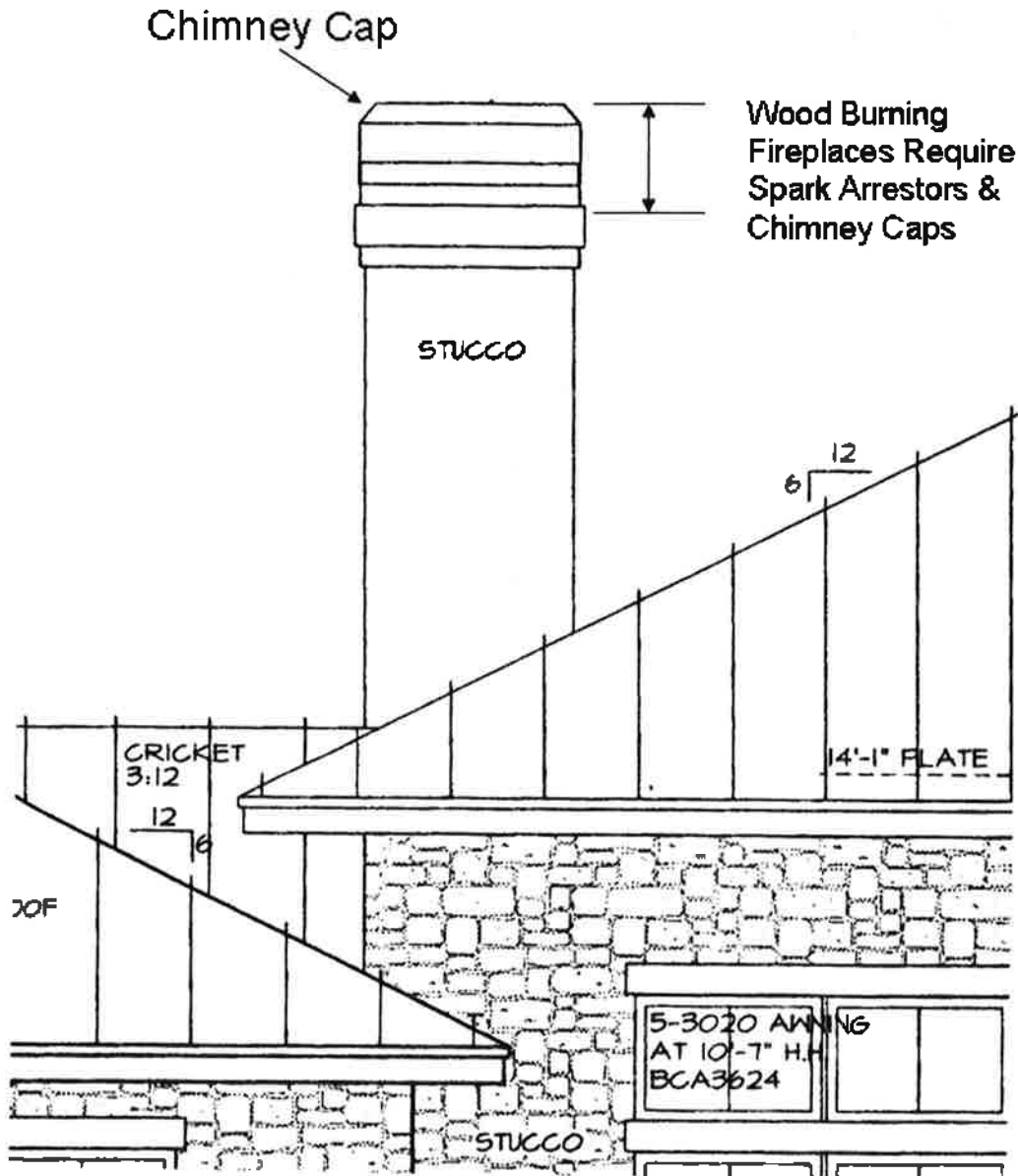
## DISCHARGE PIPING - AT GRINDER PUMP (NOTE: CLOSE NIPPLE USE NOT ALLOWED)

### REQUIRED GRINDER PUMP INSTALLATION

1. STANDARD 2 HP. HYDROMATIC HPD200, SIMPLEX GRINDER PUMP. OWNER SHALL USE GRINDER PUMP SPECIFIED UNLESS THEY SECURE APPROVAL BY THE CITY OF LEANDER PUBLIC WORKS DIRECTOR FOR ANY EQUIVALENT OR BETTER MODEL.
2. ACCESSWAY, COVER, AND PUMP TANK TO BE FIBERGLASS REINFORCED POLYESTER (F.R.P)
3. LIFTING EYES- FOR LIFTING COMPLETE GRINDER PUMP.
4. ELECTRICAL ENTRY BUSHINGS FOR LEADS FROM GRINDER PUMP AND FLOATS TO THE CONTROL PANEL (ITEM 6) CONDUIT SEAL ON BOTH ENDS OF 1 5" CONDUIT.
5. GRINDER PUMP AND ALARM LEADS - CIRCUIT TO BE RUN INACCORDANCE WITH APPLICABLE ELECTRICAL CODES. (ALL POWER AND FLOAT LEADS MUST BE IN 1.5-INCH MINIMUM CONDUIT).
6. RAINPROOF (NEMA 3R) CONTROL PANEL - WITH CIRCUIT BREAKERS OR DISCONNECT SWITCH AND HIGH WATER ALARM, FLASHING BECON MOUNTED ON EXTERIOR OF PANEL. A NEMA 3R DISCONNECT PANEL LOCATED ADJACENT TO THE CONTROL PANEL SHALL ALSO BE PROVIDED. NOTE: PUMP POWER AND CONTROL POWER ARE ON SEPARATE SUPPLY BREAKERS
7. TANK INLET - 4" PIPE GROMET , TANK OUTLET
8. TANK VENT - TANK MUST BE VENTED THRU THE HOUSE SERVICE LINE.
9. GRAVITY SERVICE LINE - 4" DRAIN WASTE VENT W/ COMBINATION POP-UP RELIEF VALVE ON DUAL SWEEP CLEAN OUT IF GREATER THAN 12" BELOW GRADE, THEN 2 CLEAN-OUT SWEEPS ARE REQUIRED.
10. DISCHARGE OUTLET - 1 1/4" FEMALE THREAD ADAPTER
11. GRINDER PUMP DISCHARGE LINE WITH GROMMET - 1 1/4" SCH 40 304 SS
12. CONCRETE ANCHOR: 900 LBS. (6 CU.FT.) PLUS 600 BLS. (4 CU.FT) PER FOOT OF ACCESSWAY. EXAMPLE: W/2" ACCESSWAY - 900+1200=2100 lbs. (14 CU FT). SLEEVE OVER INLET LINE IS REQUIRED IF ANCHOR IS POURED TO A LEVEL ABOVE THE INLET (REQUIRED IN FLOOD PLAIN AS DESIGNATED BY BUILDING INSPECTOR)
13. BEDDING MATERIAL - 6" MINIMUM, ROUNDED AGGREGATE (PEA GRAVEL)
14. FINISHED GRADE - GRADE LINE TO BE 6" BELOW TOP OF ACCESSWAY AND SLOPE AWAY FROM ACCESSWAY OPENING.
15. 4" COMBINATION POP-UP RELIEF VALVE / CLEAN-OUT SET IN 4" PVC ADAPTER. POP-UP RELIEF VALVE SHALL BE 3" ABOVE GROUND AND 3" BELOW TOP OF TANK.
16. EAST JORDAN IRON WORKS VALVE BOX, STD BOX # 548P24 w/ CAST IN LID.

**EXHIBIT G**  
**CHIMNEY CAP SPECIFICATIONS**

EXHIBIT G



**EXHIBIT H**  
**OMITTED**

## **EXHIBIT AA**

### **LIST OF ADDITIONAL APPLICABLE DOCUMENTS**

This list is provided for ease of reference and is not an all-encompassing list. Additional applicable documents include without limitation:

- 1) Amended And Restated Notice To Purchasers Of Property In Esperanza recorded as Document No. 00332055 in Volume 1698, Page 262, in the Official Records of Kendall County, Texas.
- 2) Development Agreement effective February 12, 2008, further evidenced by a Memorandum of Development Agreement recorded as Document No. 00274382 in Volume 1361, Page 834, in the Official Records of Kendall County, Texas, as amended from time to time.
- 3) Corrected Seventh Amendment To Development Agreement And District Consent Agreement recorded in Document No. 2023-379220 on April 17, 2023 at 4:08 PM in the Official Records of Kendall County, Texas.

**EXHIBIT BB**

**OMITTED**

AFTER RECORDING RETURN TO:  
Michael Siefert  
Lookout Partners, L.P.  
1001 Crystal Falls Pkwy  
Leander, TX 78641

**Kendall County  
Denise Maxwell  
Kendall County  
Clerk**

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**Instrument Number:** 389145

eRecording - Real Property

DECLARATION

Recorded On: May 20, 2024 04:13 PM

Number of Pages: 105

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**" Examined and Charged as Follows: "**

Total Recording: \$437.00

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

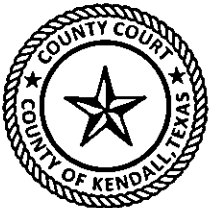
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 389145  
Receipt Number: 20240520000041  
Recorded Date/Time: May 20, 2024 04:13 PM  
User: Paula P  
Station: cclerk06

**Record and Return To:**

Corporation Service Company



**STATE OF TEXAS  
COUNTY OF**

**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*