

AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
DIAMOND RIDGE

STATE OF TEXAS \*

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF KENDALL \*

This Amended and Restated Declaration made on the date hereinafter set forth by BLANCH DOUBLE DIAMOND DEVELOPMENT CORP., a Texas Corporation, hereinafter referred to as "Developer" and /or "Declarant", is made for the purpose of replacing that certain Declaration dated May 18, 2004, and recorded at Volume 863, Page 642 of the Official Records of Kendall County, Texas.

WITNESSETH:

WHEREAS, Developer is the owner of that certain tract of land known as DIAMOND RIDGE, containing 852.70 acres of land situated in Kendall County, Texas, which has been platted as Lots 1-132 according to the Plat of Diamond Ridge recorded in Volume 4, Pages 264-271 in the Plat Records in the office of the County Clerk of Kendall County, Texas, on the 10th day of May, 2004, after having been approved as provided by law, and the Amending Plat filed for record at Volume 5, Pages 14-15, Plat Records of Kendall County, Texas; and,

WHEREAS, 668.39 acres out of said 852.70 acres has been subdivided into Lots 3-132 and streets according to said Plat;

WHEREAS, said Lots 3-132 and said streets are collectively hereinafter referred to as the "Property" or the "Subdivision"; and,

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

WHEREAS, Declarant wants to identify and describe the additional property which may be incorporated within the scheme of this Declaration, as well as land that may be withdrawn from the Subdivision; and,

WHEREAS, Declarant desires to create and carry out a uniform plan for the Improvements, development and sale of the Property for the benefit of the present and future owners of the Property;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the Property, save and specifically excepting Lot 1, containing 3.2 acres, and Lot 2, containing 181.0 acres (which Lots 1 and 2 are shown on said Plat of Diamond Ridge recorded in Volume 4, Pages 264-271 in the Plat Records in the office of the County Clerk of Kendall County, Texas), shall be held, sold, conveyed and

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

## ARTICLE I DEFINITIONS

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

1.1 Architectural Control Committee. "Architectural Control Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property.

1.2 Articles. "Articles" shall mean the Articles of Incorporation of the Diamond Ridge Property Owners Association, which shall be filed in the office of the Secretary of State of Texas, and as from time to time amended.

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

1.4 Association. "Association" shall mean and refer to Diamond Ridge Property Owners Association, a Texas non-profit corporation, its successors and assigns. Notwithstanding anything herein to the contrary, the Diamond Ridge Property Owners Association shall consist of members from all units within the Diamond Ridge development, unless otherwise determined by Declarant.

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

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

1.7 Common Area. "Common Area" shall mean that portion of the Property owned by the Association for the common use and enjoyment of the Members of the Association and for the use and enjoyment of the Developer and the owner, guests and invitees of Lot 1 and Lot 2 of the Property, including but not limited to, all parks, recreational facilities, community facilities, pumps, landscaping, sprinkler systems, pavement, streets (to the extent not owned by appropriate governmental authorities), walkways, parking lots, pipes, wires, conduits and other public utility lines situated thereon (to the extent not owned by appropriate governmental authorities or by local utility companies). The Common Areas to be owned by Association shall include (i) those areas of land shown on any recorded plat, or its equivalent, of the Property or any

portion thereof filed or approved by Declarant and identified thereon as "Amenity Area"; (ii) the unpaved and landscaped areas of the right of way for any road within the Subdivision; and (iii) those areas of land and Improvements thereon deeded to the Association by Declarant.

1.8 Declarant. "Declarant" shall mean Blanch Double Diamond Development Corp. a Texas Corporation, its duly authorized representative or their respective successors or assigns; provided that any assignment of the rights of Blanch Double Diamond Development Corp., as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declaration shall not be sufficient to constitute an assignment of the rights of Declarant hereunder. Declarant shall also mean Developer.

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

1.10 Design Guidelines. "Design Guidelines" shall mean the criteria and guidelines established by the Architectural Control Committee for the construction of landscaping Improvements and commercial development Improvements within the Property.

1.11 Development. "Development" shall mean the Subdivision as defined herein.

1.12 Diamond Ridge Restrictions. "Diamond Ridge Restrictions" shall mean collectively (i) this Declaration, together with any and all Supplemental Declaration, as the same may be amended from time to time, (ii) the Plat of Diamond Ridge, (iii) the Diamond Ridge Rules, (iv) the Design Guidelines, and (v) the Articles and Bylaws from time to time in effect, as the same may be amended from time to time.

1.13 Diamond Ridge Rules. "Diamond Ridge Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

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

1.15 Lot. "Lot" or "Lots" shall mean any tract, piece, parcel or parcels of land within the Property shown, designated and/or identified as such on a Plat of the Property, together with all Improvements located thereon.

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

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

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

1.19 Owner. "Owner" or "Owners" shall mean and refer to a person or persons, entity or entities, excluding Declarant unless otherwise provided herein, and Mortgagee, holding a fee simple interest in all or any portion of the Property, but shall not include a Mortgagee holding equitable interest in said Property only as a lien holder.

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

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

1.22 Plat. "Plat" shall mean a final subdivision plat of any portion of the Property.

1.23 Subdivision. "Subdivision" shall mean and refer to Diamond Ridge, and such other property within the Development, which has been subdivided and shown on a map or plat recorded in the Map and Plat Records of Kendall County, Texas, and brought within the scheme of this Declaration in accordance with the provisions of Article II of this Declaration.

1.24 Supplemental Declaration. "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded hereafter in order (i) to incorporate additional property into the Development, (ii) to subject any area of the Property to further covenants, conditions or restrictions, or (iii) to withdraw land from the Property.

## ARTICLE II ADDITIONS TO THE PROPERTY

### 2.1 Phased Subdivision.

(A) Incorporation and Withdrawal. The Declarant, its successors and assigns, shall have the right at any time prior to January 1, 2019, to (i) annex or incorporate within the scheme of this Declaration additional phases of the Development (a) following the acquisition of such property, or (b) with the consent of the record owner of other properties; or (ii) withdraw any property from the Subdivision, without the consent or approval of any third party, including the Owners of any Lots.

(B) Filing Supplemental Declarations. To evidence the incorporation or annexation of additional property, or the withdrawal of property, Declarant shall record an affidavit, which shall state that the property has been incorporated, annexed or withdrawn.

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

### ARTICLE III GENERAL RESTRICTIONS

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

3.01 Single Family Residential Construction. Except as provided below, no building shall be erected, altered, placed or permitted to remain on any Lot other than one dwelling unit per each Lot to be used for single-family residential purposes. All residences must have at least a two (2) car garage. However, no residence shall have more than a five (5) car garage. Garage door openings must face side or rear lot lines. Detached garages and/or any outbuildings must be constructed during or after the main dwelling is constructed. No carports are allowed. All Improvements must be approved in writing, prior to being erected, altered or placed on the Property. The term "dwelling" does not include manufactured, mobile, or prefabricated homes regardless of whether the same are placed upon permanent foundation, and said homes are not permitted within the Subdivision. All dwellings must have at least two thousand seven hundred (2,700) square feet of living area for one story homes, and three thousand (3,000) square feet of living area for two story homes, with at least one thousand six hundred (1,600) square feet on the ground floor and must be built of new construction material. Living area does not include porches, breezeways, or garages. The foundation of the main dwelling can be concrete slab, or a combination of concrete slab and piers. All piers must be constructed of concrete and rebar. No more than three (3) feet of any concrete slab may be left exposed. The dwelling must not exceed forty (40) feet in height, measured from the highest elevation of virgin soil. There is no restriction determining when a dwelling must be started, but once said dwelling, outbuilding, structures or Improvements are commenced on any Lot, they shall be completed as to the exterior finish and appearance within nine (9) months of the commencement date. Barring exceptions listed below, all garages, including detached garages, and outbuildings will be of the same general construction and exterior finish as the main

dwelling, and located on the Lot according to the Architectural Control Committee approved building site plan. No detached garages and outbuildings will exceed twenty five (25) feet in height from the highest elevation of virgin soil. Each Lot will be limited to no more than one (1) outbuilding per two and one half (2.5) acres, and a maximum of three (3) outbuildings on any Lot, unless the owner shall have first secured a variance pursuant to Section 5.8 hereof. Outbuildings would include a barn, storage building, green house, workshop, well house, gazebo, cabana or pavilion. Lots 37 through 40 may have a metal barn provided said barn is of new quality construction. The size, color, and location of said barn must be approved by the Architectural Control Committee. Lots 126 through 130 may have a metal barn provided that the construction and location of said barn is approved by the Declarant.

3.02 Location of Improvements upon the Lot. No building of any kind shall be located on any Lot nearer than twenty five (25) feet to the side Property line, no nearer than fifty (50) feet to the front Property line and no nearer than seventy five (75) feet to the rear Property line, provided however, as to any Lot, the Architectural Control Committee may waive or alter any such set-back line, if the Architectural Control Committee in the exercise of the Architectural Control Committee's sole discretion, such waiver, or alteration is necessary to permit effective utilization of a Lot. Any such waiver or alteration must be in writing and recorded in the Official Public Records of Kendall County, Texas.

3.03 Use of Temporary Structures. No structure of a temporary character, whether trailer, motor home, basement, shack, garage or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently, except as provided below. No Lot shall be used as a camping ground. After the dwelling is complete, an RV camper or motor home may be stored on the Lot provided it is stored in compliance with Section 3.17 of these restrictions. The Declarant or the Architectural Control Committee shall have the right to have any RV camper or motor home found to be in violation of these restrictions removed and stored at the expense of the owner; and, for these purposes Declarant and/or a representative of the Architectural Control Committee is granted express written consent to remove the same without penalty or offense. Homebuilders may have the option of erecting a job-site trailer during construction of the dwelling on a Lot. The location, size, and design of such trailer is subject to written approval by the Architectural Control Committee. Once the dwelling is complete, the job-site trailer shall be removed.

The Developer reserves the right to erect, place and maintain a mobile home, camper, or motor home in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other Improvements within the Subdivision. The Developer is not restricted by any of the above time constraints in this provision.

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

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

3.06 Exterior Masonry. The exterior walls of the main residence constructed on any Lot shall be at least eighty five (85) percent masonry, or masonry veneer, excluding window and door openings. Masonry or masonry veneer includes stucco, ceramic tile, clay and stone. Brick exterior walls shall not be allowed, however brick may be used for accent purposes. Concrete siding material, like Hardy Plank, is not allowed. The exterior of all chimneys shall be one hundred (100) percent masonry of a type and color matching the exterior walls of the dwelling.

3.07 Roofing Materials. The roof surface of all principal and secondary structures including residences, garages and outbuildings shall be of slate, stone, concrete tile, clay tile, or other tile of a ceramic nature, dimensional composition shingles with a thirty five (35) year or more guarantee, or they may be metal, left natural or painted a color approved by the Architectural Control Committee, using standing or battened seams. The Architectural Control Committee shall have the authority and sole discretion to approve other roof treatments and materials if the form utilized will be harmonious with the surrounding homes and Subdivision as a whole.

3.08 Colors. All exterior colors of any structures must be natural or earth tones and must compliment the surrounding landscape. The Architectural Control Committee may, in its sole discretion, approve other color schemes so long as such colors compliment the subdivision.

3.09 Model Homes. Notwithstanding anything herein contained, Builders shall be allowed to construct model or speculative homes so long as such model or speculative home conforms to these restrictions.

3.10 Walls, Fences and Gates. Walls, fences and gates, if any, must be approved prior to construction by the Architectural Control Committee. The maximum height of any fence shall be six (6) feet. Unless otherwise approved by the Architectural Control Committee, all fences must be constructed of metal, masonry, masonry veneer, wrought iron, steel or a combination thereof. Barbed wire and chain link fencing shall not be permitted. All metal, steel and wrought iron fences shall be painted with a black finish. Pipe fencing is allowed as follows; the fence posts shall consist of two and three eighths inch (2-3/8") drill stem pipe with ten foot (10') spacing. A single top rail consisting of the same size pipe will be placed on top of the line posts. The area between the posts shall be a solid-lock high-tensile wire or ranch panel welded to the vertical pipe and top rail. All piping must be painted black with panels and/or solid-lock high-tensile wire left in its natural galvanized color. All walls, fences, and gates must be maintained in good condition.

3.11 Antennas, Towers and Satellite Dishes. Antennas, towers or satellite dishes of any kind are permitted, provided it shall not exceed five (5) feet above the roof of the dwelling if attached to the dwelling, or five (5) feet above any outbuilding if attached to

an outbuilding. Any antennae, tower or satellite dish must be located to the side or rear of the dwelling or outbuilding and not within twenty five (25) feet of any side property line, fifty (50) feet of any front property line, or seventy five (75) feet of any rear property line. Nothing here shall be construed to conflict with the latest rules and regulations set forth by the Federal Communications Commission.

3.12 Light Pollution. Exterior lights such as those for security, safety, and decorative reasons are allowed provided all exterior lighting is hooded or the main beam of light is at no greater than a thirty (30) degree angle from the ground and not pointed toward or directed at any street or common element.

3.13 Noise Pollution. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security or public safety purposes) shall be located, used or placed on any Lot such that it becomes or will become clearly audible at the property line of adjoining property owners.

3.14 Prohibition of Offensive Activities. No activity, whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes, unless such activity meets the following criteria: (a) no additional exterior indication of activity is present, (b) it is the type of action that usually occurs in a home, (c) no additional traffic, that would be there normally, is created, and (d) nothing dangerous is present that should not be there. Nothing herein shall prevent a home office so long as the requirements of (a), (b), (c) and (d) above are met. This condition is waived in regards to the customary sales activities required to sell Lots or homes in the Subdivision. The discharge or use of firearms or bows and arrows by owners is expressly prohibited. Hunting, and the use of devices aiding hunting, is expressly prohibited unless the same shall be conducted for the purposes of animal control by or through the Association under the direction of a duly authorized governmental agency. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance from and after the Control Transfer Date.

3.15 Garbage. Garbage, trash and other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any property owner of this Subdivision is or may be created. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage and disposal of such material shall be kept in a clean and sanitary condition and out of sight from public roadways, except on pickup days.

3.16 Junk Motor Vehicles Prohibited. No Lot shall be used as a depository for abandoned or junk motor vehicles. No junk of any kind or character shall be kept on any Lot.

3.17 Trailers, RV's and Boats. All trailers, travel trailers, graders, recreational vehicles, boats, tractors, campers, wagons, buses, motorcycles, motor scooters and lawn and garden maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure.



3.18 Signs. No permanent or temporary sign(s) shall be constructed or placed upon any Lot covered by these Restrictions without prior written approval by the Architectural Control Committee. In the event a permitted sign is not properly maintained, the Architectural Control Committee may give the sign owner written notice thereof. Required repairs must be made within five (5) business days of notification by the Architectural Control Committee. The Architectural Control Committee shall have the right, but not the obligation, to have repairs made and charged to the property owner. Builders may erect a professionally made "Model Home", or "Custom Build on Your Lot" sign upon the purchase of a Lot. Each Lot a builder purchases may have one professionally made "For Sale" sign while the dwelling on said Lot is under construction. Professionally made does not include pre-made, store bought signs. All builder signs will be placed no closer than twenty five (25) feet to any front, side or rear property line. Notwithstanding the foregoing, the appearance, size and location of all builder signs must be acceptable to the Architectural Control Committee. No other real estate signs shall be allowed in the Subdivision including, but not limited to, for sale signs, sold signs, for lease signs, or for rent signs. This provision shall not apply to the Declarant so long as Declarant shall own a Lot in the Subdivision. Notwithstanding, however, nothing herein shall prevent the Association from establishing rules for permitting the celebration or recognition of Religious or National Holidays.

3.19 Animal Husbandry. Except as provided below, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats, or other household pets (excluding pigs), may be kept for domestic purposes. Dogs must be kept in a dwelling, kennel, dog run, or fenced area that confines such dog(s) to the area. Dogs will not be permitted to run loose in the Subdivision and must be kept on leash if outside of those confines mentioned above. Animal breeding operations will not be allowed in the Subdivision. Only Lots 37 through 40 and Lots 125-132, as designated on the Plat, shall be allowed one (1) horse per one and a half (1.5) acres of land.

3.20 Mineral Development. No commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

3.21 Drainage. No person or persons shall impair the natural established drainage patterns of streets, Lots, or roadway ditches. No creeks or natural drainage areas may be dammed, or water impounded, diverted or used for any purpose without the prior written consent of the Architectural Control Committee. Driveway culverts must be installed and will be of sufficient size to afford proper drainage of ditches without backing water up or diverting flow. Drainage culvert installation must meet County requirements.

3.22 Driveways. All driveways must be surfaced with concrete, concrete pavers, asphalt or any combination thereof. Driveways must be surfaced upon completion of the main dwelling unit.

3.23 Landscape. All new landscaping turf installed or planted must be Buffalo, Blue Grama, Zoysia or Bermuda grass. Other low water turf products will be considered and may be approved by the Architectural Control Committee. All requirements for specific types of turf are included in the restrictions to encourage water conservation practices. At time of completion of the main dwelling, all property from the rear line of the house to the street must be maintained as follows: (A) Grass, whether native or planted, is mowed on a regular basis when necessary and maintained at a height no greater than six (6) inches above the ground for native grass, and no greater than three (3) inches above the ground for all other grasses. (B) Any existing ash juniper, or more commonly called cedar, must be cleared if the trunk is less than six (6) inches in diameter with the only exception being a fifteen (15) foot row of cedar, which may remain at lot boundaries for privacy. (C) Gravel or rock landscaping, which does not include walkways, must make up no more than twenty five (25) percent of the total area.

3.24 Re-subdivision. No Lot shall be re-subdivided or split unless approved by Kendall County, so long as the density of the Diamond Ridge Subdivision does not drop below the minimum requirements set forth by Kendall County and the Cow Creek Water District. Notwithstanding, Developer reserves the right to re-subdivide any Lot. Lots or portions of Lots may be combined into one Lot for building purposes and the interior common boundary line shall be extinguished by filing a recordable document of record, joined by the Declarant, or Architectural Control Committee, declaring the same to be extinguished so long as all resulting Lots are larger than the original Lots. Thereafter, all setback lines shall refer to the exterior property lines. After approval, each of such combined Lots shall be considered as a single Lot for assessment purposes. Public utility and drainage easements are exempt from this provision.

3.25 Propane Storage. All Propane tanks shall be buried below the ground level and shielded from view of third parties insofar as may be possible giving due consideration to servicing the same in accordance with standard safety requirements.

#### ARTICLE IV DIAMOND RIDGE PROPERTY OWNERS ASSOCIATION

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

4.2 Membership. Every person or entity who is a record Owner of a fee or undivided fee interest, including contract buyers, in any Lot which is subject, by covenants of record, to Assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from any ownership of any Lot, which is subject to assessment,

by the Association. Ownership of such Lot shall be the sole qualification for membership. Any Mortgagee or Lien holder who acquired title to any Lot, which is a part of the Property through judicial or non-judicial foreclosure, shall be a Member of the Association. It is understood that the Development may be developed in phases or sections, and upon the completion of development of each individual section or phase by Declarant, such completed section or phase or any part thereof shall, at the option and election of Declarant, be incorporated within the scheme of the Declarant and become bound hereby and a part hereof, which incorporation shall be evidenced by the filing of the Supplemental Declaration. Each Lot shall only have one vote regardless of the number of owners.

4.3 Voting Rights. The Association shall have one class of voting memberships.

4.4 Powers and Authorities of the Association. The Association shall have the powers of the Texas Nonprofit Corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the Laws of Texas or of the two (2) preceding sentences. The Association, and the Board, acting on behalf of the Association, shall have the power and authority at all time as follows:

(A) Diamond Ridge Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Diamond Ridge Rules and Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions. The Bylaws may provide that a director or the chairman of the Board may be compensated for their service if approved by a majority of the Board.

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

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

(D) Assessments. To levy assessments as provided in Article VI below. An assessment is defined as that sum which must be levied in the manner and against the property set forth in Article VI hereof in order to raise the total amount for which the levy in question is being made.

(E) Right of Entry and Enforcement. To enter at any time in an emergency (or in the case of non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon, excluding a completed dwelling used as a single family residence, for the purpose of enforcing the Diamond Ridge Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Diamond Ridge Restrictions, and the expenses incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and upon the Improvements thereon, and shall be enforced in the same manner and to the same

extent as provided in Article VI hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of the Diamond Ridge Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action, as it may deem necessary or expedient to enforce the Diamond Ridge Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

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

(G) Collection for Association. The Board shall have the authority to collect on behalf of and for the accounting of the Association (but not to levy) any assessment made by such Association created pursuant to this Declaration. The Association, upon a majority vote, may direct the Board to collect a Lot Transfer Fee equal to the then current regular annual Assessment on a Lot in the event title to any Lot is transferred during any calendar year. This Fee is designed to compensate for the cost of maintaining proper records of the Association.

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

- (1) Parks, parkways or other recreational facilities or structures;
- (2) Roads, streets, walks, driveways, trails and paths;
- (3) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (4) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (5) Any similar public, quasi-public or private Improvements or facilities; provided, however, that the Association shall not convey fee simple title in and to, or mortgage all or any portion of any Common Areas without the consent of at least sixty-seven (67%) of the Owners (provided however, this provision shall not restrict Developer prior to the Control Transfer Date and for this purpose, Owners as defined herein and used in this subsection (5) shall not include Declarant).

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

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

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

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

(L) Construction on Association Property. To construct new Improvements or additions to Common Areas, subject to the approval of the Architectural Control Committee as provided in this Declaration.

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

(N) Property Ownership. To acquire and own and, subject to the provisions of Section 4.4 (H), to dispose of all manner of real and personal property whether by grant, lease, gift or otherwise.

4.5 Maintenance and Landscape Authority. The Association shall maintain all streets and roadways within the Property, which have been completed but not accepted by the appropriate governmental entity for maintenance. In addition, the Association shall be authorized to landscape, maintain and repair all easements, access easements, right-of-ways, median strips, sidewalks, paths, trails, detention ponds and other areas of the Property as appropriate. The Association shall maintain all Common Areas dedicated to the Association for maintenance, by or with the consent of Declarant. The Association shall also maintain any landscaped medians and boulevard areas, not fronting lots, located in the public right-of-way.

4.6 Lighting. The Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain the lighting within and on street right-of-ways and Common Areas.

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

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

(B) To construct, maintain, repair and replace landscape improvements and irrigation systems within public right-of-ways pursuant to agreement(s) with the County of Kendall or other appropriate governmental authority.

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

(D) Upon the approval of two-thirds (2/3rds) of the Owners, (excluding Declarant), to (i) execute mortgages, both construction and permanent, for construction of facilities, including improvements on property owned by or leased to the Association. Or (ii) accept lands in Common Areas, whether or not improved, from Declarant either subject to mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether the borrower is Declarant or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien as shall be deemed appropriate by borrower, whether Declarant or the Association, on the Improvement or other facility to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees or Assessment paid by the members of the Association, as the case may be, but subject to the limitations imposed by this Declaration.

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

4.8 Indemnification. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was director, officer, committee member, employee, servant or agent of the Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association, and (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceedings by settlement, or upon a plea of Nolo Contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association, against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

#### ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

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

5.2 Membership of Architectural Control Committee. The Architectural Control Committee shall consist to not less than three (3) nor more than seven (7) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as Declarant or its successors or assigns deems appropriate. A member of the Architectural Control Committee may be compensated for their service upon a vote of a majority of the Committee.

5.3 Actions of the Architectural Control Committee. The Architectural Control Committee may, by resolution, unanimously adopted in writing, designate one or two (2) of its members as an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Control Committee. In the absence of such designation, the vote of a majority of all the members of the Architectural Control Committee taken without a meeting shall constitute an act of the Architectural Control Committee. The Architectural Control Committee shall keep written records of all votes taken on acts of the Committee.

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

5.5 Term. At such time as ninety percent (90%) of all the Lots in all units of Diamond Ridge, including areas provided for under Article II hereof, are conveyed by Declarant (from time to time hereafter referred to as the "Control Transfer Date"), the Declarant shall cause an instrument transferring control of the Association and its function and the control over the Architectural Control Committee to be placed of record in the Official Public Records of Kendall County, Texas (which instrument shall include the Control Transfer Date, and shall appoint not less than three (3) members to form the Initial Architectural Control Committee. Developer shall have and exercise sole control of and over the Association and its functions and the Architectural Control Committee until control thereof shall have been transferred to the Association as above provided. Thereafter, annually the Board shall appoint at least three (3) members and not more than seven (7) members. The Board may provide for staggered terms for such members for terms not exceeding four (4) years. Additionally, the Declarant shall have the right to discontinue the exercise of architectural control privileges and arrange for the transfer to the Association at any time prior to the Control Transfer Date by filing a statement and instrument to such effect in the Official Public Records of Kendall County, Texas.

5.6 Adoption of Rules. The Architectural Control Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to, a building code, a fire code, a housing code and other similar codes as it may deem necessary and desirable. The Architectural Control Committee may establish a fee to be paid by an applicant upon application for approval of any Plans and Specifications, provided that such fee may not exceed \$500.00 per application unless otherwise approved by a majority of the Board of the Association.

5.7 Review of Proposed Construction. Whenever in this Declaration, or in any Supplemental Declaration, the approval of the Architectural Control Committee is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in question and all other relevant facts and information and may require an Owner to provide such other information as is relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefore shall be submitted to the Architectural Control Committee, and construction thereof may not commence unless and until the Architectural Control Committee has approved such Plans and Specifications in writing. The Architectural Control Committee shall approve or disapprove any plans in accordance with these restrictions within thirty days from the date of the submission of such plans. The Architectural Control Committee may postpone review of the Plans and Specifications until such time as the Architectural Control Committee has received all requested and necessary information so long as the Architectural Control Committee requests such information within ten days from the submission of the Plans and Specifications. If the Architectural Control Committee has not issued its approval or disapproval within thirty days from the date all information is received, the Plans and Specifications shall be deemed approved. The Architectural Control Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties



assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Control Committee. The Architectural Control Committee shall not be responsible for reviewing or approving any proposed Improvements, nor shall its approval of any Plans and Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness or conformance with building or other codes.

5.8 Variances. The Developer or, if applicable, the Architectural Control Committee, may, on a case by case basis, authorize variances from compliance with any of the provisions of either (i) this Declaration, or (ii) the minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Developer or the Architectural Control Committee. Notwithstanding, after the Control Transfer Date, both the Developer and the Architectural Control Committee shall have the right to grant a variance from the Building set-back line restrictions. Either party may grant this variance, as it determines in its sole discretion is needed, without the consent of the other. Such variances must be evidenced in writing and shall become effective when signed by the Developer or by at least a majority of the members of the Architectural Control Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

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

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

5.11 Certificate of Compliance. Upon completion of any Improvement approved by the Architectural Control Committee and upon written request by the Owner of the Lot, the Architectural Control Committee shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the Architectural Control Committee pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval of the Improvements by the Architectural Control Committee, either structurally or in

conformance with any code, standard or otherwise, or that the Architectural Control Committee actually reviewed or considered the Improvements or the workmanship or material used therein.

The Owner is specifically hereby notified that the Certificate in no way warrants the sufficiency, acceptability or approval by the Architectural Control Committee of the construction, workmanship, material and/or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the improved Lot.

## ARTICLE VI FUNDS AND ASSESSMENTS

### 6.1 Assessments.

(A) Assessments established by the Board pursuant to the provisions of this Article VI shall be levied on a uniform basis against each Lot within the Property. Notwithstanding, Developer shall not be required to pay assessments on any Lot owned by Developer. Notwithstanding any other provisions hereof, any Lot Owner who owns more than two (2) Lots may, not less than thirty (30) days prior to the establishment of any Assessment allowed hereunder, petition the Board to limit such Owner's Assessment as if such Owner only owned Two (2) Lots in the Subdivision. The Board must approve such petition by a majority vote or the petition is denied and the Owner shall pay such Assessment as levied against all Lots owned by such Owner.

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

(C) Where the obligation to pay an Assessment first arises after the commencement of the year or other period, for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose to the duration of the Assessment year or other period remaining after said date.

6.2 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

6.3 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Diamond Ridge Restrictions, including but not limited to the cost of all maintenance, the cost of providing street lighting, the cost of enforcing the Diamond Ridge Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves less any excepted income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then

be levied as herein provided, and the level of Assessment set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. The initial Assessment for the year 2004 will be determined by the Developer. However, in no event shall the regular Assessment per Lot for the year 2004 exceed the sum of \$900.00. Thereafter, the regular Assessment permitted hereunder shall not be increased by more than ten percent (10%) per year.

6.4 Owner's Personal Obligation for Payment of Assessments. The regular Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such Assessments, secured by the contractual lien provided for in Section 6.5 hereof. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest on the amount of the Assessment from the due date at a percentage rate of six percent (6%) per annum, together with all costs, and expenses of collection, including reasonable attorney's fees.

6.5 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure, pursuant to the provisions of Sections 51.002 and 209 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection with such statute. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of Sections 51.002 and 209 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of written instrument executed by the President or any Vice-President of the Association and filed for record in the Official Public Records of Kendall County, Texas. In the event that the Association has determined to non-judicially foreclose the lien pursuant to the provisions of said Sections 51.002 and 209 of the Texas Property Code and to exercise the power of sale hereby granted, the Association, or the Association's agent, shall give notice of foreclosure sale as provided by the Texas Property Code as then amended. Upon request by Association, the Trustee shall give any further notice of foreclosure sale as may be required by the Texas Property Code as then amended, and shall convey such Lot to the highest bidder for cash by Deed. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Subject to Section 209 of the Texas Property Code, following any such

foreclosure, each occupant of any such Lot foreclosed on and each occupant of any Improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in action of forcible detainer and the issuance of a writ of restitution there under. In the event of non-payment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien and exercising the remedies provided, upon ten (10) days prior written notice to such non-paying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 6.5 to comply with the provisions of Sections 51.002 and 209 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of Sections 51.002 or 209 of the Texas Property Code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Official Public Records of Kendall County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 or 209 of the Texas Property Code.

6.6 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Lot against which the lien is claimed and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured hereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

6.7 Liens Subordinate to Mortgages. The lien described in this Article VI shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or any other third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or Improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof, including any home equity loans. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Lot which accrued prior to the time such holder acquired title to such Lot. No such sale or transfer shall relieve such holder from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot

shall not affect the Association's lien for Maintenance Charges or other charges or assessments. The Association shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of lien described in Section 6.5 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VI.

## ARTICLE VII EASEMENTS

7.1 Reserved Easements. All dedications, limitations, restrictions and reservations shown on a Plat and all grants and dedications of easements, right-of-ways, restrictions and related rights, made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in, and additions to, the said easements and right-of-ways for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve, otherwise create, at any time or from time to time, right-of-ways and easements for public utility purposes (including without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of ten (10) feet on each side of such Lot line.

7.2 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the easement area affecting the Property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water (if any), sewer (if any), gas (if any), cable television, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no sewer, electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Control Committee. Additionally, it shall be expressly permissible for the utility companies and other entities supplying service to trim overhanging trees and shrubs which are located on portions of the Property abutting such easements, in the event it shall be determined that such overhanging limbs and shrubs shall interfere with the maintenance of the underground utilities.

7.3 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Control Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent in any drainage easement, except as approved in writing by the Architectural Control Committee and the Kendall County Engineer's Office in Boerne, Texas.

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

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

7.6 Common Areas. Each Owner shall have an easement of use and enjoyment in and to all Common Areas which shall be appurtenant to and shall run with title to such Owner's Lot, subject to the following restrictions:

(A) The right of the Association to suspend the Owner's voting rights and right to use the Common Areas for any period, during which any Assessment against such Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Association;

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

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

(D) The right of the Association to make reasonable rules and regulations regarding the use of the Common Areas and any facilities thereon; and

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

#### ARTICLE VIII MISCELLANEOUS

8.1 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until January 1, 2019, unless amended as herein provided. After January 1, 2019, this Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least three-fourths (3/4ths) of the Lots within the Property then subject to this Declaration.

8.2 Non-liability of Board and Architectural Control Committee Members. Neither the Architectural Control Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way, manner or form connected with the performance of the Architectural Control Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Control Committee or its members or the Board or its members, as the case may be. Neither the Architectural Control Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

#### 8.3 Amendment.

(A) By Declarant. This Declaration or any Supplemental Declaration may be amended by the Declarant acting alone until August 1, 2009, or until Declarant shall have transferred control of and over the Association and its functions and the Architectural Control Committee to the Association as provided in Section 5.5 in the Association, whichever occurs last. No amendments by Declarant after August 1, 2009, shall be effective until there has been recorded in the Official Public Records of Kendall County, Texas, an instrument approved, executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Board certifying that the Declarant had the requisite number of votes. Notwithstanding the foregoing, Declarant may unilaterally amend this Declaration at any time (i) to correct typographical and grammatical errors, oversights, ambiguities and/or inconsistencies, provided that any such Amendment shall not impair or adversely affect the vested property, or other rights of any Owner or his mortgagee, or (ii) in order to comply with VA or FHA requirements for approval of the Property.

(B) By Owners. In addition to the method in Section 8.3(A), after the latter of August 1, 2009 or the Control Transfer Date, this Declaration may be amended by the recording in the Official Public Records of Kendall County, Texas, and instrument

approved and executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least eighty percent (80%) of the number of votes to be cast pursuant to Section 4.2 hereof.

8.4 Notices. Any notice permitted or required to be given this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

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

8.6 Mergers and Consolidations. Subject to the provisions of Article 2.2 hereof, the Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger, consolidation or annexation shall have the consent (in writing or at a meeting duly called for such purpose) of those Members entitled to cast not less than two-thirds (2/3rds) of the votes of the Association.

8.7 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Control Committee. Without in any way limiting the generality of the preceding sentence, it is specifically provided that this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities to construct any and all other types of Improvements anywhere within the Property, specifically including, but not limited to, Lot 1 and Lot 2 of the Property. However, the construction of sales and leasing offices and the posting of signs advertising the sale and leasing of Lots by Declarant shall be limited to Lots owned by the Declarant.

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



#### 8.9 Enforcement and Nonwaiver.

(A) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant and/or the Board shall have the right to enforce any or all of the provisions of the Diamond Ridge Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against the breach of any such provision.

(B) Nonwaiver. The failure to enforce any provision of the Diamond Ridge Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

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

8.10 Right of Way and Easement. In addition to the rights set forth in Article II hereof, Declarant hereby reserves the right and option to establish a perpetual, nonexclusive easement and right of way over and across all platted roadways upon the Development for the purpose of providing vehicular and pedestrian access and utility services to adjoining or neighboring lands developed in the future by Declarant. Said easement and right of way shall be for the benefit of Declarant and its successors and assigns.

#### 8.11 Construction.

(A) Restrictions Severable. The provisions of the Diamond Ridge Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

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

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

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this the 22 day of December, 2005.

BLANCH DOUBLE DIAMOND DEVELOPMENT  
CORP.

By: Edgar W. Blanch, Jr.  
EDGAR W. BLANCH, JR., President

THE STATE OF TEXAS  
COUNTY OF Kendall

This instrument was acknowledged before me on this the 22<sup>nd</sup> day of December, 2005, by EDGAR W. BLANCH, JR., President of BLANCH DOUBLE DIAMOND DEVELOPMENT CORP., a Texas Corporation, in the capacity therein stated, on behalf of said Corporation.

Mary Margaret C. Clamp  
NOTARY PUBLIC, STATE OF TEXAS



STATE OF TEXAS  
COUNTY OF KENDALL

I hereby certify that this instrument was filed in File Number Sequence on the date and at the time stamped hereon and was duly recorded in the Official Records of Kendall County, Texas on:



DEC 23 2005  
DARLENE HERRIN, County Clerk  
Kendall County, Texas

By: [Signature] Deputy

Filed for Record in:

Kendall County  
Darlene Herrin  
County Clerk

On: Dec 22, 2005 at 04:04P

Document Number: 00203889  
Total Fees : 111.00

Receipt Number - 82606  
By Deputy: Paula Pfeiffer

This Document has been received by this Office for Recording into the Official Public Records. We do hereby swear that we do not discriminate due to Race, Creed, Color, Sex or National Origin.

ST