

DECLARATION FOR TWO CREEKS RECREATION CLUB

This Declaration is made by **Bitterblue/Two Creeks Phase 1, Ltd.**, a Texas limited partnership ("Declarant"), and joined in by **The Crossing at Two Creeks Homeowners Association, Inc.** ("The Crossing HOA"), for the purposes herein set forth.

Pursuant to the Two Creeks Master Declaration of Covenants, Conditions, Easements and Restrictions, recorded in Volume 11777, Page 887, Real Property Records of Bexar County, Texas ("Master Declaration"), Declarant provided for the establishment and creation of a Texas nonprofit corporation ("Recreation Club") for the ownership, operation and maintenance of a recreation center ("Recreation Center") for the benefit of the properties described in **Exhibit A** attached hereto (collectively, the "Property"), and any other properties subsequently annexed to the Master Declaration.

The Property is also subject to the terms of the Two Creeks-Unit 1 Declaration of Covenants, Conditions, Easements and Restrictions, recorded in Volume 11882, Page 1616, Real Property Records of Bexar County, Texas ("Unit 1 Declaration") or the Two Creeks-Unit 2 Declaration of Covenants, Conditions, Easements and Restrictions, recorded in Volume 11954, Page 1117, Real Property Records of Bexar County, Texas ("Unit 2 Declaration").

Declarant has established Two Creeks Recreation Club, Inc. and now desires to provide for the ownership, operation and maintenance of the Recreation Center, including the collection of assessments therefor as contemplated and provided for in the Master Declaration, the Unit 1 Declaration and the Unit 2 Declaration.

For the purpose of operating, administering, and funding the Recreation Center and its facilities, as contemplated and provided for in the Master Declaration, Declarant desires to subject all residential lots comprising the Property and the present and future owners thereof, and such additional portions of the Property and the Annexation Area as may be developed for residential purposes and annexed to the terms of this Declaration by instrument recorded in the Real Property Records of Bexar County, Texas, to the assessments and liens of the Recreation Club.

Declarant further desires to subject the Recreation Center described in **Exhibit B** attached hereto and incorporated herein to certain restrictions and standards as hereinafter set forth. The Recreation Center is currently owned by The Crossing HOA, and The Crossing HOA joins in this Declaration for the limited purpose of subjecting the Recreation Center to the terms, restrictions and conditions set forth herein. Upon recordation of this Declaration in the Real Property Records of Bexar County, Texas, The Crossing HOA will convey the Recreation Center to the Recreation Club by Deed without Warranty recorded in the Real Property Records of Bexar County, Texas.

NOW, THEREFORE, Declarant, joined by The Crossing HOA, declares that the Recreation Center shall hereafter be held, improved and used subject to the covenants and restrictions herein contained, and that all of the Lots comprising the Property and all

other Lots or property which are hereafter annexed to this Declaration, shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to all of the charges and liens hereinafter set forth and shall hereafter be subject to the jurisdiction and assessments of the Recreation Club on the terms and provisions herein stated.

1. **Definitions.** The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Annexation Area" means only those portions of the Annexation Area described in the Master Declaration developed for residential purposes.

(b) "Association" means each non-profit, corporate homeowners association formed for the Subdivisions and future single-family residential subdivisions which are developed in the Property or Annexation Area and which are annexed to the terms of this Declaration by Declarant.

(c) "Board" means the Board of Directors of Two Creeks Recreation Club, Inc., the election and procedures of which shall be as set forth in the Certificate of Formation and Bylaws of the Recreation Club.

(d) "Declarant" means Bitterblue/Two Creeks Phase 1, Ltd., its successors or assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of Declarant under this Declaration. Declarant shall have the right to assign all or any part of its rights and obligations under this Declaration to another entity by written instrument recorded in the Real Property Records of Bexar County, Texas, upon which event the term "Declarant" shall also mean and refer to such assignee.

(e) "Declaration" means this instrument and all, if any, amendments, annexations and supplements hereto made in accordance with the terms hereof.

(f) "Governing Documents" means this Declaration; the Certificate of Formation, Bylaws and rules adopted from time to time by the Recreation Club; and the Unit 1 Declaration, the Unit 2 Declaration, and any other declaration imposed on the Property or any portion thereof and hereafter recorded in the Real Property Records of Bexar County, Texas; as each such instrument is amended from time to time.

(g) "Improved Lots" means Lots on which a residence has been completed, and a closing of a sale thereof has taken place, or a Lot on which a living unit has been occupied as a residence, whichever first occurs. All other Lots other than Improved Lots are referred to herein as "Unimproved Lots."

(h) "Improvements" means every structure and all appurtenances thereto of every type, including but not limited to structures above and below ground, moveable structures, and personal property maintained on the Recreation Center for the use and benefit of members of the Recreation Club, including, without limitation and by way of

example only, a swimming pool, bath house, sport court, playground and equipment, walkways, parking lot, and other items. The enumeration of the foregoing is by example only and is not intended to be comprehensive nor shall it constitute a representation by Declarant or the Recreation Club of their intention to install anything more than a swimming pool within the Recreation Center.

(i) "Lot" means each separately numbered plot of land intended for, and capable of improvement by, a single-family residential house as part of the Subdivisions and such portion of the Property and Annexation Area as may be annexed to the terms of this Declaration by Declarant.

(j) "Master Declaration" means the Two Creeks Master Declaration of Covenants, Conditions, Easements and Restrictions for Two Creeks, recorded in Volume 11777, Page 887, Real Property Records of Bexar County, Texas, and all, if any, amendments, annexations and supplements thereto.

(k) "Member" means each member of the Recreation Club, each of whom shall be an Association. The initial Associations which are Members are identified on Exhibit C attached hereto and incorporated herein.

(l) "Mortgage" means any first lien mortgage or deed of trust covering any Lot.

(m) "Mortgagee" means the holder or holders of any Mortgage(s).

(n) "Owner" means the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

(o) "Person" means any individual, individuals, entity or entities having the legal right to hold title to the real property.

(p) "Project" means the development generally known as *Two Creeks* and which includes the Subdivisions.

(q) "Recreation Center" means the real property described in Exhibit B hereto, and all improvements now or hereafter situated thereon.

(r) "Single Family" means a group related by blood adoption, or marriage or a number of unrelated house mates equal to the number of bedrooms in a living unit.

(s) "Subdivisions" means each of the single-family residential subdivisions within the Property and the Annexation Area and which are subjected to the terms of this Declaration and to the jurisdiction and assessments for the Recreation Club.

2. Annexation.

(a) Initial Properties. The Initial property subject to the assessments and liens of the Recreation Club are the Lots within the Subdivisions identified on Exhibit A hereto.

(b) Future Properties. Declarant shall have the right to annex additional single-family residential subdivisions within the Property and Annexation Area (whether or not owned by Declarant) to this Declaration through the filing of an instrument in writing adopting the terms of this Declaration and clearly evidencing Declarant's intention to exercise such right. Upon such exercise of right of annexation, the Association(s) within such annexed Subdivisions shall become Members of the Recreation Club and the Owners of any Lots within the Subdivisions shall be subject to the assessments and liens of the Recreation Club, as provided herein. All such annexations by Declarant shall not require the consent of Members or the Recreation Club, provided the same are made within twenty-five (25) years from the date of this instrument. Notwithstanding the foregoing, Declarant shall not be bound to make any annexations to this Declaration.

(c) Other Additions. The Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction and assessments of the Recreation Club may make written submission therefor to the Recreation Club together with the following:

(1) The proposed property shall be described by size, location, proposed land use, and general nature of proposed private improvements.

(2) The proponent shall describe the nature and extent of common facilities to be located on the proposed property and fully describe any mortgage debt related to the common facilities or other debt which he seeks the Recreation Club to assume, if applicable.

(3) The proponent shall state that the proposed additions if made will be subjected to the general scheme of this Declaration and all Recreation Club assessments.

(4) Upon such submission, the Recreation Club shall vote on the proposal at a regular or special meeting of the Recreation Club. Two-thirds (2/3rds) approval of a quorum of the total votes of the membership shall be required for approval. If the proposed property shall be approved for addition to the jurisdiction of the Recreation Club, such addition shall be complete upon the proponent's filing of record in the Real Property Records of Bexar County, Texas an instrument in form and substance approved by the Board of Directors and signed by an authorized officer of the Recreation Club.

(d) Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw areas owned by Declarant, or permit the withdrawal of areas not owned by Declarant, from the Property or Annexation Area, and upon such withdrawal such areas shall no longer be subject to the unilateral annexation rights of Declarant to this Declaration and to the assessments and liens of the Recreation Club. Any such withdrawal shall be evidenced in writing clearly evidencing Declarant's intention to waive the foregoing annexation privileges herein reserved to Declarant.

3. **Property Rights.**

(a) **Title to Recreation Center.** All of the Recreation Center and Improvements thereon shall be owned by the Recreation Club. The conveyance of the Recreation Center to the Recreation Club may contain such reservations of rights and easements as Declarant may determine and the Recreation Club shall accept such conveyance. Such reservation of rights by Declarant may include, but are not limited to, easements anticipated in connection with development of surrounding or nearby property, the right of entry to enforce applicable covenants, the right to construct or install improvements after conveyance, and the right of architectural control and approval over all Improvements.

(b) **Members' Easements of Enjoyment.** Subject to the provisions of **subsections (c) and (d)** of this **Section 3**, every Owner of a lot within a Subdivision subject to the jurisdiction of an Association who is a Member shall have a common right and easement of enjoyment in and to the Recreation Center and such right and easement shall be appurtenant to and shall pass with the title to every such Lot.

(c) **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

- (1) The rights and easements existing or hereafter created in favor of others.
- (2) The right of the Recreation Club to regulate the hours and nature of use of the Recreation Center and Improvements by adoption of rules and regulations applicable to all Members and other users, if any, of the Recreation Center. This right shall include the right to reasonably restrict the use of the Improvements to certain classes of Owners or users during reasonable periods, such as for swimming lessons, swimming competitions, or adult only or children only periods or activities. The right of the Recreation Club to regulate use shall also include the right to suspend the privileges of use of Owners delinquent in paying the assessments of the Recreation Club and right of suspension of privileges of any Owner or other person who violates the rules and regulations governing the use of the Recreation Club and Improvements.
- (3) The right of the Recreation Club to borrow money for its operations or the construction or renovation of Improvements and to pledge as security for such borrowing all or part of the Recreation Center.
- (4) The right of the Recreation Club to enter into one or more contracts or agreements for the maintenance, management or improvement of the Recreation Center and Improvements.
- (5) The right of the Recreation Club to establish and collect fees for the use of the Improvements by guests of Owners and the right of the Recreation Club to rent the Improvements to Members and/or Owners for private parties or other approved activities.
- (6) The right of the Recreation Club to impose fines, and/or to maintain an action for amounts due to the Recreation Club, damages or injunctive relief.

4. **Recreation Club and Covenants for Assessments.**

(a) **Creation.** Declarant has or will take all steps necessary to create Two Creeks Recreation Club, Inc., which may elect to do business as Two Creeks Recreation Club.

Declarant may assign to the Recreation Club, on a permanent or temporary basis, one or more of the rights, powers, obligations and duties of Declarant under this Declaration.

(b) Membership and Voting. Every Association which has jurisdiction over any Lot which is subject to this Declaration and assessment by the Recreation Club shall be a Member of the Recreation Club. The initial Associations which are Members of the Recreation Club are identified on Exhibit C attached hereto and incorporated herein. Each Member shall be entitled to one (1) vote for each Lot in the Subdivision(s) over which they have jurisdiction and which are subject to this Declaration.

(c) Creation of Lien and Personal Obligation of Assessments. Declarant subjects and binds each of the Lots within the Subdivisions to pay, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay through the Association created in the Subdivision in which such Lot is a part, for the benefit of the Recreation Club, the following assessments (collectively, the "Assessments"): (1) annual assessments or charges ("Annual Assessments"), and (2) special assessments for capital improvements or extraordinary expenses ("Special Assessments"), such Assessments to be fixed, established, and collected from time to time as hereinafter provided. The Annual and Special Assessments, together with such late fees, interest thereon and costs of collection thereof including, but not limited to, court costs and reasonable attorneys fees, as are hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest and costs as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time the Assessment accrued, provided that such Assessment shall be payable by the Owner to the Association for such Subdivision. The personal obligation for delinquent Assessments shall not pass to the successors in title of any Owner unless expressly assumed by them; provided, however, in the case of Assessments assessed to any Association of a particular Subdivision, the obligation for delinquent Assessments shall pass to the successor or transferee of such Association and shall be the continued and independent obligation of such successor or transferee.

(d) Purpose of Assessments. The Assessments levied by the Recreation Club shall be used for the improvement, maintenance and operation of the Recreation Center and Improvements and for the administrative expenses of the Recreation Club, including the preservation and enforcement of the rights and obligations of the Recreation Club, its Members and Owners.

(e) Annual Assessments.

(1) In December of each year, the Board of the Recreation Club shall fix the amount of the Annual Assessment against each Lot for the following year and shall, at that time, prepare a roster of the Lots and Annual Assessments applicable thereto which shall be kept in the office of the Recreation Club and shall be open to inspection by any Member or Owner. Written notice of the Annual Assessment shall thereupon be sent to every Owner subject thereto.

(2) The Annual Assessments provided for herein shall commence as to all Lots on May 28, 2007. The Annual Assessment for the partial year 2007 shall be \$165.00 per Lot, subject to the adjustment for Unimproved Lots set forth in **Section 4(k)** herein. The Annual Assessment for the period from January 1, 2008 through December 31, 2008 shall be \$210.00 per Lot, subject to the adjustment for Unimproved Lots set forth in **Section 4(k)** herein. The Annual Assessment for each calendar year shall be collected annually in advance, unless the Board shall determine otherwise.

(3) For all Annual Assessments accruing on or after January 1 2009, the maximum Annual Assessment may be adjusted by majority vote of the Board but shall not be increased by more than ten percent (10%) above that of the previous year annual assessment rate without a vote of the Members. Any increase in the maximum Annual Assessment of more than ten percent (10%) above that of the previous year annual assessment rate shall require approval of two-thirds (2/3rds) vote of a quorum of Members voting at a meeting duly called for that purpose.

(f) Special Assessments. In addition to the Annual Assessments, the Recreation Club may levy, in any assessment year, a Special Assessment on Improved Lots only, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement which is a part of the Recreation Center, or to finance or defray the cost of any extraordinary expense of the Recreation Club, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of a quorum of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members and Improved Lot Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(g) Due Dates for Assessments. After the Board of the Recreation Club establishes the amount of the Assessments for the current year, it shall provide written notice of such amount to each Member at least thirty (30) days prior to the due date of any such Assessments as established by the Board. The Recreation Club shall, upon demand and for a reasonable charge furnish any Association or Owner a written confirmation, signed by an officer of the Recreation Club, stating whether the Assessments on specified property have been paid.

(h) Non-Waiver. The obligations contained in this Declaration, including without limitation, the obligation to pay Assessments, shall be deemed to be of a continuing and continual nature. Each and every day a Member or Owner is not in compliance with the requirements contained herein shall constitute a separate and individual violation hereof, and shall give rise to a new cause of action for such breach. The intended effect and express purpose of this provision shall be that every Member and Owner waives the affirmative defenses of a statute of limitations, waiver, and laches with respect to covenant violations. Failure of the Declarant or the Recreation Club, or of any Member or Owner, to enforce the terms of this Declaration shall in no event be deemed a waiver of the right to do so at any time thereafter.

(i) Continuing Lien. To secure the payment of Assessments and to ensure compliance with the applicable covenants, conditions, restrictions and easements set forth herein, each Owner, upon acceptance of his or her deed to a Lot governed by the Master Declaration and this Declaration, grants a continuing vendor's lien on such Lot,

together with the power of sale, to the Recreation Club, for so long as such covenants, conditions, restrictions and easements shall remain in effect. If a Member or an Owner fails to tender payment of Assessments when due or to perform any of the other obligations under this Declaration, the Recreation Club may perform those obligations, advance whatever funds may be required, and then be reimbursed by the Member or the Owner on demand for any sums so advanced, including attorney's fees, plus interest on those sums from the due dates to the dates of payment as herein provided, and the sum to be reimbursed shall be secured hereby.

If the Owner fails on demand to reimburse the Recreation Club for the sums advanced or for the Assessments owed, and such failure continues after the Recreation Club gives the Owner notice of the failure and the time within which it must be cured, as may be required by law or by written agreement, then the Recreation Club may institute a foreclosure sale of such Lot as provided by Section 51.002 et seq. of the Texas Property Code then in effect or any successor statute thereto. From and after any such foreclosure, the occupants of such Lot shall be required to pay a reasonable rent for the use of such Lot and such occupancy shall constitute a tenancy-at-sufferance. The purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice. It is the intent of the provisions of this Section to comply with the provisions of Texas Property Code Section 51.002 as may be amended hereafter, and, which amendment is applicable hereto. The President of the Recreation Club, acting without joinder of any Member, Owner or Mortgagee of any Member or Owner, may, by amendment to this Declaration filed in the office of the County Clerk of Bexar County, Texas, amend the provisions hereof so as to comply with said amendments to said Section 51.002. Any lien described herein shall be superior to all other liens and charges against any Lot covered hereby except only for tax liens and all sums secured by a first-priority Mortgage or deed of trust lien of record, securing in either instance sums borrowed for the purchase or improvement of the Lot in question.

(j) Collection of Assessments. Each of the Associations shall collect from the Owners and remit to the Recreation Club all Assessments due the Recreation Club, without cost to the Recreation Club for such collections. In such event, the Associations shall maintain true and correct records of account reflecting the payments of each Owner. However, any action filed to collect Assessments due the Recreation Club shall be brought by the Recreation Club, or in the name of the Recreation Club, against the Owner so indebted.

(k) Uniform Rate of Assessment. Each Lot subject to Assessment by the Recreation Club shall be assessed at a uniform rate as provided in this Section. Improved Lots, shall be subject to Annual and Special Assessments. Unimproved Lots shall be subject only to Annual Assessments and the Annual Assessment rate for Unimproved Lots shall be equal to twenty five percent (25%) of the Annual Assessment amount for Improved Lots established in accordance with Section 4(e) herein.

(l) Effect of Nonpayment of Assessments: Remedies of the Recreation Club.

(1) Any Assessment not paid by an Association within ninety (90) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, but in no event to exceed the maximum rate permitted under applicable law. Such Assessment shall include all costs and reasonable attorneys fees incurred by the Recreation Club to enforce and collect such Assessment. In the event of failure to pay such Assessments, the Recreation Club may do any or all of the following:

- (i) Bring an action at law against the Association obligated to pay the same; or
- (ii) To the extent the failure to pay any Assessment by the Association is a direct result of the refusal by any Owner to pay the assessments assessed by the Association for purposes of paying the Assessments of the Recreation Club, then the Recreation Club may (a) bring suit against the Owner in the name and place of the Association, at the sole cost of the Association, or (b) foreclose, on behalf of and in the name and place of the Association, at the sole cost and expense of the Association, on any lien created by the Subdivision declaration covering the Lot at issue or the lien created herein; or
- (iii) Exercise any other remedy at law or in equity.

The Recreation Club is not obligated to first serve notice of any kind on any party with respect to the taking of any such action or foreclosure described above. The rights and remedies of the Recreation Club hereunder are non-exclusive and shall not diminish the rights and remedies of an Association for any particular Subdivision to enforce any of the rights and remedies provided in the declaration for such Subdivision.

(2) The Recreation Club may levy a fine against an Owner or Member for a violation of the Governing Documents as permitted by law.

(3) If an Owner is delinquent in payment of any Assessment or in violation of the Governing Documents, the Recreation Club may suspend the Owner's rights under the Governing Documents in accordance with law until the violation is cured.

(4) An Owner is liable to the Recreation Club for damage to the Recreation Center and Improvements thereon caused by the Owner or the Owner's family, guests, agents, employees, independent contractors, and invitees in accordance with law.

(5) Notwithstanding the above, each Association will be entitled to assess the Owners in its respective Subdivision in the manner provided in the Subdivision declaration so long as (a) the particular Association has a means to assess and enforce the assessment for one hundred percent (100%) of the Recreation Club Assessment attributable to that Association, and (b) there is a mechanism for the Recreation Club to enforce the Assessment against an individual Owner if the Association fails to do so.

(6) Each Association, by virtue of its interest in any property comprising the Property, hereby expressly vests in the Recreation Club, or its agents, the right and power to bring all actions against such Association personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including judicial or non-judicial foreclosure by an action brought in the name of the Association by the Recreation Club in a like manner as a mortgage or deed of trust lien on real property, and the Association and each Owner hereby expressly grants to the Recreation Club a power of sale in connection with said lien. The lien provided for in the respective Subdivision declarations shall be in favor of the Association, but for the benefit of the Recreation Club and all other Owners.

(7) No Association, or individual Owner may waive or otherwise escape liability for the Assessments provided for herein by alleged nonuse of the Recreation Center or alleged nonuse or abandonment of the Owner's Lot. In the event the Recreation Club is forced to bring a legal proceeding to protect or enforce its rights hereunder or to collect any sums due hereunder, it shall be entitled to recover its reasonable attorney's fees from the violating Association or Owner.

(m) Subordination of the Lien to Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage(s) now or hereinafter placed upon the Lots subject to Assessment. The sale or transfer of any Lot shall not affect the Assessment lien; provided, however, that any Mortgage foreclosure, or any other proceeding in lieu of foreclosure, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve such Lot from liability for any Assessment thereafter becoming due, nor from the lien of any such subsequent Assessment.

(n) Exempt Property. The charges and liens created herein shall apply only to the Lots. Property owned by the Associations shall not be subject to the Assessments provided herein.

(o) Resubdivision and Consolidation of Lots. Each Lot created by virtue of a subdivision or consolidation of Lots made in accordance with the restrictive covenants for the Subdivision in which such Lot is located shall hereafter be subject to the Assessments provided herein as a single Lot.

(p) Assessments by Award or Judicial Decree. In the event arbitration or litigation is necessary to enforce the collection of any Assessment against a Lot, all awards granted by the court or arbitrator, or damages, penalties, fees, costs and/or any other charges awarded in the decree shall also constitute an Assessment against such Lot which shall likewise run with the ownership of the Lot and which shall have the same priority as the lien created herein.

(q) Maintenance Fund. The Board, for the benefit of the Members and Owners, shall establish and maintain a maintenance fund into which shall be deposited the Annual Assessments collected and which maintenance fund shall be used, without limitation, for the payment of the following:

(1) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Recreation Center and Improvements rather than against the individual Owners, if any.

(2) Care and preservation of the Recreation Center.

(3) Declarant's expenses in the management of the Recreation Club, including, but not limited to, reimbursement to Declarant for Declarant's costs of staff spent on Recreation Club matters.

(4) The services of a professional person or management firm to manage the Recreation Club, provided that any contract for management of the Recreation Club shall be terminable by the Recreation Club, with no penalty upon ninety (90) days prior written notice to the manager and the services of such other personnel as the Board or Manager may determine.

(5) Legal and accounting services.

(6) A policy or policies of insurance insuring the Recreation Club, its directors and officers against any liability to the public or to the Members and Owners (and/or invitees or tenants) incident to the operation of the Recreation Club in any amount or amounts as determined by the Board, and one or more policies of insurance insuring the property of the Recreation Club for the replacement or insurable value thereof.

(7) Workers compensation insurance to the extent necessary to comply with any applicable laws.

(8) Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

(9) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against any Member or individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration, or by law, or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

5. **Architectural Control.** Through and including January 1, 2017, no Improvement, as that term is defined in **Section 1** of this Declaration, shall be erected, constructed, placed, altered (either by addition or deletion), maintained or permitted to remain on any portion of the Recreation Center until plans and specifications, in such form and detail as the Declarant may deem necessary shall have been submitted to and approved in writing by Declarant.

Declarant shall have the absolute right and discretion in its determination to approve or disapprove any proposed Improvements or change to the Recreation Center. Declarant may disapprove a proposed Improvement, or alteration to an Improvement, purely on aesthetic grounds where, in its sole judgment, such disapproval is required to protect the harmony or values of the neighborhood or to preserve the serenity and natural beauty of any surroundings by preventing unusual, radical, uncommon, curious, odd, extraordinary, bizarre, peculiar or irregular external designs or appearances. Declarant and its representatives shall not be liable to the Recreation Club or any Member or Owner for the exercise of the functions, powers, and discretion provided hereunder. Declarant is not responsible for determining compliance with any applicable building code or other standards for construction but may, if it chooses, utilize such criteria in its review process. Declarant shall not be responsible for reviewing any plans or specifications from the standpoint of structural safety, engineering soundness, or conformance with building or other codes, nor shall Declarant's approval be deemed a verification of the structural safety, engineering soundness, or conformance of the Improvements to which said plans pertain to building or other codes.

All decisions of Declarant shall be final and binding, and there shall not be revisions of any action of Declarant except by procedure for injunctive relief when such action is patently arbitrary and capricious. In the event of construction of Improvements or threatened construction of Improvements in violation of this Declaration, any Member, Owner, or Declarant may seek to enjoin such construction or seek other relief against the Recreation Club, provided that the Recreation Club shall first be given written notice

of the perceived violation and the opportunity to remedy the violation prior to the filing of suit.

6. **Governmental Requirements.**

(a) **Compliance.** The Recreation Center and all Improvements thereon shall be constructed, maintained, and used in conformity with all applicable governmental regulations, rules and ordinances, including, without limitation, all building and zoning requirements. All activities of the Recreation Club and its Members, Owners and contractors shall comply with all applicable governmental regulations, rules and ordinances, including, but not limited to those promulgated or issued by the Environmental Protection Agency related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Page 41176 et seq.) and all regulations, rules, and determinations of the Texas Natural Resources Conservation Commission (TNRCC), including, without limitation, the provisions of Chapters 325 and 331, Texas Administrative Code.

(b) **Remedies of Declarant.** The Recreation Club agrees that Declarant shall have the right to enter upon the Recreation Center on which one or more conditions or activities prohibited by this Declaration or by appropriate governmental authority is maintained, or on which there has been a failure to perform any act required by appropriate governmental authority or this Declaration, for the purpose of curing any such violation, provided that the Recreation Club has been given five (5) days prior written notice and has failed to remedy the complained of violation within such time. The Recreation Club and the Members and each Owner hereby indemnify and hold harmless Declarant from all cost and expense of any such curative action undertaken by Declarant. The foregoing remedy shall be cumulative of all other remedies available to Declarant for violation of provisions of this Declaration.

7. **Easements.**

(a) **Recreation Center Plat.** The plat of the Recreation Center may create such easements, conditions and restrictions as Declarant deems appropriate, all of which shall be exceptions to the title to the Recreation Center conveyed to the Recreation Club.

(b) **Drainage and Utility Easements.** Drainage and/or utility easements may be established by Declarant upon or proximate to the Recreation Center (collectively, the "Easements"). If such Easements are established, the Recreation Club shall do no act or thing upon the Recreation Center which would divert, increase, accelerate or impede the flow of water over and across such Easements or otherwise interfere with the use of such Easements. More specifically, and without limitation, the Recreation Club shall not:

- (1) Alter, change or modify the existing natural vegetation or design of any Easements in a manner that changes the character of the design or original environment of such Easements; or

(2) Alter, change or modify the existing configuration of the Easements, or fill, excavate or terrace such Easements or remove trees or other vegetation therefrom without the prior written approval of Declarant; or

(3) Construct, erect or install a fence or other structure of any type or nature within or upon such Easement; provided, however, that fences may be permitted in the event the proper openings are incorporated therein to accommodate the flow of water over said Easement as determined by a qualified engineer and that Declarant and any appropriate agency and/or governmental authority authorizes the construction; or

(4) Permit storage, either temporary or permanent, of any type upon or within such Easements; or

(5) Place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the Easements, either on a temporary or permanent basis.

(c) Use of Easements. The surface of any Easement for underground utility services may be used for planting of shrubbery, trees, lawns or flowers and for paving of driveways, unless otherwise specifically prohibited by the plat, the utility or any other recorded Easement, but neither Declarant nor any utility service using any Easement shall be liable for any damage done by them or their respective agents, employees, servants or assigns, to any vegetation or other Improvements installed or maintained in or on any Easement.

(d) Access Easements. Declarant reserves for itself and each Easement owner a right of ingress or egress across, over, and under the Recreation Center for the purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, electricity, gas, and appurtenances thereto, or to exercise any lawful right herein reserved or as needed to reasonably exercise rights as an Easement owner, including the right to correct or remove any condition prohibited to be maintained under the terms hereof or such other instrument as may create the Easement.

(e) Emergency and Service Easements. An easement is hereby granted to police, fire protection, security, ambulance and other emergency and service vehicles to enter upon the Recreation Area in the performance of their duties, subject to all reasonable rules and regulations imposed by the Recreation Club.

8. Disclaimers. NO REPRESENTATIONS OR WARRANTIES ARE PROVIDED BY DECLARANT OR THE RECREATION CLUB WITH RESPECT TO THE RECREATION CENTER OR ANY PORTION THEREOF, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

(a) Conveyance "AS IS." The Recreation Center and Project lie within an area which may contain caves, sinkholes and/or other geological features. The conveyance of the Recreation Center to the Recreation Club will be by deed without warranty and will be "AS IS," "WHERE IS" and "WITH ALL FAULTS." The Recreation Club shall hold harmless and indemnify and unconditionally release Declarant, The Crossing HOA, and their respective partners, officers, directors, contractors, employees and agents from

and against any claims, costs, fees, expenses, damages or liabilities asserted by the Recreation Club or any Member, Owner, guest, employee, contractor, or other as a result of, arising out of, or related to any condition on, in, or under the Recreation Center, including, but not limited to, caves, sinkholes, drainage facilities, projectiles, and other dangerous objects.

(b) No representations or Warranties. Declarant and The Crossing HOA make no representations as to the physical condition, layout, footage, expenses, zoning, presence of any hazardous substance or endangered species, or any other matter affecting or related to the Recreation Center, or any other warranties, express or implied, of merchantability, marketability, fitness or suitability for a particular purpose or otherwise except as set forth and limited herein. Any implied warranties are expressly disclaimed and excluded.

(c) Security. No provision herein contained or referred to shall be construed as creating any warranty by Declarant or the Recreation Club that any safety precautions or security which may be provided by or paid for by the Recreation Club in its sole discretion, will not result in thefts, robberies, vandalism and/or personal injury or death, in or on the Recreation Center.

9. Miscellaneous.

(a) Assignment by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by writing filed of record referring to this Declaration by volume and page number, expressly 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. Upon assignment by Declarant of any or all of Declarant's rights, Declarant shall no longer be liable for performance of such assigned rights, provided that the assignee expressly assumes in the recorded assignment the obligations of Declarant that are assigned.

(b) Amendment. This Declaration may be amended until January 1, 2017, by written instrument executed by the Members representing ninety percent (90%) or more of the Lots subject to the Assessments and liens of the Recreation Club, upon recording of such written instrument in the Real Property Records of Bexar County, Texas, provided that until such date no amendment hereto shall be effective unless approved and executed by Declarant. After January 1, 2017, this Declaration may be amended in like manner by Members representing ninety percent (90%) of the Owners of residential Lots subject to the Assessments and liens of the Recreation Club but the approval and joinder of Declarant shall not be required after said date. Notwithstanding the foregoing, Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by any Member or Owner of Lots, or any interest therein, or any other party, for the purposes of correcting any error, omission, ambiguity or inconsistency appearing herein or for any reason whatsoever deemed necessary for the benefit of the overall *Two Creeks* development as determined by Declarant, in its sole

discretion. Said amendment shall be effective upon filing the said amended restrictions with the County Clerk of Bexar County, Texas.

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

(d) 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.

(e) Captions. 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 paragraphs, sections or Articles hereof.

(f) Enforcement. In addition to the remedies for enforcement provided for elsewhere in this Declaration or by law, the violation or attempted violation of the provisions of this Declaration, or any amendment hereto, or of any guidelines, rules, regulations, bylaws, or Articles of Incorporation herein referenced or permitted, by any Member, Owner, his family, guests, lessees or licensees shall authorize Declarant or the Recreation Club (in the case of all of the following remedies) or any Owner [in the case of the remedies provided in subsection (2), below], including Declarant, to avail itself of any one or more of the following remedies:

(1) The suspension by the Recreation Club of rights to use the Recreation Center for a period not to exceed thirty (30) days per violation, plus attorney's fees incurred by the Recreation Club with respect to the exercise of such remedy.

(2) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Member or Owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court costs.

(3) Before the Recreation Club may invoke the remedy of suspension of privileges as set forth in **subsection (1) above**, it shall give written notice of such alleged violation to the Member or Owner, and shall afford the Member or Owner the opportunity of a hearing at which the Member or Owner and any persons the Member or Owner desires may attend. Thereafter, if a violation is found to exist, the Recreation Club's right to proceed with the suspension of privileges shall be absolute. Each day a violation continues after notice thereof has been given to the Member or Owner shall be deemed a separate violation. Failure of the Recreation Club, Declarant, or of any Member or Owner to take any action upon any violation shall not be deemed a waiver of any right to take enforcement action thereafter or upon a subsequent violation. No Member or Owner shall have the right to compel or require the filing of suit by Declarant or the Recreation Club.

(g) Nonwaiver. The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

(h) Governmental Restrictions on Use of Property. The Recreation Center lies within the area classified as the Contributing Zone of the Edwards Aquifer and as such is subject to the rules and regulations of agencies of the State of Texas, including the Texas Commission on Environmental Quality (TCEQ), governing the use of said land, in addition to ordinances and statutes, or regulations affecting the Property enacted by other governmental authorities. Such requirements and prohibitions may prescribe the types of pesticides and fertilizers which may be used, minimum topsoil requirements, inspection of sewer laterals prior to covering, and criteria standards for sewer pipe, among other matters.

(i) Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible to more than one conflicting interpretation, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

(j) Notice by Recreation Club. Whenever written notice to a Member of the Recreation Club or an Owner is permitted or required hereunder, such shall be given by the mailing of such to the address of such Member or Owner appearing on the records of the Recreation Club, unless such Member or Owner has given written notice to the Recreation Club of a different address, in which event such notice shall be sent to the Member or Owner at the address so designated. In such event, such notice shall conclusively be deemed to have been given by the Recreation Club by placing same in the United States mail, properly addressed, whether received by the addressee or not.

(k) Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

(l) Term. This Declaration, including all of the covenants, conditions and restrictions herein, shall run until January 1, 2025, unless amended as herein provided. After January 1, 2025, this Declaration including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless terminated by a written instrument executed by all Members, and filed of record in the Real Property Records of Bexar County, Texas.

EXHIBITS:

Exhibit A - Property
Exhibit B - Recreation Center
Exhibit C - Initial Member Associations

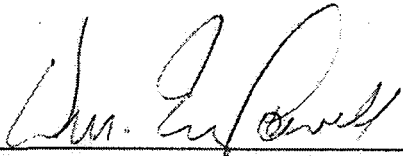
AFTER RECORDING, RETURN TO:

Jamie M. Wilson
Wilson & Wilson Law, P.C.
3303 Oakwell Court, Suite 110
San Antonio, Texas 78218
M:\BB\Two Creeks\Rec Club\Decl.3doc

DECLARANT:

**BITTERBLUE/TWO CREEKS PHASE 1, LTD., a
Texas limited partnership**

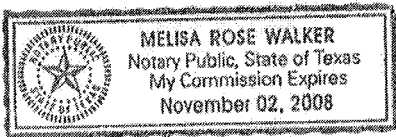
By Its Sole General Partner:
Bitterblue, Inc., a Texas corporation


By: 
Wm. Eugene Powell, Chief Executive Officer

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on June 19, 2007
by Wm. Eugene Powell, Chief Executive Officer of Bitterblue, Inc., a Texas corporation,
the sole General Partner of Bitterblue/Two Creeks Phase 1, Ltd., a Texas limited
partnership, on behalf of said limited partnership.




Notary Public, State of Texas

JOINED IN BY THE CROSSING HOA FOR THE LIMITED PURPOSES SET FORTH HEREIN:

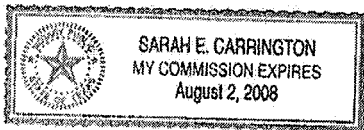
THE CROSSING AT TWO CREEKS HOMEOWNERS ASSOCIATION, INC., a Texas nonprofit corporation

By: Todd P. Helmer
Todd P. Helmer, President

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on June 28, 2007 by Todd P. Helmer, President of The Crossing at Two Creeks Homeowners Association, Inc., a Texas nonprofit corporation, on behalf of said nonprofit corporation.



Sarah E. Carrington
Notary Public, State of Texas

EXHIBIT A

PROPERTY

1. All of the residential Lots described and shown on the Subdivision Plat No. 050105 of Two Creeks, Unit-1 (Planned Unit Development), in Bexar County, Texas, recorded in Volume 9567, Pages 58-61, Deed and Plat Records of Bexar County, Texas.

2. All of the residential Lots described and shown on the Subdivision Plat No. 050106 of Two Creeks, Unit-2 (Planned Unit Development), in Bexar County, Texas, recorded in Volume 9567, Pages 62-65, Deed and Plat Records of Bexar County, Texas.

EXHIBIT B

RECREATION CENTER

Lot 2, Block 20, CB 4712, Two Creeks, Unit -1 (Planned Unit Development), in Bexar County, Texas, according to plat thereof recorded in Volume 9567, Pages 58-61, Deed and Plat Records of Bexar County, Texas.

EXHIBIT C

INITIAL MEMBER ASSOCIATIONS

1. The Crossing at Two Creeks Homeowners Association, Inc.
2. The Bluffs at Two Creeks Homeowners Association, Inc.

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law.
STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

JUL - 2 2007



Gerry Rickhoff
COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20070152499 Fees: \$100.00
07/02/2007 11:31AM # Pages 22
Filed & Recorded in the Official Public
Records of BEXAR COUNTY
GERRY RICKHOFF COUNTY CLERK