



Travis County Commissioners Court Agenda Request

Meeting Date: August 19, 2014

Prepared By: Don Perryman **Phone #:** (512) 974-2786

Division Director/Manager: Anna Bowlin, Division Director Development Services
Long Range Planning

Department Head: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Todd, Precinct Two
Commissioner Daugherty, Precinct Three

AGENDA LANGUAGE: Consider and take appropriate action on the Tipco Preliminary Plan (consisting of 24 lots on 85.27 acres; 20 single-family lots, 3 open space/water quality lots, and 1 lot of 3,890 linear feet of private streets).

BACKGROUND/SUMMARY OF REQUEST:

The subject property consists of Tipco Preliminary Plan, and is located in the City of Austin's 2-mile ETJ. It proposes 20 single-family lots, 3 open space/water quality/drainage lots, and 1 private street lot on 85.27 acres. There are 3,890 linear feet of private streets with two gates proposed with this development. The property will take access to Far Gallant road (City of Austin full purpose), Scenic View Drive, and Petticoat Lane (non-maintained Travis County roads). On June 10, 2014, Travis County's Commissioners Court approved a request by the applicant to allow for private streets. The City of Austin Zoning and Platting Commission approved the preliminary plan at their meeting held on July 1, 2014.

STAFF RECOMMENDATIONS:

This preliminary plan meets all single-office regulations and was approved by the City of Austin Zoning and Platting Commission. The single-office staff recommends approval of the preliminary plan.

ISSUES AND OPPORTUNITIES:

Staff has received requests from adjacent property owners to be included as interested parties. The applicant has met repeatedly with two adjoining neighborhood associations; as a result of these meetings the applicant has agreed to a private restrictive covenant and other commitments. The commitments made to the neighborhood are summarized below:

Commitments made to the Davenport Ranch Neighborhood Association:

1. Private drive will be constructed no closer than 40 feet from the adjacent property lines of Lots 1 and 2.

2. Provide a landscape buffer or natural buffer between the private drive and Lots 1 and 2.
3. Limit the height of homes to 40 feet and further limit the height of homes on Lots 4 and 5 to 38 feet.
4. If applied for by a resident and permitted, install traffic calming measures at the completion of the subdivision infrastructure construction.
5. Designate a subdivision construction representative to meet with the DR Association representative on a regular basis.
6. The private drive, security gate, and landscape/natural area buffer will be part of the subdivision restrictive covenant and maintained by the HOA.

Commitments made to the neighbors Along Scenic View Drive:

1. Prior to subdivision infrastructure construction, clean and re-grade Scenic View road-side ditches so that storm water from Scenic View Drive flows to and through existing culvert pipes.
2. Prior to subdivision infrastructure construction, trim trees and shrubs to eliminate “blind corners” along Scenic View Drive.
3. Monitor roadways during construction, patch pot holes, and clear the roadway of spilled concrete and other construction debris on a weekly basis.
4. Designate a subdivision construction representative to meet with a designated representative of the Scenic View Drive neighbors on a regular basis.
5. At the completion of subdivision infrastructure construction, re-pave Scenic View Drive with 1½ inches of asphalt.
6. If applied for by a resident and permitted, install a “No Outlet” or “Dead End” sign at the entrance of Scenic View Drive, install a 25 mile per hour speed limit sign, place a speed hump on Scenic View Drive at the intersection with The High Road, and a speed hump on both sides of the intersection.
7. The private drive and security gate will be part of the subdivision restrictive covenant and maintained by the HOA.
8. Contribute \$1,000 annually toward the maintenance of Scenic View Dr. for a period of 10 years or until the maintenance of Scenic View Dr. is assumed by a governmental or quasi-governmental entity.

During the Zoning and Platting public hearing, several residents spoke primarily about their concerns over construction traffic. The applicant promised to work with the neighborhood during construction to help find solutions to any problems that may arise. Staff is not aware of any unresolved issues between the neighborhoods and the applicant.

FISCAL IMPACT AND SOURCE OF FUNDING:

None

ATTACHMENTS/EXHIBITS:

Location Map

Precinct Map

Copy of Preliminary Plan with Private Streets

Supplemental exhibits: Letter to Davenport Ranch, Letter to Scenic View, and

Propose Restrictive Covenant/Declaration

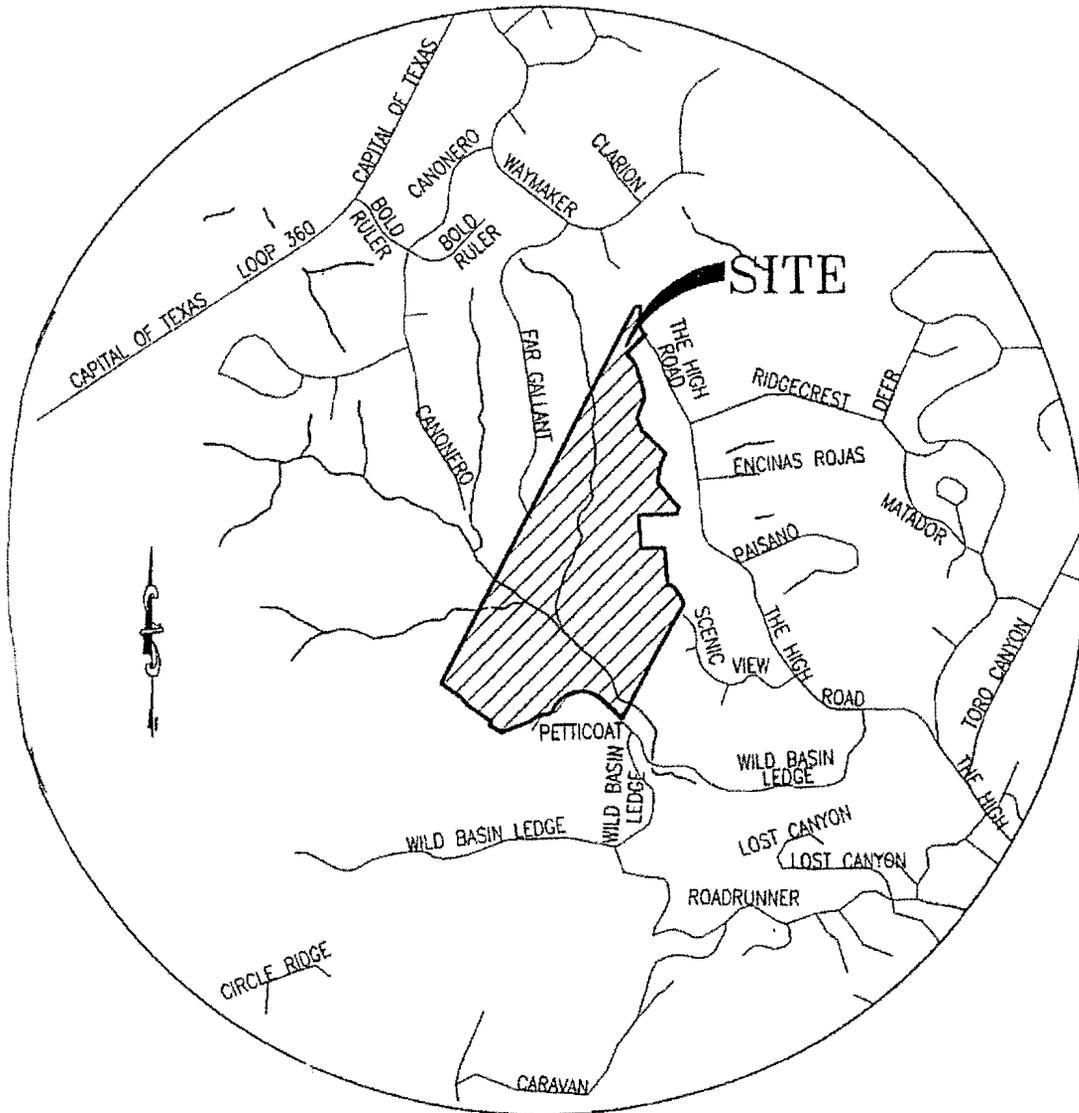
REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429
Anna Bowlin	Division Director Development Services Long Range PLanning	TNR	(512) 854-7561

CC:

SM:AB:sw

1101 - Development Services Long Range Planning - Tipco Preliminary Plan



LOCATION MAP

NOT TO SCALE

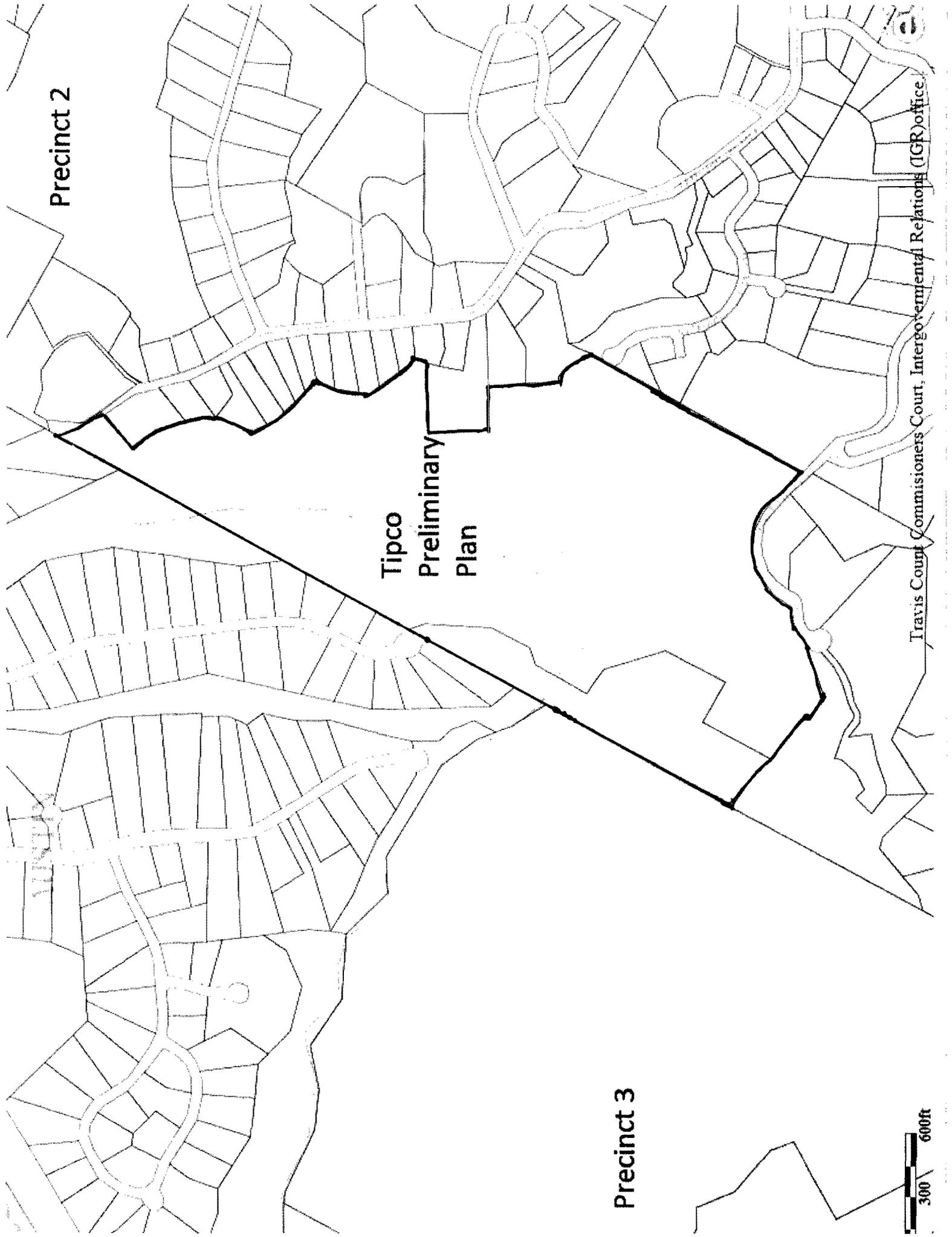
Precinct 2

Tipco
Preliminary
Plan

Precinct 3

300
600ft

Travis County Commissioners Court, Intergovernmental Relations (IGR) Office



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A Professional Corporation

JOHN M JOSEPH

jmjoseph@coatsrose.com
Direct Dial
512.541.3593

May 9, 2014

Via Email

Joe H. Thrash
Chair, Architectural Review Board
Davenport Ranch Neighborhood Association
4157 Westlake Dr.
Austin, Texas 78746

Re: Tipco Subdivision
Case No. C8J-2013-0148

Dear Mr. Thrash:

Thank you for your recent communication dated May 3, 2014. My prior letter was to address the neighbors' concerns. As I have previously advised you, my client is generally in agreement with the recitations in the letter from Mr. Larry Eisenberg, and my client is interested in securing the Davenport Ranch Neighborhood Association (the "Association") support.

To reiterate my client's position:

1. A private drive will be constructed no closer than 40 feet from the adjacent property lines of Lot 1, Block B, Davenport Ranch Phase 7, Section 3, Amended, owned by Jubayer & Momena Ahmed and Lot 2, Block B, Davenport Ranch Phase 7, Section 3, Amended, owned by J. Kay Trostle & Joe H. Thrash of Davenport Ranch.
2. My client has offered a landscape plan, including the elements Mr. Eisenberg mentioned in his letter dated March 11, 2014, for a vegetative buffer between the private drive and the above-mentioned Lots 1 and 2 of Davenport Ranch. Or, as an alternative to the landscaped buffer, the area between the private road and their lots could be maintained in an undisturbed and natural manner. Please advise whether the Association and/or the adjacent property owners prefer an undisturbed vegetative buffer or the offered landscaped area.

Barton Oaks Plaza, 901 South MoPac Expressway, Building 1 Suite 500, Austin, Texas 78746

Phone: 512-469-7987 Fax: 512-469-9408

Web: www.coatsrose.com

We are generally in agreement with the landscape berm within the landscape buffer, as long as it can be done without creating drainage issues and does not require any variances from the City or County. Of course, the maintenance of this landscape buffer will be the obligation of the Tipco neighborhood association. Please advise whether the Association and/or adjacent property owners prefer the berm.

3. A restrictive covenant for this development will limit the height of homes to 40 feet and further limit the height of homes to 35 feet above the elevation of the private drives.

4. The developer will require that: (a) for all homes built west of the drainage way construction access will be off of Far Gallant, and (b) for all homes built east of the drainage way construction access will be off of Scenic View Drive.

5. The developer will install traffic calming measures, if these measures are approved by the City and the neighbors, at the completion of the subdivision infrastructure construction, in the form of speed bumps on Far Gallant just inside the intersection with Waymaker. Please advise whether the Association requests we pursue the approval of traffic calming measures.

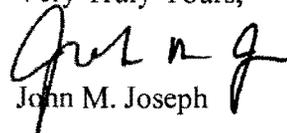
6. My client will designate a subdivision construction representative to meet with the Association representative on a regular basis to confirm that construction debris, if any, is removed from Far Gallant during the construction phase of the project.

Although the accommodations are not conditioned on the Association and neighbor support, we welcome their support.

To answer a specific question you raised in your letter, if the variances are not granted the subdivision will likely proceed with the same number of homes on a public street following the same lot layout as currently proposed. The difference being that the street would be public and there would be no gates. With respect to your comment regarding density of the development, the density proposed is 0.23 residential units per acre which is far less than the density of the existing residential development along Far Gallant which is 0.84 residential units per acre.

Please let me know if you have any or comments and whether your group would like to meet with us again. We look forward to working with you.

Very Truly Yours,


John M. Joseph

May 9, 2014
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cc: The Honorable Judge Sam Biscoe
Travis County Commissioner Gerald Daugherty
Don Perryman, Travis County Case Manager
Kam Kronenberg
Charles Brigance
Larry Eisenberg, President Davenport Ranch Neighborhood Association
Davenport Ranch Neighborhood Association

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JOHN M. JOSEPH

jmjoseph@coatsrose.com
Direct Dial
512.541.3593

June 4, 2014

Via Email

David Ruehlman
Stratus Properties, Inc.
2121 Lavaca St., Ste. 300
Austin, Texas 78701

Re: Tipco Subdivision
Case No. C8J-2013-01448

Dear Dave,

Following is my understanding of the accommodations and the neighbor's agreement.

In exchange for you and your neighbors advising the Travis County Commissioner's Court of your support for the above-referenced variance requests and the pending preliminary plan application, and appearing at the Commissioner's Court hearing to show your support, my client agrees to the following:

1. Prior to infrastructure construction within the referenced subdivision, to clean and re-grade Scenic View road-side ditches so that storm water from Scenic View Drive flows to and through existing culvert pipes.
2. Prior to infrastructure construction within the referenced subdivision, to trim trees and shrubs to eliminate "blind corners" along Scenic View Drive.
3. Monitor the roadway during subdivision construction and patch pot holes and clear the roadway of spilled concrete and other construction debris on a weekly basis.
4. Meet with a designated representative of the Scenic View Drive neighbors on a regular basis to make sure the roadway is being maintained according to our agreement.
5. At the end of the subdivision construction, re-pave Scenic View Drive with 1 and ½ inches of asphalt. Our client will also make available the repaving contractor, so that the neighbors, at their expense, may repave Twilight Ridge at the same time.
6. If directed to do so by the neighborhood representative and if approved by Travis County TNR, install a "No Outlet" or "Dead End" sign at the entrance of Scenic

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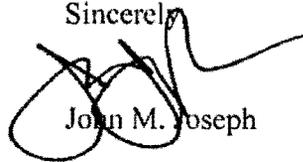
June 4, 2014
Page 2

View Drive, install a 25 mile per hour speed limit sign, place a speed hump on Scenic View Drive at the intersection with The High Road, and a speed hump on both sides of the intersection of Scenic View at its intersection with Twilight Ridge.

7. Contribute to a fund, designated by the neighbors, \$1,000 annually for the maintenance of Scenic View Drive, for a period of ten years or until the maintenance of Scenic View Drive is assumed by some governmental entity whichever event occurs first in time.

Please let me know if I have accurately related the agreement between you, your neighbors and my client. If you should have any questions or suggestions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Joseph", written over the printed name below it.

John M. Joseph

AFTER RECORDING RETURN TO:

JOSHUA D. BERNSTEIN, ESQ.
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

SCENIC VIEW

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Travis County, Texas

DECLARANT: WWDC DEVELOPMENT CORP., a Texas corporation

SCENIC VIEW
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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SCENIC VIEW

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Scenic View – Declaration of Covenants, Conditions and Restrictions (this “**Declaration**”) is made by **WWDC DEVELOPMENT CORP.**, a Texas corporation (“**Declarant**”), and is as follows:

R E C I T A L S:

A. Declarant is the owner of real property located in Travis County, Texas, said property being more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference (the “**Property**”).

B. Declarant desires to create and carry out a uniform plan for the development, improvement and sale of the Property.

NOW, THEREFORE, it is hereby declared that: (i) the Property (or any portion thereof) will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions, which will run with the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; (ii) each contract or deed conveying all or any portion of the Property will 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 in full or by reference in said contract or deed.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

ARTICLE 1 **DEFINITIONS**

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

(a) “**Architectural Design Guidelines**” means the standards adopted by the Architectural Reviewer, if any, for design, construction, landscaping, and exterior items placed on any Lot.

(b) “**Architectural Reviewer**” means the entity vested with the right to review and approve proposed construction within the Property in accordance with the terms of *Article 7*.

(c) “**Assessable Lot**” means all of the Lots in the Property, **SAVE AND EXCEPT** Lot 16 and Lot 17 therein.

{W0613751.8}

(d) "**Assessment**" or "**Assessments**" means assessments imposed by the Association under this Declaration.

(e) "**Assessment Unit**" has the meaning set forth in *Section 6.09*.

(f) "**Association**" means the Scenic View Homeowners Association, Inc., a Texas non-profit corporation, which has been created to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Declaration.

(g) "**Board**" means the Board of Directors of the Association.

(h) "**Bulk Rate Contract**" or "**Bulk Rate Contracts**" means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services and any other services of any kind or nature which are considered by the Board to be beneficial.

(i) "**Bylaws**" means the Bylaws of the Association as adopted and as amended from time to time.

(j) "**Certificate**" means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

(k) "**Community Facilities**" means property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Lot. The Community Facilities also include any property that the Association holds possessory rights under a lease, license or any easement in favor of the Association. Some Community Facilities will be for the common use and enjoyment of the Property's residents, e.g., internal pocket parks, while some portion of the Community Facilities may be for the use and enjoyment of the public, e.g., open space, parks, and recreational facilities. Open space, parks, and recreational facilities dedicated to the public may be classified as Community Facilities under this Declaration to permit the Association to provide maintenance services to such facilities. Declarant, from time to time and at any time, may designate Community Facilities. However, the Community Facilities will include, in any event, all private roadways and entry gates within the Property.

(l) "**Declarant**" means **WWDC DEVELOPMENT CORP.**, a Texas corporation, its successors or assigns; provided that any assignment(s) of the rights of Declarant must be expressly set forth in writing and recorded in the Official Public Records of Travis County, Texas.

(m) "**Development Period**" means the period in which Declarant owns all or any portion of the Property.

(n) "**Homebuilder**" means an Owner (other than the Declarant) who acquires a Lot for the construction of a single family residence for resale to a third party.

(o) "**Improvement**" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, 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.

(p) "**Lot**" means any portion of the Property designated by Declarant or as shown as a subdivided lot on a Plat other than Community Facilities.

(q) "**Manager**" has the meaning set forth in *Section 4.05(h)*.

(r) "**Members**" means every person or entity that holds membership privileges in the Association.

(s) "**Mortgage**" or "**Mortgages**" means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

(t) "**Mortgagee**" or "**Mortgagees**" means the holder(s) of any Mortgage(s).

(u) "**Owner**" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

(v) "**Plat**" means a subdivision plat of any portion of the Property as recorded in the Official Public Records of Travis County, Texas, and any amendments thereto.

(w) "**Property**" means all of that certain real property described on Exhibit "A", attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 10.03* and *Section 10.04* of this Declaration.

(x) "**Restrictions**" means this Declaration, the Architectural Design Guidelines, Bylaws, and any rules and regulations promulgated by the Association

pursuant to this Declaration, as adopted and amended from time to time. See *Table 1* for a summary of the Restrictions.

TABLE 1: RESTRICTIONS	
Declaration: (recorded)	Creates obligations that are binding upon the Association and all present and future owners of all or any portion of the Property.
Certificate of Formation: (filed with the Secretary of State)	The Certificate of Formation of the Association, which establish the Association as a not-for-profit corporation under Texas law.
Bylaws: (adopted by the Association)	The Bylaws of the Association which govern the Association's internal affairs, such as elections, meetings, etc.
Architectural Design Guidelines: (if adopted)	The design standards and architectural and aesthetics guidelines adopted pursuant to <i>Article 7</i> , if any, which govern new construction of Improvements and modifications thereto.
Rules: (adopted by the Board of the Association)	The use restrictions and rules of the Association adopted pursuant to <i>Section 4.05(a)</i> , which regulate use of property, activities, and conduct within the Property.
Board Resolutions: (adopted by the Board of the Association)	The resolutions adopted by Board which establish rules, policies, and procedures for internal governance and activities of the Association.

ARTICLE 2

GENERAL RESTRICTIONS

2.01 General. Except as otherwise provided in this *Section 2.01*, all Lots will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the applicable conditions, restrictions, reservations, and easements contained in the Restrictions.

In addition to the terms of the Restrictions, the Property is also subject to any additional covenants, conditions, restrictions, and easements filed of record in the Official Public Records of Travis County, Texas. Ordinances, requirements and regulations imposed by applicable governmental and quasi-governmental authorities are applicable to all Lots. Compliance with the Restrictions is not a substitute for compliance with such ordinances, requirements and regulations. Please be advised that the Restrictions do not purport to list or describe each restriction that may be applicable to a Lot. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot prior to submitting plans to Architectural Reviewer for approval. Furthermore, approval by the Architectural Reviewer should not be construed by an Owner as indicating that any Improvement complies with the terms and

provisions of all encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by Architectural Reviewer.

NOTWITHSTANDING THE FOREGOING, OR ANY PROVISION THIS DECLARATION OR ANY OF THE OTHER RESTRICTIONS TO THE CONTRARY, IN NO EVENT SHALL LOT 18 IN THE PROPERTY BE SUBJECT TO: (I) THE COVENANTS, CONDITIONS AND RESTRICTIONS SET FORTH IN THIS ARTICLE 2, IN ARTICLE 3, IN ARTICLE 5, OR IN ARTICLE 7 OF THIS DECLARATION, NOR TO ANY TERMS OR PROVISIONS SET FORTH IN ANY ARCHITECTURAL DESIGN GUIDELINES OR RULES.

2.02 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Homebuilder or other developer of any portion of the Property makes any representation or warranty concerning such land uses and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property. Each Owner acknowledges that the Property is a master planned community, the Property of which is likely to extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to changes in the Conceptual Plans.

2.03 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof, without the prior written approval of the Architectural Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Architectural Reviewer.

2.04 Hazardous Activities. No activities may be conducted on or within the Property and no Improvements constructed on any portion of the Property which, in the opinion of the Declarant during the Development Period, and the Board thereafter, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Property unless discharged in conjunction with an event approved in advance by Declarant during the Development Period, and the Board thereafter, and no open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2.05 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance

on the Community Facilities or the Improvements located thereon, without the prior written approval of Declarant during the Development Period and the Board thereafter.

2.06 Mining and Drilling. No portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property. Furthermore, this provision will not be interpreted to prevent the drilling of water wells approved in advance by the Architectural Reviewer which are required to provide water to all or any portion of the Property. All water wells must also be approved in advance by any applicable regulatory authority.

2.07 Noise. Except as otherwise provided herein, no exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes or residential outdoor speakers) shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm). Residential outdoor speakers are only permitted within the rear yard of each Lot and placed in such a manner so as to minimize their effect upon any other portion of the Property or its occupants and the operation thereof shall be specifically subject to this Section. The "rear yard" for the purposes of this provision means the yard area in the rear or posterior to the residence constructed on the Lot. In the event of any dispute regarding what portion of the Lot constitutes the "rear yard," the opinion of the Architectural Reviewer will be final, binding and conclusive.

2.08 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property. No Owner may keep a dangerous or exotic animal, trained attack dog, or any other animal deemed by the Board to be a potential threat to the well-being of the people or other animals. No animal may be kept, bred or maintained for any commercial purpose or for food. No animal will be allowed to make an unreasonable amount of noise, or to become a nuisance, and no animal will be allowed within the Property other than on the Lot of its Owner unless confined to a leash or otherwise restrained or contained. No animal will be allowed to run at large. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration within the Property, and no kennels or breeding operation will be allowed. Except as otherwise provided herein, at all times animals must be kept within fenced or enclosed areas, which must be clean, sanitary, and reasonably free of refuse, insects, and waste. All fencing and outdoor enclosed areas

constructed hereunder must be: (i) constructed in accordance with materials, plans, and specifications in conformance with the terms and provisions of this Declaration, any applicable Architectural Design Guidelines and any additional conditions imposed by the Architectural Reviewer; (ii) of reasonable design and construction to adequately fence and/or enclose such animals in accordance with the provisions hereof; (iii) screened so as not to be visible from any other portion of the Property, and (iv) approved in advance and in writing by the Architectural Reviewer. All pet waste will be removed and appropriately disposed of by the Owner of the pet. All pets must be registered, licensed and inoculated as required by law.

2.09 Rubbish and Debris. No rubbish or debris of any kind may be placed or permitted to accumulate on or within the Property, and no odors will be permitted to arise therefrom so as to render all or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.10 Maintenance. The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their entire Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Architectural Reviewer, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this Section has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Architectural Reviewer, in its sole discretion:

- (a) Prompt removal of all litter, trash, refuse, and wastes;
- (b) Lawn mowing;
- (c) Tree and shrub pruning;
- (d) Watering;
- (e) Keeping exterior lighting and mechanical facilities in working order;
- (f) Keeping lawn and garden areas alive, free of weeds, and attractive;
- (g) Keeping planting beds free from turf grass;
- (h) Keeping sidewalks and driveways in good repair;
- (i) Complying with all government, health and police requirements;
- (j) Repainting of Improvements; and

- (k) Repair of exterior damage, and wear and tear to Improvements.

2.11 Antennae. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any solar energy system, shall be erected, maintained or placed on a Lot without the prior written approval of the Architectural Reviewer; provided, however, that:

- (a) An antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or

- (b) An antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

- (c) An antenna that is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Architectural Reviewer, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Development.

2.12 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Community Facilities or any other portion of the Property. A Permitted Antenna shall be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Property, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Architectural Reviewer are as follows:

- (a) Attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

- (b) Attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The Architectural Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

2.13 Signs. No sign of any kind may be displayed to the public view on any Lot without the prior written approval of the Architectural Reviewer, except for:

(a) signs erected by the Declarant or erected with the advance written consent of the Declarant;

(b) one small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the principal residence constructed upon the Lot;

(c) permits as may be required by applicable law;

(d) a religious item on the entry door or door frame of a residence (which may not extend beyond the outer edge of the door frame), provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches;

(e) one (1) temporary "For Sale" or "For Lease" sign per Lot, provided that the sign will be limited to: (a) a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post; (b) an overall height of the sign from finished grade at the spot where the sign is located may not exceed four (4) feet; and (c) the sign must be removed within two (2) business days following the sale or lease of the Lot;

(f) political signs may be erected provided the sign: (i) is erected no earlier than the 90th day before the date of the election to which the sign relates; (ii) is removed no later than the 10th day after the date of the election to which the sign relates; and (iii) is ground-mounted. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited; and

(g) a "no soliciting" sign near or on the front door to the principal residence constructed upon the Lot, provided, that the sign may not exceed twenty-five (25) square inches.

Except for signs which are erected by the Declarant or erected with the advance written consent of the Declarant, no sign may be displayed in the window of any Improvement located on a Lot.

2.14 Flags – Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university ("**Permitted Flag**") and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence ("**Permitted Flagpole**"). Only two (2) permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Architectural Reviewer. Approval by the Architectural Reviewer is required prior to installing vertical

freestanding flagpoles installed in the front or back yard area of any Lot (“**Freestanding Flagpole**”).

2.15 Flags – Installation and Display. Unless otherwise approved in advance and in writing by the Architectural Reviewer, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

(a) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;

(b) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;

(c) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');

(d) With the exception of flags displayed on Community Facilities and any Lot which is being used for marketing purposes by a Homebuilder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;

(e) The display of a flag, or the location and construction of the flagpole must comply with Applicable Law, easements and setbacks of record;

(f) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(g) A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;

(h) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and

(i) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

2.16 Tanks. The Architectural Reviewer must approve any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No elevated tanks of any kind may be

erected, placed or permitted on any Lot without the advance written approval of the Architectural Reviewer. All permitted tanks must be buried or screened from view in accordance with a screening plan approved in advance by the Architectural Reviewer. This provision will not apply to a tank used to operate a standard residential gas grill.

2.17 Barbecue Units. Barbecue units are only permitted within the rear yard of each Lot and placed in such manner as to not be visible from any other portion of the Property. The "rear yard" for the purpose of this provision means the yard area in the rear or posterior to the residence constructed on a Lot. In the event of any dispute regarding what portion of a Lot constitutes the "rear yard," the opinion of the Architectural Reviewer will be final, binding, and conclusive.

2.18 Clotheslines; Awnings. No clotheslines and no outdoor clothes drying or hanging shall be permitted in the Property, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any residence on any Lot, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of any residence on any Lot, or any part thereof, nor relocated or extended, without the prior written consent of the Architectural Reviewer.

2.19 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property without the prior written approval of the Architectural Reviewer; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. No shed, outbuilding, or other storage building may be erected on any Lot without the advance written approval of the Architectural Reviewer, which approval may include requirements regarding placement, design, screening, and construction materials.

2.20 Unightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Reviewer shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have sufficient garage space, as approved by the Architectural Reviewer, to house all vehicles to be kept on the Lot. Notwithstanding the foregoing provision all-terrain vehicles, motor scooters, and motorized mini-bikes may not be used on the Property or on any road or street within the Property. Lot Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72)

hours. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any roadway within the Property.

Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than (i) in enclosed garages and (ii) behind a fence so as to not be visible from any other portion of the Property is prohibited; provided, however, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a residence.

No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Architectural Reviewer.

2.21 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes may be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time, and no motor homes, travel trailers or recreational vehicles may be parked on or near any Lot so as to be visible from adjoining property or from public or private thoroughfares at any time.

2.22 Basketball Goals; Permanent and Portable. Permanent basketball goals are permitted between the street right-of-way and the front of the residence on a Lot provided the basketball goal is located a minimum of twenty feet (20') from the street curb. The basketball goal backboard must be perpendicular to the street and mounted on a black metal pole permanently installed in the ground. Portable basketball goals are prohibited. Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals must, in any event, be approved by the Architectural Reviewer prior to being placed on any Lot.

2.23 Compliance with Restrictions. Each Owner, his or her family, occupants of a Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation thereof and may result in a fine against the Owner in accordance with *Section 6.13* of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by Declarant, the Manager, the Board on behalf of the Association, the Architectural Reviewer, or by an aggrieved Owner. Without limiting any rights or powers of either the Board or the Architectural Reviewer may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or

attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association and their officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.24 Liability of Owners for Damage to Community Facilities. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Community Facilities without the prior written approval of the Declarant during the Development Period, and the Board thereafter. Each Owner shall be liable to the Association for any and all damages to: (i) the Community Facilities and any improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided for in Section 6.13 of the Declaration.

2.25 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Declaration. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

2.26 Recreational Courts and Playscapes. Recreational courts, e.g., "sport courts" and tennis courts, may be constructed on any Lot only with approval by the Architectural Reviewer. No lighting of these structures will be allowed without express approval of the Architectural Reviewer. Playscapes or any similar recreational facilities may be constructed on any Lot only the advance written approval of the Architectural Reviewer.

2.27 Release and Indemnity. EACH OWNER HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION AND DECLARANT AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY,

CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF SUCH OWNER'S USE OF ANY COMMUNITY FACILITIES. EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND DECLARANT AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF AN OWNER, OR SUCH OWNER'S GUESTS, TENANTS, LICENSEES, EMPLOYEES, SUBCONTRACTORS, USE OF ANY COMMUNITY FACILITIES (INCLUDING ANY COST, FEES, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S OR DECLARANT'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION OR DECLARANTS GROSS NEGLIGENCE OR WILFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE. NEITHER THE ASSOCIATION NOR DECLARANT SHALL ASSUME ANY RESPONSIBILITY OR LIABILITY FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE WHICH IS OCCASIONED BY USE OF ANY COMMUNITY FACILITIES AND IN NO CIRCUMSTANCE SHALL WORDS OR ACTIONS BY THE ASSOCIATION OR DECLARANT CONSTITUTE AN IMPLIED OR EXPRESS REPRESENTATION OR WARRANTY REGARDING THE FITNESS OR CONDITION OF ANY COMMUNITY FACILITIES.

2.28 Additional Restrictions and Obligations. Notwithstanding any provision herein to the contrary, the following restrictions shall constitute covenants running with the land and, to the extent they impose obligations on Declarant, the Owners and/or the Association, Declarant, the Owners and/or the Association, as the case may be, shall be obligated at all times to observe and comply with the such obligations.

(a) Scenic View Drive Maintenance Fund. The Association shall be obligated to contribute \$1,000 annually to a fund established to provide for the maintenance of Scenic View Drive. Such fund shall be established by one or more neighborhood associations or groups representing owners of property located adjacent to or in the vicinity of the Property. The Association's obligation to contribute to such maintenance fund shall continue until the earlier of: (i) ten (10) years from the date of this Declaration; or (ii) such time as Scenic View Drive has been accepted for maintenance by a governmental entity.

(b) Private Drive. A private drive will be constructed upon the Property no closer than forty feet (40') from the adjacent property lines of Lot 1, Block B and Lot 2, Block B, Davenport Ranch Phase 7, Section 3 Amended, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 99, Pages 351-357, Plat Records of Travis County, Texas.

(c) Landscape Plan. The portion of the Property located between the private drive and the adjacent property referenced in subsection (b) above shall be maintained

at all times in either an undisturbed and natural manner or in accordance with the terms of a landscape plan mutually acceptable to both the Association and one or more neighborhood associations or groups representing owners of property located adjacent to or in the vicinity of the Property

ARTICLE 3
USE AND CONSTRUCTION RESTRICTIONS

3.01 Architectural Design Guidelines. If the Architectural Design Guidelines have been adopted, any and all Improvements erected, placed, constructed, painted, altered, modified, or remodeled on any portion of the Property shall strictly comply with the requirements of the Architectural Design Guidelines, unless a variance is obtained pursuant to this Declaration. The Architectural Design Guidelines may be adopted, supplemented, modified, amended, or restated by the Architectural Reviewer as authorized by the Declaration and the Architectural Design Guidelines.

3.02 Approval for Construction. No Improvements shall be constructed upon any Lot without the prior written approval of the Architectural Reviewer. Prior to commencement of construction, a construction deposit in the amount of \$5,000 will be required to be paid to the Architectural Reviewer. Such deposit will be held to ensure compliance with all applicable restrictions and may be drawn upon in the event of damage or violation.

3.03 Single-Family Residential Use. The Lots shall be used solely for private single family residential purposes and there shall not be constructed or maintained thereon more than one detached single family residence.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot, except an Owner or occupant of a residence may conduct business activities within a residence so long as: (i) such activity complies with all the applicable zoning ordinances (if any); (ii) the business activity is conducted without the employment of persons other than the residents of the home constructed in the Lot; (iii) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business on any Lot, sound, or smell from outside the residence; (iv) the business activity conforms to all zoning requirements (if any) for the Property; (v) the business activity does not involve door-to-door solicitation of residents within the Property; (vi) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vii) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property as may be determined in the sole discretion of the Board; and (viii) the business does not require the installation of any machinery other than that customary to normal household operations. The terms "**business**" and "**trade**," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation,

work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or an Owner engaged in the business of constructing homes for resale who acquires a Lot for the purpose of constructing a residence thereon for resale to a third party.

Notwithstanding any provision in this Declaration to the contrary, until the later to occur of expiration of the Development Period or the date when all new home sales activity has ceased within the Property:

(a) Declarant and/or its licensees may construct and maintain upon portions of the Community Facilities and any Lot owned by Declarant such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, sales offices and sales/construction trailers. Declarant and/or its licensees shall have an easement over and across the Community Facilities for access and use of such facilities at no charge; and

(b) Declarant and/or its licensees will have an access easement over and across the Community Facilities for the purpose of making, constructing and installing improvements to the Community Facilities.

3.04 Minimum Square Footage. Unless otherwise approved in writing by the Architectural Reviewer, the minimum square footage for each residence, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages, will be 4,000 square feet for the first (1st) floor of the residence. Further, of the total square footage within a residence, sixty percent (60%) thereof shall be within the first (1st) floor of the residence.

3.05 Masonry Requirements; Foundation Shielding. The exterior of each residence constructed within the Property shall be one-hundred percent (100%) masonry construction. Only brick, stucco and natural stone shall be considered masonry for purposes of this *Section* 3.05. Exposed portions of the foundation on each front elevation and side elevation must be concealed by extending the exterior masonry to finished grade. Retaining walls shall be limited to a four foot (4') rise with a minimum of twenty-four inches (24") planting area between walls and shall be constructed of stone veneer over structural masonry or dry stacked stone.

3.06 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for single-family residential purposes; provided

that all rentals must be for terms of at least twelve (12) months. All leases shall be in writing. The Owner must provide to its lessee copies of the Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease.

3.07 Fences. All Lots may be fenced only with approval from the Architectural Reviewer. Except as expressly set forth in this *Section 3.07*, or as otherwise approved by the Architectural Reviewer, fences shall be at least six feet (6') in height and constructed of either masonry, wrought iron or decorative metal construction, or a combination thereof, and metal bars shall be no less than ½" x ½" construction.

3.08 Garages. The size, location, orientation and opening of each garage to be located on a Lot shall be approved in advance of construction by the Architectural Reviewer. An effort should be made to conceal garage doors from view in the front of the Lot. All garage doors must be wood clad. All garages shall be maintained for the parking of automobiles and may not be used for storage or other purposes which preclude its use for the parking of automobiles. No garage may be permanently enclosed or otherwise used for habitation.

3.09 Windows. All windows on each residence shall have a consistent design throughout the residence and shall comply with any applicable requirements set forth in any Architectural Design Guidelines, and shall otherwise be approved by the Architectural Reviewer.

3.10 Height Restrictions. The roof line of the houses built on Lot 4 and Lot 5 in the Property will be no greater than thirty-eight feet (38'), as measured vertically from the highest point of the finished slab to the main ridge line of the roof.

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

3.12 Trash Containers. Except on any designated waste pick-up day, trash containers and recycling bins must be stored in one of the following locations:

- (a) Inside the garage of the single-family residence constructed on the Lot; or
- (b) Behind the single-family residence constructed on the Lot in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Lot.

The Architectural Reviewer shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

3.13 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved in advance by the Architectural Reviewer. Specifically, and not by way of limitation, no Improvement, including landscaping, may be installed that impedes the proper drainage of water between Lots.

3.14 Construction Activities. This Declaration will not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon or within the Development. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Architectural Reviewer in its sole and reasonable judgment, the Architectural Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Development, then the Architectural Reviewer may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all reasonable expenses incurred in connection therewith.

3.15 Landscaping. Each Owner shall be required to install landscaping upon such Owner's Lot in accordance with landscaping plans approved in advance of installation by the Architectural Reviewer. Notwithstanding any provision in this Declaration to the contrary, such landscaping plans must be approved by the Architectural Reviewer prior to occupancy of the single family residential structure located on the Lot to which such landscaping plans relate. All landscaping shown on the landscaping plans and specifications approved by the Architectural Reviewer shall be installed, and all such landscaping shall be completed on or before occupancy of the Lot for residential purposes, unless a variance is obtained pursuant to this Declaration. All landscaping materials (e.g., plants) shall be approved in advance by the Architectural Reviewer. The Architectural Reviewer or its assigns shall be entitled to make recommendations with respect to tree disease control, whereupon the Owner or Owners to whom such recommendations are directed shall be obligated to comply with such recommendations, which may include, but not be limited to tree removal and replacement.

3.16 Maintenance of Septic Systems and Other Sewage Treatment Facilities. In furtherance, and not in limitation, of the obligations of Owners as set forth in *Section 2.10*, each Owner shall be expressly obligated to maintain at all times in good condition and repair any septic system or other sewage treatment facilities (together with any related Improvements) located upon and exclusively serving such Owner's Lot. Any septic system or other sewage treatment facilities shall be installed in the rear portion of the Lot's yard, unless otherwise approved by the Architectural Reviewer.

3.17 Xeriscaping. As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping ("Xeriscaping") upon written approval by the Architectural Reviewer. All Owners implementing Xeriscaping shall comply with the following:

(a) Application. Approval by the Architectural Reviewer is required prior to installing Xeriscaping. To obtain the approval of the Architectural Reviewer for Xeriscaping, the Owner shall provide the Architectural Reviewer with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The Architectural Reviewer is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the Architectural Reviewer for approval; (ii) supervising installation or construction to confirm compliance with an approved Xeriscaping Application or (iii) the compliance of an approved application with Applicable Law.

(b) Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the Architectural Reviewer. For purposes of this Section 3.17, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the Architectural Reviewer determines that: (1) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or (2) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.

No Owners shall install gravel, rocks or cacti that in the aggregate encompass over twenty percent (20%) of such Owner's front yard or twenty percent (20%) of such Owner's back yard.

(c) Process. The decision of the Architectural Reviewer will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the

Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this *Section 3.17* when considering any such request.

(d) Approval. Each Owner is advised that if the Xeriscaping Application is approved by the Architectural Reviewer, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the Architectural Reviewer may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the Architectural Reviewer to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

3.18 Roofing. Roofing materials shall be limited to concrete or clay tile, standing seam metal, or slate, which, in each case, shall be expressly approved by the Architectural Reviewer. In addition, roofs of buildings may be constructed with "Energy Efficiency Roofing" with the advance written approval of the Architectural Reviewer. For the purpose of this *Section 3.18*, "Energy Efficiency Roofing" means roofing materials that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. The Architectural Reviewer will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing: (i) resembles the materials used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the materials used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth herein. In conjunction with any such approval process, the Owner should submit information which will enable the Architectural Reviewer to confirm the criteria set forth in this *Section 3.18*. Any other type of roofing material shall be permitted only with the advance written approval of the Architectural Reviewer.

3.19 Solar Energy Device. During the Development Period, this *Section 3.19* does not apply and the Declarant must approve in advance and in writing the installation of any solar energy device or apparatus (a "Solar Energy Device"). Until expiration or termination of the Development Period, the Declarant may prohibit the installation of any Solar Energy Device. After expiration or termination of the Development Period, Solar Energy Devices may be installed with the advance written approval of the Architectural Reviewer.

(a) Application. To obtain Architectural Reviewer approval of a Solar Energy Device, the Owner shall provide the Architectural Reviewer with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the “**Solar Application**”). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of *Article 7*.

(b) Approval Process. The Architectural Reviewer will review the Solar Application in accordance with the terms and provisions of *Article 7*. The Architectural Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 3.19(c)* below **UNLESS** the Architectural Reviewer makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.19(c)*, will create a condition that substantially interferes with the use and enjoyment of property within the Development by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The Architectural Reviewer’s right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the residence located on the Owner’s Lot, entirely within a fenced area of the Owner’s Lot, or entirely within a fenced patio located on the Owner’s Lot. If the Solar Energy Device will be located on the roof of the residence, the Solar Energy Device shall be installed on a flat portion of the roof within the perimeter of a parapet to shield the device from view to the maximum extent possible. The Architectural Reviewer may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the Solar Energy Device if installed in the location designated by the Architectural Reviewer. If the Owner desires to contest the alternate location proposed by the Architectural Reviewer, the Owner should submit information to the Architectural Reviewer which demonstrates that the Owner’s proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the

Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the principal residence located on the Owner's Lot, then: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the top edge of the Solar Device must be parallel to the roofline; (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

3.20 Rainwater Harvesting Systems. Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed with the advance written approval of the Architectural Reviewer.

(a) Application. To obtain Architectural Reviewer approval of a Rainwater Harvesting System, the Owner shall provide the Architectural Reviewer with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "Rain System Application"). A Rain System Application may only be submitted by an Owner.

(b) Approval Process. The decision of the Architectural Reviewer will be made in accordance with *Article 7*. Any proposal to install a Rainwater Harvesting System on property owned by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Architectural Reviewer, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

(i) The Rainwater Harvesting System must be consistent with the color scheme of the residence constructed on the Owner's Lot, as reasonably determined by the Architectural Reviewer.

(ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.

(iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed on the Owner's Lot and any adjoining or adjacent street.

(iv) There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the Architectural Reviewer.

(v) If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Community Facilities, or another Owner's Lot, the Architectural Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 3.20(d)* for additional guidance.

(d) **Guidelines.** If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Community Facilities, or another Owner's Lot, the Architectural Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, common area, or another Owner's Lot. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Community Facilities, or another Owner's Lot, any additional requirements imposed by the Architectural Reviewer to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not **prohibit** the economic installation of the Rainwater Harvesting System, as reasonably determined by the Architectural Reviewer.

3.21 Swimming Pools. All swimming pools must comply with any applicable provisions set forth in the Architectural Design Guidelines and be approved by the Architectural Reviewer prior to the commencement of construction and installation. Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies all applicable governmental requirements. Nothing in this Section is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable governmental regulations concerning swimming pool enclosure requirements. Above-ground or temporary swimming pools are prohibited.

3.22 Compliance with Setbacks. Unless otherwise approved in advance by the Architectural Reviewer, no residence may be constructed within forty feet (40') of the front boundary line of a Lot, within twenty feet (20') of the rear boundary line of a Lot or within twenty-five feet (25') of any side boundary line with a minimum of ten feet (10') per side of a Lot. In the event of any disagreement regarding the location of the front, rear, or side boundary lines of a Lot, the decision of the Architectural Reviewer will be final. For the purpose of this restriction, eaves, steps, and open porches will not be considered as part of a residence; however, this *Section 3.22* will not be construed to permit any portion of any Improvement on any Lot to encroach upon another Lot or other portion of the Property.

3.23 Utility Lines. Unless otherwise approved by the Architectural Reviewer, no sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of the Property, other than within buildings or structures, unless the same shall be contained in conduits or cables constructed, placed or maintained underground or concealed in or under buildings or other structures.

ARTICLE 4

RIGHTS, POWERS AND OBLIGATIONS OF THE ASSOCIATION; VOTING RIGHTS

4.01 Organization. The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas nonprofit corporation. Neither the Certificate nor the Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.02 Membership.

(a) Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

(b) Easement of Enjoyment – Community Facilities. Every Member will have a right and easement of enjoyment in and to all of the Community Facilities and an access easement by and through any Community Facilities, which easements will be appurtenant to and will pass with the title to such Member's Lot, subject to the following restrictions and reservations:

(i) The right of the Association and Declarant (during the Development Period) to dedicate or transfer all or any part of the Community Facilities to any public agency, authority or utility for such purpose;

(ii) The right of the Association and Declarant (during the Development Period) to grant easements or licenses over and across the Community Facilities to any third party;

(iii) The right of the Association to borrow money for the purpose of improving the Community Facilities and, in furtherance thereof, mortgage the Community Facilities;

(iv) The right of the Association to make reasonable rules and regulations regarding the use of the Community Facilities and any Improvements thereon; and

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

4.03 Governance. The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, no later than the tenth (10th) anniversary of the date this Declaration is Recorded, Declarant will have the sole right to appoint and remove all members of the Board. No later than the tenth (10th) anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board will call a meeting of Members of the Association for the purpose of electing one-third of the Board (the "**Initial Member Election Meeting**"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

4.04 Vote Allocation.

(a) **Generally.** The Owner of each Lot will be allocated one (1) vote for each Lot so owned. In the event of the re-subdivision of any Lot into two (2) or more Lots: (i) the number of votes to which such Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision, e.g., each Lot resulting from the re-subdivision will be entitled to one (1) vote; and (ii) each Lot resulting from the re-subdivision will be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights will continue to be determined according to the number of original Lots contained in such consolidated Lots.

(b) **Declarant Allocation.** In addition to the votes to which Declarant is entitled by reason of *Section 4.04(a)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. In no event will the votes allocated to the Declarant pursuant to this *Section 4.04(b)* be considered a separate class for voting purposes, i.e., the votes allocated to owners pursuant to *Section 4.04(a)* and the votes allocated to Declarant hereunder will be considered a single class.

(c) **Co-Owners.** If there is more than one Owner of a portion of the fee simple interest in a Lot, the vote for such Lot shall be exercised as the co-Owners, holding a majority of the ownership interest in the Lot, determine among themselves and designate in writing to the Secretary of the Association, prior to the close of balloting. Any co-Owner may cast the vote for the Lot, and majority agreement shall be

conclusively presumed unless another co-Owner of the Lot protests promptly to the President or other person presiding over the meeting on the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the Lot's vote shall be suspended if two or more co-Owners seek to exercise it independently. In no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled pursuant to this *Section 4.05* below. Notwithstanding the foregoing, all co-Owners of a Lot shall be Members of the Association.

4.05 Powers. The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that 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 this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules and regulations, and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property (including the operation, maintenance and preservation thereof) or of the Association;

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions;

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions, available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours;

(d) Assessments. To levy and collect assessments and to determine Assessment Units, as provided in *Article 6* below;

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon, for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed a special Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 6* hereof for Assessments. The Association will 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 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 Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or their successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Community Facilities in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.05(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE;**

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

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Community Facilities in compliance with the use and occupancy restrictions imposed by the Restrictions or any governmental or quasi-governmental authority, for the purpose of constructing, erecting, operating or maintaining: (i) parks, parkways or other recreational facilities or structures; (ii) roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths; (iii) lines, cables, wires, conduits, pipelines or other devices for utility purposes; (iv) sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or (v) any similar Improvements or facilities;

(h) 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. Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon sixty (60) days written notice to the Manager. To the extent permitted by law, the Board may delegate any other duties, powers and functions to the Manager. In addition,

the Board may adopt transfer fees, resale certificate fees, or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED;**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for any portion of the Property or the Property and any Community Facilities, including but not limited to private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes;

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law (including the Texas Business Organizations Code) or under the terms of the Restrictions or as determined by the Board;

(k) Construction. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board;

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Community Facilities or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members;

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise;

(n) Allocation of Votes. To determine votes when permitted or required pursuant to *Section 4.04* above; and

(o) Membership Privileges. To establish Rules and regulations governing and limiting the use of the Community Facilities and any Improvements thereon.

4.06 Acceptance and Control of Community Facilities.

(a) Transfers and Conveyance by Declarant. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real

property. Declarant may transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, or the Property and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Such property will be accepted by the Association and thereafter will be maintained as Community Facilities by the Association for the benefit of the Property and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment to the extent conveyed in error or needed to make minor adjustments in property lines.

(b) Relationships with Other Properties and Entities. The Association may contract with the owner of any neighboring property and any entity that provides services to all or any portion of the Members for the purpose of sharing costs associated with: (a) maintenance and operation of mutually beneficial properties or facilities; and (b) provision of mutually beneficial services.

(c) Relationships with Quasi-Governmental Entities and Tax Exempt Organizations. The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Community Facilities to (i) a public improvement district created pursuant to Chapter 372, Subchapter B of the Texas Local Government Code; (ii) a municipal utility district created pursuant to Article XVI, Section 59 of the Constitution of Texas and Chapters 49 and 54, Texas Water Code; (iii) any other similarly constituted quasi-governmental entity created for the purpose of providing benefits or services to the Property or (iv) nonprofit, tax-exempt organizations, the operation of which confers some benefit upon the Property, the Association, its members, or residents. The Association may contribute money, real or personal property, or services to such entity. Any such contribution shall be a common expense to be included in the assessments levied by the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code (the "Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time. The Association may maintain multiple-use facilities within the Property and allow use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for the use of such facilities.

4.07 Indemnification. To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether

civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (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 proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

4.08 Insurance. The Board may purchase and maintain, at the expense of the Association, insurance on behalf of any person who is acting as 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 or otherwise.

4.09 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 4.05* hereinabove, the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such twelve (12) day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the occupant of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the

office or street address where the Owner (or the occupant of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

4.10 Community Technology.

(a) Community Systems. Without limiting the generality of *Section 4.05*, the Association is specifically authorized to provide, or to enter into contracts with other persons to provide, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Property (the "**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. The Association will have no obligation to utilize any particular provider(s).

(b) Community Interaction. The Association may make use of computers, the internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology related services and opportunities for Owners and occupants to interact and participate in Association-sponsored activities. To the extent Texas law permits, and unless otherwise specifically prohibited in the Restrictions, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means. The Board will specifically have the authority to adopt policies and procedures related to (i) Community Systems access by Owners, residents and other parties; (ii) using the Community Systems for the purpose of sending any notice required by the Restrictions; and (iii) electronic voting and the establishment of any quorum.

4.11 Merger. Merger or consolidation of the Association with another association must be conducted pursuant to the Texas Business Organizations Code. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Restrictions within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property. After merger or consolidation of the Association with another association, the Board reserves the right to record a notice in the Official Public Records of Travis County, Texas stating that a merger or

consolidation has occurred and providing the name of the other association and the surviving association.

4.12 Damage and Destruction.

(a) Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Community Facilities covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 4.12(a)*, means repairing or restoring the Community Facilities to substantially the same condition as existed prior to the fire or other casualty.

(b) Repair Obligations. Any damage to or destruction of the Community Facilities will be repaired unless a majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Community Facilities will not be repaired and no alternative Improvements are authorized, then the affected portion of the Community Facilities will be restored to its natural state and maintained as an undeveloped portion of the Community Facilities by the Association in a neat and attractive condition.

(d) Special Assessment. If insurance proceeds are paid to restore or repair any damaged or destroyed Community Facilities, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 6*, against all Owners. Additional Special Assessments may be made in like manner at any time during or following the completion of any repair.

(e) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Community Facilities, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

4.13 Eminent Domain. In the event it becomes necessary for any public authority to acquire all or any part of the Community Facilities for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners.

In the event any proceeds attributable to acquisition of Community Facilities are paid to Owners, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot.

ARTICLE 5
INSURANCE

5.01 Insurance. Each Owner will be required to purchase and maintain reasonably standard insurance on the Improvements located upon such Owner's Lot. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

5.02 Restoration. In the event of any fire or other casualty involving a Lot, the Owner thereof will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 5.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE,**

EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

5.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this *Article 5*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 6 ASSESSMENTS

6.01 Assessments.

(a) Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 6* will be levied by the Association against each Assessable Lot in amounts determined pursuant to *Section 6.09* below. The total amount of Assessments will be determined by the Board pursuant to *Section 6.03, 6.04, 6.05, 6.06 and/or 6.07.*

(b) Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Assessable Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Assessable Lot and all Improvements thereon (such lien, with respect to any Assessable Lot not in existence on the date hereof, will be deemed granted and conveyed at the time that such Assessable Lot is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

(c) Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Assessable Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. If Declarant elects to treat such subsidy as a loan, Declarant may prepare and submit to the Association a promissory note for the loan amount and the Association shall execute and return an original of the promissory note to Declarant. Any subsidy and the characterization thereof will be disclosed as a line item in the

annual budget prepared by the Board and attributable to such Assessments. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

6.02 Maintenance Fund. The Board will establish one or more accounts into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under the Restrictions and the Texas Business Organizations Code. The funds of the Association may be used for any purpose authorized by the Restrictions and the Texas Business Organizations Code, as each may be amended.

6.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Declaration, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the covenants and restrictions contained herein, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will 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 Board may at any time, and from time to time, levy further Assessments in the same manner. All such regular Assessments will 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.

6.04 Special Assessments. In addition to the Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration. The amount of any special Assessments will be at the reasonable discretion of the Board. In addition to the special Assessments authorized above, the Board may, in any fiscal year, levy a special Assessment applicable to that fiscal 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 upon the Community Facilities. Any special Assessment levied by the Board for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Community Facilities will be levied against all Owners pro rata in proportion to the number of allocated Assessment Units.

6.05 Individual Assessments. In addition to any other Assessments, the Board may levy an Individual Assessment against an Owner and the Owner's Assessable Lot. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on

delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner's Assessable Lot into compliance with the Restrictions; fines for violations of the Restrictions; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or residents of the Owner's Assessable Lot; common expenses that benefit fewer than all of the Units, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Assessable Lot basis; and "pass through" expenses for services to Assessable Lots provided through the Association and which are equitably paid by each Assessable Lot according to benefit received.

6.06 Working Capital Fee.

(a) Due Upon Sale. Except as otherwise provided herein, a working capital fee, in such amount as may be determined by the Board from time to time in its sole and absolute discretion, will be payable upon the sale of each Assessable Lot. The working capital fee will be collected from the transferee when the sale of the Assessable Lot closes to an Owner. Contributions to the fund are not advance payments of any other Assessments levied hereunder and are not refundable. Declarant is not required to make contributions for any Assessable Lot owned or retained by Declarant, or for any Assessable Lot for which the contribution was not collected at closing. During the Development Period, Declarant must approve the amount of any working capital fee adopted by the Board.

(b) Exempt Transfers. Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent. In the event of any dispute regarding the application of the working capital fee to a particular Owner, Declarant's determination regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this *Section 6.06*. The working capital fee will be in addition to, not in lieu of, any other assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such assessments. The working capital fee will be due and payable by the transferee to the Association immediately upon each transfer of title to the Assessable Lot, including upon transfer of title from one Owner of such Assessable Lot to any subsequent purchaser or transferee thereof. The Association will have the power to waive the payment of any working capital fee attributable to a Assessable Lot by the recordation in the Official Public Records of Travis County, Texas of a waiver notice executed by a majority of the Board members of the Association.

6.07 Amount of Assessment. The Board will levy Assessments against each "Assessment Unit" (as defined in *Section 6.09(a)* below). Unless otherwise provided in this

Declaration, Assessments levied pursuant to *Section 6.03* and *Section 6.05* will be levied uniformly against each Assessment Unit.

(a) Each Assessable Lot will constitute one (1) "**Assessment Unit**" unless otherwise provided herein.

(b) Notwithstanding anything in this Declaration to the contrary, no Assessments will be levied upon Assessable Lots owned by Declarant.

(c) Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Property, Assessable Lot from Assessments; or (ii) delay the levy of Assessments against any un-platted or unimproved or improved portion of the Property.

6.08 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Assessable Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Assessable Lot; provided, however, such charge will never exceed the maximum charge permitted under applicable law.

6.09 Owner's Personal Obligation; Interest. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Assessable Lot against which are levied such Assessments. 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 Assessable Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one half percent (1½%) per month), together with all costs and expenses of collection, including reasonable attorney's fees. Such amounts will be levied as an Individual Assessment against the Assessable Lot owned by such Owner.

6.10 Application of Payments. The Association may adopt and amend policies regarding the application of payments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Owner's account.

6.11 Assessment Lien and Foreclosure. The payment of all sums assessed by the Association in the manner provided in this *Article 6* is, together with any late charges as

provided in *Section 6.08* and interest and all costs of collection, including attorney's fees as provided in *Section 6.11*, secured by the continuing Assessment lien granted to the Association pursuant to *Section 6.01(b)* above, and will bind each Assessable Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Assessable Lot, except only for tax liens and all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Assessable Lot in question, provided such Mortgage was recorded in the Official Public Records of Travis County, Texas before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Assessable Lot covered by such lien and a description of the Assessable Lot. Such notice may be signed by an agent of the Association and will be recorded in the Official Public Records of Travis County, Texas. Each Owner, by accepting a deed or ownership interest to a Assessable Lot subject to this Declaration will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. Such lien for payment of Assessments may be enforced by the non-judicial foreclosure of the defaulting Owner's Assessable Lot by the Association in like manner as a real property mortgage with power of sale under Tex. Prop. Code § 51.002. (For such purpose, Joshua D. Bernstein of Travis County, Texas, is hereby designated as trustee for the benefit of the Association, with the Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Assessable Lot; except, however, that in the event of foreclosure of any first-lien Mortgage securing indebtedness incurred to acquire such Assessable Lot, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first lien Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale.

Upon payment of all sums secured by a lien of the type described in this *Section 6.11*, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such 12 day period) to such Owner, in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or occupant to the utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by applicable law, the sale or transfer of a Assessable Lot will not relieve the Owner of such Assessable Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Assessable Lot and on the date of such conveyance Assessments against the Assessable Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Assessable Lot, and such sums will be paid in preference to any other charges against the Assessable Lot other than a first lien Mortgage or Assessment Liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Assessable Lot which are due and unpaid. The Owner conveying such Assessable Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Assessable Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Assessable Lot to a third party.

6.12 Exempt Property. The following area within the Property will be exempt from the Assessments provided for in this Article:

- (a) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Public Records of Travis County, Texas;
- (b) The Community Facilities;
- (c) Lot 16 and Lot 17 in the Property; and
- (d) Any portion of the Property owned by Declarant.

6.13 Fines and Damages Assessment.

(a) **Board Assessment.** The Board may assess fines against an Owner for violations of any of the terms and provisions of the Restrictions which have been committed by an Owner, an occupant of the Owner's Assessable Lot, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 6.13* will be considered an Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Community Facilities by the Owner or the Owner's family, guests, agents, occupants, or tenants. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

(b) **Procedure.** The procedure for assessment of fines and damage charges will be as follows:

(i) The Association, acting through an officer, Board member or Manager, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;

(ii) The notice of the fine or damage charge must describe the violation or damage;

(iii) The notice of the fine or damage charge must state the amount of the fine or damage charge;

(iv) The notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and

(v) The notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

(c) **Due Date.** Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges will be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

(d) Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of an Assessable Lot is, together with any late charges, interest and all costs of collection, including attorney's fees, secured by the lien granted to the Association pursuant to *Section 6.01(b)* of this Declaration. Unless otherwise provided in this *Section 6.13*, the fine and/or damage charge will be considered an Assessment for the purpose of this Article, and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 6*.

ARTICLE 7

ARCHITECTURAL COVENANTS AND CONTROL

7.01 Purpose. This Declaration creates rights to regulate the design, use, and appearance of the Lots in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent Improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, inappropriate or peculiar in comparison to the then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing Improvements, including but not limited to dwellings, buildings, fences, landscaping, retaining walls, yard art, sidewalks, and driveways, and further including replacements or modifications of original construction or installation. Until expiration or termination of the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

7.02 Architectural Reviewer. The purposes of this Article shall be undertaken by the Architectural Reviewer. Until expiration or termination of the Development Period, the Architectural Reviewer shall mean Declarant or its designee. Upon expiration or termination of the Development Period, the rights of the Architectural Reviewer will automatically be transferred to the Architectural Control Committee appointed by the Board as provided in *Section 7.04* below. So long as Declarant has rights as the Architectural Reviewer, all references in the Restrictions to the Architectural Control Committee shall mean the Architectural Reviewer. In furtherance of the purposes of this Article, the Architectural Reviewer may adopt Architectural Design Guidelines as more fully set forth in *Section 7.06(b)* below.

7.03 Architectural Control by Declarant.

(a) Declarant as the Architectural Reviewer. During the Development Period, the Architectural Reviewer shall mean the Declarant or its designee, and neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Declarant may designate one or more persons from time to time to act on its behalf as the Architectural Reviewer in reviewing and responding to applications pursuant to this Article.

(b) Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property. Accordingly, each Owner agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of the Architectural Reviewer, which approval may be granted or withheld at the Architectural Reviewer's sole discretion. In reviewing and acting on an application for approval, the Architectural Reviewer may act solely in its self-interest and owes no duty to any other person or any organization.

(c) Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights as the Architectural Reviewer under this Article to an "**Architectural Control Committee**" appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason, provided however such veto must be made by Declarant within ten (10) days of Declarant's receipt of the Architectural Control Committee's decision.

7.04 Architectural Control by Association.

(a) Association as the Architectural Reviewer. Upon Declarant's delegation in writing of all or a portion of its reserved rights as the Architectural Reviewer to the Board, or upon the expiration or termination of the Development Period, the Association, acting through the Architectural Control Committee, will assume jurisdiction over architectural control and will have the powers of the Architectural Reviewer.

(b) Architectural Control Committee. The Architectural Control Committee will consist of at least two (2) persons appointed by the Board. Members of the Architectural Control Committee serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the Architectural Control Committee, in which case all references to the Architectural Control Committee will be construed to mean the Board. Members of the Architectural Control Committee need not be Owners or Residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

7.05 Prohibition of Construction, Alteration and Improvement. No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the Architectural Reviewer. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement, provided that such action is not visible from any other portion of the Property or Property.

7.06 Architectural Approval.

(a) **Submission and Approval of Plans and Specifications.** Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation will be submitted in accordance with the Architectural Design Guidelines or any additional rules adopted by the Architectural Reviewer together with any review fee which is imposed by the Architectural Reviewer in accordance with *Section 7.06(b)*. Contact information for the Architectural Reviewer will be set forth in the Architectural Design Guidelines. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the Homebuilder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by the Architectural Reviewer. The Architectural Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Architectural Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Architectural Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Architectural Reviewer, in its sole discretion, may require. Site plans must be approved by the Architectural Reviewer prior to the clearing of any Lot, or the construction of any Improvements. The Architectural Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Architectural Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(b) **Architectural Design Guidelines.** Declarant, as the initial Architectural Reviewer, will adopt the Architectural Design Guidelines. Thereafter, the Architectural Reviewer has the power, from time to time, to amend, modify, or supplement the Architectural Design Guidelines. In the event of any conflict between the terms and provisions of the Architectural Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the Architectural Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant

to the terms of this Declaration. Such charges will be held by the Architectural Reviewer and used to defray the administrative expenses incurred by the Architectural Reviewer in performing its duties hereunder; provided, however, that any excess funds held by the Architectural Reviewer will be distributed to the Association at the end of each calendar year. The Architectural Reviewer will not be required to review any plans until a complete submittal package, as required by this Declaration and the Architectural Design Guidelines, is assembled and submitted to the Architectural Reviewer. The Architectural Reviewer will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder. Plans and specifications may be submitted to the office of Jauregui Architect, 3660 Stone Ridge Road, Building A102, Austin, Texas 78746 (or such other address as the Architectural Reviewer may designate from time to time).

(c) Failure to Act. In the event that any plans and specifications are submitted to the Architectural Reviewer as provided herein, and the Architectural Reviewer fails to either approve or reject such plans and specifications for a period of sixty (60) days following such submission, the plans and specifications will be deemed disapproved.

(d) Variances. The Architectural Reviewer may grant variances from compliance with any of the provisions of this Declaration or the Architectural Design Guidelines, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Architectural Reviewer, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and, if Declarant has assigned its rights to the Architectural Control Committee, must be approved by at least a majority of the members of the Architectural Control Committee. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in the Restrictions will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of the Restrictions for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of the Restrictions.

(e) Duration of Approval. The approval of the Architectural Reviewer of any final plans and specifications, and any variances granted by the Architectural Reviewer will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such

one hundred and twenty (120) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Architectural Reviewer, and the Architectural Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 7.06(e)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(f) No Waiver of Future Approvals. The approval of the Architectural Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Architectural Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Architectural Reviewer.

(g) Limits on Liability. The Architectural Reviewer has sole discretion with respect to taste, design, and all standards specified by this Article. The Architectural Reviewer shall have no liability for decisions made in good faith, and which are not arbitrary or capricious. The Architectural Reviewer is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the Architectural Reviewer; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

(h) Non-Liability of the Architectural Reviewer. THE ARCHITECTURAL REVIEWER WILL NOT BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL REVIEWER'S DUTIES UNDER THIS DECLARATION, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT OR BAD FAITH OF THE ARCHITECTURAL REVIEWER OR ONE OR MORE INDIVIDUALS ACTING ON ITS BEHALF, AS THE CASE MAY BE.

ARTICLE 8 MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this Article apply to the Declaration and the Bylaws of the Association.

8.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "**Eligible Mortgage Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or occupant which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

8.02 Examination of Books. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

8.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law will relate only to the individual Lots and not to any other portion of the Property.

ARTICLE 9 EASEMENTS

9.01 Right of Ingress and Egress. Declarant and its agents, employees and designees will have a right of ingress and egress over and the right of access to the Community Facilities to the extent necessary to use the Community Facilities and the right to such other temporary uses of the Community Facilities as may be reasonably required or desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property.

9.02 Reserved Easements. All dedications, limitations, restrictions and reservations shown on any plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property.

9.03 Development Easements. Declarant reserves for itself and the Association a perpetual non-exclusive easement over and across the Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable

lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Property and any other property owned by Declarant; and (iii) the installation, operation and maintenance of roadways, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and improvements described in (i) through (iii) of this *Section 9.03*. The exercise of the easement reserved herein will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

9.04 Roadway and Utility Easements. Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, relocated, constructed, erected, and maintained in and on any streets maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Community Facilities, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of repair and maintenance.

9.05 Subdivision Entry, Fencing and Landscape Easements. Declarant reserves for itself and the Association, an easement over and across the Property for the installation, maintenance, repair or replacement of certain subdivision entry facilities and fencing within the Property which serves the Property, including but not limited to fencing along streets and roadways within the Property which may be constructed upon portions of Lots adjacent to such streets and roadways ("**Roadway Fences**"). Declarant will have the right, from time to time, to record a written notice in the Official Public Records of Travis County, Texas, which identifies the subdivision entry facilities and fencing, including any Roadway Fences, to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities and/or fencing, including any Roadway Fences, as Community Facilities by written notice recorded in the Official Public Records of Travis County, Texas. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or Improvement constructed thereon.

9.06 Easements for Special Events. Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, non-exclusive easement over the Community Facilities for the purpose of: (i) conducting parades; (ii) running, fishing, biking or other sporting events; (iii) educational, cultural, artistic, musical and entertainment activities; and (iv) other activities of general community interest, at such locations and times as Declarant and/or the Association, in their reasonable discretion, deem appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement.

9.07 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

ARTICLE 10 **DEVELOPMENT RIGHTS**

10.01 Development by Declarant. It is contemplated that the Property will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to create and/or designate Lots and Community Facilities and to subdivide with respect to any of the Property pursuant to the terms of this *Section 10.01*, subject to any limitations imposed on portions of the Property by any applicable Plat.

10.02 Special Declarant Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 10.02* until two (2) years after expiration or termination of the Development Period. Declarant retains an easement over and across the Community Facilities to effectuate any purpose enumerated in this *Section 10.02*.

10.03 Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property and, upon the filing of a notice of addition of land, such land will be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add

lands to the Property, Declarant will be required only to record in the Official Public Records of Travis County, Texas, a notice of addition of land (containing the following provisions:

(a) A reference to this Declaration, which reference will state the volume and initial page number of the Official Public Records of Travis County wherein this Declaration is recorded;

(b) A statement that such land will be considered Property for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and

(c) A legal description of the added land.

10.04 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, including the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association: (i) any portions of the Property which have not been included in a Plat; (ii) any portion of the Property included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portions of the Property included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal and renewal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to record in the Official Public Records of Travis County, Texas, a notice of withdrawal of land containing the following provisions:

(a) A reference to this Declaration, which reference will state the volume and initial page number of the Official Public Records of Travis County wherein this Declaration is recorded;

(b) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and

(c) A legal description of the withdrawn land.

10.05 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under the Restrictions (and expressly including this Declaration) to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

ARTICLE 11
DISPUTE RESOLUTION

11.01 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Bound Parties. Declarant, the Association, and its officers, directors, and committee members, Owners and all other parties subject to this Declaration (“**Bound Party**,” or collectively, the “**Bound Parties**”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file a lawsuit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 11.02* in a good faith effort to resolve such Claim.

(b) Claim(s). As used in this Article, the term “**Claim**” or “**Claims**” will refer to any claim, grievance or dispute arising out of or relating to:

(i) The interpretation, application, or enforcement of the Restrictions;

(ii) The rights, obligations, and duties of any Bound Party under the Restrictions; or

(iii) The design or construction of Improvements within the Property, other than matters of aesthetic judgment under *Article 6*, which will not be subject to review.

(c) Not Considered Claims. The following will not be considered a “Claim” or “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 11.02*:

(i) Any legal proceeding by the Association to collect assessments or other amounts due from any Owner;

(ii) Any legal proceeding by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of the Restrictions;

(iii) Any legal proceeding which does not include Declarant or the Association as a party, if such action asserts a Claim which would constitute a cause of action independent of the Restrictions;

(iv) Any legal proceeding in which any indispensable party is not a Bound Party;

(v) Any legal proceeding by the Association to enforce easements, architectural control, maintenance and/or use restrictions under the Restrictions; and

(vi) Any legal proceeding as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by *Section 11.02(a)*, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

11.02 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim (“**Claimant**”) against another Bound Party (“**Respondent**”) will give written notice to each Respondent and to the Board stating plainly and concisely:

(i) The nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

(ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) The Claimant’s proposed resolution or remedy; and

(iv) The Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation.

(i) If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in *Section 11.02(a)* (or within such other period as the parties may agree upon), the Claimant will have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Travis County, Texas.

(ii) If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant will be deemed to have waived the Claim, and the Respondent will be relieved of

any and all liability to the Claimant (but not third parties) on account of such Claim.

(iii) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant will thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iv) Each Party will bear its own costs of the mediation, including attorney's fees, and each Party will share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award will, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

11.03 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association will not initiate any judicial or administrative proceeding unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, excluding the votes held by Declarant, except that no such approval will be required for actions or proceedings:

(i) Initiated while Declarant owns any portion of the Property or the Property;

(ii) Initiated to enforce the provisions of the Restrictions, including collection of assessments and foreclosure of liens;

(iii) Initiated to challenge *ad valorem* taxation or condemnation proceedings;

(iv) Initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(v) To defend claims filed against the Association or to assert counterclaims in proceedings instituted against the Association.

This Section will not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment will also be approved by Declarant until the expiration or termination of the Development Period.

ARTICLE 12
GENERAL PROVISIONS

12.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the portion of the Property described in such notice, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant and its legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Records of Travis County, Texas, and continuing through and including January 1, 2073, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Travis County, Texas. Notwithstanding any provision in this *Section 12.01* to the contrary, if any provision of this Declaration would be unlawful, void or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

12.02 Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Travis County, Texas, of an instrument executed and acknowledged by: (i) Declarant, acting alone and unilaterally, until expiration or termination of the Development Period; or (ii) by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (unless Declarant has relinquished such right by written instrument recorded in the Official Public Records of Travis County, Texas) and Members entitled to cast at least sixty-seven (67%) of the number of votes entitled to be cast by members of the Association. No amendment will be effective without the written consent of Declarant, or its successors or assigns until expiration or termination of the Development Period. Specifically, and not by way of limitation, Declarant may unilaterally amend this Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

12.03 Enforcement. The Association or Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

12.04 Higher Authority. The terms and provisions of this Declaration are subordinate to federal and state law, and local ordinances. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

12.05 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

12.06 Conflicts. If there is any conflict between the provisions of this Declaration, any Architectural Design Guidelines, the Certificate of Formation, the Bylaws, or any rules and regulations adopted pursuant to the terms of such documents, the provisions of this Declaration will govern.

12.07 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

12.08 Acceptance by Grantees. Each grantee of Declarant of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

12.09 No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Community Facilities or any part will be permitted, nor will any person acquiring any interest in the Property or any part seek any such judicial partition unless the Property in question has been removed from the provisions of this Declaration

pursuant to *Section 10.04* above. This *Section 12.09* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration, nor will this provision be construed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

12.10 Notices. Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the date this Declaration has been recorded in the Official Public Records of Travis County, Texas.

DECLARANT:

WWDC DEVELOPMENT CORP., a Texas corporation

By: _____

Printed Name: _____

Title: _____

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____, 2014 by _____, _____ of **WWDC DEVELOPMENT CORP.**, a Texas corporation, on behalf of said _____.

(seal)

Notary Public, State of Texas

EXHIBIT "A"

[INSERT DESCRIPTION OF PROPERTY]