

**FIFTH AMENDMENT TO DEVELOPMENT AREA
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BARTON CREEK NORTH RIM**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS §

This Fifth Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek North Rim (the "Fifth Amendment") is made by North Rim Community, Inc., a Texas nonprofit corporation (the "Association"), as duly authorized by a vote of its members, and is as follows:

RECITALS:

A. FM Properties Operating Co., a Delaware general partnership (the "Declarant"), recorded that certain Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek North Rim recorded in Volume 12717, Page 2028 et seq., of the Real Property Records of Travis County, Texas (the "Declaration") which related to certain real property (the "Property").

B. Pursuant to that one certain Notice of Applicability of Master Declaration of Covenants, Conditions and Restrictions for Barton Creek North Rim, dated June 26, 1996, recorded in Volume 12717, Page 2021, of the Real Property Records of Travis County, Texas, the Property is subject to the Master Declaration of Covenants, Conditions and Restrictions of record in Volume 11324, Page 707, of the Real Property Records of Travis County, Texas (the "Master Declaration").

C. Declarant recorded that certain Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek North Rim, dated July 18, 1997, recorded in Volume 12980, Page 2243, of the Real Property Records of Travis County, Texas (the "First Amendment").

D. Declarant recorded that certain document which was inadvertently incorrectly titled First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek North Rim, dated February 11, 1998, recorded in Volume 13118, Page 192, of the Real Property Records of Travis County, Texas (the "Second Amendment").

E. The Association recorded that certain Third Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek North Rim, dated October 30, 2009, recorded under Document No. 2009185191 of the Official Public Records of Travis County, Texas (the "Third Amendment").

F. The Association recorded that certain Fourth Amendment to Development Area Declaration of Covenants, Conditions and Restrictions for Barton Creek North Rim, dated May

10, 2016, recorded under Document No. 2016072360 of the Official Public Records of Travis County, Texas (the "Fourth Amendment").

G. Pursuant to Article VIII, Section 8.02 of the Declaration, the Declaration may be amended by recording in the Real Property Records of Travis County, Texas an instrument executed and acknowledged by the President and Secretary of the Association certifying that such amendment has been approved by the Members of the Association entitled to cast at least seventy percent (70%) of the number of votes of the Association; and, superseding that, pursuant to Section 209.0041(h) of the Texas Property Code, the Declaration may be amended by a vote of sixty-seven percent (67%) of the total votes allocated to property owners entitled to vote on the amendment of the declaration.

H. The Members of the Association have approved the below amendments to the Declaration.

NOW, THEREFORE, the Association hereby declares and certifies and hereby amends and modifies the Declaration, by and through the undersigned duly appointed and authorized officers, as follows:

1. The definition of "Common Area" in Article I, Section 1.01 is hereby amended to read as follows:

"Common Area" shall mean and refer to those areas within the Property which have been or may in the future be conveyed to, leased by, or granted easements over to the Association or for the benefit of the Owners in common, as determined by the Board in its sole discretion, including, without limitation, all private streets and easements for landscape, drainage, irrigation, fencing, walls, entry gates, or related purposes. Common Area shall include the Driveway Access Easement. The Common Area may be owned by the Association, but held for the use and enjoyment of the Owners.

2. Article III, Section 3.04(c) of the Declaration shall be deleted in its entirety and replaced with the following language:

(c) Rules and Bylaws. To make, establish, and promulgate and in its discretion, to amend or repeal and re-enact the Bylaws and such Association Rules not in conflict with this Declaration, as it deems proper, covering nay and all aspects of its functions, including, without limitation, the use and occupancy of the Property. In the event of any conflict between the terms and provisions of the Articles, Bylaws, or Association Rules with this Declaration, the terms and provisions of this Declaration are intended to, and shall be controlling.

3. Article II, Section 2.09 of the Declaration shall be amended to read as follows:

2.09 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or otherwise appropriately screened from view from any portion of the Property, other than the Lot on which such containers are properly located, except for the period from 6:00 p.m. on the day before trash pick-up day to 8:00 p.m. on the day of trash pick-up.

4. Article II, Section 2.18 of the Declaration shall be deleted in its entirety and replaced with the following language:

2.18 Unsightly Articles. No article deemed to be unsightly by the Master Architectural Control Committee or the Board shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Service areas, storage areas, compost piles, and facilities for hanging, drying, or airing clothing or household fabrics (including, without limitation, clothes lines) shall be screened from view from any portion of the Property other than the Lot on which such areas, piles, and facilities are properly located. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scraps, refuse, or trash of any kind shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view from any portion of the Property other than the Lot on which such materials are properly located.

5. Article II, Section 2.20 "Travel Trailers and Recreational Vehicles," of the Declaration shall be deleted in its entirety.

6. Article II, Section 2.28 of the Declaration as added by the **FOURTH AMENDMENT TO DEVELOPMENT AREA DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BARTON CREEK NORTH RIM** is hereby deleted in its entirety and replaced with the following Article II, Section 2.28:

2.28. Vehicles.

(a) **Permitted and Prohibited Vehicles.** All vehicles brought onto or kept within the Property must be operable, not dilapidated, and must display a current license tag and inspection sticker. **"Permitted Vehicles"** shall include passenger automobiles, sport utility vehicles, motorcycles, motorized bikes, electric scooters, passenger trucks, and small vans. **"Prohibited Vehicles"** shall include, without limitation, recreational vehicles, travel trailers, trailers, graders, commercial vehicles, aircraft, pickup trucks larger than $\frac{3}{4}$ ton, boats, golf carts, panel trucks, flat trucks, vans capable of seating more than ten passengers, tow trucks, tractors, semi-trailers, campers, wagons, buses, machinery, garden maintenance equipment, inoperable, dilapidated, and unlicensed vehicles.

(b) **Temporary Parking of Prohibited Vehicles.** Prohibited Vehicles may not be parked on the Property where they are visible from any other portion of the Property at any time except for the following:

(i) Recreational Vehicles, campers, or travel trailers may be parked on the Driveway Access Easement in front of the vehicle owner's Lot (but not in front of any other Lot) or on the vehicle owner's Lot for up to a total of two (2) hours during any thirty (30) day period.

(ii) Prohibited Vehicles belonging to service providers may be parked on the Driveway Access Easement in front of the Lot being serviced (but not in front of any other Lot) or on a Lot for so long as the service provider is actively performing services on a Lot, but in no event, other than to allow emergency repairs to be made on a Lot, between the hours of 7:00 p.m. and 7:00 a.m., on Sundays, or otherwise in violation of the Declaration.

(c) **Parking on Lots.**

(i) Garages may not be used for storage (other than ordinary household storage incidental to residential use) or living purposes, and must be maintained in a manner to accommodate the number of vehicles for which they were designed. Owners are encouraged to utilize garage parking spaces for parking of vehicles to minimize the number of vehicles in the driveway. Garage doors

shall be kept closed other than when opened for vehicular ingress and egress.

(ii) Only Permitted Vehicles may be parked on Lots except that Prohibited Vehicles may be parked within garages so as to be entirely concealed from view when the door is closed.

(iii) Vehicles may be parked only on driveways, and may not be parked on grass, dirt, landscaped areas, walkways, or sidewalks.

(iv) All vehicles parked in driveways shall be parked "head in" so that the front of the vehicle faces the residence.

(v) During the hours of 8:00 a.m. to 10:00 p.m. no more than three (3) vehicles may be parked in an Owner's driveway at any given time. During the hours of 10:00 p.m. to 8:00 a.m. no more than one (1) vehicle may be parked in an Owner's driveway at any given time.

(d) Parking on Driveway Access Easement.

(i) General Restrictions. Except as otherwise specifically allowed by the Declaration, no vehicle may be parked on the Driveway Access Easement:

- (1) between the hours of 10:00 p.m. and 8:00 a.m.;
- (2) within fifteen feet (15') of a fire hydrant;
- (3) in a manner which blocks or prevents the safe passage of other vehicles, including, without limitation, emergency vehicles or trash trucks;
- (4) where the curb has been painted red at the direction of the Board, which shall have the absolute right and discretion to determine which curbs in the Driveway Access Easement shall be painted red to indicate no parking at any time; or
- (5) for more than two (2) hours per twenty-four (24) hour period.

(ii) Owners. Owners may not park their vehicles on the Driveway Access Easement at any time except when the Owner's driveway is temporarily blocked by guests or invitees, or when visiting another resident within the Property.

(iii) Guests and Invitees.

(1) Service Providers. Up to two (2) vehicles per Lot belonging to service providers actively engaged in home repair, renovation, or remodeling projects may be parked on the Driveway Access Easement for so long as the repair, renovation, or remodeling reasonably continues.

(2) Large Event Guests. An Owner who is planning a gathering such as a wedding, party, or other event to which guests will be invited, shall provide all Owners with prior notice of the event. Notwithstanding the preceding restrictions on parking on the Driveway Access Easement, for such an event and only during the event, it is permissible for guests to park their vehicles on the Driveway Access Easement in a manner that does not block or prevent safe passage of other vehicles.

(e) No Parking Areas. Owners, Occupants and/or their guests are not permitted to park within fifteen feet (15') of fire hydrants, or in front of postal boxes, entrances to driveways, or in any manner that blocks the flow of traffic or interferes with another Owner's access to his or her Lot.

(f) Repairs. No repair, restoration, or maintenance work on vehicles shall be carried out within the Property except for emergency repairs necessary in order to facilitate moving a vehicle off of the Property, or repair or maintenance work done entirely within an enclosed garage which does not otherwise create a nuisance or hazard by noise, odors, or the use of hazardous materials.

(g) Anti-Theft Alarms. Owners and occupants who have vehicles with anti-theft systems shall not allow the alarms or horns

to go off and disturb other persons in the Property for more than three (3) minutes. Any vehicle violating the three (3)-minute rule shall be deemed to be illegally parked and subject to immediate towing by the Association under the Texas towing statutes, without prior notice to the vehicle owner or operator. The Association may, without liability to the owner or operator of the vehicle, cut or disconnect any power source to such alarm or horn to avoid having to tow the vehicle.

(h) Speed Limit. Because of narrow streets and limited sight distances, the speed limit for operation of all vehicles on the Property is 15 MPH.

(i) Gate Access. An Owner who wishes to have gates left open for an open house, party, or other gathering should contact the Association's management company to make a request. Requests must be made Monday through Friday between 9:00 a.m. and 4:00 p.m., at least two (2) business days, but not more than seven (7) business days, before the event. For example, for a party on Saturday, Sunday, or Monday, requests must be made no later than 4:00 p.m. the previous Thursday.

Owners shall not provide gate access codes by posting them or providing them to invitees except as provided herein. Limited access daytime invitee codes and 24-hour housekeeper and employee codes are available to be programmed at an Owner's request.

(j) Enforcement.

(i) Towing Illegally Parked Vehicles. Any Vehicle parked in the Driveway Access Easement in violation of this Declaration may be removed and stored without notice or permission of the vehicle's owner or operator or Owner. Notice and removal shall be in accordance with Chapter 2308 of the Texas Occupations Code. The Owner shall be liable for all costs of towing illegally parked vehicles of the Owner, his family, guests, tenants and contractors.

7. Article VIII, Section 8.09 is hereby amended in its entirety to read:

8.09. Enforcement and Nonwaiver.

(a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant, the Master Association and/or the Association shall have the right to enforce all of the provisions of this Declaration. The Association or Master Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement shall include both damages for and injunctive relief against the breach of any provision hereof.

(b) The Board may levy reasonable fines, as an Assessment, against an Owner and the Owner's Lot if the Owner or occupant, or their respective family members, guests, employees, agents, invitees, or contractors violate a provision of the Bylaws, Association Rules, or Declaration. Fines may be levied for each act of violation or for each day a violation continues, and do not constitute a waiver or discharge of the Owner's obligations under the Bylaws, Association Rules, or Declaration.

In addition to fines, the Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities located thereon by the Owner or occupant, or their respective family members, guests, employees, agents, invitees, or contractors. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest at the rate of 1.5% per month or the highest rate permitted by law, whichever is less, and all costs of collection, including attorneys' fees, secured by the lien granted to the Association pursuant to Article VI, Section 6.08 of this Declaration. The fine and/or damage charge shall be considered an Assessment and shall be enforced in accordance with the terms and provisions governing the enforcement of Assessments pursuant to Article VI of the Declaration. Unless otherwise specified in the Declaration, fines shall be \$100 for the first violation, \$200 for the second violation, \$300 for the third violation and \$500 for the fourth and all subsequent violations occurring within the same six-month period following notice to the Owner of such violation. Prior to assessing a fine, notice shall be sent to the Owner in compliance with the applicable provisions of Chapter 209 of the Texas Property Code in effect as of the date of the violation.

(c) Every act or omission whereby any provision of the Association Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any

Owner of a Lot (at such Owner's own expense), Declarant, the Master Association or the Association.

(d) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.

(e) The failure to enforce any provision of the Association Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Association Restrictions.

Any capitalized items used and not otherwise defined herein shall have the meanings set forth in the Declaration or Master Declaration. Unless expressly amended by this Fifth Amendment, all other terms and provisions of the Declaration remain in full force and effect as written.

Executed to be effective upon recording in the Official Public Records of Travis County, Texas.

By our signatures below, we, the President and Secretary of the Association, acting in our official capacities for the Association, do hereby certify that this Fifth Amendment has been approved by a vote of sixty-seven percent (67%) of the total votes allocated to Owners in the Association in accordance with Section 209.0041 of the Texas Property Code, and has been approved by Members of the Association entitled to cast at least seventy percent (70%) of the votes of the Association in accordance with Section 8.02 of the Declaration. No governmental approval is required.

THE ASSOCIATION:

North Rim Community, Inc.

By:


Dale I. Misczynski
President

By:


Isabella Cunningham

Secretary

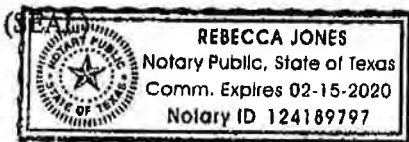
ACKNOWLEDGMENTS

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on June 26, 2019, by Dale J. Mischynski, President of and for North Rim Community, Inc., a Texas nonprofit corporation, on behalf of said corporation.



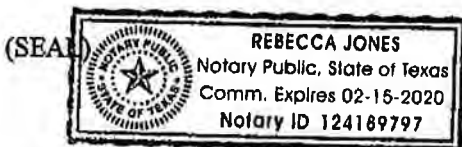
Rebecca Jones
Notary Public Signature

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on June 26, 2019, by Isabella Cunningham, Secretary of and for North Rim Community, Inc., a Texas nonprofit corporation, on behalf of said corporation.



Rebecca Jones
Notary Public Signature

AFTER RECORDING RETURN TO:

Bill Flickinger
Willatt & Flickinger, PLLC
12912 Hill Country Blvd., Ste. F-232
Austin, Texas 78738

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS



Dana DeBeauvoir

Dana DeBeauvoir, County Clerk
Travis County, Texas

Jun 27, 2019 04:00 PM Fee: \$66.00

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