

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR BARTON CREEK  
ABC WEST PHASE II**



**AFTER RECORDING RETURN TO:**

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**Watershed Protection and  
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505 Barton Springs Rd., 4<sup>th</sup> Fl.  
Austin, TX 78704  
ATTN: Cesar Zavala**

**BARTON CREEK NORTH  
[BARTON CREEK ABC WEST PHASE II]  
DEVELOPMENT AREA DECLARATION**

**DECLARANT: STRATUS PROPERTIES OPERATING CO., L.P.**

Cross reference to Cross reference to Master Declaration of Covenants, Conditions and Restrictions, recorded in Volume 11324, Page 707 of the Official Public Records of Travis County, Texas, as amended, and that certain Partial Assignment of Declarant's Rights and Amendment to Master Declaration of Covenants, Conditions and Restrictions, recorded as Document No. 2002044488 in the Official Records of Travis County, Texas.

123294-4 03/09/2004

**DEVELOPMENT AREA DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
[Barton Creek ABC West Phase II]**

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

This Development Area Declaration of Covenants, Conditions and Restrictions [Barton Creek ABC West Phase II] (the "Declaration") is made by STRATUS PROPERTIES OPERATING CO. L.P., a Delaware limited partnership (the "Declarant"), and is as follows:

**RECITALS**

A. The Declarant is the owner of all lots located in BARTON CREEK ABC WEST, PHASE II, a subdivision in Travis County, Texas, according to the map or plat (the "Plat") thereof recorded in Document No. 200400122, Official Public Records of Travis County, Texas (the "Property").

B. Pursuant to that one certain Notice of Applicability of Master Declaration of Covenants, Conditions, and Restrictions for Barton Creek ABC West, Phase II, recorded in the Official Public 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, as amended (the "Master Declaration").

C. Pursuant to the terms and provisions of that certain Partial Assignment of Declarant's Rights and Amendment to Master Declaration of Covenants, Conditions and Restrictions dated February 25, 2002, recorded as Document No. 2002044488 in the Official Records of Travis County (the "Partial Assignment"), Declarant reserved its right as Declarant under the Master Declaration to add the Property to the terms and provisions of the Master Declaration.

D. The Master Declaration permits the Declarant to file Development Area Declarations applicable to specific Development Areas, as those terms are used and defined in the Master Declaration, which shall be in addition to the covenants, conditions, and restrictions of the Master Declaration.

E. Declarant desires to create upon the Property a residential community and carry out a uniform plan for the improvement and development of the Property for the benefit of the present and all future owners thereof.

F. Declarant desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Property to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Property, and each owner thereof, which shall be in addition to the covenants, conditions, and restrictions set forth in the Master Declaration.

**NOW, THEREFORE**, it is hereby declared: (i) that all of the Property shall be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which shall run with the Property and shall be binding upon all parties having right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject

to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) that this Declaration shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Declaration.

## ARTICLE I

### DEFINITIONS

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

**“Wimberly II Architectural Control Committee”** means the committee created by Declarant as described in this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot.

**“Architectural Guidelines”** means the architectural guidelines adopted by the Wimberly II Architectural Control Committee, as such architectural guidelines may be amended, modified, or restated from time to time.

**“Articles”** means the Articles of Incorporation of the Wimberly II Community, Inc., to be filed in the office of the Secretary of State of the State of Texas, as the same may be amended from time to time.

**“Assessment” or “Assessments”** means assessments as may be levied by the Association under the terms and provisions of this Declaration and shall include regular and special assessments.

**“Association”** means the Wimberly II Community, Inc., a Texas non-profit corporation.

**“Association Restrictions”** means this Declaration as the same may be amended from time to time, together with the Articles, Bylaws, and Association Rules, from time to time in effect.

**“Association Rules”** means the rules and regulations adopted by the Board pursuant to *Section 3.04(c)* hereof as may be amended from time to time.

**“Board”** means the Board of Directors of the Association.

**“Bulk Rate Contract” or “Bulk Rate Contracts”** shall mean and refer to 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.

**“Bylaws”** means the bylaws of the Association as adopted by the Board and as amended from time to time.

**“Common Area”** means those areas within the Property which have been or may in the future be conveyed to, or leased by, the Association or held for the benefit of the Owners as determined by the Board in its sole discretion, including, without limitation, all private streets and easements for

landscape, drainage, irrigation, fence or related purposes. The Common Area may be owned by the Association, but held for the use and enjoyment of the Owners.

**"Declarant"** means Stratus Properties Operating Co., L.P., a Delaware limited partnership, its successors or assigns; provided that any assignment(s) of the rights of Stratus Properties Operating Co., L.P., as Declarant, must be expressly set forth in writing and the mere conveyance of a portion or all of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

**"Declaration"** means this instrument as it may be amended from time to time.

**"Improvements"** means every structure and all appurtenances of every type, whether temporary or permanent, including but not limited to buildings, outbuildings, sheds, patios, tennis courts, swimming pools, garages, driveways, storage buildings, sidewalks, gazebos, signs, fences, gates, screening walls, retaining walls, stairs, decks, landscaping, landscape improvements, poles, mailboxes, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, playground equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, other utilities, or otherwise.

**"Lot" or "Lots"** means one or more of the subdivided lots within the Property other than Common Areas.

**"Master Association"** means the Barton Creek North Property Owners Association, Inc., a Texas non-profit corporation.

**"Master Declaration"** means that certain Master Declaration of Covenants, Conditions and Restrictions dated November 28, 1990, of record in Volume 11324, Page 707 of the Real Property Records of Travis County, Texas, filed against the Property and other real estate in Travis County, Texas, as such declaration may be modified, amended, or restated from time to time.

**"Mortgage" or "Mortgages"** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any portion of the Property given to secure the payment of a debt.

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

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

1.02. **General Definitions.** Unless the context specifies or requires otherwise, capitalized terms used but not defined in this Declaration are used and defined as they are used and defined in the Master Declaration.

## ARTICLE II

### GENERAL RESTRICTIONS

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

**2.01. General Restrictions.**

(a) The Lots shall be used solely for private single family residential purposes and there shall not be constructed or maintained thereon more than one (1) detached single family residence.

(b) Each Lot must contain a private garage for not fewer than two (2) automobiles.

(c) All roof materials, including color, must be approved in advance by Wimberly II Architectural Control Committee.

(d) The design, construction materials, and location of (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, shall be approved by the Wimberly II Architectural Control Committee and shall strictly comply with the requirements of the Architectural Guidelines.

(e) All fences, including the material, height, or location of such fence must be approved in advance by the Wimberly II Architectural Control Committee.

(f) No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot; provided that, in connection with its development of the Property and sale of Lots, Declarant shall have the right to maintain model homes, temporary or permanent sales and marketing centers and offices, and conduct open houses or other marketing events, to which the general public may be invited.

(g) No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies, or for a carport or other automobile storage open on more than one side.

(h) No Lot may be used as an apartment house, flat, lodging house, hotel, bed and breakfast lodge, or any similar purpose, but Lots may be leased for single family residential purposes for a minimum term of six (6) months; provided that any lease agreement must be in writing and must be made specifically subject to this Declaration.

(i) All signage shall comply with sign guidelines adopted by the Association or the Wimberly II Architectural Control Committee. The Association and the Wimberly II Architectural Control Committee reserve the right to amend or modify the sign guidelines from time to time.

(j) House construction may occur only between the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and from 9:00 a.m. to 5:00 p.m. on Saturday. There shall be no construction allowed on Sunday or on legal holidays. During construction, all Lots shall be kept in a tidy manner; no dumping, burying or burning of trash shall be allowed. No debris from any Lot shall be stored or permitted to accumulate on any other Lot. During construction on any Lot, the Owner of such Lot shall be responsible for installing debris, construction, and/or silt fencing in accordance with guidelines adopted by the Wimberly II Architectural Control Committee. The operation of radios, televisions, or other entertainment devices by personnel during construction on any Lot shall be permitted, provided that the volume and sounds produced by such devices shall be inaudible from any adjacent Lot on which a residence has been constructed.

**2.02. Sight Distance at Intersection.** No fence, wall, hedge, or shrub planting that obstructs sight lines at elevations between two (2) and nine (9) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line

connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within the triangular area formed by the street line, a driveway or alley line and a line connecting them at points ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. All tree foliage within such distances of intersections shall be maintained to meet the sight line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, at a minimum, sight distances required by any applicable governmental authority shall be complied with.

**2.03. Antennas.** Except as expressly provided below, no exterior radio or television antenna or aerial or satellite dish or disc, nor any solar energy system, shall be erected, maintained, or placed on any Lot without the prior written approval of the Wimberly II Architectural Control Committee.

- (a) **Dishes Over One Meter Prohibited.** A satellite dish antenna which is over one meter in diameter is prohibited.
- (b) **Notification.** An Owner who wishes to install a satellite dish one meter or less in diameter (a "Permitted Antenna") must submit a written notice to the Wimberly II Architectural Control Committee, which notice must include the Owner's installation plans for the satellite dish.
- (c) **One Dish Limitation.** Only one satellite dish per residence is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner must provide written notification to the Wimberly II Architectural Control Committee. Upon notification, the Owner will be permitted to install an additional antenna if a single satellite is not sufficient for the reception of an acceptable quality signal and the use of an additional antenna results in the reception of an acceptable quality signal.
- (d) **Permitted Installation Locations.** In order of preference, the location of a Permitted Antenna which will be considered least visible by the Wimberly II Architectural Control Committee is as follows:
  - (i) Attached to the rear portion of the residence, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and streets; then
  - (ii) Attached to the side of the residence, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and streets.

The Wimberly II Architectural Control Committee may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.

**2.04. Insurance Rates.** Nothing shall be done or kept on the Property that would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, the Association Property, or the improvements located thereon, without the prior written approval of the Board.

**2.05. Subdividing and Easements.** No Lot shall be further divided or subdivided, nor may any easements or other interests therein covering less than the whole Lot be conveyed by the Owner thereof without the prior express written approval of the Declarant. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No shrubbery, fence or other obstruction shall be placed in any easement. No utility company, water district, political subdivision, or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, or flowers, or any other landscaping or Improvements or to other property of the Owner situated within any such easement.

**2.06. Signs.** No sign of any kind shall be displayed to the public view on any Unit or Common Element without the prior written approval of the Wimberly II Architectural Control Committee, except for:

- (a) signs which are part of Declarant's overall marketing or construction plans or activities for the Regime;
- (b) one (1) small security service sign per residence, 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 residence;
- (c) permits as may be required by legal proceedings; and
- (d) permits as may be required by any governmental entity.

An Owner will be permitted to post a "no soliciting" sign near or on the front door to the residence, provided, that the sign not exceed twenty-five (25) square inches.

**2.07. 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.

**2.08. Noise.** 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).

**2.09. Construction of Improvements.** No Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon any of the Property without the prior written approval of the Wimberly II Architectural Control Committee.

**2.10. Repair of Buildings.** All Improvements upon any of the Property that are not maintained by the Association shall at all times be kept in good condition and repair and adequately maintained by the Owner thereof. The opinion of the Wimberly II Architectural Control Committee as to condition and repair shall be final.



**2.11. Alteration or Removal of Improvements.** Any alteration, remodeling, or construction that in any way alters or modifies the exterior appearance of any Improvements, or the removal of any Improvements within the Property, shall be performed only with the prior written approval of the Wimberly II Architectural Control Committee.

**2.12. 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 approved in writing by the Wimberly II Architectural Control Committee.

**2.13. Hazardous Activities.** No activities may be conducted on the Property and no Improvements constructed on the Property that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces or in contained barbecue units which are attended while in use for used and cooking purposes only.

**2.14. Temporary Structures.** No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property without the written approval of the Wimberly II Architectural Control Committee; provided, however, that temporary structures necessary for storage of tools and equipment and for office space for architects, builders, and foreman during actual construction may be maintained with the prior approval of Wimberly II Architectural Control Committee, such approval to include the nature, size, duration, and location of such structure.

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

**2.16. Unightly Articles: Vehicles.** No article deemed to be unsightly by the Board shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks larger than a 3/4 ton pickup, boats, tractors, semi-trailers, campers, wagons, buses, motorcycles, motor scooters, machinery, garden maintenance equipment and inoperable vehicles 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. 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.

**2.17. Animals.** No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. The keeping of ordinary household pets not to exceed four (4) in number such as dogs and cats is allowed, and the pups, kittens, or offspring of any such permitted household pets may be kept for a period not in excess of eight weeks; provided, however, that no breeding, raising, or boarding of such pets for commercial purposes is permitted on such sites. No poultry, livestock or exotic animal may be kept on any Lot. All pets shall be kept on the Owner's Lot and shall not be allowed to roam loose.

**2.18. Travel Trailers and Recreational Vehicles.** No travel trailers or recreational vehicles shall be parked in any street or on or near any Lot for more than forty-eight (48) hours or for more than seventy-two (72) hours in any 30-day period, so as to be visible from any other portion of the Property.

**2.19. Owner's Responsibility for Maintenance.** Each Owner shall maintain and keep in a good state of repair the interior and exterior of all buildings, structures, and other Improvements of any kind or nature that are located upon such Owner's Lot. An Owner, when exercising the right and responsibility of repair, maintenance, replacement, or remodeling, as herein defined, shall never alter in any manner whatsoever the color and exterior appearance of the Improvements located on such Owner's Lot, except by written consent of the Wimberly II Architectural Control Committee. Each Owner shall, however, have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the inner surface of the walls, ceilings, floors, windows, and doors within such Owner's structure. In the event an Owner fails to maintain the Improvements located on such Owner's Lot as provided herein in a manner that the Wimberly II Architectural Control Committee deems necessary to preserve the appearance and value of the Property, the Wimberly II Architectural Control Committee may notify such Owner of the work required and request that it be done within thirty (30) days from the giving of such notice. In the event such Owner fails to complete such work or maintenance within said period, the Wimberly II Architectural Control Committee shall so notify the Board, and the Board may (but shall not be obligated to) cause such work to be done and the Owner shall be personally liable to the Association for the cost of such work. If the Owner fails to pay such cost upon demand by the Board, such cost (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 (1-1/2%) per month) shall be added to the Assessment (as such term is defined in this Declaration) chargeable to the Owner's Lot(s). Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in this 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, 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 2.19* (including any cost, fees, 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.

**2.20. Liability of Owners for Damage to Common Area.** No Owner shall in any way alter, modify, add to, or otherwise perform any work whatsoever upon the Common Area. The Owner of each Lot shall be liable to the Association for all damages to: (i) the Common Area; (ii) any Improvements constructed thereon; or (iii) to any Improvements constructed upon any Lot, the maintenance of which has been assumed by the Association; which damage is caused by the neglect, misuse or negligence of such Owner or any tenant or other occupant of such Owner's Lot or such Owner's guest or invitee. The full cost of all repairs of such damage shall be an Assessment against the Owner's Lot, secured by the liens reserved in this Declaration for Assessments and collectible 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(s).

**2.21. Compliance with Association Restrictions.** Each Owner shall comply strictly with the provisions of the Association Restrictions as the same may be amended from time to time. Failure to comply with any of the Association Restrictions shall constitute a violation 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 the Declarant, the Manager or Board on behalf of the Association or by the Wimberly II Architectural

Control Committee or by an aggrieved Owner. Without limiting any rights or powers of the Association or the Board set out in this Declaration, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of this Declaration, 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 (1-1/2%) per month) shall be added to the Assessment chargeable to the Owner's Lot(s). Any such amounts added to the Assessments 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, 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 2.21* (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.

**2.22. Butane and Fuel Tanks.** No butane or fuel tank or other structure or facility for the storage of combustible fuel (other than gas grills) shall be placed or maintained on the Property unless approved in writing by the Wimberly II Architectural Control Committee.

**2.23. 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 Association Restrictions. 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.

**2.24. Swimming Pools.** 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 the criteria set out in Section 13-8-70 of the Land Development Code of the City of Austin and all other applicable governmental requirements. Nothing in this *Section 2.24* 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.

**2.25. No Tennis Courts.** No tennis courts shall be constructed on any Lot.

### ARTICLE III

#### THE ASSOCIATION

**3.01. Organization.** The Association shall be a non-profit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**3.02. Membership.**

- (a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership. Membership in the Association may not be severed from the ownership of a Lot, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said Lot.
- (b) Every Member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:
  - (i) the right of the Association to suspend the Member's voting right and right to use the Common Area for any period during which any Assessment against such Member's Lot(s) remains past due, and for any period during which a Member is in violation of the Association Restrictions;
  - (ii) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility on such conditions as may be agreed to by the Members;
  - (iii) the right of the Association to borrow money for the purpose of improving or maintaining the Common Area and, in aid thereof, to mortgage said Common Area;
  - (iv) the right of the Association to make reasonable rules and regulations regarding the use of the Common Area and facilities located thereon by the Members and other persons entitled to such use; and
  - (v) the right of the Association to contract for services with third parties on such terms as the Association may determine to be in the best interest of the Association.

**3.03. Voting Rights.** The right to cast votes and the number of votes which may be cast for election of members of the Board and on all other matters to be voted on by the Members shall be calculated as follows:

- (a) The Owner of each Lot shall have one (1) vote for each lot so owned. In no event shall any Lot be entitled to more than one (1) vote; provided, however, that in the event of the resubdivision of any Lot into two or more Lots, the number of votes to which such Lot is entitled shall be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such resubdivision. No resubdivision shall be effective, for purposes of the Association Restrictions, unless the same is approved by the appropriate governmental entity in accordance with the requirements of Chapter 212 of the Texas Local Government Code then in effect (or its successor statute), and duly recorded in the Official Public Records of Travis County, Texas. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights shall continue to be determined according to the number of original

Lots contained in such consolidated Lot. Nothing herein shall be construed as authorization for any resubdivision or consolidation of Lots; such actions are subject to and require the prior approval of the Wimberly II Architectural Control Committee pursuant to other provisions of this Declaration.

- (b) In addition to the votes to which Declarant is entitled by reason of *Section 3.03(a)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant shall have four (4) additional votes until such time as Declarant no longer owns any of the Lots.
- (c) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) remains past due, for any period during which such Owner or such Owner's Lot(s) is in violation of the Association Restrictions or the Declaration.

**3.04. Duties of the Association.** Subject to and in accordance with these restrictions, the Association acting through the Board shall have and perform each of the following duties:

- (a) **Association Property.**
  - (1) **Ownership and Control.** To accept, own, operate, and maintain all Common Area, together with all improvements of whatever kind and for whatever purpose that may be located in said Common Area, and all sidewalks, pathways and private driveways and streets located within the Property.
  - (2) **Repair and Maintenance.** To maintain in good repair and condition the Common Area and all lands, Improvements, security devices, and other property owned, leased, or licensed to the Association, including, without limitation, all sidewalks, pathways, private streets, driveways and fences located within the Property.
  - (3) **Taxes.** To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Common Area to the extent that such taxes and assessment are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (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) **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 any and all aspects of its functions, including the use and occupancy of Common Area. In the event of any conflict between the terms and provisions of the Articles, Bylaws, or any other Association Rules with this Declaration, the terms and provisions of this Declaration are intended to, and shall be controlling.

- (d) Records. To keep books and records of the Association's affairs and to make such books and records, together with current copies of the Association Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.
- (e) Other. To carry out and enforce all duties of the Association set forth in the Association Restrictions.

**3.05. Powers and Authority of the Association.** The Association shall have the powers of a Texas non-profit corporation. It shall 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 by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

- (a) Assessments. To levy assessments as provided herein.
- (b) Right of Entry and Enforcement. To enter at any time in an emergency without notice, or in a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner or any other person or entity, upon any Lot or into any Improvement thereon, or to enter at any time without notice onto any Common Area, for the purpose of enforcing the Association Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Association Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be deemed a special Assessment against such Lot, shall be a lien upon the Lot entered upon and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in *Article VI* hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of the Association 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 Association Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns. Notwithstanding any provision herein to the contrary, the Association may not alter or demolish any Improvements on any Lot other than Common Area or Association Property in enforcing the Association Restrictions before judicial proceedings are instituted by the Association or the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER SHALL 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 3.05(b) (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.

- (c) Conveyances. To grant and convey to any person or entity any 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 Association Property for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:
- (1) Parks, parkways or other recreational facilities or structures;
  - (2) Roads, streets, walks, street lights, driveways, parking lots, trails, paths and fences;
  - (3) Lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
  - (4) Sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; or
  - (5) Any similar improvements or facilities.

Nothing set forth above, however, shall be construed to permit the use or occupancy of any improvement or other facility in any way that would violate applicable use and occupancy restrictions imposed thereon by the Association Restrictions, or by any governmental authority.

- (d) Manager. To retain and pay for the services of a Manager to manage and operate the Association, including the Association Property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power, or function so delegated.
- (e) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (f) Common Area Services. To pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to, and all maintenance of the Common Area, including, but not limited to, any recreational facilities; to maintain and repair any recreational facilities, easements, roads, roadways, rights-of-way, parkways, median strips, sidewalks, paths, trails, fences, ponds,

lakes located within or upon the Property and to maintain and repair other portions of the Property.

- (g) 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 or under the terms of the Association Restrictions.
- (h) Construction on Association Property. To construct new Improvements on or additions to Association Property, subject to the approval of the Wimberly II Architectural Control Committee.
- (i) Contracts: Property Ownership. To enter into contracts with Declarant or Declarant, and with such other persons or entities on such terms and provisions as the Board shall determine, and to acquire, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise.
- (j) Security Services. To provide for and construct and maintain facilities for the provision of security regarding the Property.
- (k) Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.
- (l) Membership Privileges. To establish rules and regulations governing and limiting the use of the Common Area and any Improvements thereon.

**3.06. Indemnification.** To the fullest extent permitted by applicable law, but without duplication of (and subject to) any rights or benefits arising under the Articles or Bylaws of the Association, the Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of Nolo Contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner 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 such conduct was unlawful.

The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant, or agent of the Association, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of the status of such person as such, whether or not the Association would have the power to indemnify such person against such liability hereunder or otherwise.

**3.07. Control by Declarant.** Notwithstanding anything to the contrary, Declarant, or its successors or assigns, shall have the absolute right to appoint members of the Board and their successors until the earlier to occur of: (i) one hundred and twenty (120) days after Declarant has conveyed all the



Lots to owners other than Declarant; or (ii) twenty (20) years after the date this Declaration is recorded in the Official Public Records of Travis County, Texas. Declarant, at its option, may assign or delegate, in whole or in part, its rights and powers to the Association, the Board or any other entity provided such designation is in writing.

**3.08. Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 3.05* hereinabove, the Association shall 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 shall 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 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 shall 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 shall 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 shall be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

**3.09. Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by: (i) the Declarant (so long as Declarant owns any Lots within the Property) only; or (ii) the Declarant (so long as Declarant owns any Lots within the Property) and Members holding at least 70% of the votes in the Association. 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 this Declaration. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property. No merger or consolidation will effect a change the rights reserved by Declarant pursuant to the terms and provisions of this Declaration.

#### ARTICLE IV

#### INSURANCE AND RESTORATION

**4.01. Insurance.** Each Owner shall be required to maintain insurance on the Improvements located upon such Owner's Lot, providing fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for Improvements similar in construction, location and use. Such insurance policies shall be for the full insurable value of the

Improvements constructed upon each Lot, shall contain extended coverage and replacement costs endorsements, if reasonably available, and may also contain vandalism and malicious mischief coverage, special form endorsement, a stipulated amount clause and a determinable cash adjustment clause. The Association shall 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 shall be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

**4.02. Restoration.** In the event of any fire or other casualty, the Owner shall 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 shall 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 shall 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 shall 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 shall be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments 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 this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH SUCH OWNER SHALL 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 4.02, 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.**

**4.03. Mechanic's and Materialmen's Lien.** Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the Association's rights under this *Article IV*, 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 shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

## ARTICLE V

### Wimberly II Architectural Control Committee

Declarant has a substantial interest in ensuring that improvements within the Property maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the Wimberly II Architectural Control Committees to the Board as provided in *Section 5.02(a)* below, the Wimberly II Architectural Control Committee shall be acting solely in Declarant's interest and shall owe no duty to any other Owner or the Association.

**5.01. Construction of Improvements.** No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than the Declarant without the prior written approval of the Wimberly II Architectural Control Committee.

**5.02. Wimberly II Architectural Control Committee.**

- (a) **Composition.** The Wimberly II Architectural Control Committee shall be composed of at least three (3) and no more than five (5) persons appointed as provided below, who shall review Improvements proposed to be made by any Owner other than Declarant. Declarant shall have the right to appoint and remove (with or without cause), at any time, all members of the Wimberly II Architectural Control Committee unless such right is transferred in writing to the Board.
- (b) **Submission and Approval of Plans and Specifications.** Two (2) copies of the construction plans and specifications (including but not limited to exterior views, exterior materials, colors and elevation, a drainage plan, a site plan showing the location of any proposed structure or improvement, a landscaping plan, and a driveway construction plan) or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal in the form required by the Wimberly II Architectural Control Committee, and any other information or documents that may be required by the Wimberly II Architectural Control Committee, shall be delivered, together with any review fee which is imposed by the Wimberly II Architectural Control Committee in accordance with *Section 5.02(c)* to the Wimberly II Architectural Control Committee at the offices of Declarant, at 98 San Jacinto Blvd., Suite 220, Austin, Texas 78701, Attn: Wimberly II Property Manager, or such other address as may hereafter be designated in writing from time to time, not less than thirty (30) days prior to the date on which the Owner proposes to commence construction or re-subdivision/consolidation. No re-subdivision or consolidation shall be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications therefor and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a majority of the members of the Wimberly II Architectural Control Committee. The Wimberly II Architectural Control Committee 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 Wimberly II Architectural Control Committee or any other entity; information relating to the question of whether any proposed Improvement would

unreasonably obstruct the view from neighboring Lots; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Wimberly II Architectural Control Committee may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Wimberly II Architectural Control Committee, in its sole discretion, may require. Site plans must be approved by the Wimberly II Architectural Control Committee prior to the clearing of any Lot, or the construction of any Improvements thereon. The Wimberly II Architectural Control Committee 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 Wimberly II Architectural Control Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

- (c) Adoption of Rules and Regulations. The Wimberly II Architectural Control Committee shall have the authority to adopt such procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder, including rules and guidelines establishing and describing its review procedures, and principles and criteria used in its review. The Wimberly II Architectural Control Committee may amend or modify or supplement its rules and guidelines from time to time as the Wimberly II Architectural Control Committee deems advisable. In addition, the Wimberly II Architectural Control Committee shall have the power and authority to impose such reasonable charges for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges shall be held by the Wimberly II Architectural Control Committee and used to defray the administrative expenses incurred by the Wimberly II Architectural Control Committee in performing its duties hereunder, provided, however, that any excess funds held by the Wimberly II Architectural Control Committee shall be distributed to the Association at the end of each calendar year.
- (d) Actions of the Wimberly II Architectural Control Committee. The Wimberly II Architectural Control Committee may, by resolution unanimously adopted in writing, designate one or two of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the Wimberly II Architectural Control Committee, except the granting of variances as hereinafter provided. In the absence of such designation, the vote of a majority of all of the members of the Wimberly II Architectural Control Committee taken at a duly constituted meeting shall constitute an act of the Wimberly II Architectural Control Committee.
- (e) Failure to Act. In the event that any plans and specifications are submitted to the Wimberly II Architectural Control Committee as provided herein, and the Wimberly II Architectural Control Committee shall fail either to approve or reject such plans and specifications for a period of forty-five (45) days following such submission, no approval by the Wimberly II Architectural Control Committee shall be required, and approval of such plans and specifications shall be presumed; provided, however, that such forty-five (45) day period shall not

begin to run until all information required to be submitted by the Wimberly II Architectural Control Committee to assist in its review of any plans or specifications has been received by the Wimberly II Architectural Control Committee. Any failure of the Wimberly II Architectural Control Committee to act upon a request for a variance hereunder shall not be deemed a consent to such variance, and the Wimberly II Architectural Control Committee's written approval of all requests for variances shall be expressly required.

- (f) **Variances.** The Wimberly II Architectural Control Committee may grant variances from compliance with any of the provisions of this Declaration, 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 Wimberly II Architectural Control Committee, in its sole and absolute discretion, such variance is justified due to visual or aesthetic considerations or unusual circumstances. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Wimberly II Architectural Control Committee. Plans and specifications which have been approved by the Wimberly II Architectural Control Committee without conditions or exceptions and which reflect deviations from this Declaration shall constitute a writing for the purpose of the foregoing sentence. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this Declaration, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.
- (g) **Duration of Approval.** The approval of the Wimberly II Architectural Control Committee of any plans and specifications, whether by action or inaction, and any variances granted by the Wimberly II Architectural Control Committee shall be valid for a period of ninety (90) days. If construction in accordance with such plans and specifications or variance is not commenced within such ninety (90)-day period and diligently prosecuted to completion thereafter, the Owner shall be required to resubmit such plans and specifications or request for a variance to the Wimberly II Architectural Control Committee, and the Wimberly II Architectural Control Committee shall have the authority to re-evaluate such plans and specifications in accordance with this Section and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval thereof.
- (h) **No Waiver of Future Approvals.** The approval of the Wimberly II Architectural Control Committee to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Wimberly II Architectural Control Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Wimberly II Architectural Control Committee.

- (i) Non-liability of Committee Members. Neither the Wimberly II Architectural Control Committee, nor any member thereof shall be liable to any Owner or to any other person for any loss, damage or injury arising out of the performance of the Wimberly II Architectural Control Committee's duties under this Declaration, unless such loss, damage, or injury is due to the willful misconduct or bad faith of the Wimberly II Architectural Control Committee or one or more of its members, as the case may be.
  
- (j) Relationship of Wimberly II Architectural Control Committee with Master Architectural Control Committee Established Under the Master Declaration. Pursuant to the terms and provisions of the Partial Assignment, Declarant retained the right to establish the Wimberly II Architectural Control Committee and to appoint and remove all members thereof. The Master Architectural Control Committee established under the Master Declaration has no authority to review, approve, or disapprove any Improvement constructed on the Property until such time as Declarant has assigned its rights to appoint and remove all members of the Wimberly II Architectural Control Committee to the Board.

## ARTICLE VI

### COVENANT FOR ASSESSMENTS

**6.01. Assessments.** Each Owner of any Lot, by acceptance of a deed therefor or ownership interest thereto, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant to pay to the Association: (i) Assessments or charges (as specified in *Section 6.03*); (ii) Special Assessments (as specified in *Section 6.04*); and (iii) late charges (as specified in *Section 6.06*). All of such Assessments shall be fixed, established, and collected from time to time as hereinafter provided. The Assessments provided for under this *Article VI* shall be in addition to the assessments levied pursuant to the Master Declaration.

**6.02. Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of promoting the comfort, health, safety, and welfare of the Owners, and the maintenance and improvement of the Property or any part thereof, including, without limitation, Common Area, and for carrying out the purposes or rights of the Association as stated herein or as otherwise provided in the Articles or Bylaws. Assessments may be levied to discharge certain maintenance expenses incurred by The Barton Creek ABC West Community, Inc. to maintain a portion of Wimberly Lane, as more particularly described in that certain Restrictive Covenant [Wimberly Lane Maintenance-ABC West, Phase 2], recorded as Document No, 2001035795, in the Official Public Records of Travis County, Texas.

**6.03. Establishing Assessments.** Each fiscal year, the Board shall estimate the expenses to be incurred by the Association during each year in performing its functions with respect to the Property, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and as between the Lots within the Property, the amount of the Assessments levied against each Lot shall be equal and uniform. The level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable by each Owner to the Association

during the fiscal year in equal monthly, quarterly, semi-annual, annual, or other periodic installments, as the Board determines in its sole discretion, on or before the first day of the applicable period.

**6.04. Special Assessments.** In addition to the Assessments authorized by *Section 6.03* hereof, the Association may, by vote of its Members as set out in *Section 6.04A* hereof, levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of any Improvement located upon any of the Common Area, or any portion of the Property owned by the Association, including the necessary fixtures and personal property related thereto, or for carrying out other purposes of or otherwise benefiting the Association.

**6.04A. Vote Required for Special Assessment.** Special Assessments levied against the Owner(s) of a particular Lot to cure violations of the Association Restrictions by such Owner(s) shall be deemed approved and authorized automatically upon the occurrence of the events giving rise to such curative Special Assessments. Special Assessments to be levied against all Owners as authorized by *Section 6.04* hereof must be approved by a majority of the total votes of the membership of the Association determined in accordance with *Section 3.03* of the Declaration, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all Members in accordance with the Bylaws.

**6.05. Due Date of Assessments.** The first Assessment shall become due and payable on each Lot in accordance with the periodic payment schedule established by the Board in accordance with *Section 6.03*. The due date of any Special Assessment hereunder shall be fixed in the resolution authorizing such Assessment or, if not so fixed or established by other terms of this Declaration, the first day of the first month following the imposition of such Special Assessment. Payments shall be considered delinquent if not paid within five (5) days after their due date.

**6.06. Late Charges.** If any Assessment is not paid before it is delinquent, the Owner responsible for the payment thereof may be required by the Board to pay a late charge at such rate the Board may designate from time to time, and such late charge (and any reasonable handling costs therefor) shall be a charge upon the Lots owned by the said Owner to which the Assessment relates, collectible in the same manner as herein provided for collection of Assessments, including foreclosure of the lien against such Lot(s); provided, however, such charge shall never exceed the maximum charge permitted under applicable law.

**6.07. Owner's Personal Obligation for Payment of Assessments.** The Assessments and late charges provided for herein shall be the personal and individual debt of each Owner. No diminution or abatement of Assessments shall be allowed for inconveniences arising from the making of repairs or improvements to the Common Area or any Lot, and no Owner may exempt himself from liability for such Assessments and charges through non-use of such Owner's Lot or otherwise.

**6.08. Assessment Lien and Foreclosure.** All sums assessed or charged in the manner provided in this Article but unpaid, together with all costs and expenses of collection, including reasonable attorney's fees, are secured by a continuing Assessment lien and shall constitute a charge on or against the Lot covered by such Assessment or charge, which shall bind such property in the hands of the Owner, and such Owner's heirs, devisees, and personal representatives, successors or assigns. The obligation to pay Assessments hereunder is part of the purchase price of each Lot when sold to an Owner. An express lien on each Lot is hereby granted and conveyed by Declarant to the Association to secure the payment thereof in each such instance, each such lien to be superior and paramount to any homestead or other exemption provided by law. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens, and all sums unpaid secured by a first-lien Mortgage securing sums borrowed for the purchase or improvements of the 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 shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must 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 Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Official Public Records of Travis County, Texas. Each Owner, by accepting a deed to a Lot subject to this Declaration, shall be deemed conclusively to have granted a power of sale to the Association to secure and enforce at any time after such payment becomes delinquent by the non-judicial foreclosure of such lien on the defaulting Owner's Lot by the Association in like manner as a deed of trust or real property mortgage with power of sale under Tex. Prop. Code § 51.002. (For such purpose, Robert D. Burton 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 shall be in addition to and not in substitution of any other rights and remedies the Association may have by law and under the Association Restrictions, including the rights of the Association to institute suit against the Owner personally obligated to pay the Assessment for monetary damages and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses, and reasonable trustee's and attorney's fees incurred. The Association shall 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 holding a prior lien on any Lot, the Association shall report to said Mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder shall not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any first-lien Mortgage, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments shall 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 Lot Owner 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 paragraph, the Association shall 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 shall be signed by an officer of the Association.

**6.09. Exemptions.** Notwithstanding any provision herein to the contrary, the Declarant and all Common Area shall be exempt from the payment of any Assessment levied by the Association, pursuant to this *Article VI*.

**6.10 Fines and Damages Assessment.** The Board may assess fines against an Owner for violations of the Association Restrictions, which have been committed by an Owner, an occupant of the Owner's 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 6.10* shall 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 Common Area or any facilities located thereon by the Owner or the Owner's family, guests, agents, occupants, or tenants. The Manager shall 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.



The procedure for assessment of fines and damage charges shall be as follows:

- (a) 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;
- (b) the notice of the fine or damage charge must describe the violation or damage;
- (c) the notice of the fine or damage charge must state the amount of the fine or damage charge;
- (d) the notice of a fine or damage charge must state that the Owner may, not later than thirty (30) days after the date of the notice, request a hearing before the Board to contest the fine or damage charge; and
- (e) 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.

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 shall 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.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot, together with interest as provided in *Section 6.06* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to this Declaration. Unless otherwise provided in this *Section 6.10*, the fine and/or damage charge shall be considered an Assessment for the purpose of this Article, and shall be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article VI*.

## ARTICLE VII

### MORTGAGE PROTECTION

**7.01. Notice to Association.** An Owner who mortgages such Owner's Lot and any residence or structure thereon shall notify the Board, giving the name and address of such Owner's Mortgagee. The Board may, at its election, maintain such information in a book entitled "Mortgagees of Owners."

**7.02. Examination of Books.** The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours upon one business day's notice (not less than 24 hours).

**7.03. Taxes, Assessments and Charges.** All taxes, assessments and charges which may become liens prior to first lien mortgages under local law shall relate only to the individual Lots and not to the Property as a whole.

## ARTICLE VIII

### EASEMENTS

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

**8.02. 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 shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. 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.

**8.03. Miscellaneous Easements.** Declarant hereby reserves unto itself and Declarant's successors and assigns 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, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and any other property owned by Declarant. Declarant shall 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 8.03*. The exercise of the easement reserved herein shall not extend to permitting entry into any residence, nor shall it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

**8.04. 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, shall 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, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and shall be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

## ARTICLE IX

### DISPUTE RESOLUTION

#### **9.01. Agreement to Encourage Resolution of Disputes Without Litigation.**

- (a) Declarant, the Association and its officers, directors, and committee members, all parties subject to this Declaration (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 suit 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 9.02* in a good faith effort to resolve such Claim.
- (b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:
  - (i) the interpretation, application, or enforcement of the Declaration, the Architectural Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board; or
  - (ii) the rights, obligations, and duties of any Bound Party under the Declaration, the Architectural Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board; or
  - (iii) the design or construction of improvements within the Property, other than matters of aesthetic judgment under *Article V*, which shall not be subject to review.

The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 9.02*:

- (i) Owner; and
- (ii) any suit 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 this Declaration; and
- (iii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration, the Architectural Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board; and
- (iv) any suit in which any indispensable party is not a Bound Party; and
- (v) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by *Section 9.02 (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.

**9.02. Dispute Resolution Procedures.**

- (a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall 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; and
  - (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and
  - (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 shall 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.** If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in *Section 9.02(a)* (or within such other period as the parties may agree upon), the Claimant shall 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.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

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 shall 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 shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

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

- (d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall 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 shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying 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.

**9.03. Initiation of Litigation by Association.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall 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 the Declarant, except that no such approval shall be required for actions or proceedings:

- (a) initiated while Declarant owns any portion of the Property; or
- (b) initiated to enforce the provisions of the Declaration, the Architectural Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board, including collection of assessments and foreclosure of liens; or
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings; or
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment shall also be approved by the Declarant for so long as Declarant owns any portion of the Property.

## ARTICLE X

### GENERAL PROVISIONS

**10.01. Duration.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration shall run with and bind the portion of the Property described in such notice, and shall inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Public Records of Travis County, Texas, and continuing through and including January 1, 2051, after which time this Declaration shall 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 shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that such change shall 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 10.01* 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 shall expire (twenty one) 21 years after the death or the last survivor of the now living descendants of Elizabeth II, Queen of England.

**10.02. Eminent Domain.** In the event it shall become necessary for any public authority to acquire all or any part of the Common Area 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 shall be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments shall be allocated on the per Lot basis and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the Lot.

**10.03. Amendment.** This Declaration may be amended or terminated by the recording in the Official Public Records of Travis County, Texas, of an instrument setting forth the amendment, which said instrument shall be executed and acknowledged by: (i) the Declarant, acting alone; or (ii) the Declarant and the President and Secretary of the Association certifying that such amendment has been approved by Members of the Association entitled to cast at least seventy percent (70%) of the number of votes of the Association.

**10.04. Roadway, Utility and General Fence Easements.** Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, constructed, erected, and maintained in and on any streets maintained by the Association or areas conveyed to the Association or reserved as Common Area, roadways, sewer lines, water lines, cable television and other communication lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground and fences common to the entire Property, with the right of access to the same at any time for the purposes of repair and maintenance.

**10.05. Notices.** Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Saturday, 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 in writing to the Secretary of the Association for the purpose of service of notices, or to the residence located on the Lot owned by such person if no address has been given to the Secretary of the Association. Such address may be changed from time to time by notice in writing given by such person to the Secretary of the Association.

**10.06. Interpretation.** The provision of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property, provided, however, that the provisions of this Declaration shall not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Property. This Declaration shall be construed and governed under the laws of the State of Texas.

**10.07. Construction Activities.** This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements upon Lots within the Property, so long as such construction is pursuant to proper approval of the Wimberly II Architectural Control Committee.

**10.08. Gender.** Whenever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

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

**10.10. Enforcement and Nonwaiver.**

- (a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant, and/or the Association shall have the right to enforce all of the provisions of this Declaration. The 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) 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, or the Association.
- (c) 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.
- (d) 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.

**10.11. Construction.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

**10.12. Damage and Destruction.**

- (a) Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, shall 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 10.12(a)* means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.
- (b) Any damage to or destruction of the Common Area shall be repaired unless a majority of the Board shall decide 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 shall be extended until such information shall be made available.

- (c) In the event that it should be determined by the Board that the damage or destruction of the Common Area shall not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.
- (d) If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board shall levy a special Assessment, as provided in *Article VI*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.
- (e) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments shall be allocated on a per Lot basis and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.
- (f) In the event that any proceeds of insurance policies are paid to Owners, such payments shall be allocated on a per Lot basis and shall be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

**10.13. The 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 without notice to the Owners, 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 shall be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property.

**10.14. Construction Matters.** Land development activities and construction activities will occur within and around the Property and such activities will create noise, dust, traffic disruption and general inconvenience to the residents within the Property.

**10.15. Views.** Views within the Property are not protected. No warranty, representation or guaranty is made to any Owner by Declarant or by any homebuilder or developer of any portion of the Property, that any views from any portion of the Property will be protected or remain the same.

**10.16. Warranties and Representations Regarding Improvements.** Declarant is not responsible for, nor does it assume or warrant as true, any representation or warranty made by any person who may be associated with the marketing and sale of any residences or other Improvements within the Property. Declarant is not responsible for, nor does it assume or warrant, the quality of construction of any home, building or other Improvements which are not constructed by Declarant. Each Owner has selected or will select a builder to construct such owner's home or other building, and no Owner will be entitled to look to Declarant with respect to any disputed contractual or construction warranty issues which may arise between any Owner and any contractor or contractors constructing a home or building upon such Owner's Lot.



10.17. **Storm Water Drainage.** Each Owner is responsible for complying with all governmental and/or regulatory requirements which may apply with respect to the drainage or detention of storm water within such Owner's Lot. Declarant expressly disclaims any responsibility, representation or warranty with respect to the drainage and/or detention of storm water within any Lot.

10.18. **Wildlife.** Deer and other wildlife are present within the Property. Accordingly, caution should be used when driving, walking or biking on all roadways and/or sidewalks within the Property so as to avoid encounters with such wildlife.


EXECUTED to be effective the 10 day of March, 2004.

**DECLARANT:**

**STRATUS PROPERTIES OPERATING CO., L.P., a Delaware limited partnership**

By: **STRS, L.L.C., a Delaware limited liability company, General Partner**

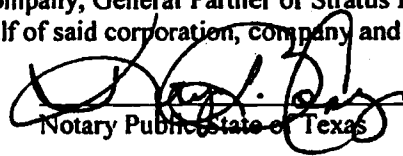
By: **STRATUS PROPERTIES INC., a Delaware corporation, its Sole Member**

By:   
John E. Baker, Sr. Vice President

THE STATE OF TEXAS     §  
  §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on this 10 day of March, 2004 by John E. Baker, Sr. Vice President of Stratus Properties Inc., a Delaware corporation, Sole Member of STRS, L.L.C., a Delaware limited liability company, General Partner of Stratus Properties Operating Co., L.P., a Delaware limited partnership, on behalf of said corporation, company and partnership.

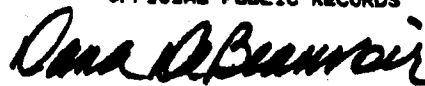
(SEAL)

  
Notary Public State of Texas



**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS



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HAYWOOD \$78.00

DANA DEBEAUVOIR COUNTY CLERK  
TRAVIS COUNTY TEXAS