

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR LOMA VISTA

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

32

WHEREAS, SHADOWRIDGE GP PARTNERS, LTD., a Texas limited partnership ("Declarant"), is the owner of the Property (defined below), which Declarant proposes to develop for residential purposes; and

WHEREAS, Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property, and to convey the Property subject to certain protective covenants, conditions, easements, restrictions, liens and charges hereinafter set forth; and

WHEREAS, Declarant desires to create a homeowner's association for the purpose of administering and enforcing this Declaration, and collecting and disbursing the assessments and charges hereinafter created;

NOW, THEREFORE, it is hereby declared (i) that all the Property shall be held, sold, conveyed and occupied subject to the following liens, easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and shall run with, the Property, shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each such party; 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 liens, easements, covenants, conditions and restrictions regardless of whether or not the same are set forth or referred to in said contract or deed.

ARTICLE 1
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter specified.

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

1.2 Articles. "Articles" shall mean the Articles of Incorporation of Estates of Loma Vista HOA, Inc., to be filed in the office of the Secretary of State of the State of Texas, as from time to time amended.

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

1.4 Association. "Association" shall mean Estates of Loma Vista HOA, Inc., a Texas nonprofit corporation.

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

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

1.7 Common Area. "Common Area" shall mean either a fee simple or an easement interest in any land within or benefitting any portion of the Property, which is designated by Declarant, in Declarant's sole discretion, as Common Area, and thereafter is maintained and operated by Declarant or the Association for the benefit of the Property, including, but not limited to, all easements, roads, roadways, rights-of-way, parkways, medians, sidewalks, parks, paths, trails, recreational facilities such as swimming pools or tennis courts, clubhouses, water quality, drainage and/or detention areas, and ponds and lakes.

1.8 Declarant. "Declarant" shall mean Shadowridge GP Partners, Ltd., a Texas limited partnership, or its successors or assigns. Any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of the Declarant.

1.9 Declaration. "Declaration" shall mean this instrument, as from time to time amended.

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

1.11 Lot. "Lot" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on either of the Plats, together with all Improvements located thereon.

1.12 Member. "Member" shall mean any Person holding membership rights in the Association.

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

1.14 Mortgagee. "Mortgagee" shall mean the owner and holder of a Mortgage.

1.15 Owner. "Owner" shall mean any Person, including Declarant, holding a fee simple interest in any portion of the Property, but shall not include a Mortgagee.

1.16 Person. "Person" shall mean any individual or entity having the legal right to hold title to real property.

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

1.18 Plats. "Plats" shall mean the subdivision plats, collectively, for Shadowridge Crossing, Section 11, a subdivision in Travis County, Texas, according to the map or plat of record in Document Number 200000134, of the Plat Records of Travis County, Texas, and Shadowridge Crossing, Section 12, a subdivision in Travis County, Texas, according to the map or plat of record in Document Number 200000133, of the Plat Records of Travis County, Texas, together with the subdivision plat for any land added to the Property pursuant to Article 2 below.

1.19 Property. "Property" shall mean all of Shadowridge Crossing, Section 11, a subdivision in Travis County, Texas, according to the map or plat of record in Document Number 200000134, of the Plat Records of Travis County, Texas, and Shadowridge Crossing, Section 12, a subdivision in Travis County, Texas, according to the map or plat of record in Document Number 200000133, of the Plat Records of Travis County, Texas, together with such land as may be annexed from time to time in accordance with Section 2.1 below, all subject to withdrawals made pursuant to Article 2 below.

1.20 Public View. "Public View" shall mean, as to each Lot, visibility of a location on the Lot from a Street, Common Area or another Lot.

1.21 Restrictions. "Restrictions" shall mean this Declaration, the Articles and Bylaws of the Association, and any rules of the Association or its committees, as from time to time in effect and from time to time amended, including without limitation, the integrated pest management plan, homeowner plan, homeowner education plan and turf and landscaping regulations adopted by the Association as described in Section 3.32 below.

1.22 Street. "Street" shall mean a road or right-of-way that has been or is intended to be dedicated for use by the public.

1.23 Supplemental Declaration. "Supplemental Declaration" shall mean any declaration of covenants, conditions, and restrictions which may be hereafter recorded by Declarant (or another Person with Declarant's approval) which is imposed against real property, and which expressly subjects such property to all the terms and restrictions of this Declaration (except as otherwise expressly stated in the Supplemental Declaration).

1.24 Visible Location. "Visible Location" shall mean a location on a Lot or Common Area which is in Public View.

ARTICLE 2 ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY

2.1 Staged Subdivision: Addition of Land. Declarant, acting without the consent or approval of any other Owner, shall have the right to bring within the scheme of this Declaration additional land (an "annexation") owned by Declarant or by other Persons (if Declarant so consents). Declarant shall accomplish any annexation by recording in the Official Public Records of Travis County, Texas one or more Supplemental Declarations which comply with this Section. Furthermore, after Declarant no longer owns any Lot within the Property, the Association may annex additional properties into the Property at any time with the assent of two-thirds (2/3) of the votes of the Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter. A Supplemental Declaration may, but need not, (i) provide that certain provisions of this Declaration shall not apply to the land annexed by the Supplemental Declaration, (ii) modify one or more provisions of this Declaration as applied to the land annexed by such Supplemental Declaration, (iii) impose different or additional restrictions or conditions upon the land annexed by the Supplemental Declaration, or (iv) establish its own procedure for the amendment of any provision thereof (for example, by specified vote of only Owners of Lots subject to the Supplemental Declaration, or by specified vote of only the Owners of some Lots subject thereto). An annexation shall be effective upon the recording of any Supplemental Declaration, and thereafter this

Declaration and the covenants, conditions, restrictions and obligations set forth herein shall apply to the annexed lands and the rights, privileges, duties and liabilities of the Persons subject to this Declaration shall be the same with respect to the annexed lands as with respect to the lands originally covered by this Declaration (except as expressly provided otherwise in an applicable Supplemental Declaration). In the event of a conflict between this Declaration and a Supplemental Declaration, the Supplemental Declaration shall control. Any Supplemental Declaration must state that land is being annexed, and must contain at least the following provisions:

- (a) a reference to this Declaration, which reference shall state the document number under which this Declaration is recorded in the Travis County Official Public Records;
- (b) a statement that the provisions of this Declaration shall apply to the annexed land, except as expressly provided otherwise therein;
- (c) a legal description of the annexed land; and
- (d) if Declarant is not the owner of the land being annexed, the signatures of both such owner and Declarant.

Upon the recording of any Supplemental Declaration, all Owners of Lots within the area annexed by same shall have the rights, privileges, and obligations of other Owners herein in accordance with the provisions thereof, to the extent set forth in this Declaration and the applicable Supplemental Declaration, and thereafter the land so affected by the Supplemental Declaration shall be included within the term "Property" for all purposes hereof (except as may be modified by the Supplemental Declaration).

2.2 Withdrawal of Land. Declarant shall have the right at any time to reduce or withdraw lands then owned by Declarant (or by other Persons with Declarant's consent) from the Property, and upon any such withdrawal this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to the lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Public Records of Travis County, Texas, a notice of withdrawal of land containing the following provisions:

- (a) a reference to this Declaration, which reference shall state the document number under which this Declaration is recorded in the Travis County Official Public Records;
- (b) a statement that the provisions of this Declaration shall no longer apply to the withdrawn land;

- (c) if Declarant is not the owner of the land so withdrawn, the signatures of both such owner and Declarant; and
- (d) a legal description of the withdrawn land.

ARTICLE 3
GENERAL RESTRICTIONS

All of the Property, and any right, title or interest therein, shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions.

3.1 Towers and Antennas. No exterior antennae, aerials, satellite dish receivers or other devices designed to transmit or receive television, radio, satellite or other signals of any kind shall be placed, allowed or maintained upon a Visible Location *unless* a Visible Location is the only location on a Lot where signals may be received or transmitted without substantial interference with reception. If a Visible Location is the only location on a Lot where signals may be received or transmitted without substantial interference with reception, such a device may be placed in a Visible Location approved by the ACC. The ACC may require screening of any device placed in a Visible Location, unless such screening (i) unreasonably delays installation or unreasonably increases the cost of installation, maintenance or use of the antenna, or (ii) precludes reception of an acceptable quality signal. To the extent permitted by the Telecommunications Act of 1996, as amended from time to time (the "Telecommunications Act"), without ACC approval: (a) no direct broadcast satellite dish or multipoint distribution service antenna larger than one (1) meter in diameter will be allowed on a Lot, (b) no television broadcast antenna mast may extend above the height of the center ridge of the roof of the residence on the Lot, and (c) no multipoint distribution service antenna mast may exceed the height of twelve feet (12') above the center ridge of the roof. This Article 3, Section 3.1 shall be interpreted to be as restrictive as possible, while at all times complying with the provisions of the Telecommunications Act. Terms used in this Article 3, Section 3.1, shall be deemed to have the meanings set forth in the Over-The-Air Reception Devices Rule ("OTARD") promulgated under the Telecommunications Act or other rules and regulations promulgated pursuant thereto, and where OTARD, the Telecommunications Act, or any other rule or regulation promulgated thereunder requires the ACC to act reasonably, or respond promptly, such obligation shall be deemed a part of the ACC's obligations under this provision. In the event of an amendment to the Telecommunications Act which conflicts with this provision, the conflicting provision herein automatically shall be deemed deleted, and Declarant, without the joinder of any other Owner(s), may amend this provision so as to comply with the amended Telecommunications Act.

3.2 Insurance Rates. Nothing shall be done or kept on the Property which would increase the customary rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon without the prior written approval of Declarant.

3.3 Subdividing. No Lot shall be further divided or subdivided, and no easements or other interests therein less than the whole shall be conveyed by the Owner thereof, without the prior written approval of Declarant.

3.4 Signs. Except for signs, billboards or other advertising devices displayed by Declarant, for so long as Declarant or Declarant's successors or assigns hereunder shall own any portion of the Property, no sign of any kind shall be displayed in Public View on any Lot except:

- (a) builders may display one (1) sign of not more than six (6) square feet on a Lot to advertise the Lot and any residential structure situated thereon for sale during the construction and/or sale period;
- (b) any Owner may display one (1) sign of not more than four (4) square feet on a Lot improved with a residential structure to advertise the Lot and residence for sale or rent;
- (c) signs required for legal proceedings; and
- (d) for so long as a builder owns any Lot, such builder may display two (2) signs of not more than one hundred (100) square feet in the aggregate on a Lot owned by such builder which contains a model home.

3.5 Rubbish and Debris. No rubbish or debris of any kind (including weeds, brush or material of any nature deemed to be rubbish or debris by the ACC) 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 portion of the Property or to its occupants. The ACC shall determine what constitutes rubbish, debris or odors, and what conditions render any portion of the Property unsanitary, unsightly, offensive or detrimental to any other property or to its occupants, and the decisions of the ACC shall be final and binding on all parties. Refuse, garbage and trash shall be kept at all times in covered containers with tightly fitting lids, which containers shall be maintained in a clean and sanitary condition and kept within enclosed structures or appropriately screened from view. In no event shall such containers be maintained in Public View except to make the same available for collection, and then only for the shortest time reasonably necessary to effect such collection.

3.6 Noise or Nuisance. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any of the Property, except with the approval of the ACC. 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. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to

neighboring property (except any reasonable security, landscape or tennis court lighting that has approval of the ACC). Upon being given notice by the ACC that any lighting is objectionable, the Owner shall take all necessary steps to properly shield same.

3.7 Construction of Improvements. No Improvements shall be constructed upon any of the Property without the prior written approval of the ACC; however, the ACC may limit its review to a review of a typical floor plan for the proposed residence, and upon the ACC's approval of such floor plan, residences may be constructed consistent with the approved floor plan without the requirement of further review or approval by the ACC, anything herein to the contrary notwithstanding.

3.8 Roofing Materials. Roofs shall consist of twenty-five (25) year dimensional fiberglass asphalt shingles. Shingle color shall be weatherwood. Roof pitch must be at least 6 to 12, except that the ACC may approve (without the necessity of granting a variance) a roof pitch of less than 6 to 12 above covered porches and patios. Any other type of roof must be approved by the ACC.

3.9 Underground Utility Lines. Subject to the provisions of the Telecommunications Act, except for utility lines installed by Declarant, or existing on the Property, no utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed or maintained underground or concealed in, under or on buildings or other Improvements as approved in writing by the ACC; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements which have been previously approved in writing by the ACC.

3.10 Natural Gas. All Lots shall be provided with natural gas lines, and each building Improvement on a Lot shall have at least two (2) natural gas appliances.

3.11 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property which 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 within barbecue units while attended and in use for cooking purposes.

3.12 Temporary Structures. Garage Apartments and Outbuildings. No (a) tent, shack or other temporary building, improvement or structure, (b) garage apartment, or (c) outbuilding or storage shed shall be placed, erected or permitted to remain upon the Property without the prior

written approval of the ACC. No structure of a temporary character may be used at any time as a residence on the Property. The preceding sentences will not prohibit temporary structures necessary for storage of tools and equipment and for office space for architects, builders and foremen during actual construction (or in the event of repair), which may be maintained with the prior written approval of the ACC. The ACC's approval may be conditioned on specifications as to the nature, size, duration and location of such structure. This Section 3.12 shall not prohibit a separate garage building, guest house or servants quarters so long as such building, house or quarters: (a) does not exceed thirty feet (30') in height, (b) does not exceed six hundred (600) square feet of floor area, and (c) is attached to the main residence by a common wall or a covered passageway. Any permitted garage, guest house or servants quarters shall meet or exceed the masonry requirements set forth in Article 3, Section 3.19 below. All structures described in this Section 3.12, at a minimum, shall be constructed of the same or substantially similar materials and colors as the main structure on the Lot (as determined by the ACC), and shall have roofs of the same color and weight as the main structure on the Lot. Metal awnings, patio covers, outbuildings and sheds are expressly prohibited.

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

3.14 Unsightly Articles: Vehicles. No article deemed to be unsightly by the ACC shall be permitted to remain on any Lot in a Visible Location. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall at all times, except when in actual use, be kept in enclosed structures or screened from Public View, and no repair or maintenance work shall be done on any of the foregoing or on any automobile (other than minor emergency repairs) except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have sufficient garage space, as approved by the ACC, to house all vehicles to be kept on the Lot. No Owner shall keep more than two (2) automobiles in Public View for any period in excess of seventy-two (72) hours. No inoperable automobile or other vehicle may be parked overnight on any Street within the Property, and no automobile or other vehicle may be parked overnight on any Street within the Property for more than two (2) consecutive nights. Service areas, storage areas, air conditioning units, compost piles, and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from Public View; no facilities for hanging, drying or airing clothing or household fabrics shall be placed in Public View. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse, or trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from Public View. This provision shall not prohibit the storage of new building materials used in the construction of Improvements on a Lot during the period of construction, so long as the construction progresses without unreasonable delay.

3.15 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers or recreational vehicles shall be parked on or near any Lot in a Visible Location for any period in excess of forty-eight (48) hours.

3.16 Fences. Fences are not required on the Property. If constructed, fences shall be of wood, masonry, wrought iron or decorative metal construction, or a combination thereof, and shall not exceed six feet (6') in height. All wrought iron or decorative metal must be of a color and style approved by the ACC. No fence (other than structural retaining walls approved by the ACC) shall be maintained in front of the front wall line of the main residential structure on the Lot. Chainlink fences shall not be permitted. All Lots shall be fenced so that with respect to any portion of the fence which faces any existing or proposed Street, the slats shall face the Street. All other portions of such wood fencing shall be fenced in "shadowbox" style, with alternating slats (where one slat faces into the Lot and the next slat faces outward from the Lot). With respect to those corner Lots with a 15' side setback line adjacent to a Street right-of-way, the ACC shall not allow the side yard fence adjacent to the right-of-way to be placed along the side property line, but instead shall require such side yard fence to be placed on the 15' side setback line. A fencing plan for each Lot shall be submitted as part of the Plans and Specifications. Upon written request, the ACC may waive the requirement of a fencing plan for any Lot if the builder uses plans previously approved by the ACC for another similarly located Lot. Notwithstanding the foregoing, the ACC may in its discretion prohibit the construction of any proposed fence, modify the requirements as to how slats of a wood fence shall face, specify the materials of which any proposed fence must be constructed, or require that any proposed fence be screened by vegetation or otherwise so as not to be visible from other portions of the Property.

3.17 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. The ACC may enact rules which limit the number of ordinary household pets to be kept on any one Lot. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the ACC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

3.18 Landscaping Requirements. It is the intent of the Restrictions to recognize, utilize and supplement the existing landscape and visual resources and to permit and require a viable

introduced landscape, so as to ensure consistent quality and provide for visual harmony through color and textural variety within the Property. To the extent there is any conflict between the provisions of this Section 3.18 and the provisions of the City of Austin Environmental Criteria Manual requirements for the Barton Springs Zone, the provisions of the Environmental Criteria Manual shall supersede all requirements set forth herein.

- (a) Detailed landscape plans for each Lot shall be submitted as part of the Plans and Specifications; provided, however, that Owners who are homebuilders shall not be required to submit landscape plans. There shall be no revisions made to the approved plans without resubmittal to and approval by the ACC of the revised plans.
- (b) Existing trees shall be deemed to be trees of 6" caliper and above measured three feet (3') above grade. During construction, existing trees shall be preserved and protected to the extent reasonable for the intended development, as determined in the ACC's discretion. Building or paving operations occurring adjacent to existing trees to be saved shall be in accordance with the Restrictions.
- (c) Demolition of existing trees shall mean any operation, including transplanting, which removes, uproots or renders the tree incapable of sustaining a healthy and thriving condition. The ACC, at its option, may require that any tree which it deems to have been unnecessarily demolished shall be replaced with a tree approved by the ACC.
- (d) All introduced vegetation shall be trees, shrubs, vines, ground covers, seasonal flowers or permanent turf grasses which are commonly used in Central Texas for landscaping purposes and which are approved by the ACC. For purposes of this Declaration, "permanent turf grasses" shall be either Bermuda or Buffalo 609; provided, however, that where Bermuda or Buffalo 609 will not flourish because of shady conditions, Fescue or St. Augustine shall be considered permanent turf grasses.
- (e) "Landscaping" shall mean any proposed modification to a Lot, including but not limited to any berming, irrigation systems, landscape subsurface drainage systems, paving, nonstructural retaining walls, and introduced vegetation according to the plans approved by the ACC. Landscaping in accordance with the approved plans shall be installed within ten (10) days after the date the City of Austin issues a Certificate of Occupancy with respect to the Improvements on such Lot. Extensions to the time limit may be granted by the ACC for up to an additional thirty (30) days on a case by case basis. The approved plans shall include permanent turf grass in all sodded areas. Winter rye shall be considered a

temporary measure to reduce soil erosion through the winter season, and shall be completely demolished and replaced with permanent turf grass according to the approved plans.

- (f) Each Owner shall landscape front yards and side yards (from the rear of the structure forward). Trees, shrubs, ground covers, seasonal color and permanent turf grass shall be used in these areas to achieve the landscape intent according to the approved plans.

3.19 Construction Requirements.

- (a) The exterior of each structure built upon any Lot shall be of at least seventy-five percent (75%) masonry construction, and each exterior wall of a residential structure built upon any Lot which faces a Street shall be of at least ninety percent (90%) masonry construction. In calculating such percentages, gables and window and door openings will be excluded from the total area of the exterior structure. Any chimney constructed on the outside of an exterior front or side wall of any building structure shall consist of not less than ninety percent (90%) masonry construction. Brick, natural stone and stucco shall be considered to be masonry for purposes of this Section; however, no non-clay brick, or brick with gray color tones, will be permitted unless approved by the ACC. Combinations of materials and the proportion thereof shall aesthetically and architecturally blend with and enhance the Property, and shall be subject to approval by the ACC. Notwithstanding the foregoing, up to twenty percent (20%) of the Lots may be built with a minimum of twenty-five percent (25%) masonry on the front exterior wall of the structure (with the balance of the exterior being Hardi-Plank); provided, however, that all houses built pursuant to this sentence shall include a front porch of a design acceptable to the ACC.
- (b) Interior walls of all garages must be finished (i.e., at a minimum, taped, bedded and painted). No garage shall be permitted to be used or enclosed for living purposes, but must be maintained for storage of automobiles and other vehicles and related purposes. All garages must have garage doors constructed or faced with wood siding or painted metal harmonious in quality and color with the exterior of the main residence, and shall be installed with electric opening and closing devices, which devices shall at all times be kept in a serviceable condition.
- (c) All exterior wall materials must be continued down to eighteen inches (18") above finish grade on the front exterior walls, and down to twenty-four inches (24") above finish grade on the side exterior walls, thereby eliminating unfinished foundation walls within Public View. Any structure with a pier and beam foundation shall

have all mechanical, electrical, plumbing lines and fixtures located thereunder screened from Public View.

- (d) All finished floor elevations shall comply with the provisions of the applicable Plat. All building pad sites, including the garage, shall be elevated to a minimum of twelve (12) inches above the final graded elevations.

3.20 Construction Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as unreasonably to interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to construction practices customary in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the ACC, provided that such waiver shall be only for the reasonable period of such construction.

3.21 Construction in Place. All dwellings constructed on the Property shall be built in place on the Lot. The use of prefabricated materials other than trusses and wall panels shall be allowed only with the prior written approval of the ACC.

3.22 Unfinished Structures. No structure shall remain unfinished for more than two hundred seventy (270) days after construction has begun. A structure shall be deemed "unfinished" if a certificate of occupancy has not been issued by the City of Austin, or if all exterior and interior details are not completed and operational. Construction of residential Improvements shall begin no later than one (1) year after ownership of the Lot has been legally conveyed by the applicable Declarant, and shall be considered to have begun on the date on which foundation forms are set.

3.23 Location of Improvements. No building or other Improvements shall be located on any Lot nearer to the front Lot line than forty feet (40'). The front of a primary dwelling structure shall face the front of a similar structure across the Street whenever feasible, and the ACC shall resolve any conflicts arising from this requirement and make the final determination with regard to the orientation of the front of Improvements upon any Lot. No building shall be located on any Lot nearer than ten feet (10') to any rear Lot line. No building shall be located on any Lot nearer than fifteen feet (15') to any side Lot line adjacent to a Street. Unless the building is to be located on more than one Lot, no building shall be located nearer than five feet (5') to an interior Lot line. No swimming pool may be located between the front Lot line and the fence closest to such front Lot line. For the purposes of this Declaration, eaves, steps and unroofed terraces shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot. Notwithstanding the general guidelines herein

set forth as to location of Improvements upon the Lot, it is the intention of Declarant to establish the importance of locating the Improvements so as to preserve existing trees, vegetation and topography to the extent reasonable and practical. The ACC shall be specifically empowered to require or to grant variances with respect to these guidelines, so long as the location of the Improvements will not encroach upon any other Lot, utility easement, or public right-of-way or result in any building being located closer than ten feet (10') from the primary dwelling structure on another Lot.

3.24 New Materials. Only new materials shall be utilized in constructing any structures situated upon a Lot, unless approved by the ACC.

3.25 No Window Units. No window, roof or wall type air conditioner which is in a Visible Location shall be permitted to be used, placed or maintained on or in any building in any part of the Property.

3.26 Minimum Floor Area. The air conditioned portion of the primary dwelling structure erected on any Lot shall have a floor area of not less than two thousand (2,000) square feet for any Lot, such area to be exclusive of all porches, carports, garages and other rooms which are not air conditioned with the main living quarters.

3.27 Design. No structure may exceed two (2) stories in height or may have a garage which is intended to shelter more than four (4) cars.

3.28 Driveways: Culverts. All driveways shall be constructed of washed aggregate unless prohibited by governmental regulations. For a minimum travel distance of twenty-five feet (25') from the edge of a public roadway, driveway grades may exceed fourteen percent (14%) only with written approval by the Transportation and Public Services and Planning Departments of the City of Austin (or the applicable successor to such Department(s)). All culverts installed in connection with the installation of driveways shall be finished in accordance with ACC specifications.

3.29 Sewer. No residence on a Lot shall be serviced other than by a public sanitary sewer system.

3.30 Swimming Pools. Above-ground swimming pools are expressly prohibited within the Property. All swimming pools must be contained within fenced enclosures in compliance with all governmental requirements and screened from Public View.

3.31 Composite Building Site. Any Owner of one or more adjoining Lots may consolidate such Lots into one single-family residential building site, and may place or construct Improvements on such site with the prior written approval of the ACC. In cases of such consolidation of Lots, setback lines shall be measured from the two side Lot lines existing after

consolidation, rather than from the Lot lines shown on the Plat. The Owner may not thereafter resubdivide the consolidated Lots without the prior written approval of Declarant.

3.32 Compliance with Save Our Springs Restrictions. The Property is located within the Barton Springs Zone within the City of Austin. Accordingly, each Owner must comply with certain provisions of the City of Austin Environmental Criteria Manual. Specifically, the Association shall adopt, and each Owner must comply with all provisions of, an integrated pest management plan, a homeowner plan, a homeowner education plan and certain turf and landscaping regulations. Such plans and regulations shall apply to the Property with the same force and effect as this Declaration, and may be enforced by the Association in the same manner as this Declaration may be enforced. *These plans and restrictions limit the maximum portion of any Lot which may be established as turf or landscaping to fifteen percent (15%) of the Lot.*

3.33 Slopes. All slopes adjacent to Street rights-of-way must be limited to three to one slopes. If such a limitation is not possible, the Owner of the Lot must build a retaining wall in a location and in accordance with specifications approved by the ACC.

3.34 Compliance with Provisions of Restrictions. Each Owner shall comply strictly with the provisions of the Restrictions as from time to time amended. Failure to comply with any of the 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 Declarant, the Association, or by any Owner. Without limitation, if any Owner fails to comply with the duties or responsibilities set forth in the Restrictions, including the maintenance obligations set forth in Article 5 below, then Declarant or the Association may give such Owner written notice of such failure and such Owner, within ten (10) days after receiving such notice, shall comply with the duty or responsibility required. Should any such person fail to fulfill such duty and responsibility within such ten-day period, then Declarant or the Association shall have the right and power to enter onto the Lot and correct the failure without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work and shall promptly reimburse Declarant or the Association for such cost. If the Owner fails to reimburse the applicable party within ten (10) days after receipt of a statement for such work, then said indebtedness shall be a personal debt of such Owner and shall constitute a lien against the Lot on which said work was performed. Such lien shall have the same attributes as the liens for Assessments set forth herein, which provisions are incorporated herein by reference, and Declarant and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure. Declarant shall have the right to designate the ACC or the Board its agent for purposes of delivering any notice, performing any action, or otherwise enforcing each Owner's obligations in the manner described herein, in which event the ACC or Board, as applicable, shall have the same rights as are granted to Declarant under this Section 3.34.

3.35 No Warranty of Enforceability. While Declarant has no reason to believe that any of the covenants, terms or provisions of this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such covenant, term or provision. Any Owner acquiring a Lot in reliance on one or more of such covenants, terms or provisions shall assume all risks of the validity and enforceability thereof, and by acquiring such Lot agrees to hold Declarant harmless therefrom.

ARTICLE 4 USE RESTRICTIONS

4.1 Single Family Use. Each Lot shall be improved and used only for single-family residential purposes. No building, outbuilding or portion of either may be built on a Lot for use as income-producing property (*i.e.*, for lease to tenants who do not occupy an entire Lot). A "single family" shall be defined as any number of persons related by blood, marriage or adoption, and shall also include foster children and domestic servants. This Declaration shall not, however, exclude from a Lot any person who is authorized to so remain by any state or federal law. If this Article 4, Section 4.1 is held to be in violation of any law, this Section shall be interpreted to be as restrictive as possible in order to preserve as much of the original intent of this Section as is permitted by law.

4.2 Incidental Uses. No trade or business may be conducted in or from any Lot, except as follows: an Owner or occupant may conduct business activities that are incidental to the primary residential use of the Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the building Improvements; (b) the business activity conforms to all zoning requirements and other provisions of the Restrictions; (c) the business activity does not involve visitation of the Lot by clients, customers, vendors or other business invitees, or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined by Declarant. Day care facilities, churches, nurseries, pre-schools and similar facilities are expressly prohibited. The lease of an entire Lot to be used for single family residential purposes shall not be deemed the conduct of a trade or business from a Lot.

4.3 Common Area. No Common Area shall be improved, used or occupied, except in such manner as shall have been approved by Declarant and the ACC. Such required approval shall extend to the nature and type of use, occupancy and improvement.

ARTICLE 5
REPAIR AND MAINTENANCE OBLIGATIONS

5.1 Repair and Maintenance. Improvements shall at all times be kept in good, attractive condition and repair, and adequately painted or otherwise maintained by the Owner and/or occupants thereof. Each Owner shall keep all shrubs, trees, grass and landscaping of every kind on such Owner's Lot alive, cultivated, pruned or mowed, free of trash, weeds and other unsightly material. Before construction of a residence on a Lot, the Owner shall regularly mow the unimproved Lot and keep it neatly trimmed and free of trash and other unsightly material. By way of example, maintenance obligations shall include (but are not limited to): maintenance of all visible exterior surfaces of Improvements and prompt removal of paper, debris, and refuse; removal of dead or diseased trees and landscaping from the Property, prompt replacement of dull and/or peeling paint from the exterior of Improvements; mowing, watering, fertilizing, weeding, replanting and replacement of landscaping, and during construction, the cleaning of dirt, construction debris, and other construction-related refuse from Street and storm drains and inlets as often as deemed necessary by the ACC. The ACC's recommendations with respect to tree disease control shall be followed immediately. Grass and weeds shall at no time be allowed to exceed 6" in height on a Lot.

ARTICLE 6
ASSOCIATION MATTERS

6.1 Organization. At such time as Declarant, in Declarant's sole discretion, deems appropriate, Declarant shall cause the formation and incorporation of the Association. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed in its Articles and Bylaws, in this Declaration, and by applicable law. Neither the Articles nor the Bylaws shall for any reason be prepared, amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

6.2 Membership. Any Person upon becoming an Owner of a Lot automatically shall become a Member of the Association on the later of (a) the date such Person becomes an Owner, or (b) the date the Association is formed. Declarant shall be a Member of the Association so long as Declarant owns any portion of the Property. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such property interest.

6.3 Voting Rights. The right to cast votes and the number of votes which may be cast for election of the Board, and on all other matters to be voted on by the Members, shall be calculated as provided below. Owners entitled to votes pursuant to (a) below are hereinafter sometimes referred to as "Class A Members." Declarant is hereinafter sometimes referred to as the "Class B Member."

- (a) The Owner (other than Declarant) of each Lot within the Property shall have one (1) vote for each Lot so owned.
- (b) Declarant shall have four (4) votes for each Lot within the Property until such time as Declarant ceases to own any portion of the Property. Thereafter, the Class B membership shall cease, and each Owner shall have only one (1) vote for each Lot owned by it.
- (c) Any property interest entitling the Owner thereof to vote as herein provided held jointly or in common by more than one Owner shall require that such Owners thereof designate, in writing, a single Owner who shall be entitled to cast such vote and no other person shall be authorized to vote in behalf of such property interest. A copy of such written designation shall be filed with the Board before any such vote may be cast, and, upon the failure of the Owners thereof to file such designation, such vote shall neither be cast nor counted for any purpose whatsoever.

6.4 Duties of the Association. Subject to and in accordance with this Declaration, the Association acting through the Board shall have and perform each of the following duties:

- (a) accept, own, operate, and maintain all personal and real property conveyed to or leased by the Association ("Association Property"), and which is approved by the Board, together with all Improvements thereon and all appurtenances thereto;
- (b) own and maintain all Common Area and all Improvements thereon and all appurtenances thereto, all Streets (including median areas) which have been constructed but not accepted by the appropriate governmental entity, and all entry signs and associated landscaping;
- (c) pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Association Property and the Common Area, to the extent that such taxes and assessments are not levied directly upon the Members; and the Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments;
- (d) obtain and maintain in effect any policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the functions of the Association;
- (e) make, establish, promulgate, and in its discretion amend or repeal and reenact, the Bylaws and such 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 the Association Property and Common Area;

- (f) keep books and records of the Association's affairs and make such books and records, together with a current copy of this Declaration, available for inspection by the Owners and the Mortgagees upon request during normal business hours; and
- (g) carry out and enforce all duties of the Association set forth in this Declaration and in the Restrictions.

6.5 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or 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 following power and authority at all times.

- (a) The Association shall have the power and authority to levy Assessments in accordance with and as provided in this Declaration.
- (b) The Association shall have the power and authority to enter at any time in an emergency (or in a non-emergency after the notice to the Owner of the affected Lot prescribed by Section 3.34 above), without being liable to any Owner, upon any Lot or Common Area for the purpose of enforcing this Declaration or maintaining or repairing any Lot, Common Area or Improvement so as to conform with the Restrictions, as more particularly provided in Section 3.34 above.
- (c) 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 an 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, this Declaration. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce this Declaration; 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.
- (d) The Association shall have the power and authority to grant and convey to any person or entity any Association Property and/or any Common Area and/or any interest therein, including fee title, leasehold estates, easements, rights-of-way, or

Mortgages, out of, in, on, over, or under any of same for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:

- (i) roads, Streets, walks, driveways, parking lots, trails, and paths;
- (ii) lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- (iii) sewers, water systems, storm water drainage systems, water quality facilities, sprinkler systems, and pipelines; or
- (iv) any similar Improvements or facilities.

Nothing in this subparagraph (d) shall be construed to permit the use or occupancy of any Improvement or other facility in any way which would violate other provisions of this Declaration.

- (e) The Association shall have the power and authority to retain and pay for the services of a manager to manage and operate the Association, including the Association Property and Common Area, 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.
- (f) The Association shall have the power and authority:
 - (i) to retain and pay for legal and accounting services necessary or proper in the operation of the Association;
 - (ii) to pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to and all maintenance of the Association Property and the Common Area, in accordance with this Declaration and the Restrictions;
 - (iii) to obtain and pay for any other property and services and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or this Declaration;

- (iv) to construct new Improvements or additions to the Common Area, subject to the approval of the ACC;
- (v) to enter into contracts with Declarant and with any other Person 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; and
- (vi) to borrow money and to mortgage, pledge or hypothecate any or all of the Association Property as security for money borrowed or debts incurred subject to the limitation set forth in this Declaration.

6.6 Indemnity. To the maximum extent permitted by Article 2.22A of the Texas Non-Profit Corporation Act (the "Act") (without regard, however, to Section Q of such Article), the Association shall indemnify any person who is or was a director or officer of the Association against any and all judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses actually incurred by such person in connection with a proceeding (as defined in Article 2.22A) because of that person's service or status as a director or officer. Further, the Association shall pay or reimburse reasonable expenses incurred by a director or officer who was, is or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding, to the maximum extent permitted by Article 2.22A; provided, however, that payment or reimbursement of expenses pursuant to the procedures set out in Section K of Article 2.22A may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the officer or director in question to make the repayment referred to in such Section. Further, the Association may indemnify, and may reimburse or advance expenses to or purchase and maintain insurance or any other arrangement on behalf of, any person who is or was a director, officer, employee or agent of the Association, or who is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, director, employee, agent or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, in connection with any liability asserted against such person because of such service or status, to such further extent, consistent with Article 2.22A and other applicable law, as the Board may from time to time determine. The provisions of this Section shall not be deemed exclusive of any other rights to which any such person may be entitled under any bylaw, agreement, insurance policy, or otherwise. No amendment, modification or repeal of this Section shall in any manner terminate, reduce or impair the right of any person to be indemnified by the Association in accordance with the provisions of this Section as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

ARTICLE 7
ACC

7.1 Membership. The ACC shall consist of not more than three (3) voting members.

7.2 Declarant's Rights of Appointment. Declarant shall have the right to appoint and remove all members of the ACC. Declarant may delegate to the Board, in whole or in part, their right to appoint and remove members of the ACC by written instrument. If no such instrument has been executed prior to the time when Declarant owns no portion of the Property, such delegation shall be deemed to have occurred automatically as of such time.

7.3 Term. Each member shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein.

7.4 Adoption of Rules. The ACC may adopt such procedural and substantive rules, standards, policies and development guidelines, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties and the orderly development of the Property, including but not limited to architectural and landscaping guidelines, and other similar codes or guidelines as it may deem necessary and desirable. Such rules, standards, policies, procedures and development guidelines shall be binding and enforceable against each Owner in the same manner as any other restriction set forth herein. Nothing contained herein shall be deemed to affect any approval granted by the ACC in accordance with the terms of this Declaration prior to the amendment of such rules, standards, policies, procedures or development guidelines.

7.5 Review of Proposed Construction. The ACC shall have the right whenever its approval is required under this Declaration to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts and information which in its sole discretion are relevant. Except as otherwise specifically provided herein, before beginning construction of any Improvement on any portion of the Property, the Plans and Specifications for that Improvement, together with the review fee, shall be submitted to the ACC. Construction may not begin unless and until the ACC has approved the Plans and Specifications in writing. A non-refundable review fee of \$100.00 will be charged by the ACC for reviewing Plans and Specifications submitted for its approval in connection with the initial construction of Improvements, and a non-refundable review fee of \$50.00 will be charged by the ACC for reviewing Plans and Specifications submitted for its approval after the initial Improvements are constructed, unless the ACC specifically waives the applicable fee in writing. Upon written request, the ACC may waive the requirement of plans for any Lot if the builder uses Plans and Specifications previously approved by the ACC for another Lot. There shall be no revisions made to the approved Plans and Specifications without first submitting the revised plans to the ACC and receiving the ACC's approval of the revision. The ACC shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or from time to time

by the Board, including without limitation, inspecting construction in progress to assure its conformance with Plans and Specifications approved by the ACC. The ACC may postpone review of any Plans and Specifications submitted for approval until it receives any information which it deems necessary. The ACC shall have the authority to disapprove any proposed Improvement based upon this Declaration, and the decision of the ACC shall be final and binding so long as it is made in good faith. The ACC shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

7.6 Variance. The ACC may grant variances from compliance with any restriction in Article 3 of this Declaration when, in its opinion and in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property or is justified due to aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument in recordable form, and must be signed by a majority of the members. The granting of a variance shall not operate to waive or amend any of the terms and provisions of the Restrictions applicable to the Lots for any purpose except as to the particular Lot and the particular matter covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, change or amendment of the terms and provisions hereof.

7.7 Actions of the ACC. The ACC, by resolution unanimously adopted in writing, may designate any of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of a majority of all members, which may be taken without a meeting, shall constitute an act of the ACC.

7.8 Failure to Act. If Plans and Specifications are submitted to the ACC in the manner required by this Declaration, and the ACC fails either to approve or reject such Plans and Specifications for a period of thirty (30) days after such submission, such Plans and Specifications shall be deemed approved. For purposes of the preceding sentence, Plans and Specifications shall not be deemed submitted until the date upon which the ACC has received any applicable review fee and all information which the ACC requires be submitted to it in connection with its review of Plans and Specifications (including any supplemental information which the ACC may request). In no event shall the ACC's failure to act upon a request for a variance within thirty (30) days (or any other time period) be deemed a consent to, or approval of, a variance. Variances may be approved only by a written document signed by the ACC.

7.9 No Waiver of Future Approvals. The approval or consent of the ACC to any Plans and Specifications shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications or other matter whatever subsequently or additionally submitted for approval or consent by the same or a different Person.

7.10 Nonliability of ACC Members. Neither the ACC nor any member thereof, shall be liable to the Association or to any Owner or to any other Person for any loss, damage or injury arising out of or in any way connected with the performance of the ACC's duties under this Declaration, unless due to the willful misconduct or bad faith of such Person. Neither the ACC nor any member thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

7.11 Address. Plans and Specifications shall be submitted to the ACC (c/o The Blake Magee Company) at 1011 North Lamar Blvd., Austin, Texas 78703, or such other address as may be designated by Declarant (or the Board, if Declarant has delegated such designation right to the Board) from time to time.

ARTICLE 8 FUNDS AND ASSESSMENTS

8.1 Assessments. Assessments established pursuant to this Declaration shall be levied on a uniform basis against each Lot within the Property for the purposes of enforcing these restrictions, maintaining the Common Area and Association Property, and maintaining such other property as the Board may determine. If Lots are combined into one homesite, each Lot so combined shall be considered a Lot for purposes of Assessments (so that if two Lots are combined into one homesite, when the homesite is occupied, the Owner thereof shall be treated as owning two Lots). No Assessments shall be levied before January 1, 2002.

8.2 Operating Fund. The Board shall establish an operating fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association shall be used solely for purposes authorized by this Declaration.

8.3 ~~Regular Annual Assessments.~~ When Declarant forms the Association, Declarant shall establish a budget for the Association. The Association then shall levy against all Lots an initial annual Assessment based on that budget. Thereafter, before January 1 of each year, the Board shall estimate the net expenses of the Association for the upcoming fiscal year, which shall be (i) the expenses to be incurred by the Association during such year in performing its functions under the Restrictions, including but not limited to the cost of all duties required and activities authorized herein of the Association, the Board, and the ACC, and a reasonable provision for contingencies and appropriate replacement reserves, less (ii) any expected income and any surplus from the prior year's operating fund, and shall establish a budget based on such estimates. Assessments sufficient to pay such estimated net expenses shall then be levied as provided herein. All Assessments levied hereunder shall be final and binding so long as they are made in good faith. Each Owner shall be given written notice of the amount of such annual Assessment at least thirty (30) days prior to the

date such annual Assessment is due and payable. All such regular annual Assessments shall be due and payable to the Association, at the discretion of the Board, either in one (1) payment at the beginning of the fiscal year or in twelve (12) monthly payments equal to 1/12th of the total annual Assessment, or at such time and in such other manner as the Board may from time to time designate.

8.4 Special Assessments. In addition to the regular annual Assessments provided herein, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any special Assessments shall be at the reasonable discretion of the Board; provided, however that if the Class B Member no longer owns any portion of the Property, no special Assessment may be levied without the assent of two-thirds (2/3rds) of the votes of Members who are eligible to vote at a meeting duly called to vote on such matter with at least a quorum of Members who are eligible to vote represented in person or by proxy. Each Owner shall be given written notice of the amount of any special Assessment at least thirty (30) days prior to the date such special Assessment is due and payable. All such special Assessments shall be due and payable to the Association at such time and in such other manner as the Board may designate, in its sole and absolute discretion.

8.5 Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the Owner as of the date of levy of the Lot subject to each such Assessment, and no Owner shall be exempt from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot subject thereto shall be obligated to pay interest at the highest rate allowed by applicable laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1.5% per month), together with all costs and expenses of collection including reasonable attorneys' fees. The Board shall have the right to charge a one-time late fee for delinquent payment of Assessments in such amount as the Board may from time to time deem appropriate.

8.6 Exempt Property. All portions of the Property dedicated to, and accepted by, a local public authority and all portions of the Property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the Assessments created herein. Notwithstanding the foregoing, no land or Improvements devoted to dwelling use shall be exempt from said Assessments.

8.7 Assessment Lien and Foreclosure. All regular and special Assessments provided for herein which are not paid when due, together with interest and collection costs and expenses as herein provided, shall be secured by a continuing lien and charge in favor of the Association on the Lot subject to such Assessment and any Improvements thereon, which shall bind such Lot and Improvements and the Owner thereof and such Owner's heirs, devisees, 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, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby transferred and assigned to the Association. Additionally, a lien with a power of sale is hereby granted and conveyed to the Association to secure the payment of such Assessments. Such liens shall be superior to all other liens and charges against such Lot, except only for tax liens and the lien of any Mortgage of record and securing sums borrowed for the acquisition or improvement of such Lot. The Board in its sole discretion may subordinate its Assessment liens to any other lien, and any such subordination shall be signed by an officer of the Association. To evidence any Assessment liens hereunder, the Association may prepare a written Notice of Assessment Lien setting forth the amount of the unpaid Assessments, the name of the Owner of the Lot subject to such Assessments and a description of such Lot, which shall be signed by an officer of the Association and may be recorded in the Office of the County Clerk of Travis County, Texas. Any Assessment lien hereunder shall attach with the priority set forth herein from the date payment is due. Upon the written request of any Mortgagee, the Association shall report to such Mortgagee any Assessments then unpaid with respect to any Lot on which such Mortgagee holds a Mortgage.

Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Board the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Assessments and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Texas Property Code § 51.002 (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the deed to his Lot, expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid Assessment, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and attested to by the Secretary of the Association and filed in the Office of the County Clerk of Travis County, Texas. In the event of the election by the Board to foreclose the liens herein provided for nonpayment of sums secured to be paid by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Lot, and all rights appurtenant thereto, at the door of the County Courthouse of Travis County, Texas, on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash at public vendue after the trustee and the Board, respectively, shall have given notice of the proposed sale in the manner hereinafter set forth and to make due conveyance to purchaser or purchasers, with general warranty of title to such purchaser or purchasers binding upon the Owner or Owners of such Lot and his heirs, executors, administrators and successors. The trustee shall give notice of such proposed sale by posting a written notice of time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Travis County, Texas, and, in addition, the Board shall serve written

notice at least twenty-one (21) days preceding the date of sale or the proposed sale by certified mail on each of such Owner or Owners according to the records of the Association. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner or Owners at the most recent address as shown by the records of the Association, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service.

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorneys' fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure, the occupants of such Lot shall be required to pay a reasonable rent for the use of such Lot and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice.

It is the intent of the provisions of this Section to comply with the provisions of Texas Property Code § 51.002, relating to non-judicial sales by power of sale and, in the event of the amendment of said § 51.002 hereafter, which amendment is applicable hereto, the President of the Association, acting without joinder of any other Owner or Mortgagee or other person may, by amendment to this Declaration filed in the Office of the County Clerk of Travis County, Texas, amend the provisions hereof so as to comply with said amendments to § 51.002.

ARTICLE 9 COMMON AREA

9.1 Conveyance of Common Area. At such time or times as Declarant determines appropriate, Declarant shall identify and convey to the Association, and the Association shall accept, fee simple or easement interests in portions of the Property which shall be held by the Association as Common Area. Declarant and the Association anticipate multiple conveyances of Common Area, and the Association's obligations set forth herein with respect to Common Area shall refer only to the Common Area owned by the Association at the particular point in time. Each conveyance shall be, at Declarant's election, by special warranty deed or easement with special warranty of title, subject in either instance to all matters set forth in this Declaration, all liens securing the payment of taxes for the current and all subsequent years, and all easements, liens, rights of way, prescriptive rights, encroachments, overlapping of improvements, discrepancies, conflicts, leases, reservations, mineral severances, restrictions, covenants, conditions, regulations, and other rights, claims, title exceptions and other matters of any kind or nature affecting all or any of the real property interests conveyed as Common Area, whether of record in the real property records of Travis County, Texas or apparent on the Common Area. Each such conveyance shall be made solely for the benefit of the

Owners and all right, title and interest in the Common Area so conveyed shall be held by the Association solely for the use and benefit of the Owners. Any such conveyance shall be made by Declarant and accepted by the Association, "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL. WITHOUT LIMITING THE FOREGOING, DECLARANT SHALL NOT MAKE AND SPECIFICALLY SHALL NEGATE AND DISCLAIM ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE COMMON AREA, INCLUDING, WITHOUT LIMITATION, THE ACREAGE, WATER, SOIL OR GEOLOGY OF THE COMMON AREA OR ANY SURROUNDING AREAS, (B) THE VALUE OF THE COMMON AREA, (C) THE SUITABILITY OF THE COMMON AREA FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON, (D) THE COMPLIANCE OF OR BY COMMON AREA OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING WITHOUT LIMITATION ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (E) THE DISPOSAL OR EXISTENCE, IN OR ON THE COMMON AREA, OF ANY ASBESTOS, PCB EMISSIONS, HYDROCARBONS, RADON GAS, OR HAZARDOUS OR TOXIC MATERIALS, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OF ANY IMPROVEMENTS WITHIN THE COMMON AREA OR MATERIALS, IF ANY, INCORPORATED INTO THE COMMON AREA, (G) THE STATE OF REPAIR OR LACK OF REPAIR OF THE COMMON AREA OR ANY IMPROVEMENTS THEREIN OR THERETO, OR (H) ANY OTHER MATTER WITH RESPECT TO THE COMMON AREA. IF THE ASSOCIATION OR ANY OWNER REQUESTS ANY INFORMATION WITH RESPECT TO THE COMMON AREA, THE ASSOCIATION OR OWNER SHALL ACKNOWLEDGE THAT SUCH INFORMATION SHALL NOT HAVE BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY DECLARANT. DECLARANT SHALL MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, AND DECLARANT SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, REPORTS, SURVEYS OR OTHER INFORMATION OF ANY KIND OR NATURE PERTAINING TO THE COMMON AREA, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON. The Association shall and hereby does agree to indemnify and hold harmless Declarant from and against all liability, damages, suits, actions, costs and expenses of whatsoever nature (including reasonable attorney's fees) to persons or property caused by or arising out of any use or activities of the Association or any of the Owners upon or within the Common Area.

ARTICLE 10
MISCELLANEOUS

10.1 Term. This Declaration shall run until December 31, 2030, unless amended as herein provided. After December 31, 2030, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless amended in accordance with Section 10.2 below or terminated by a written instrument executed by the Owners of at least seventy-five percent (75%) of the Lots.

10.2 Amendment. This Declaration may be amended by Declarant so long as Declarant owns any portion of the Property. Thereafter, this Declaration may be amended by consent of the Owners of at least fifty-one percent (51%) of the Lots. Any such amendment shall be effective upon recordation in the Travis County Official Records.

10.3 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 second (2nd) day (other than a Sunday or legal holiday) after deposit in the United States mail, postage prepaid, addressed to the Owner at the address given by such Owner to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such Owner to the Association.

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

10.5 Exemption of Declarant. Notwithstanding any provision herein to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Association, the Board or the ACC. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to install overhead or above-ground utility lines, to construct and alter drainage patterns and facilities, to construct any and all types of Improvements, including but not limited to construction, sales, and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property.

10.6 Assignment by Declarant. Notwithstanding any provision herein to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder. Any such assignment by Declarant shall be effective upon recordation in the Travis County Official

Public Records of an instrument executed and acknowledged by Declarant evidencing such assignment.

10.7 Enforcement and Nonwaiver. Except as otherwise provided herein, any Owner at such Owner's expense, Declarant, and/or the Association, shall have the right to enforce any and all provisions of this Declaration and the Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce any such provision at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other such provision.

10.8 Reservation of Easements. Easements are reserved as indicated on the Plats for storm water drainage, water quality and/or utility installation and maintenance. Within these easements, no Improvements (including Landscaping) or any other thing shall be placed or permitted to remain which may interfere with the purposes for which the easements are intended, no flow patterns may be disturbed (with respect to drainage and/or water quality easements), and the easement areas on each Lot shall be maintained continuously by the Owner of the Lot, except for improvements for which a public utility or public authority is responsible. Each Owner must provide access to the drainage easements and/or water quality easements situated on such Owner's Lot as may be necessary, and shall in no event prohibit access to such easements by the City of Austin or Travis County.

10.9 No Right to Use Easement Area. By various instruments recorded in, among others, Volume 1992, Page 119, Volume 2503, Page 373, Volume 2714, Page 275, Volume 2542, Page 282 and Volume 2978, Page 1002, all of the Deed Records of Travis County, Texas, certain parties reserved right of ways and easements (the "Easements") which both encumber and benefit certain portions of the Property. The Easements also cross Lot 10, Block "B" ("Lot 10"), of the Amended Plat of Lot 10, Block "B", Shadowridge Crossing Section 9, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 102, Pages 271-272, Plat Records of Travis County, Texas. The land encumbered by the Easements is referred to herein as the "Easement Area". By separate instrument, Declarant has vacated and waived any right to use the Easement Area which may have accrued to Declarant. This vacation and waiver is binding on all Owners of the Property. All Owners are expressly notified that this vacation has occurred, and that no Owner has any right to use any portion of the Easement Area (except to the extent access rights in portions of the Easement Area may be granted by separate instrument to the Owner(s) of specific Lots).

10.10 General.

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

- (b) Unless the context requires a contrary construction, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- (c) All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect the text of the paragraphs, sections and articles hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of September 19, 2001.

DECLARANT:

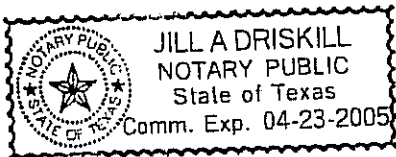
SHADOWRIDGE GP PARTNERS, LTD., a Texas limited partnership

By: Shadowridge GP, Inc., a Texas corporation, General Partner

By: [Signature]
Blake J. Magee, President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on Sept. 19, 2001, by Blake J. Magee, President of Shadowridge GP, Inc., a Texas corporation, General Partner of SHADOWRIDGE GP PARTNERS, LTD., a Texas limited partnership, on behalf of said limited partnership and corporation.



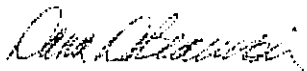
Jill A. Driskill
NOTARY PUBLIC, State of Texas
Print Name: JILL A. DRISKILL

AFTER RECORDING RETURN TO:

Hurst & Vanderburg, L.L.P.
1401 West Avenue, Suite B
Austin, Texas 78701
Attn: Ann E. Vanderburg

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS



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DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS