

## DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

WN DEVELOPMENT, L.P., a Texas limited partnership ("Declarant"), pursuant to its power and authority and in order to create and carry out a general and uniform plan for the improvement, development, sale, and use of lots (the "Lots") in TIERRA VISTA, a subdivision in Travis County, Texas (the "Subdivision"), for the benefit of the present and future owners (the "Owners") of the Lots, establishes and adopts the following covenants, conditions and restrictions (the "Restrictions") for the benefit of the Lots, the Owners and the Subdivision as more fully set forth below.

### ARTICLE 1 DEFINITIONS

As used in these Restrictions, the terms set forth below shall have the meanings indicated:

1. Additional Land - Such tracts or parcels of land, other than the Land, made subject to these Restrictions pursuant to an amendment of these Restrictions in accordance with Article 8.
2. Annual Maintenance Charge - the assessment made and levied by the Board against each Owner and that Owner's Lot in accordance with the provisions of these Restrictions.
3. Architectural Control Committee - shall mean the committee established pursuant to Article 3. (The Architectural Control Committee shall sometimes be referred to as the "ACC" or the "Committee".)
4. Articles of Incorporation - the Articles of Incorporation of the Association.
5. Association - TV Property Owners Association, a Texas nonprofit corporation, its successors and assigns.
6. Board or Board of Directors - the Board of Directors of the Association, whether such Board be appointed by Declarant or elected by the Association in accordance with the provisions of these Restrictions.
7. Bylaws - the Bylaws of the Association.
8. Commencement of Construction - the date on which foundation forms are set for a Unit.
9. Declarant - WN Development, L.P. and its successors and assigns that have been designated as such by Declarant pursuant to a written instrument duly executed by Declarant and recorded in the Official Public Records of Travis County, Texas.

10. Exterior Area - the portion of a Lot not covered by a Unit.

11. Land - that certain tract or parcel of land containing approximately 63.25 acres and situated in Travis County, Texas, such tract or parcel of land being the lands more particularly described on the Plat. If this Declaration is amended pursuant to Section 8.4 to include Additional Land, then the Land shall include the initial 63.25 acre tract described on the Plat and the Additional Land.

12. Lot or Lots - each of the lots shown by the Plat, as the Plat may hereafter be amended, exclusive of the roadways shown on the Plat.

13. Maintenance Fund - any accumulation of (i) the Annual Maintenance Charges collected by the Board in accordance with the provisions of these Restrictions for the continued maintenance, insuring, repair and operation of, and the construction of improvements on, the Subdivision and (ii) interest, penalties, assessments, and other sums and revenues collected by the Board pursuant to these Restrictions.

14. Member or Members - a member or members of the Association, as more particularly described in Section 4.2.

15. Mortgage - a security interest, mortgage, deed of trust, or lien instrument granted by an Owner to secure the repayment of a loan made to Owner, duly recorded in the Office of the County Clerk of the county in which the Lot is located and creating a lien or security interest encumbering a Lot and all improvements on that Lot.

16. Owner or Owners - any person or persons, firm, corporation or other entity or any combination thereof that owns record title to a Lot.

17. Plat or Plats - the map or maps, plat or plats, of the Land recorded in Document No. \_\_\_\_\_ of the Plat Records of Travis County, Texas, as such Plat may hereafter be amended.

18. Plans - the final construction plans and specifications (including a related landscape, site, and grading plan) for any building or improvement of any kind erected, placed, constructed, maintained, or altered on any Lot.

19. Property - each of the Lots identified on the Plat.

20. Restrictions - the covenants, conditions, easements, reservations, and stipulations as set out in this instrument and any subsequent amendments.

21. Subdivision - the Land, together with all improvements now or subsequently situated on the Land, and all rights and appurtenances thereto, subject to the Restrictions.

22. Subdivision Fence - the decorative Kentucky style wood horse fence that may be constructed by Declarant, at Declarant's sole option, to run along, adjacent to and/or across the Property or portions thereof.

23. Rules and Regulations - rules adopted from time to time by the Board concerning the management and administration of the Subdivision for the use, benefit and enjoyment of the Owners.

24. Unit - a single family residence and appurtenances constructed on a Lot.

ARTICLE 2  
GENERAL PROVISIONS RELATING TO  
USE AND OCCUPANCY

Section 2.1 Use Restrictions. Each Owner shall use the Owner's Lot for single family residential purposes only. The term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for duplex apartments or other apartment uses (but shall not include the construction of servant's quarters or a guest room built above a garage, both of which shall be allowed); or for any business, professional, or other commercial activity of any type (provided that businesses that are run exclusively via telephone, mail or e-mail shall not be prohibited). No Owner shall use or permit such Owner's Lot or Owner's Unit to be used for any purposes that would (i) void any insurance in force with respect to the Subdivision; (ii) make it impossible to obtain any insurance required by these Restrictions; (iii) constitute a public or private nuisance, which determination may be made by the Board in its sole discretion; (iv) constitute a violation of the Restrictions, any applicable law, ordinance, rule, or regulation (including the Rules and Regulations); or (v) unreasonably interfere with the use and occupancy of the Subdivision by the other Owners.

Section 2.2 Decoration, Maintenance, Alteration, and Repairs

(a) Subject to the provisions of Section 3.7, each Owner shall have the right to modify, alter, repair, decorate, redecorate or improve such Owner's Unit or the Exterior Area of such Owner's Lot, provided that all such action is performed in a good and workmanlike manner and in a manner that causes minimum inconvenience to other Owners and does not constitute a nuisance.

(b) Each Owner shall maintain the Owner's Lot and improvements in good order and repair and in accordance with the Restrictions at

all time. If the requirements of this Section 2.2(b) are not satisfied, the ACC, at its election, may cause such maintenance, repair, and good order to be maintained, in which case the cost of same shall be billed by the ACC to the Owner of the Lot, shall be payable immediately, and shall be secured and bear interest in the same manner as provided in Section 5.7 for the Annual Maintenance Charges.

(c) The Association shall be responsible for the maintenance and repair of the streets and any designated common areas.

### Section 2.3 Certain Restrictions

(a) Unless otherwise approved in writing by the ACC, no building material of any kind or character shall be placed or stored upon any Lot more than thirty (30) days before the construction of a structure or improvements is commenced. All materials permitted to be placed on a Lot shall be placed within the property lines of the Lot. At the completion of such structure or improvements, any unused materials shall be removed immediately from the Lot. After commencement of construction of any structure or improvements on the Lots, the work shall be performed diligently, to the end that the structure or improvements shall not remain in a partly finished condition any longer than reasonably necessary for completion. Unless otherwise approved in writing by the ACC, the exterior construction of any structure or improvement on a Lot shall be completed within one year from date of Commencement of Construction, excepting delays due to strikes, war, acts of God or other similar causes beyond the control of the Owner.

(b) No structure of a temporary character, trailer (with or without wheels), mobile home (with or without wheels), or modular or prefabricated home, tent or shack, or any other out-building structure or building, other than the permanent residence, approved guest or servant's quarters, studio, or other approved structure or out-building, shall be placed on any Lot, either temporarily or permanently; provided, however, that a temporary trailer or other similar structure shall be allowed during major construction. Declarant shall have the right to use a residence situated on a Lot as an office or model home during the period of and in connection with construction, sale and resale operations in the Subdivision.

(c) Only new construction materials (except for used brick) shall be used in constructing any structure or improvements situated on a Lot. Unless otherwise approved in writing by the ACC, all Units situated on any Lot shall have not less than seventy-five percent (75%) masonry construction (including, but not limited to, stucco), or its equivalent (at the discretion of the ACC), on the exterior wall area; (four-foot by eight-foot (4' x 8') plywood siding is not allowed). All attached garage interiors must be sheetrocked and

painted, but detached garages located one hundred sixty-five feet (165') or more from the front property line of a Lot are not required to have their interiors sheetrocked or painted. In determining whether any building has seventy-five percent (75%) masonry construction, or its equivalent, on the exterior wall area, there shall be excluded from the exterior wall area measurements those portions of such exterior wall areas which are doors, windows and covered porch walls.

(d) The construction of covered driveways, porte-cocheres and carports that are designed as an integral architectural feature of the Unit will be allowed. No porte-cochere may be constructed over a building line or setback line unless otherwise approved in writing by the ACC. Any covered driveway, porte-cochere or carport is subject to approval by the ACC.

(e) No window, roof, or wall type air conditioner or air conditioner compressor that is visible from any street shall be used, placed or maintained on or in any Unit.

(f) Prior to and after occupancy of a Unit, all Units must have shrubs or other landscaping planted adjacent to the front of the Unit to screen from view the foundation of such Unit, unless otherwise approved in writing by the ACC.

(g) Roofs of the Units shall be constructed only as follows: built-up flat roofs, concrete or ceramic tile, wood shake, wood shingle, or approved metal. If wood shingle is used, only "Number 1 Perfection" wood shingle shall be used, unless otherwise approved in writing by the ACC. If metal is used, the metal surface must have a dull finish upon installation, and must meet ACC approval as to type, color and finish. No composition shingles shall be allowed.

(h) No external antennae, satellite receiving dishes, or other structure designed or used for receiving any type of radio, television, or other communications signal shall be permitted on any Lots within the Subdivision unless such facility is either approved by the ACC, in compliance with rules established by the ACC or totally screened from view from all surrounding Lots, streets, and other adjacent areas.

(i) A landscape plan for each Unit must be approved in writing by the ACC, and landscaping, as required by Section 2.3(f) above, shall be used to screen such exposed slab. Any slab in excess of two feet (2') in height above finished grade shall have at least that excess in height covered with siding or masonry used in constructing the Unit. Any Unit with a pier and beam foundation shall have all mechanical, electrical, plumbing lines and fixtures located thereunder screened from view from any public street and from adjacent Units. Any Unit with an elevated deck shall have its open space below such

deck screened from public view and view from adjacent Units. The ACC in its sole discretion will determine the adequacy of any screening technique employed.

(j) All solar panels or other solar collection devices must be constructed as an integral part of the architectural design of any Unit and the design and installation thereof is subject to the approval of the ACC. The ACC may further approve solar panels or other solar collection devices to be added to any Unit if the same are totally screened from the view of all streets and adjacent Units or if incorporated into the architectural design of the Unit.

(k) Except for signs, billboards, or other advertising devices displayed by Declarant or its appointees, for so long as Declarant, or any successors or assigns of Declarant to whom the rights of Declarant are expressly transferred, shall own any of the Lots, no sign of any kind shall be displayed to the public view on any Lot, including specifically, but without limitation, signs offering property or Lots for rent or lease, political signs, signs advertising goods, wares or services for sale or rent, and construction company or repair company signs; provided, however, that signs offering property or Lots for sale shall be permitted if either approved by the ACC or in compliance with rules established by the ACC. Declarant or its agent shall have the right to remove any sign not complying with the provisions of this subsection.

(l) 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 Lots if the noise or sound generated therefrom would result in an annoyance or disruption to the residents in the Subdivision. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Lots so as to be offensive or detrimental to any other portion of the Subdivision or its occupants.

(m) No animals, including pigs, horses, hogs, swine, poultry, fowl, wild animals, 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 in the Subdivision. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration in the Subdivision, and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large, and all animals which are permitted hereunder 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 and shall be of reasonable design and construction to adequately contain such animals.

(n) No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or other portion of the Subdivision unless otherwise approved in writing by the ACC.

(o) Each Lot must be accessible to any adjoining street by a driveway suitable for such purposes before the residential structure located on any such Lot may be occupied or used. Materials and design for all driveways must be approved by the ACC. No Owner may block any drainage ditch (including road ditches) or drainage gutters on curb or outer streets. Specifications for and construction of all drain tiles, culverts in or over any drainage ditch, or driveway transitions to be installed in connection with a driveway or otherwise, must be approved by the ACC. The ACC shall determine all elevation and slope requirements for all driveways.

(p) The Rules and Regulations shall provide general requirements for the elevation and connection to such utilities as the ACC may from time to time reasonably require.

(q) The Owners or occupants of all Units shall at all times keep all weeds and grass thereon (not maintained by the Association) cut in a sanitary, healthful, and attractive manner, shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incident to approved construction of improvements, shall not permit the accumulation of garbage, trash, or rubbish of any kind, and shall not burn anything (except by use of an incinerator and then only during such hours as permitted by law). Upon construction of a Unit, there shall be installed and continuously maintained and operated an automatic sprinkler system covering all areas of the Lot from the street to the front of the Unit. Each Owner shall maintain in such area a green grass lawn with not more than 10% rock or gravel or such other landscape as may be either approved by the ACC or in compliance with rules established by the ACC. Sprinkler systems and grass selection must be approved by ACC as part of landscape plans.

(r) No articles deemed to be unsightly by the ACC shall be permitted to remain on any Lot so as to be visible from adjoining Units or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks (other than pickups), motorhomes, boats, boat trailers, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Subdivision shall have sufficient garage space, as approved by the ACC, to house all vehicles to be kept on the Lot. Lot Owners

shall not keep more than two (2) automobiles in such manner as to be visible from any other Lot.

(s) Each Unit shall have, either as an integral part of or attached to the Unit or as a separate detached structure, a garage capable of accommodating at last two (2) standard-size passenger automobiles. Each garage and garage door must be approved by the ACC in order to be harmonious in quality and color with the exterior of the appurtenant Unit. Each garage in the Subdivision shall be connected to the adjacent street by means of a driveway to be constructed out of a surface specifically approved by the Board. All overhead doors shall be electrically operated and shall be kept closed when not in use. Automobiles shall be stored in garages when not in use. No front entry garages shall be permitted on any of the Lots unless otherwise hereafter approved by the ACC.

(t) Moveable above-ground swimming pools are prohibited except for pools less than six feet (6') in diameter. All swimming pools must be contained within fenced enclosures.

(u) No trees with a circumference larger than twenty-eight inches (28") may be removed from any Lot or destroyed without the prior written consent of the ACC. For the purpose of determining the size of the trees, the circumference will be measured one foot above the average natural level of the ground at the base of the tree, and the ACC ruling on the circumference of any tree is final and binding on all parties. No concrete, asphalt, or impervious cover of any kind shall be placed within the drip line of any tree twenty-eight inches (28") or larger in circumference without the prior written consent of the ACC. The drip line is defined as the line on the ground directly below the farthest extremities of the branches of the tree. The ACC's determination of the location of the drip line shall be final and binding on all parties. Any parking area located within the drip line of any tree twenty-eight inches (28") or larger in circumference shall be constructed of a pervious or porous cover such as porous asphalt, concrete, or other similar material, unless the use of other materials is approved in writing by the ACC prior to construction.

(v) All exterior lighting on any Lot must be approved by the ACC. The ACC shall have the right to remove any lighting not so approved.

(w) No Lot may be subdivided into smaller lots.

#### Section 2.4 Size of Residences and Location on Lot.

(a) No Unit erected on any Lot shall have more than two and one-half (2 1/2) stories or exceed a maximum of thirty-five feet (35') from the top of its lowest slab. No Unit with an interior area of less than the applicable minimum number of square feet set forth below, exclusive of attached garages, porches or other appurtenances or appendages, shall be erected on any Lot:

| <u>Main Residence</u>  | <u>Minimum Interior Area</u>   |
|--|--|
| (a) One (1) story residence  | 3,000 square feet  |
| (b) One and one-half (1 1/2), two (2), and two and one-half (2 1/2) story residences | 3,000 square feet (with at least 2,600 square feet on the first floor) |
| (c) Guest house  | 1,200 square feet  |
| (d) Studio   | 625 square feet  |

Any other out-buildings and their minimum square footage must be approved by the ACC.

(b) No structure or improvements shall be located on any Lot between the building setback lines shown on the Plat pertaining to such Lot and the street right-of-ways on which such Lot fronts or which are adjacent to any side Lot line of such Lot. In addition, no structure or improvements shall be located nearer than ten feet (10') to any interior (side) Lot line, unless otherwise approved in writing by the ACC. The Plat sets forth certain setback lines for each Lot and no buildings shall be erected closer to the front Lot lines than such setback lines. For the purposes of this Section 2.4, eaves, steps, and open porches shall be considered to be a part of the building or structure. Unless otherwise approved in writing by the ACC, each Unit shall face the front Lot line of the Lot upon which it is constructed and each detached garage shall be provided with a driveway access from the front of the Lot. Such access into the garage must comply with the terms stated in Section 2.3 and with all requirements established by the ACC. During original construction, the ACC, or its assignee, at its sole discretion, is permitted to approve deviations in the location of improvements upon the Lot, subject to setbacks shown on the recorded Plat.

Section 2.5 Out-buildings. All outbuildings to be constructed on a Lot must have the same exterior building and roofing materials and color as the main residences. Guest houses and studios are permitted, but in no event shall guest houses or studios be constructed prior to construction of the main residence without prior ACC approval.

Section 2.6 Walls, Fences, and Hedges.

(a) All fences and walls, wherever located on a Lot, must be of ornamental iron, masonry construction, or Subdivision Fence, unless otherwise approved in writing by the ACC. No fence, wall, entryway, gate, or other improvement shall be erected, placed, or altered on any Lot, unless otherwise approved in writing by the ACC. No fence, wall, hedge, or similar structure or growth shall be constructed or allowed to grow greater than eight feet in height unless otherwise approved in writing by the ACC, or in excess of any applicable governmental restriction regarding the same, whichever is the lower height.

(b) Ownership of any wall, fence or hedge, with the exception of the Subdivision Fence, erected on a Lot shall pass with title to such Lot. Owners shall not damage, destroy, remove, paint or otherwise alter the Subdivision Fence in any manner and shall be prohibited from installing or constructing gates or openings in the Subdivision Fence without prior approval by the ACC. An Owner shall be responsible for any damage and associated costs caused to the Subdivision Fence by the Owner or the Owner's respective assigns, agents, invitees and representatives. An Owner shall be responsible for maintaining all walls, fences, or hedges, except the Subdivision Fence, on the Owner's Lot. After thirty (30) days written notice of failure to do so, Declarant, its successor or assigns, or the Association, may, at its option, without liability to the Owner or occupant enter upon the Lot, cause to be repaired or maintained or to do any other thing necessary to secure compliance with this Restriction, and to place the wall, fence, or hedge in a satisfactory condition, and may charge the Owner of the Lot for the cost of such work. The Owner agrees by the purchase of such Lot to pay such charge immediately upon receipt of the corresponding statement. If an Owner fails to pay such statement upon demand, the payment shall be secured and enforced in the same manner as the Annual Maintenance Charge and special assessments described in Section 5.7 below.

(c) Subdivision Fence maintenance and repair shall be the responsibility of Declarant until such time as the Subdivision Fence is conveyed to the Association, at which time all such responsibility shall be assumed by the Association. The Declarant reserves a permanent maintenance easement ten feet (10') in width (or to the Subdivision property line) on each side of the Fence.

(d) No fence (other than the Subdivision Fence), hedge or shrub, that obstructs sight lines at elevations between two (2) and six (6) feet above any 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 twenty-five feet (25') from the intersection of the street lines, or in case of a rounded property corner, from the intersection of a street property line with the intersection of a driveway or alley pavement. No trees shall be

permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

Section 2.7 Reservations and Easements.

(a) Title to all streets, drives, boulevards and other roadways, and to all easements shown on the Plat, is expressly reserved and retained by Declarant subject only to the grants and dedications expressly made on the Plat, until such time as Declarant conveys such title to the Association pursuant to Section 4.9 below, provided that repair and maintenance of the streets, drives, boulevards and other roadways shall be at the Association's expense both prior to and after conveyance of title to the Association.

(b) Declarant reserves the utility easements, roads, and rights-of-way shown on the Plat for the construction, addition, maintenance, and operation of all utility systems (which systems shall include systems for drainage purposes) now or subsequently deemed necessary by Declarant for all utility purposes, including systems of electric light and power supply, drainage, telephone services, water supply, and services resulting from future advances in science and technology. There is hereby created an easement upon, across, over, and under all of the Land shown on the Plat for ingress and egress for the purpose of installing, replacing, repairing, and maintaining all utilities. By virtue of this easement, it shall be expressly permissible for utility companies and other entities supplying services to install and maintain pipes, wires, conduits, service lines, or other utility facilities (which facilities shall include drainage facilities), or appurtenances thereto, on, above, across, and under the Land within the drainage and utility easements now or from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this Section 2.7(b), no utilities (including drainage) or appurtenances thereto may be installed or relocated on the Land until approved by Declarant or, if applicable, the Board. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Plat, and to trim overhanging trees and shrubs located on portions of the Land abutting such easements. All utilities and utility easements situated in or on the Land may also be used to provide utility service to other property in the vicinity of the Subdivision, including without limitation any additional property that may be annexed to the Subdivision pursuant to the provisions of this Declaration.

(c) It is expressly agreed and understood that the title conveyed by Declarant to any Lot or parcel of land in the Subdivision by contract, deed, or other conveyance shall not in any event be held or construed to include the title to any oil, gas, coal, lignite, uranium, iron ore, or any other minerals, gas, storm lines, poles or

conduits or any utility or appurtenances thereto constructed by or under authority of Declarant or its agents, or by utility companies, through, along, or upon the easements or any part thereof to serve the Lot or parcel of land or any other portions of the Subdivision. Declarant expressly reserves the right to maintain and repair such lines, utilities, drainage facilities, and appurtenances.

(d) Declarant expressly reserves the right to grant an easement on, over, and across all roads and streets in the Subdivision for the purpose of providing vehicular and pedestrian ingress and egress to or from other property in the vicinity of the Subdivision upon such terms and conditions as Declarant may determine, which may include, without limitation, the sharing with the Association of the cost of the repair and maintenance of such streets and roads on such basis as the Declarant may determine.

(e) Declarant reserves the right to impose further restrictions (so long as such restrictions do not materially impact the use of any of the Lots or materially limit the rights of the owners of the Lots) and dedicate additional easements and roadway rights of way, by instrument recorded in the Official Public Records of Travis County, Texas, or by express provisions in recorded conveyances.

(f) Declarant reserves the right to make changes and additions to all easements to facilitate the most efficient and economic installation of utility systems.

(g) In addition to and without limitation of the generality of the other provisions of this Section 2.7, Declarant expressly reserves the right to establish by separate instrument conservation easements on, over, across, and under the Lots for the purposes of compliance with the Lower Colorado River Authority Nonpoint Source Pollution Control Ordinance, including without limitation conservation easements for the construction and maintenance of water pollution control devices such as detention ponds and trenches as well as for vegetative buffers; provided, however, that such conservation easements shall not materially impact the use of any of the Lots and must be reasonable in size, scope and location.

ARTICLE 3  
ARCHITECTURAL CONTROL COMMITTEE

Section 3.1 Establishment and Composition. There is hereby established an Architectural Control Committee which shall consist of a representative appointed by Declarant and such other persons, if any, as may be designated by Declarant from time to time.

Section 3.2 Appointment and Removal. Except as provided below, the right to appoint and remove all members of the ACC at any time, with or without cause, shall be, and hereby is, vested solely in

Declarant. At such time as Declarant no longer owns any portion of the Property or at such time that Declarant records a waiver of the right retained in this Section 3.2, whichever occurs first, then the Association shall appoint all members of the ACC in accordance with the Bylaws of the Association.

Section 3.3 Transfer of Authority to the Association. The duties, rights, powers and authority of the ACC may be assigned at any time, at the sole election of a majority of the members of the ACC, to the Association. From and after the date of such assignment and the acceptance thereof by the Association, the Association shall have full right, authority and powers, and shall be obligated to perform the functions of, the ACC.

Section 3.4 Duties.

(a) General: It shall be the duty of the ACC to receive, consider and act upon all proposals, plans, complaints, requests for determination, Plans or other matters submitted to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration.

(b) Consultant: The ACC may, but need not, hire specialized consultants and incur expenses to aid it in reviewing plans and inspecting construction. The cost of such specialized consultants and expenses shall be considered to be a cost of the Plans of the Lot Owner and payment of such costs shall be a filing requirement with no Plans to be considered unless and until such costs are paid.

Section 3.5 Meetings. The ACC shall meet from time to time as necessary to perform its duties. Subject to the provisions of Section 3.6 below and except as otherwise provided in this Declaration, the vote or written consent of a majority of the members, at a meeting or otherwise, shall constitute the act of the Committee. The committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

Section 3.6 Action Without Formal Meeting. The ACC, in accordance with Section 3.5 above, may take action without a formal meeting by unanimously consenting in writing on any matter which it might consider at a formal meeting. Such unanimous written consent shall constitute the act of the Committee.

Section 3.7 Procedure for Submission and Approval of Plans.

(a) No building or improvement of any kind will be erected, placed, constructed, maintained, or altered on any Lot until the Plans for such building or improvements have been submitted to and approved in writing by the ACC in its sole discretion.

(b) In determining whether such Plans shall be approved, the ACC may take into consideration factors deemed appropriate by the ACC. Such factors may include, without limitation, the following:

- (1) compliance with these Restrictions;
- (2) quality, texture, and color of the building materials or improvements;
- (3) harmony of external design of such building or improvement with existing and proposed buildings and improvements and with the design or overall character and aesthetics of the Subdivision;
- (4) location of such building or improvement within the Lot on which it will be constructed or placed;
- (5) the number of square feet to be contained in such building or improvement;
- (6) compliance with the Rules and Regulations; and
- (7) compliance with laws, ordinances, rules or regulations of any county, state, municipal or other governmental authority.

(c) The ACC shall approve or disapprove the Plans in accordance with the following procedures:

- (1) Two (2) complete sets of Plans shall be delivered to the ACC at the address set forth in the Rules and Regulations.
- (2) If the Plans are approved by the ACC, a letter of approval, including a description of qualifications or required modifications, if any, will be prepared and delivered, along with one complete set of Plans, to the Owner. Such approval shall be dated and shall not be effective for construction commenced more than three hundred sixty (360) days after such approval. If construction is not commenced within three hundred sixty (360) days after such approval, Owner shall not begin construction of any building or improvement of any kind until the corresponding Plans have been resubmitted and reapproved by the ACC in accordance with the provisions of this Section 3.7.
- (3) If the Plans are disapproved by the ACC, one set of such Plans shall be returned marked "Disapproved". Disapproved Plans shall be accompanied by a statement of reasons for disapproval.
- (4) If the ACC fails to indicate its approval within thirty (30) days after receipt of the Plans, it shall be deemed that the ACC has approved such Plans.

(5) The ACC may require payment of a cash fee by any party who submits Plans for approval to compensate for the expense of reviewing such Plans and inspecting construction.

(d) All decisions of the ACC shall be final and binding and there shall be no review of any action of the ACC.

(e) No approval of Plans shall ever be construed as representing or implying that such Plans, specifications, or standards will, if followed, result in a properly designed structure. Such approvals and standards shall in no event be construed as a representation, warranty or guarantee by the Board or ACC that any structure will be built in a good and workmanlike manner. Neither Declarant nor the members of the ACC or its representative shall be liable in damages to anyone submitting Plans to the ACC for approval or to any Owner or lessee of any part of the Subdivision affected by these Restrictions, by reason of or in connection with the approval or disapproval or failure to approve any Plans submitted. Every person who submits Plans to the ACC for approval agrees, by submission of such Plans, and every Owner or lessee of any portion of the Subdivision agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against Declarant or the members of the ACC, or their representatives, to recover any such damages.

Section 3.8 Waiver and Estoppel. The approval of the ACC of any Plans, specifications or drawings or any materials accompanying them shall not be deemed to constitute a waiver of, or a limitation on, the Committee's right to withhold approval of any similar Plans, drawings, specifications or matters subsequently submitted for approval.

Section 3.9 ACC Rules.

(a) The ACC shall have the authority to adopt, amend, add to, replace and rescind, from time to time, procedural or substantive rules to make more definite and certain, and to carry out the purpose and intent of, the provisions of this Declaration. A copy of such rules, as in effect from time to time, shall be provided to any Owner requesting the same in writing.

Section 3.10 Decisions Conclusive. All decisions of the ACC shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the ACC or any member, for its or such member's approval or refusal to approve all or any portion of Plans or of any materials submitted with Plans, or for any other decision rendered in good faith.

Section 3.11 Liability. Neither the ACC nor any member thereof shall be liable to any Owner or any other person, association, or entity, for any damage, costs or prejudice suffered or claimed on

account of: (i) the approval or disapproval of any Plans or any materials submitted with the Plans, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved Plans or any materials submitted with the Plans; (iii) the development of the Property; (iv) the structural capacity or safety features of any improvements or structure, (v) whether or not the location of any improvements or structure is free from possible hazards from flooding, or from any other possible hazards whether caused by conditions occurring either on or off the Property; (vi) soil erosion causing sliding conditions; (vii) compliance with governmental laws, ordinances and regulations; or (viii) any decision made or action taken or omitted to be taken in good faith. Without in any way limiting the generality of any of the foregoing provisions of this Section, the ACC or any member of the ACC may, but is not required to, consult with or determine the view of any other Owner with respect to any Plans or any materials submitted to the ACC.

Section 3.12 Modifications and Waivers. The ACC, upon such terms and conditions and upon payment of such fees or expenses and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of Article 2 of this Declaration or of the Rules and Regulations, applicable to any improvements. Such applications shall contain such information as the ACC may prescribe, and shall affirmatively show that the application of such requirements, under the circumstances, creates unnecessary and undue hardship, and that its modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to the Owner of any other Lot. The ACC may decide the matter upon the application and any materials or written statements accompanying it, or may allow oral presentations in support of, or in opposition to, the application prior to the decision, at its discretion. The ACC shall render a decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision and shall forward one copy to the applicant.

Section 3.13 Governmental Agency Approval. Nothing in this Declaration shall relieve, or be interpreted as purporting to relieve, any Owner from also securing such approval, certificate, or permit of any governmental agency or entity as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any improvements, and the ACC may require that a copy of such approval, certificate or permit be provided to the ACC as a final condition to approval of Plans, or as additional assurance to the ACC that the improvements and uses of any approved Plans meet governmental requirements, or for both such purposes.

ARTICLE 4  
PROPERTY OWNERS ASSOCIATION OF TIERRA VISTA

Section 4.1 Management by Association.

(a) The Declarant shall cause the formation and incorporation of the Association as a non-profit corporation organized and existing under the Texas Non-Profit Corporation Law charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, and this Declaration. The affairs of the Subdivision shall be administered by the Association except as otherwise provided by this Declaration. The Association shall have the right, power, and obligation to provide for the management, construction, maintenance, repair, replacement, administration, insuring, and operation of the Subdivision as provided for in this Declaration, the Bylaws, and the Rules and Regulations. The business and affairs of the Association shall be managed by its Board of Directors. The Declarant shall determine the number of directors and appoint, dismiss, and reappoint all of the members of the Association's Board of Directors until such time as the Members elect the Board at the first meeting of the Members of the Association pursuant to Section 4.4 below. The Board of Directors appointed by the Declarant is referred to as the Appointed Board and the Board of Directors elected at the first meeting of the Members is referred to as the "First Elected Board".

(b) The Appointed Board may engage the Declarant or any entity, whether or not affiliated with Declarant, to perform the day-to-day functions of the Association and to provide for the maintenance, repair, replacement, administration, and operation of the Subdivision as a viable residential development.

Section 4.2 Membership in Association. Each Owner, including Declarant during the period of time in which Declarant owns any Lot, shall be a Member of the Association and such membership shall terminate automatically when such ownership ceases. Upon the transfer of ownership of a Lot, the new Owner shall concurrently with such transfer become a Member in the Association. Membership in the Association runs with title to the Lots and is mandatory.

Section 4.3 Voting of Members. There shall be two classes of membership in the Association. Class A Members shall be all persons owning one or more Lots. The Class B Member shall be the Declarant. The Class B membership shall terminate (a) when the Class B Member so designates in writing delivered to the Association, (b) ten (10) years after the date of recordation of this Declaration, or (c) when ninety percent (90%) of the Lots in the Subdivision are owned by persons other than Declarant, whichever occurs first. When entitled to vote, each Member shall be entitled to one (1) vote for each Lot owned by that Member. Until such time as the Class B membership terminates, in

order to be approved, a matter voted on shall require the approval of (i) Class A Members having more than one-half (1/2) of the total votes of all of the Class A Members and (ii) the Class B Member. In the event that ownership interests in a Lot are owned by more than one Member of the Association, such Members shall exercise their right to vote in such manner as they may among themselves determine, but in no event shall more than one vote be cast for each Lot. Such owners shall appoint one of them as the Member who shall be entitled to exercise the vote for that Lot at any meeting of the Association. Such designation shall be effective until written notice revoking such designation is received by the Board. In the event that a Lot is owned by more than one Member of the Association and no single Member is designated to vote on behalf of the Members having an ownership interest in such Lot, then none of such Members shall be allowed to vote. All Members of the Association may attend meetings of the Association and all voting Members may exercise their vote at such meeting either in person or by proxy. Declarant may exercise voting rights with respect to Lots owned by it.

#### Section 4.4 Meetings of the Members.

(a) The first meeting of the Members of the Association shall be held when called by the Appointed Board upon no less than ten (10) and no more than fifty (50) days' prior written notice to the Members. Such written notice may be given at any time but must be given no later than thirty (30) days after ninety percent (90%) of all of the Lots in the Subdivision have been sold by Declarant and a deed recorded for each such sold Lot in the Office of the County Clerk of Travis County, Texas. The First Elected Board shall be elected at the first meeting of the Members of the Association.

(b) Thereafter, annual and special meetings of the Members of the Association shall be held at such place and time and on such dates as shall be specified in the Bylaws.

Section 4.5 Election and Meetings of the Board of Directors. The Board of Directors shall be elected and shall meet in the manner set forth in the Bylaws.

Section 4.6 Disputes. In addition to the other powers conferred by law or this Declaration, the Board shall be empowered to create procedures for resolving disputes between Owners and the Board or the Association, including appointment of committees to consider and recommend resolutions of any such disputes.

Section 4.7 Professional Management. The Board may retain, hire, employ, or contract with such professional management as the Board deems appropriate to perform the day-to-day functions of the Association and to provide for the construction, maintenance, repair, landscaping, insuring, administration, and operation of the

Subdivision as provided for in this Declaration and in the Bylaws.

Section 4.8 Board Actions in Good Faith. Any action, inaction, or admission by the Board made or taken in good faith shall not subject the Board or any individual member of the Board to any liability to the Association, its members, or any other person.

Section 4.9 Ownership of Private Roads. Ownership of the right-of-way containing all private roads in the Subdivision shall be transferred to the Association by the Declarant, at no expense to the Association, at any time the Declarant elects, but not later than the sale and conveyance by Declarant of ninety percent (90%) of all Lots in the Subdivision.

ARTICLE 5  
MAINTENANCE EXPENSE CHARGE AND MAINTENANCE FUND

Section 5.1 Payment of Annual Maintenance Charge. Each Lot shall be subject to an Annual Maintenance Charge of \$500.00 per year. The amount of the Annual Maintenance Charge for each Lot may be increased or decreased by the Board from time to time, but no more often than once per year. However, if any such change increases the Annual Maintenance Charge by more than ten percent (10%) of the Charge for the preceding calendar year, the change must be approved by a vote of at least a majority of the votes of each Class of Members, by written vote taken not less than ten (10) days prior to the first day of January of the year in which such increase is scheduled to become effective.

Section 5.2 Payment of Annual Maintenance Charge by Declarant. Notwithstanding anything to the contrary herein, all Lots while owned by the Declarant shall be exempt from the payment of an Annual Maintenance Charge.

Section 5.3 Maintenance Fund. The Annual Maintenance Charges collected by the Board shall be paid into the Maintenance Fund and shall be held, managed, invested, and expended by the Board, at its discretion, for the benefit of the Subdivision and the Lot Owners, for, but not limited to, road and drainage facilities maintenance, mowing of road right-of-way, and Subdivision Fence maintenance. The Board shall expend the Maintenance Fund for the administration, management, and operation of the Subdivision, for the enforcement of these Restrictions by action at law or in equity, or otherwise; and for all other purposes that are, in the discretion of the Board, desirable in order to maintain the character and value of the Subdivision and the Lots. The Board and its individual members shall not be liable to any person as a result of actions taken in good faith by the Board with respect to the Maintenance Fund.

Section 5.4 Ownership, Maintenance, and Assessments for Private

Roads, Common Areas and Ad Valorem Taxes. In addition to and without limiting the generality of the other provisions of this Article 5, the Association shall, upon conveyance from the Declarant, own and have the obligation to maintain, and levy and collect assessments for the maintenance of the roads and common areas located within the Subdivision (the "Private Roadways and Common Areas"), as those Private Roadways and Common Areas are depicted on the Plat, and any security gates or other devices ("Security Facilities") controlling access to the Private Roadways. The Private Roadways shall not be dedicated to or maintained by Travis County. If the Private Roadways are acquired by Travis County, all special paving and medians within the Private Roadways and the Security Facilities shall be made to meet Travis County standards. Further, an express easement is hereby granted across the Private Roadways and any adjoining common areas for the use of the surface for all governmental functions, vehicular and non-vehicular, including fire and police protection, solid and other waste material pick-up and any other purposes any governmental authority deems necessary, and Declarant does further agree that all governmental entities, their agents or employees, shall not be responsible or liable for any damage occurring to the surface of the Private Roadways and adjoining common area as a result of governmental vehicles traversing over same. The Association shall bear the expense of repairing and maintaining the Private Roadways and Common Areas and shall pay all ad valorem taxes assessed against the Private Roadways and Common Areas, whether before or after such Roadways and Common Areas have been conveyed by Declarant to the Association.

Section 5.5 Ownership, Maintenance, and Assessments for Water Quality Improvements. The Subdivision is subject to the requirements of the Lower Colorado River Authority Nonpoint Source Pollution Control Ordinance (the "Ordinance"). Pursuant to the Ordinance, Declarant will construct certain improvements (the "LCRA Improvements"), including detention ponds, within the Subdivision. In addition to and without limitation of the other provisions of this Article 5, the Association shall, upon conveyance from the Declarant, own and have the obligation to maintain, and levy and collect assessments for the maintenance of, the LCRA Improvements, exclusive of gravel filled trenches to be constructed on certain of the Lots, which trenches shall be maintained by the respective Owners in accordance with the Ordinance.

Section 5.6 Special Assessments. The Association may levy and collect Special Assessments to pay in whole or in part the cost of any Major Repair or Maintenance Expenses (to the extent that the Board determines that the Annual Maintenance Charges assessed for any period are insufficient for the continued operation of the Subdivision and maintenance of the Common Areas) or Replacement of a Capital Improvement without the approval or concurrence of the Members. A "Major Repair or Maintenance Expense" means any repair to or maintenance of an existing capital improvement that exceeds \$20,000.

"Replacement of a Capital Improvement" means replacement of any existing capital improvement. The Association may levy or collect a Special Assessment for the acquisition of a new capital improvement provided the Special Assessment is approved by a vote of at least sixty percent (60%) of the votes of the Members without regard to class. For purposes hereof, Special Assessments shall not include the costs incurred by Declarant to initially construct certain roads, utilities and other improvements to the Property prior to Declarant's initial sale of the Lots, but shall include any repairs to or maintenance of such initial improvements after the initial construction thereof by Declarant.

Section 5.7 Enforcement of Annual Maintenance Charge and Special Assessment.

(a) The Annual Maintenance Charge assessed against each Owner shall be due and payable, in advance, on the date of the sale of such Lot by Declarant for that portion of the calendar year remaining, and on the tenth (10<sup>th</sup>) day of each January thereafter. Any such amount not paid and received by the tenth (10<sup>th</sup>) day of each January thereafter shall be deemed delinquent, and, without notice, shall bear interest at the highest contract rate per annum allowed by law from the date originally due until paid.

(b) To secure payment of the Annual Maintenance Charge or Special Assessments, and any other sums due under this Declaration (including, without limitation, interest, late fees or delinquency charges), a vendor's lien and superior title shall be and hereby is reserved in and to each Lot and Unit and is hereby assigned and transferred (without recourse on or warranty by Declarant) to the Association, which lien shall be enforceable as set forth below by the Association or the Board on behalf of the Association. The collection of such Annual Maintenance Charge and other sums due under this Declaration may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest, costs, and attorney's fees shall be chargeable to and an obligation of the defaulting Owner. The voting rights of any Owner in default in payment of the Annual Maintenance Charge, Special Assessment or other charge owing under this Declaration, may be revoked by action of the Board for the period during which such default exists.

(c) Notice of the lien referred to in the preceding paragraph may be given by recordation in the Official Public Records of Travis County, Texas of an affidavit, duly executed, sworn to and acknowledged by an Officer of the Association, setting forth the amount owed, the name of the Owner or Owners of the affected Lot, according to the books and records of the Association, and the legal description of such Lot.

(d) Each Owner, by acceptance of a deed to the Owner's Lot, hereby expressly recognizes the existence of such lien as being prior to the Owner's 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 Annual Maintenance Charge and other sums due under this Declaration as a debt, and to enforce the lien by all methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code (as same may be amended or revised from time to time). In addition, by Owner's acceptance of the deed to the Owner's Lot, each Owner 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 provided below) such owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the Annual Maintenance Charge and other unpaid sums due under this Declaration from time to time. The trustee 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 and the Secretary of the Association and filed in the Official Public Records of Travis County, Texas. In the event of the election by the Board to foreclose the lien for non-payment of sums secured to be paid by such lien, then it shall be the duty of the trustee, or the trustee's successor, 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 location designated for such judicial or non-judicial foreclosures in 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 venue after the trustee and the Board, respectively, shall have given notices of the proposed sale in the manner set forth below and to make due conveyance to the purchaser, with general warranty of title to such purchaser or purchasers binding upon the Owner or Owners of such Lot and the Owner's respective heirs, executors, administrators, and successor. The trustee shall give notice of such proposed sale by posting a written notice of the time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the location designated for judicial and non-judicial foreclosures in 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 State 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.

(e) 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 attorney's 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 sale 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.

(f) It is the intent of the provisions of this Section to comply with the provisions of Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the subsequent amendment of Section 51.002, the President of the Association, acting without joinder of any other Owner or Mortgagee or other person may, by amendment to these Restrictions filed in the Official Public Records of Travis County, Texas, amend the provisions hereof so as to comply with such amendments.

5.8 Equality of Assessments and Charges. Any Assessments or charges under this Article 5, whether annual or special, payable by each Lot Owner shall be determined by dividing the Total Assessment or Charge fixed by the Association by the total number of Lots in the Subdivision.

## ARTICLE 6 INSURANCE

Section 6.1 General Provisions. The Board shall obtain insurance for the Subdivision in such amounts as the Board shall deem desirable.

Section 6.2 Policies. All policies of insurance provided for in this Article 6 shall name as insured the Association, as trustee for each Owner. Each such policy shall be without contribution with regard to any other policies of insurance carried individually by an Owner, and shall provide that such policy shall not be terminated for any cause without at least thirty (30) days prior written notice to the Association. Any proceeds paid in respect of any insurance policy obtained by the Board pursuant to this Article 6 shall be held and disbursed by the Board in accordance with these Restrictions.

Section 6.3 Subrogation. Each Owner and the Association agree to and hereby waive all rights of subrogation against Declarant that they may have now or in the future under or with respect to any insurance policies.

Section 6.4 Individual Insurance. Each Owner shall be

responsible for insuring that Owner's Lot and Unit and the Unit's contents and furnishings. All policies of casualty insurance carried by each Owner shall be without contribution with respect to the policies of casualty insurance, if any, obtained by the Board for the benefit of all of the Owners as provided above. Each Owner, at the Owner's own cost and expense, should carry an individual policy of liability insurance insuring against the liability of such Owner.

ARTICLE 7  
FIRE AND CASUALTY: REBUILDING

Section 7.1 Rebuilding. In the event of a fire or other casualty causing damage or destruction to a Lot or the Unit located on the Lot, the Owner of such damaged or destroyed Lot or Unit shall within six (6) months after such fire or casualty contract to repair or reconstruct the damaged portion of such Lot or Unit and shall cause such Lot or Unit to be fully repaired or reconstructed in accordance with the original Plans therefor, or in accordance with new plans presented to and approved by the Board, and shall promptly commence repairing or reconstructing such Unit so that the Unit shall not remain in a partly finished condition any longer than reasonably necessary. Alternatively, such damaged or destroyed Unit shall be razed and the Lot restored as nearly as possible to its prior condition.

Section 7.2 Indemnity of Association. Each Owner shall be responsible for any costs incurred as a result of such Owner's negligence or misuse or the negligence or misuse of (i) the Owner's family, tenants, guests, invitees, agents, or employees, or of (ii) any other resident or occupant of the Owner's Unit, and shall indemnify the Association and all other Owners against any such costs.

ARTICLE 8  
AMENDMENT TO DECLARATION  
AND DURATION OF RESTRICTIONS

Section 8.1 Amendment. Except as otherwise provided by law and by Section 8.3, these Restrictions may be amended by an instrument in writing signed by (a) the Declarant, if and for so long as the Declarant owns one (1) or more Lots, and (b) Members having not less than two-thirds (2/3) of the total votes in the Association, but no such amendment shall be effective until a written notice thereof is duly recorded in the Official Public Records of Travis County, Texas. The Bylaws of the Association may be amended in accordance with their terms.

Section 8.2 Duration. These Restrictions shall remain in full force and effect until January 1, 2027, and shall be extended automatically for successive ten (10) year periods; provided, however, that these Restrictions may be terminated on January 1, 2027, or on

the commencement of any successive ten (10) year period, by filing for record in the Official Public Records of Travis County, Texas, an instrument in writing signed by (a) the Declarant, if and for so long as the Declarant owns one (1) or more Lots, and (b) Members having not less than two-thirds(2/3) of the total votes in the Association.

Section 8.3 Amendment to Plat or Subdivision. Notwithstanding anything to the contrary contained in these Restrictions, the Declarant shall have and hereby reserves the right at any time, without the joinder or consent of any other party or entity, whether such other party or entity owns any portion of the Lots, to realign or amend any Lots within the Subdivision which may be owned by Declarant, whether such realignment or amendment increases or decreases the size of such Lots, and to file, seek approval of, and record any and all replats, amended plats, or other revisions to the plat of the Subdivision, so long as such realignment or amendment (a) does not affect the direct access of any Lot not then owned by Declarant to an adjoining road as then reflected on the plat of the Subdivision, (b) does not materially destroy the overall plan for the development of the Subdivision and (c) is effected in accordance with applicable state, county and municipal law. Declarant shall further have the right and hereby reserves the right at any time to approve the construction of a Unit across the Lot lines of any Lots held in common ownership.

Section 8.4 Annexation of Additional Land. Declarant hereby declares that it presently contemplates that at a future time the Land may be expanded (but Declarant does not obligate itself to expand the Land), by adding, from time to time, Additional Land. The Additional Land may include, without limitation, single-family residential lots, common areas, recreational amenities, patio-home and townhome lots, condominium regimes, and commercial property and/or Lots. After these Restrictions are amended pursuant to Section 8.1 to include the Additional Land, these Restrictions shall become effective with respect to any such annexed Additional Land on the date on which there is filed for record in the Official Public Records of Travis County, Texas, a Supplemental Declaration to that effect signed and acknowledged by the Association. Such Supplemental Declaration shall describe the degree to and manner in which these Restrictions shall apply to the Additional Land and may include, at the Association's option, such other or further covenants, conditions, and restrictions as apply to the Additional Land and shall set forth the responsibilities of the Association with respect to the operation, maintenance, and repair, and provisions for the use and enjoyment, of such portions of the Additional Land constituting roads, utilities, common areas, and recreational amenities and the assessments applicable to those portions of the Additional Land constituting Lots or other units for residential or commercial occupancy. The Association may cause to be recorded as many separate Supplemental Declarations as may be desired from time to time and at any time, to

affect the annexation of Additional Land. These Restrictions, including but not limited to this Article 8, do not presently create any interest in or with respect to the Additional Land, and these Restrictions shall not affect in any manner all or any part of such Additional Land unless and until this Declaration is amended pursuant to Section 8.1 to include the Additional Land and a Supplemental Declaration is filed in accordance with this Article 8.

ARTICLE 9  
MISCELLANEOUS

Section 9.1 Severability. In the event of the invalidity or partial invalidity or unenforceability or partial unenforceability of any provision of these Restrictions, the remainder of these Restrictions shall remain in full force and effect.

Section 9.2 Rules and Regulations. The Rules and Regulations may be amended from time to time by the Board. The Rules and Regulations are of equal dignity with, and shall be enforceable in the same manner as, the provisions of these Restrictions, but in the event of a conflict, these Restrictions, as from time to time amended, shall control. Each Owner, by accepting conveyance of a Lot, agrees to comply with and abide by the Rules and Regulations as the same may be amended from time to time.

Section 9.3 Number and Gender. Pronouns, whenever used in this Declaration, and of whatever gender, shall include natural persons and corporations, entities and associations of every kind or character, and the singular shall include the plural, and vice versa, wherever appropriate.

Section 9.4 Articles and Sections. Article and section headings in these Restrictions are for convenience of reference and shall not affect the construction or interpretation of these Restrictions. Unless the context otherwise requires, references to Articles and Sections are to Articles and Sections of these Restrictions.

Section 9.5 Delay in Enforcement. No delay in enforcing the provisions of these Restrictions shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation at any later time or times.

Section 9.6 Limitation of Liability. Declarant, as well as its partners, agents, employees, officers, directors, and their respective officers, directors, agents, and employees, shall not be liable to any Owner or lessee of the Land or any portion thereof or to any other party for any loss, claim, or demand in connection with a breach of

any provision of these Restrictions by any party other than Declarant.

Section 9.7 Enforceability. These Restrictions are imposed upon and made applicable to the Subdivision and shall run with the Subdivision and shall be binding upon and inure to the benefit of and be enforceable by Declarant, the Association, each purchaser, grantee, Owner, and lessee in the Subdivision, and their respective heirs, legal representatives, successors, and assigns.

Section 9.8 Remedies. In the event any one or more persons, firms, corporations, or other entities shall violate or attempt to violate any of the provisions of these Restrictions, the Declarant, the Association, each purchaser, grantee, Owner, or lessee of the Land, may institute and prosecute any proceeding at law or in equity (i) to abate, prevent, or enjoin any such violation or attempted violation or (ii) to recover monetary damages caused by such violation or attempted violation. Upon the violation of any of the provisions of these Restrictions by any Owner, in addition to all other rights and remedies available to it at law, in equity, or otherwise, the Association, acting through the Board, shall have the right to restrict the right of such Owner to vote in any regular or special meeting of the Members.

Dated the \_\_\_\_ day of \_\_\_\_\_, 2008.

WN DEVELOPMENT, L.P.

By: WNLANDCO, LLC, General Partner

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF TRAVIS     )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 by \_\_\_\_\_, the \_\_\_\_\_ of WNLANDCO, LLC, a Texas limited liability company, on behalf of the company, and the company acknowledged the instrument as General Partner of WN DEVELOPMENT, L.P., a Texas limited partnership, on behalf of said partnership.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas