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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR WINDERMERE -- REVISED 1996

Recitals

The original Declaration of Covenants Conditions, and Restrictions for Windermere was recorded in Volume 7775, Page 334, of the Real Property Records of Travis County, Texas. It has been amended and supplemented multiple times thereafter. Such declaration, together with all amendments, supplements, annexations thereto, are, referred to hereafter as the "Original Declaration". Such amendments, supplements, and annexation documents include all documents listed in attached Exhibit H.

On or about December 3, 1996, by written approval of the required number of Association members who may vote under the Original Declaration, the members of the Windermere Homeowners Association, Inc. totally revised and replaced such "Original Declaration" with the "Declaration of Covenants, Conditions, and Restrictions for Windermere -- Revised 1996", the latter being referred to hereafter as the "Revised Declaration". This Revised Declaration totally supersedes and replaces the Original Declaration, except that moneys due and accruing under the Original Declaration prior to the adoption of this Revised Declaration shall continue to be owed and shall be subject to all remedies for collection of same under this Revised Declaration. The documents being superseded and replaced are listed in Exhibit H.

ARTICLE I. DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Revised Declaration shall have the meanings specified below:

1.1 *Architectural Control Committee.* "Architectural Control Committee" or "Committee" shall mean the committee created pursuant to these Restrictions to review and approve plans for the construction of Improvements upon the Property.

1.2 *Architectural Control Committee Rules.* "Architectural Control Committee Rules" shall mean the rules and regulations adopted by the Architectural Control Committee and approved by the Board, as the same are amended from time to time.

1.3 *Articles.* "Articles" shall mean the Articles of Incorporation of Windermere Homeowners Association, Inc.

1.4 *Assessment.* "Assessment" or "Assessments" shall mean assessment(s) levied by the Association under the terms and provisions of the Revised Declaration.

1.5 *Association.* "Association" shall mean and refer to the Windermere Homeowners Association, Inc., a Texas nonprofit corporation, or its successors.

1.6 *Association Property.* "Association Property" shall mean all real or personal property now or hereafter owned by or leased to the Association.

1.7 *Board.* "Board" or "Board of Directors" shall mean the board of directors of the Association.

1.8 *Bylaws.* "Bylaws" shall mean the bylaws of the Association which may be adopted by the Members and as from time to time amended.

1.9 *Common Area.* "Common Area" shall mean and refer to those areas within the Property, including but not limited to those areas designated as park, roads, rights of way, or entryways that are (1) designated as common area on any Plat and held for the benefit of the Owners, or (2) owned by the Association. Initial Common Area consists of those lands described in Exhibit C.

1.10 *Declaration.* "Declaration" means this Revised Declaration, as amended or supplemented hereafter from time to time.

1.11 *Improved Lot(s).* "Improved Lot(s)" shall mean all Lots on which construction of the original dwelling or other improvements on the Lot has begun or has been completed.

1.12 *Improvement*. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind which alter the appearance of any Lot, including but not limited to, buildings, outbuildings, storage buildings, greenhouses, patios, tennis courts, swimming pools, saunas, hot tubs, garages, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softeners, fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television or other utilities, driveways, alleyways, walkways, entryways and any alteration or replacement of any exterior surface.

1.13 *Landscaping*. "Landscaping" shall mean any trees, shrubs, grass or other vegetative cover, whether native or domestic, decorative planters, borders, ornaments or other such items which alter the appearance of any Lot.

1.14 *Lot*. "Lot" shall mean any parcel of land within the Property which is a subdivided lot on a Plat of a subdivision out of the Property, together with all Improvements located thereon, except that each pair of townhouse lots (e.g. Lots 1-A and 1-B) on page 27 of this Revised Declaration shall be treated as one Lot for all purposes since one single family home must be built on such two lots pursuant to Exhibit B.

1.15 *Member*. "Member" or "Members" shall mean any person(s), entity or entities holding membership rights in the Association.

1.16 *Mortgage*. "Mortgage" or "Mortgages" shall mean any mortgage(s) or deed(s) of trust covering any Lot, or other portion of the Property.

1.17 *Mortgagee*. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage.

1.18 *Original Declaration*. "Original Declaration" shall mean the Declaration of Covenants, Conditions, and Restrictions for Windermere of record in Volume 7775, Page 334, of the Real Property Records of Travis County, Texas, together with all amendments, supplements, and annexations.

1.19 *Owner*. "Owner" or "Owners" shall mean the person(s), entity or entities, holding a freehold estate in any portion of the Property, but shall not include any Mortgagee or the Association.

1.20 *Person*. "Person" or "Persons" shall mean any individual(s), entity or entities having the legal right to hold title to real property.

1.21 *Plans and Specifications*. "Plans and Specifications" shall mean any and all 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, plans for utility services and all other documentation or information relevant to such Improvement.

1.22 *Plat*. "Plat" or "Plats" shall mean any recorded subdivision plat or plats of all or any portion of the Property.

1.23 *Property*. "Property" shall mean and refer to the tracts of land or Lots which are subject to this Revised Declaration and which are described in Exhibit A.

1.24 *Revised Declaration*. "Revised Declaration" shall mean this instrument as it may be amended or supplemented from time to time.

1.25 *Rules*. "Rules" shall mean the rules and regulations adopted by the Board, as the same may be amended from time to time or such rules and regulations adopted by any committee and ratified by the Board.

1.26 *Unimproved Lot(s)*. "Unimproved Lot(s)" shall mean all Lots on which the construction of the original dwelling or other improvements on the Lot has not yet begun.

## ARTICLE II. THE PROPERTY

2.1 *The Property*. The land subject to this Revised Declaration is described in Exhibit A. A map of the Property, for orientation purposes only, is contained in Exhibit D.

2.2 *Owner Rights in the Common Areas*. Each Lot Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to each Lot, without specific mention. The

Owner's rights in the Common Area shall be subject to the provisions of this Revised Declaration, including the following limitations:

- (a) The right of enjoyment in and to the Common Area shall be limited to those residing on the Property. The Board may adopt Rules to permit and limit the number of guests of Members who may use the Common Area, including the authority to limit the number of persons permitted to invite guests to two adults per Lot.
- (b) The Association may charge reasonable admission and other fees for the use of any recreational facility in the Common Area.
- (c) An Owner may, in accordance with Association Rules, delegate his right of enjoyment to the Common Area to his tenants or contract purchasers who reside on his Lot; but such right of enjoyment shall be limited to those residing on the Owner's Lot and may not consist of more than two adults per Lot plus any children who reside on the Lot and who are single and under 21 years of age.

### ARTICLE III. GENERAL RESTRICTIONS

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

3.1 *Subdividing.* No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Control Committee. No unsubdivided land which is subject to this Revised Declaration may be subdivided into lots other than single family home lots.

3.2 *Hazardous Activities.* No activities shall be conducted nor objects or substances stored or kept on the Property and no Improvements shall be constructed or allowed to remain 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, no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes. The foregoing shall not prevent the Association from conducting a fireworks display sponsored and supervised by the Association on holiday occasions on Association Common Areas.

3.3 *Insurance Rates.* Nothing shall be done or kept on the Property which would increase the rate of insurance for reasons such as substandard, high risk, or special risk, or cause the cancellation of insurance on any Lot or any of the Improvements located thereon.

3.4 *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.

3.5 *Nuisance.* Unless approved by the Board in writing in advance, 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 portion of the Property. Portable radios and other personal sound equipment are permissible so long as they do not create a nuisance or otherwise interfere with the quiet enjoyment of any portion of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property, its occupants, or the family nature of residential dwellings in the Property.

3.6 *Animals, Household Pets.* No animals, including pigs, pot-bellied 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. Any Owner may keep on such Owner's Lot a reasonable number of domestic animals as household pets. More than four animals weighing over five pounds each will be presumed to be an unreasonable number unless the Owner can demonstrate that the animals are not a nuisance and that their presence on the Property has no adverse impact on neighboring Lots or the Property as a whole. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic animal 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 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 Architectural Control Committee, 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.

3.7 *Rubbish and Debris.* No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants; and same shall be promptly removed by the Lot Owner. Refuse, garbage and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view.

3.8 *Maintenance.* Each Owner shall keep all Landscaping on such Owner's Lot cultivated, pruned, mowed, and free of trash; and other unsightly material. All Improvements upon any Lot, including homes, backyard fences, alleyway fences, storage buildings, and all Improvements constructed by the Owners, or the Association shall at all times be kept in good condition and repair and adequately painted or otherwise maintained at the sole expense of the Owner of such Lot. After giving prior notice and a reasonable opportunity to correct any defects, request more time, or give an acceptable reason as to why such maintenance has not been done, the Board, or their respective designees, shall have the right at any time to enter upon any Lot to replace, maintain, and cultivate Landscaping as deemed necessary; to paint, repair or otherwise maintain any Improvements in need thereof; and to charge the cost thereof to the Owner of the Lot. The Board or its respective designees shall have the right to immediately enter any abandoned property to make any necessary repairs, maintenance, alterations or improvements to reduce or eliminate an attractive nuisance, nuisance, eyesore, or other danger to the health and safety of the community, charging all costs to the Owner of the Lot. The Board shall also have the authority to request that utilities be discontinued on an abandoned property. An Improved Lot may be considered abandoned if it has been unoccupied for a period of more than thirty days and the Board has not had contact from the Owner within thirty days after notice was sent by certified mail. An Unimproved Lot may be considered abandoned if the Owner has allowed a hazardous condition to arise or persist.

Owners shall subscribe to a regular trash collection service. In order to obtain the lowest price and best service and to minimize wear and tear on the streets, the Board shall have the authority to negotiate a single trash collection agreement on behalf of all Association Members. Such an agreement must be ratified by a majority of the Membership at the annual meeting before it is binding. Once accepted by the Membership, the agreement is binding on all Members, and the trash collection company chosen must be subscribed to by all Owners for non-construction trash. Owners must make separate arrangement for hauling off large items such as furniture, beddings, large limbs, etc.; and such items may not be left outside on a Lot or in the alleyways.

The Association shall not have the responsibility to remove trash from culverts located on Lots, and that shall be the responsibility of the Lot Owner on whose Lot the culvert exists. The Association will mow the major drainage culverts or drainageways, at the Association's option.

3.9 *Antennae, Solar Collectors and Other Roof Appurtenances.* No exterior radio or television antenna or aerial or satellite dish receiver or other devices designed to receive telecommunication signals, including, but not limited to, radio, television or microwave signals shall be erected or maintained on any portion of the Property if the antenna or device is greater in size than ten feet by ten feet as measured at the largest and widest points and/or extending more than thirty feet off the ground or five feet above the top of the roof of the primary residence (whichever is greater) except for those antennae or other receivers which are shielded or concealed to such an extent that they are not visible from another Lot or portion of the Property. No more than five such antennae or such devices may be erected per Lot. In considering applications for variances, the legitimate interest of amateur (ham) radio operators should be considered and reasonably accommodated if possible. Solar energy, electricity-generating devices, or other roof appurtenances must be unobtrusive and mounted such that they do not face and are not visible from a street. Under no circumstances will transmitting antennas be allowed to interfere with radio or television reception, telephones, or household intercoms in neighboring homes.

3.10 *Signs.* No sign shall be displayed to the public view on any Lot without the prior written approval of the Architectural Control Committee, except that one sign of not more than five square feet is allowed for the purpose of advertising a Lot for sale or rent, and temporary signs of not greater than five square feet (such as for political campaigns, garage sales, or school activities) may be displayed for not more than an aggregate of forty-five days in any calendar year. The Association can post speed limit signs in the alleys. No sign shall be displayed on Association Property without the prior written consent of the Board. The Board shall have the authority to remove any sign not in compliance with this section.

3.11 *Tanks.* The Architectural Control Committee shall have the right to approve the location of any tank used or proposed in connection with a residential structure. Swimming pool filter tanks shall be the only tanks permitted on any Lot. All such tanks shall be screened so as not to be visible from any other portion of the Property. Ordinary commercial water softening equipment for individual home use does not violate this section.

3.12 *Temporary Structures.* Except for storage buildings which are not visible from any street, no tent, shed, or other temporary building, improvement or structure may be placed upon the Property without the prior written approval of the Architectural Control Committee; provided, however, that the Architectural Control Committee may give pre-approval as a class to any temporary structures for office space for architects, builders and foremen during actual construction provided such structures are of a given nature, size, duration and location. Storage sheds may be no larger than eight feet in height, and 10' x 8' unless approved by the Committee.

3.13 *Permanent Structures.* No permanent structures are allowed on any Lot without prior written approval of the Architectural Control Committee who shall review the Plans and Specifications for such structures for compliance with this Declaration.

3.14 *Unightly Articles; Vehicles.* No equipment other than motor vehicles may be kept in driveways. No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks (other than pickups), boats, tractors, campers, wagons, buses, motorcycles, motor scooters and garden maintenance equipment shall be kept at all times except when in actual use in enclosed structures, fenced areas, or screened from view. No repair or maintenance work shall be done on any of the foregoing, or on any vehicle (other than minor emergency repairs) unless such repairs are begun and completed within twenty-four hours, except in enclosed garages or other structures. No vehicle shall be permitted to remain in a visible state of disrepair or disassembly if it is visible from other Lots or areas of the Property. A "motor vehicle" includes (1) anything that can be propelled by motor upon a public highway and (2) "off road" vehicles such as ATVs, dune buggies, dirt-bike motorcycles, etc.

Each residential structure constructed within the Property following the adoption of this Section shall have sufficient garage space, as approved by the Architectural Control Committee. Vehicles may not be parked on sidewalks, apron areas, landscaped area of front yards or side yards. Sidewalks must be kept clear for pedestrian and bicycle traffic. Vehicles other than automobiles, vans, and pickups may not be parked in the streets or Common Areas except when in actual use. Automobiles, vans or pickups may not be kept, parked or stored in streets or Common Areas for more than 72 hours. However, if the automobile, van or pickup is owned or operated by a bona fide guest of the owner or occupant, it may be parked in the street or guest parking areas for up to five days. Moving or reparking a vehicle will not restart the measurement of allowable time for a vehicle to be parked other than on the Owner's Lot. Lot Owners shall not keep, park, or store any vehicle on the Owner's Lot except in a driveway or garage save for Owners of Lots improved prior to the adoption of this section which have insufficient space provided for the parking and storage of vehicles. The Board may make temporary exceptions to the parking rules if good cause is shown to the Board.

The Committee may tow or remove any vehicle being stored or parked in violation hereof, and may recover the expense thereof from the owner of the vehicle. Such removal shall comply with the state statutes requiring notice to the vehicle owner or operator and the use of an insured towing company.

Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.

3.15 *Mobile Homes, Travel Trailers and Recreational Vehicles.* No mobile homes shall be parked or placed on any Lot and used as a residence, either temporary or permanent, at any time. No motor homes, travel trailers or recreational vehicles shall be parked on or near any Lot except when in actual use, in enclosed structures, fenced areas, or otherwise screened from view.

3.16 *Sidewalks and Pedestrian Ramps.* All Lots on which construction of the primary dwelling is completed following the adoption of this Section are required to have sidewalks constructed along each side of all streets. Pedestrian ramps are required to be constructed on all corner Lots on which construction of the primary dwelling is completed following the adoption of this Section. Plans and specifications for the sidewalk must be submitted to the Architectural Control Committee at the time of subdivision of dwelling plans and specifications if a dwelling is being constructed. Such sidewalks must be installed before occupancy of a dwelling. The construction of all sidewalks and pedestrian ramps required to be constructed on any Lot shall be the responsibility of the Owner of such Lot or such Owner's builder and shall be performed in accordance with applicable law; provided, however, the Architectural Control Committee may require that more stringent specifications be observed. The Owner's responsibilities shall be limited to the sidewalks adjacent to his Lot as measured perpendicularly to the front Lot corners. The Owners of Lots adjacent to the Common Areas will be responsible for the construction of sidewalks adjacent to their Lots.

3.17 *Sidewalk Encroachments.* No Landscaping on any Lot or Common Areas shall be allowed to overhang or otherwise encroach upon any sidewalk or other pedestrian way without the prior approval of the Architectural Control



Committee. Any vegetation which overhangs or grows near a sidewalk or other pedestrian way shall be pruned or trimmed at all times so as not to encroach or otherwise interfere with access to and use of the pedestrian way or sidewalk.

3.18 *Compliance with the Declaration.* Each Owner shall comply strictly with the provisions of the Revised Declaration as the same may be amended from time to time. Failure to comply with any provision in the Revised Declaration shall constitute a violation thereof and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both.

3.19 *Additional Restrictions for Small Lot Subdivision.* Additional restrictions and easements shall apply to all lots in *Windermere, Phase G, Section One, a Small Lot Subdivision*, according to the plat recorded in Vol. 86, Page 58A, 58B, and 58C, Plat Records of Travis County, Texas. Such additional restrictions are described in Exhibit G. The source of these restrictions is the document entitled "Additional Restrictions for Windermere, Phase G, Section One, a Small Lot Subdivision", which document is recorded in Vol. 9484, Page 126, Real Property Records Of Travis County, Texas.

#### ARTICLE IV. USE AND CONSTRUCTION RESTRICTIONS

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

4.1 *Approval for Construction.* No Improvements shall be constructed upon any Lot without the prior written approval of the Architectural Control Committee. No dwelling shall be constructed on any Lot having a total square foot of less than 3900 square feet.

4.2 *Use of Land.*

(a) The Lots and unsubdivided tracts subject to this Revised Declaration and described in Exhibit A may be used only for single family homes except for:

- (i) the Common Area described in Exhibit C;
- (ii) the Lots restricted to townhouses in Exhibit B;
- (iii) the tract owned by a church described in Paragraph 19 of Exhibit A, so long as it is vacant land or used for church purposes; and
- (iv) Lot 1, Block P, *Windermere, Phase F, Section Three*, according to the plat recorded in Vol. 94, Pages 346 through 349, Plat Records of Travis County, Texas (a 2.03-acre Lot abutting Pflugerville Loop West).

(b) Lot 1, Block P, *Windermere, Phase F, Section Three* is restricted to retail use, common area, single family homes, or townhouses.

4.3 *Rentals.* An Owner may lease his Lot and Improvements thereon for residential purposes, provided that the Owner complies with leasing requirements and limitations contained in this Revised Declaration.

4.4 *Building Materials; Dwelling Size.* After the effective date of this Revised Declaration, no building or structure erected, altered, or placed on any Lot within the properties shall exceed 45 feet in height (measured from the top of the foundation to the topmost part of the roof) or contain less than 850 square feet of living area, exclusive of open or screened porches, terraces, patios, driveways, carports, garages and/or living quarters for bona fide domestic servant unless specifically approved to the contrary by the Architectural Control Committee. At least 50% of the first floor front elevation of the exterior of all dwellings, exclusive of openings and trim, shall be composed of masonry. All side walls of each dwelling structure situated on a corner Lot which faces or fronts on side streets shall be composed of at least 50% masonry from the ground to the top of first floor window heights, exclusive of openings and trim. For the purpose of these restrictions, masonry includes stucco and all materials commonly referred to in the Austin building industry as masonry. If commencement of construction or architectural committee approval of a building or structure on a Lot was before the effective date of this Revised Declaration, the building or structure does not need to have its total square footage increased to 850 square feet.

4.5 *Exterior painting.* Paint color for painting exterior surfaces of building and other Improvements must be submitted to and receive prior written approval of the Architectural Control Committee. The Committee may adopt a list of paint colors pre-approved by the Committee. The Committee may require an Owner to repaint a color that is not approved by the Committee.

4.6 *Alteration or Removal of Improvements.* Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement shall be performed only with the prior written approval of the Architectural Control Committee. The Committee shall have the right to approve any and all exterior colors of a dwelling, including its roof and fences. Any alteration to building exteriors must be completed within 90 days after approval of the Plans and Specifications by the Committee.

4.7 *Roofing Materials.* All roofing materials must be approved in advance by the Architectural Control Committee. The Committee may adopt a list of roofing materials pre-approved by the Committee.

4.8 *Landscaping Requirements.* Prior to the occupancy of any residence constructed upon a Lot, the front and side yards of the Lots from the outside walls of the residence to a distance of at least 10 feet behind the front wall of the residence shall be sodded with St. Augustine grass, planted with hybrid Bermuda, or otherwise landscaped with other vegetation approved by the Architectural Control Committee. The front yard shall be sodded or landscaped from the front wall of the residence to the curb or sidewalk. The side yards shall be sodded or landscaped from the side walls of the residence to the side Lot lines, for a distance of at least 10 feet from and behind the front wall of the residence. Existing trees on a Lot shall be preserved to the extent practicable. At least 5 shrubs shall be planted on every townhouse Lot and at least 5 shrubs and one tree on each single family home lot on that portion of the lot which is required to be sodded with grass. These requirements shall be the initial responsibility of the builder or contractor of each structure, but the cost of installation, replacement, and maintenance thereafter may be at the expense of either the home purchaser or the builder. Review of applications for landscaping variances should take into consideration lot frontage and rough square footage of that portion of the lot which is subject to the landscaping requirements of this section.

4.9 *Frontage; Setback Requirements; Building Location.* Every dwelling on a Lot shall front on the street on which the Lot fronts. Dwellings on corners shall have a presentable frontage on all streets on which the particular corner Lot abuts.

No dwelling shall be located contrary to the building lines shown on the applicable subdivision Plat. No dwelling may be located nearer than 25 feet to the front lot line. No dwelling on any interior lot may be located nearer than 12 feet to the rear lot line. No dwelling may be located within any easement.

No detached single family dwelling may be located nearer than 5 feet to any side lot line, and there shall be an aggregate side setback requirement of 15 feet on each lot. Townhouse dwellings may be located on the side lot line if such dwelling is paired with a townhouse dwelling situated on the adjacent lot. All townhouse dwellings shall be located a minimum of 5 feet from the side lot line opposite the lot line on which the common wall between the paired dwellings is situated.

For purposes of this section, (1) the term "dwelling" includes a living unit and any other structure besides a driveway or sidewalk, and (2) eaves, steps, returns, and open porches are not considered as part of a building for setback purposes. Such improvements may not encroach on another Lot.

Setback requirements and building location requirements that are contained in a plat and that are more restrictive than this section shall control over this section.

4.10 *Garages and Driveways.* No garage may be used by anyone other than the family, bona fide guests or Owner of a Lot on which the garage is situated. The Architectural Control Committee shall have the right to impose limitations on driveway design, including materials, aprons, location, and point of contact with dedicated roads, streets or private driveways within the Property. Driveways shall be constructed so that they have a sufficient rise in elevation to allow for the surface water drainage along the curb line of the street to continue without interruption or change in direction of flow.

4.11 *Community Mail Boxes.* All mail service will be handled through community mail boxes. No individual mail boxes will be allowed upon the Lots unless the U.S. Postal Service provides door-to-door service, and in such event all individual mail boxes shall be subject to review and approval by the Architectural Control Committee.

4.12 *Fences.* No fence, wall, hedge, or any other Improvement shall be erected or placed forward of any front setback line without the prior consent of the Architectural Control Committee. All fences shall be constructed of wood or some masonry alternative pre-approved by the Architectural Control Committee, and the construction of all fences is subject to review and approval of the Architectural Control Committee. Unless the Committee specifically otherwise consents in writing, all fences shall be privacy fences of at least six feet in height. Privacy fences may be constructed along any side or rear lot line which is adjacent to a street within the Property, and any such fence shall be maintained by the Owner of the Lot on which such fence is constructed. An Owner shall not at any time change the design of a fence without approval of the Committee.

4.13 *Underground Utility Lines.* 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 other type of line or wire shall be erected; or placed anywhere in or upon any portion of the Property following the adoption of this Section unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Improvements as approved in writing by the Architectural Control Committee; 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 Committee. The installation method, including but not limited to, location, type of installation equipment, trenching method, and other aspects of installation, for both temporary and permanent utilities, shall be subject to review and approval by the Committee.

4.14 *Drainage.* There shall be no interference with the established drainage patterns over any of the Property, unless adequate provision is made for proper drainage and approved by the Architectural Control Committee.

4.15 *Construction Activities.* This Revised Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Revised Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In no event, however, shall any structure be allowed to remain uncompleted for more than one year after construction has commenced. In addition, during construction of any structure, the contractor shall keep adjoining streets and thoroughfares free from debris and shall be required to maintain upon the Lot a dumpster for the purpose of holding all construction debris.

In the event that construction upon any Lot does not conform to the requirements set forth above or otherwise does not conform to usual construction practices in the area as determined by the Board in its sole good faith judgment, the Board shall have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render unsanitary, unsightly, offensive or detrimental to it or any other portion of the Property, then the Board may contract for or cause such debris to be removed, and the Owner of the Lot shall be liable for all expenses incurred in connection therewith. In the event of default in the payment of such sums within 30 days after demand therefor has been made, the Owner of the Lot shall be obligated to pay, in addition to the sums demanded, interest on such sums at the highest rate allowed by applicable usury laws, together with all costs and expenses of collection, including reasonable attorneys' fees. All such sums shall thereupon become a continuing lien and charge upon the Lot which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. Such liens shall be superior to all other liens and charges against the Lot, except only for tax liens and all sums unpaid on any first Mortgage lien of record encumbering the Lot.

To evidence the lien, the Board may prepare a written notice of lien, setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, and a description of the Lot. Such notice shall be signed by one of the members of the Board and shall be recorded in the office of the County Clerk of Travis County, Texas. Such lien shall attach with the priority set forth above from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting Owner's Lot by the Board in like manner as a mortgage on real property subsequent to the recording of notice as provided above, or the Board may institute suit against the Owner personally obligated to pay the sums and/or for foreclosure of the lien judicially. In any foreclosure proceeding, whether judicial or nonjudicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred.

## ARTICLE V. THE ASSOCIATION

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

5.2 *Membership.* Any person or entity upon becoming an Owner of a Lot shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot which qualifies the Owner thereof for membership. Membership in the Association may not be severed from the ownership of a Lot or in any way transferred, pledged, mortgaged or alienated except together with the freehold estate to the Lot.

5.3 *Voting.* A Lot owner shall not be entitled to vote for any purpose until construction has begun on the dwelling on the owner's lot.

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

- (a) *Association Property.* To accept, own, operate and maintain all Association Property, including all Common Area which may be conveyed or leased to it, together with all improvements located in the Common Area.
- (b) *Repair and Maintenance.* To maintain in good repair and condition the Common Area and the Association Property.
- (c) *Taxes.* To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Common Area and the Association Property, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall cause taxes for Association-owned property to be prorated among the Lot Owners in accordance with Section 23.18, Texas Tax Code, as amended. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (d) *Insurance.* To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.
- (e) *Rules and Bylaws.* To make, establish, and promulgate and, in its discretion, to amend or repeal and reenact Rules not in conflict with this Revised Declaration or the Bylaws. A copy of the Bylaws adopted by the Association on the date of adoption of this Revised Declaration are in Exhibit F.
- (f) *Records.* To keep books and records of the Association's affairs and to make such books and records, together with current copies of this Revised Declaration, available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours. The Association shall, upon request, issue (1) certificates of compliance (see Exhibit E) and (2) resale certificates, stating any delinquent monies owed to the Association by an Owner and any other information required by law or reasonably necessary for the resale of a Lot.
- (g) *Prudent management.* To retain professional management for the Association at the discretion of the Board and to prudently manage the affairs of the Association at all times; and to have an independent audit of the Association's financial records once each year unless directed otherwise at the annual meeting of the Association by a majority vote of the Association members entitled to vote. The term of a professional management agreement may not exceed one year; but it may be renewed for successive periods of one year or less. Any management agreement shall be terminable for good cause in addition to any termination clause contained in said agreement.
- (h) *Other.* To carry out and enforce all duties of the Association and the Owners under this Revised Declaration.

5.5 *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 Revised 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 Revised Declaration. Without limiting the generality of the foregoing, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

- (a) *Assessments.* To levy Assessments as provided in this Revised Declaration. An "Assessment" is defined as that sum which must be levied in order to raise the total amount for which the levy in question is being made.
- (b) *Right of Entry and Enforcement.* To enter at any time pursuant to the restrictions and procedures set forth in Section 3.8 of this Revised Declaration, without being liable to any Owner, upon any Lot or into any Improvement therein, or onto any Common Area for the purpose of enforcing this Revised Declaration, Bylaws, and Rules or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Revised Declaration, Bylaws, and Rules. (For example, a Lot Owner refuses to remove articles, materials, or improvements which inherently or by their normal use constitute a danger to others.) The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot and any Improvements thereon, and shall be enforced in the same manner and to the same extent as provided herein for Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to

restrain and enjoin any breach of threatened breach of this Revised Declaration, Bylaws, and Rules. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Revised Declaration, Bylaws, and Rules.

- (c) *Conveyances.* To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way or Mortgages out of, in, on, over or under any Association Property for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder:
- (1) roads, streets, walks, driveways, parking lots, trails, and paths;
  - (2) lines, cables, wires, conduits, pipelines or other devices for utility purposes;
  - (3) sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; or
  - (4) any similar Improvements or facilities.

Nothing above shall be construed to permit the use or occupancy of any Improvement or other facility in any way which would violate applicable use and occupancy restrictions imposed by other provisions of this Revised Declaration.

- (d) *Manager.* To retain and pay for the services of a manager to manage and operate the Association, including its Association Property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the manager.
- (e) *Legal and Accounting Services.* To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (f) *Association Property Services.* To pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to, and all maintenance of the Association Property.
- (g) *Other Services and Properties.* 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 the terms of the Revised Declaration, Bylaws, or Rules.
- (h) *Construction on Association Property.* To construct Improvements or additions to Association Property, subject to the approval of the Architectural Control Committee.
- (i) *Contracts; Property Ownership.* To enter into contracts 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.

5.6 *Indemnification by the Association.* The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. Indemnification is not permitted if the act of the person seeking indemnity is (1) a breach of the such person's duty of loyalty to the Association or its members, (2) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, (3) a transaction from which the person receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the such person's office, or (4) an act or omission for which the liability of such person is expressly provided for by a statute.

5.7 *Liability of Board Members.* The members of the Board of Directors, the Association officers, and Architectural Control Committee members shall not be liable to any Owner or any person claiming by or through any Owner for any act or omission of such director, officer, or Committee member in the performance of his duties unless such act or omission is (1) a breach of the such person's duty of loyalty to the Association or its members, (2) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, (3) a transaction from which the person receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the such person's

office, or (4) an act or omission for which the liability of such person is expressly provided for by a statute. The Association shall indemnify all such Directors, Officers, and Architectural Control Committee members from all claims, demands, actions and proceedings and any expenses in connection therewith, except if such person has acted in violation of the foregoing.

The Board may purchase (but is not required to purchase) directors and officers liability insurance. Such insurance and any indemnification payments shall be treated as a common expense. The Board is authorized and directed to modify the Association's corporate charter to conform to the foregoing.

5.8 *Enforcement of Declaration, Bylaws, and Rules.* The Association or any Owner may enforce all restrictions, conditions, covenants, reservations, liens, bylaws, rules, charges, and liabilities now and hereafter imposed by the Revised Declaration, Bylaws, or Rules. Failure of the Association or any Owner to enforce shall not be deemed a waiver of the right to do so at a later time.

- (a) *Rules.* The Board may adopt Rules for the purpose of administering the Association and obtaining compliance by Owners and their family, guests, and tenants with the Revised Declaration, the Bylaws, and the provisions of any subdivision restrictions of record. The Rules must be consistent with and not in conflict with this Revised Declaration or Texas law. An updated copy of the Rules should be provided at least once a year to all Owners. Owners shall be responsible for Rule violations by their tenants, family, and guests.
- (b) *Late charges.* The Board may adopt late charges, from time to time, for late payment by the Owners of monies owed to the Association.
- (c) *Returned check charges.* The Board may assess returned check charges against an Owner, as set by the Board from time to time, for each returned check, plus late charges, until acceptable payment is received.
- (d) *Suspension of voting rights.* The voting rights of any Owner who is more than 60 days delinquent on any sum owed to the Association shall be automatically suspended without notice. Such suspension of voting rights shall extend to general or special membership meetings, mail ballots, committee meetings, board meetings, and all other meetings.
- (e) *Suspension of Common Area rights.* The Board may suspend all services to an Owner and all Common Area use rights of an Owner if
  - (1) the Owner is more than 60 days delinquent on any sums owed by the Owner to the Association, or
  - (2) the Board has unanimously concluded in good faith after proper notice and hearing before the Board that (i) the Owner or a member of the Owner's family, the Owner's tenant, or other occupant of the Owner's Lot has committed a criminal offense within the previous year involving bodily harm or threat of bodily harm to another Owner or that Owner's family, tenants, or guests, or (ii) has committed a criminal offense in the previous year involving intentional or reckless damage to the Common Area or another Owner's Lot. The Owner shall be given written notice of the nature of the alleged conduct, and shall be given an opportunity to appear before the Board and be heard. The Board shall not be required to abide by any rules of procedure or evidence which might attach to a court proceeding.

Such suspension of use rights or services may cover use rights of and services to the Owner and/or Owner's family, guests, or tenants. Notice of such suspension shall be mailed to the Owner by certified mail, return receipt requested. Suspension for criminal offenses may last for no longer than one year for each criminal offense. Suspension for nonpayment may last until all delinquent sums are paid.

- (f) *Fines.* The Board may assess reasonable fines against an Owner for violations by the Owner or his family, guests, agents, or tenants, of standards of conduct contained in the Revised Declaration and the Association Rules. Reasonable fines may also be assessed for failure to abide by any suspension of Common Area rights. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owners. There must be notice of the alleged infraction, an opportunity to be heard, and imposition of any fine to the Owner no later than 60 days from the alleged infraction.
- (g) *Remedies against tenants.* The Board shall have authority to evict tenants of Owners, after reasonable notice, for substantial or repeated violations of Association Rules. The Board shall have authority to enforce all Rules against the Owner's tenants, including collection of fines for violations of the Revised Declaration or Bylaws by the tenants. Fines may be assessed jointly and severally against Owners and their tenants if such tenants violate Association Rules.

- (h) *Leasing.* The Board may (1) require owners to timely furnish the Association with tenant names, telephone numbers, emergency contact persons, and (2) require owners to attach a copy of Association Rules to all leases. The Board may recommend (but not require) that a particular lease form of lease addendum be used. The Board may, but is not required, to furnish standard lease forms or addendums to Lot Owners wishing to lease their dwellings. The management company managing the Association does not have authority to act for the Association in leasing or managing individual dwellings. A dwelling Owner may contract with the same management company which manages the Association to lease or manage a dwelling owned by the Owner. An Owner may not lease for transient or hotel purposes. Any lease shall be subject to the Revised Declaration, Bylaws, and Rules.
- (i) *Interest.* All past due sums due the Association by Owners shall bear interest from due date at the highest lawful rate, compounded annually.
- (j) *Fees for special services.* Fees chargeable to Owners for special services (such as furnishing certificates of compliance, resale certificates, copies of the Revised Declaration and Bylaws, copies of accounting records, etc.) shall be set by the Board from time to time.
- (k) *Parking limitations.* Vehicle owners shall reimburse the Association for any costs incurred in towing vehicles illegally parked in the Common Area if the towing complies with applicable statutes regarding illegal parking, including any prior notice requirements.
- (l) *Animals.* The Board may limit the kind and number of animals allowed in the Common Area, and such limitations shall uniformly apply to all Owners, their family, guests, and tenants. The Board may designate specific areas for animal defecation in the Common Area to the extent animals are allowed in the Common Area. The Board may prohibit animal defecation on Lots not owned by the animal owner and may require the animal owner to remove from another owner's Lot or the Common Area any defecation placed there by the owner's animal. The Board may require certain kinds of animal to be on a leash when outside fenced portions of the animal owner's Lot. The Board may not adopt rules that are inconsistent with the right of owners to have animals under Section 3.6 of the Revised Declaration.
- (m) *Publication of delinquencies.* The Board may at any time disclose and publish to Association members and mortgagees the financial condition of the Association, including a list of names and amounts of any delinquencies that are 60 days delinquent or greater. The Board may notify mortgage lenders of delinquent monies owed by such Owners to the Association. The Board may notify a Lot Owner's tenants of monies owed by such Owners to the Association provided the monies are more than 60 days delinquent.
- (n) *Name and address of new Owners.* An Owner may not sell or convey his Lot without all monies due and owing to the Association being paid in full; and if such Owner does sell or convey his Lot without paying such monies, such Owner shall remain liable for all monies accruing to the Association thereafter until such monies are paid in full. If such Owner sells or conveys his Lot and fails to notify the Association of the transfer, such Owner shall continue to be liable (along with the new Owner) for assessments accruing after the date of sale or conveyance until such time as the selling or conveying Owner notifies the Association in writing of the name and address of the new Owner. The selling or conveying Owner shall have a right of indemnity against the new Owner for recovery of any sums paid by the selling or conveying Owner under this subsection.
- (o) *Change of address.* Owners shall keep the Association timely informed of their current mailing addresses and any change of addresses.
- (p) *Lien of the Association.* The Association shall have a lien on an Owner's Lot and on any rentals and insurance proceeds relating to the dwelling thereon, to secure payment of all monies owed by the Owner to the Association. The lien shall automatically attach to the Lot on the due date of the monies owed. Recordation of a notice of lien is permitted but is not necessary. The Association's lien shall be subordinate to the lien of a first lien Mortgagee who has advanced money for purchase or improvement of the Lot. However, the Association's lien shall not be subordinate for unpaid amounts if (1) such amounts were due and unpaid before the recordation of such first lien mortgage instrument in the county real property records, and (2) the Association had a valid lien for such amounts at the time of such recordation, i.e., the Association's lien for such unpaid amounts had not been extinguished by foreclosure of a previous first lien.

The Association's lien may be foreclosed via court proceedings or via nonjudicial foreclosure procedures as if it were a nonjudicial foreclosure of a mortgage lien. The Association shall have power of sale and all other powers necessary for nonjudicial foreclosure. The Board shall have the power to appoint an agent or trustee for purposes of foreclosing the lien nonjudicially. All funds realized from any foreclosure sale shall be

applied first to the cost and expense of foreclosure, including but not limited to attorneys fees. The Owner shall have the right to judicially enjoin such foreclosure on the same grounds as in any other nonjudicial foreclosure in this state. Up to the time of actual foreclosure, the Owner shall have the right to pay all sums due and owing to the Association (including attorneys fees in connection with the proposed foreclosure), thereby avoiding foreclosure. Extinguishment of the lien shall not relieve the delinquent Owner from his personal obligation to pay sums which are due to the Association and which accrue during the Owner's ownership of his Lot.

Concurrent with the Original Declaration, a deed of trust in favor of the Association to secure payment of assessments was recorded in Vol. 7795, Page 355, Real Property Records of Travis County, Texas. That deed of trust is not necessary in view of Subsection (p) above, and such deed of trust is therefore released by the Association.

- (q) *Change in Lot Lines or Utilities.* The Board shall have the power to approve, on behalf of the Association, any relocation of Lot lines or utilities of lots subject to this Revised Declaration.
- (r) *Borrowing.* The Board shall avoid borrowing funds to meet Association obligations except as authorized by 66 2/3% vote of the Members who are entitled to vote and who are in attendance in person or by proxy at a regular or specially-called Association meeting. The Association, if approved by such vote, may pledge its revenues, assessment rights, and lien rights as collateral for repayment of such loan.
- (s) *Venue and lawsuit authority.* All obligations of Owners, tenants, and the Association arising under this Revised Declaration, the Bylaws, or Rules shall be performed in Travis County, Texas, and venue for any lawsuits relating thereto shall be in Travis County, Texas. The Association shall have the right to file and defend a suit (including injunctions) and recover on behalf of the Association and/or the Owners in any cause of action based on damages to the common facilities or Common Area or based on liabilities of Owners and their families, guests, agents, tenants, or third parties.
- (t) *Attorney's fees.* If delinquent accounts or other violations are turned over to the Association's attorney, the Owner shall be liable for all attorney's fees incurred by the Association in collections, filing liens, foreclosing liens, releasing liens, prosecuting lawsuits, and/or otherwise enforcing the Revised Declaration, Bylaws, and Rules. In the event of litigation between the Association and Owner(s), the prevailing party shall recover its attorney's fees from the non-prevailing party.
- (u) *Notices to multiple Owners, tenants, mortgagees.* Notice to or from one of multiple Owners or tenants of a Lot shall be deemed as notice to or from all Owners or tenants of that Lot. If an Owner is more than 60 days delinquent, the Association may send to the Owner's tenant a copy of any Association notices or communications with the Owner.

5.9. *Dissolution.* If the Association is dissolved, the assets of the Association shall be dedicated to the City of Pflugerville, Texas.

## ARTICLE VI. ASSESSMENTS

6.1 *Covenants for Assessments; Lien for Assessments.* Each Owner of a Lot covenants and each purchaser of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant to pay to the Association: (1) Regular Assessments as defined below, and (2) Special Assessments as defined below, and (3) all other sums for which the Owner is obligated under the Revised Declaration, Bylaws, or Rules. All Assessments and charges shall be fixed, established, and collected from time to time as provided by the Revised Declaration or by the Board. The Association shall have a lien for assessments and other sums due, pursuant to Section 5.8(p).

6.2 *Purpose of Assessments.* The Assessments levied by the Association shall be used exclusively for the purpose of (1) promoting the comfort, health, safety, and welfare of the Owners, (2) maintenance and improvement of the Common Area and the Association Property, (3) promoting the purposes of the Association as stated herein, including activities such as Fourth of July fireworks displays, Easter egg hunts, etc., (4) maintaining streets and common access drives on rear lot boundaries to the extent that no governmental entity has the legal responsibility to maintain same, or (5) as otherwise provided in the Articles or Bylaws. In order to accomplish these purposes, the Association shall have the ability to levy Assessments, subject to the limitations below. The Board shall adopt a budget to cover the proposed operating expenses of the Association, including a reasonable provisions for contingencies and prudent reserves.

6.3 *Regular Assessments.* Regular Assessments shall be assessed as follows:



- (a) *Improved Lots.* Prior to the beginning of each fiscal year, the Board shall estimate (1) estimated expenses of the Association, including a reasonable provision for contingencies and appropriate replacement reserves, and (2) estimated revenues. The Board shall adopt an annual budget. The Board shall levy Regular Assessments no greater than the maximum Regular Assessment provided below, and such Regular Assessment shall be sufficient to pay estimated Association expenses and to establish and maintain a prudent reserve fund. Regular Assessments levied against each Improved Lot shall be equal and uniform. The level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Regular Assessment, the Association may at any time levy further Regular Assessments against the Improved Lots in the same manner, provided the total annual Regular Assessment does not exceed the annual maximum allowed. The due date(s) and delinquent date(s) of Regular Assessments shall be set by the Board.

The maximum allowable annual Regular Assessment shall not be increased by the Board by more than 10% of the previous year's maximum allowable Regular Assessment or the annual increase in the Consumer Price Index, whichever is greater. The Board may set actual Regular Assessments at less than the maximum allowed.

- (b) *Unimproved Lots.* The Owner of a Lot on which construction of a dwelling has not yet begun shall not be obligated to pay any Regular or Special Assessments relating to such Lot. Such obligation shall commence when construction has commenced on the Lot. The foregoing shall be subject to Section 6.8 below.
- (c) *Per-lot basis.* Assessments shall be on a per-lot basis.

6.4 *Special Assessments.* Special Assessments may be made for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of any Improvement located upon the Common Area, including the necessary fixtures and personal property related thereto, or for carrying out other purposes of or otherwise benefiting the Association. The due date(s) and delinquent date(s) of Special Assessments shall be fixed by the Association resolution authorizing such Special Assessment.

6.5 *Vote Required for Special Assessment.* The Board may assess a Special Assessment on all Lots only if 66 2/3% of the Owners entitled to vote have approved such Special Assessment, voting in person or by proxy, at a regular or special meeting of the membership.

6.6 *Owner's Personal Obligation for Payment of Assessments.* The Regular and Special Assessments and all other sums due under this Revised Declaration relating to a particular Lot shall be the personal and individual debt of such Lot Owner. No diminution or abatement of Assessments shall be allowed for any reason. If any Owner defaults in the payment of any Assessment, the Owner's voting rights and rights to use the recreational facilities contained within the Common Areas shall be suspended until such default has been cured.

6.7 *Exemptions.* The Common Area (described in Exhibit C) and the church tract (described in Paragraph 19 in Exhibit A) shall be exempt from the payment of any Regular or Special Assessment. No assessments shall be made on existing or future Common Area Lots.

6.8 *Past due sums prior to Adoption of Revised Declaration.* Assessments and other sums due to the Association and accruing prior to the adoption of this Revised Declaration shall continue to be owed and shall not be void or terminated by this Revised Declaration.

## ARTICLE VII. ARCHITECTURAL CONTROL COMMITTEE

7.1 *Membership of Architectural Control Committee.* The Architectural Control Committee shall consist of not more than five voting members who must be Members of the Association, or residents living within the Property under a lease or other legal arrangement ("Voting Members"), and not more than three non-voting members serving in an advisory capacity ("Advisory Members"). The Committee members shall be appointed by the Board annually or as vacancies arise.

7.2 *Action by the Architectural Control Committee.* Items presented to the Architectural Control Committee shall be decided by a majority vote of the Voting Members.

7.3 *Term.* The term of each Voting Member shall be three years, except that initially two of the members shall have terms of one and two years, respectively, so that eventually the term of only one member expires each year. Advisory Members shall be appointed for terms of one year. Each Voting Member and Advisory Member of the Architectural Control

Committee shall hold office until such time as he has resigned or has been removed by the Board or his successor has been appointed. In the event of the death or resignation of the member, the Board shall appoint a replacement.

7.4 *Adoption of Rules.* The Architectural Control Committee may adopt procedural and substantive rules as it may deem necessary or proper for the performance of its duties, including but not limited to, a building code, a fire code, a housing code, and other similar codes as it may deem necessary and desirable. Such rules may not conflict with the Revised Declaration and may not exceed the code requirements of the City of Pflugerville, Texas.

7.5 *Review of Proposed Construction.* Whenever, in this Revised Declaration, the approval of the Architectural Control Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as otherwise specifically provided, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications shall be submitted to the Committee; and construction may not commence unless and until the Committee has approved such Plans and Specifications in writing.

The Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Revised Declaration and shall perform such other duties assigned to it by this Revised Declaration or by the Board, including the inspection of construction in progress to assure it conforms with Plans and Specifications approved by the Committee. The Committee may review Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the Committee of any information or documents deemed necessary by the Committee, it may postpone review of any Plans and Specifications submitted for approval. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes, and material and similar features as to be incompatible with development within the Property and the surrounding area. The Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions required or permitted under this Revised Declaration. The decision of the Committee shall be final and binding so long as it is made in good faith.

Any proposed Improvement shall be considered as approved if it has not been disapproved by the Committee within 30 days after complete Plans and Specifications for such Improvement and all other information required by the Committee have been submitted to the Committee in writing. The Committee shall not be responsible for reviewing any proposed Improvement from the standpoint of structural safety, engineering soundness, or conformity with building or other codes. No approval by the Committee shall be considered as approval from that standpoint.

7.6 *Actions of the Architectural Control Committee.* The Architectural Control Committee may, by unanimous written resolution, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Committee. In the absence of such designation, the vote of the majority of the members of the Committee taken without a meeting shall constitute an act of the Committee.

7.7 *Variances.* The Architectural Control Committee may grant variances from compliance with any matter which it is empowered to review, including, but not limited to, restrictions upon height, bulk, size, shape, floor areas, land area, placement of structures, setbacks, colors, materials or land use when, in the opinion of the Committee, in its sole and absolute discretion, such variance will add to the appearance and value of the Lot and will not detract from the appearance of the adjoining Lots and will not be contrary to the overall scheme or general plan of the Property. Such variance must be evidenced in writing and must be signed by at least a majority of the Voting Members of the Committee.

If a variance is granted, no violation of the protective covenants, conditions or restrictions shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Revised Declaration for any purpose except as to the particular Lot and in the particular instance covered by the variance. If the appeal is made within five business days after notice of the grant or denial to the applicant, any Lot Owner may appeal a grant or denial of a variance to the Board for final decision by the Board on an expedited basis. The Architectural Control Committee shall report on all variances granted at the next regular meeting of the Board, at which time any member of the Board may appeal the grant of the variance for final decision of the Board on an expedited basis. The appealing Board member shall be permitted to participate and vote on the appeal, as a member of the Board. No variance shall become effective until it is reported to the Board and the Board has considered any appeals.

All variances which have been granted are subject to reconsideration by the Board in the event a Lot affected is sold or transferred. If withdrawal of a previously-granted variance would, in the good faith judgment of the Board, improve the appearance and value of the Property or any portion thereof and would not work an undue hardship on the new Owner, the Board may by two-thirds vote withdraw the variance. The Lot Owner shall receive notice of the intention of the Board to reconsider the variance and shall be given the opportunity to appear and be heard. Any variance which is not exercised for a period of six months after it is granted may be withdrawn by a majority vote of the Board with prior notice or hearing.

7.8 *No Waiver of Future Approvals.* The approval or consent of the Architectural Control Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee 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.

7.9 *Work in Progress.* The Architectural Control Committee, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications, and in the event that any construction work is proceeding, otherwise than in compliance with the Revised Declaration and the approved Plans and Specifications, the Committee shall have the authority to issue a directive to the Owner of the Lot upon which the construction is proceeding to cease all construction work and to immediately commence such curative action as may be necessary to bring the construction work into compliance with the Revised Declaration and/or the approved Plans and Specifications. In the event of a failure of the Owner to comply with such directive, the Board shall have the right to enforce such directive by seeking injunctive relief or by such other remedies as provided in this Revised Declaration for enforcement of the Revised Declaration, Bylaws, and Rules.

7.10 *Address.* Plans and Specifications shall be submitted to the Architectural Control Committee at the permanent address of the Association, which is P. O. Box 1158, Pflugerville, Texas 78691, or such other address as may be designated from time to time.

7.11 *Fees.* The Architectural Control Committee shall have the right to require a reasonable submission fee (not to exceed ten percent of the total cost of construction) for each set of Plans and Specifications submitted for its review. The Committee, with prior Board approval, may engage the services of an architect or other professional for the sole purpose of reviewing the Plans and Specifications for compliance with restrictions required or allowed under the Revised Declaration; and the reasonable cost of such review shall be paid by the Lot Owner unless the Plans and Specifications have already been reviewed and approved by a certified building designer or licensed architect or engineer who certifies that the Plans and Specifications comply with the use, appearance, and construction restrictions in Article III and Article IV of this Revised Declaration.

7.12 *Certificate of Compliance.* Upon completion of any Improvement approved by the Architectural Control Committee and upon written request by the Owner of the Lot and payment of any required expenses or fees, the Committee shall issue a Certificate of Compliance in a form suitable for recordation. The certificate shall identify the Lot and the Improvements and shall specify that the Improvements, in the Committee's judgment, comply with approved Plans and Specifications (if any) and with the requirements of the Revised Declaration. The certificate shall not be construed to warrant the construction, workmanship, materials or equipment of the Improvements. Preparation and recordation of such a certificate shall be at the expense of the Owner of the Improved Lot. A copy of a proposed Certificate of Compliance form is attached as Exhibit E.

## ARTICLE VIII. EASEMENTS

8.1 *Prior Easements.* All dedications, limitations, restrictions and reservations shown on the Plats and all grants and dedications of easements, rights-of-way, restrictions and related rights, made prior to the Property becoming subject to this Revised Declaration are a part of this Revised Declaration for all purposes unless expressly modified or superseded by this Revised Declaration.

8.2 *Utility Easements.* There is hereby created, in addition to utility easements shown on Plats and in actual use at the time of the adoption of this Revised Declaration, an easement across the rear five feet of each Lot for the purpose of installing, replacing, repairing, and maintaining all utilities, including but not limited to water, gas, telephones, cable television, and electricity lines and appurtenances thereto. No electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by the Architectural Control Committee. Utility companies furnishing service shall have the right to remove fences, trees, and other Improvements situated within the utility easements shown on the Plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

8.3 *Drainage Easements.* There is hereby created a drainage easement across the rear five feet of each Lot and a three-foot drainage easement across the side lot lines of each Lot except on the common boundary line of a Lot on which a townhouse is constructed on a zero lot line basis. Each Owner requesting approval of Plans and Specifications from the Architectural Control Committee covenants to provide additional easements for drainage and water flow on that Owner's Lot, as contours of land and the arrangement of Improvements thereon approved by the Committee may require. A Lot Owner may not change the topography of a drainage easement or plant landscaping in the easement so as to adversely interfere with surface drainage affecting other Owners.

8.4 *Townhouse Lot Maintenance Easements.* The Owner of a Lot on which a townhouse is located has an easement, to the extent it is reasonably necessary, on the adjacent Lot on which the paired townhouse is located in order to (1) maintain the Owner's roof, foundation, and building encroachments within the easement area to the extent existing at the time of the completion of the initial construction of the paired townhouse dwellings, and (2) construct, maintain, repair, and restore the Owner's dwelling.

8.5 *Surface Area Use.* The surface of easement areas for utility services may be used for planting of shrubbery, lawns or flowers. There shall be no planting of trees or construction of structures, temporary or permanent, in any drainage easement, except as approved in writing by the Committee. Neither the Association nor any utility service using any easement area shall be liable to any Owner for damage done to vegetation as a result of construction, maintenance, operation or repair of any facility in such easement areas. Fencing across easements is permitted, but gates along the side lot lines must be provided. The gates shall be at least as wide as the easement and constructed without permanent centerpoles in the gates. Gates shall be capable of being opened and closed at all times and shall remain unlocked at all times. The Lot Owner shall have no right of reimbursement for any costs of removing or restoring any Improvements which must be removed for utility or drainage purposes.

8.6 *Sight Distance at Intersections.* No fence, wall, hedge or shrub which obstructs sight line at elevations between two feet and eight feet above the roadways 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 25 feet from the intersections of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersections of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

8.7 *Access Easements on Rear Lot Lines.* Many Lots subject to this Revised Declaration do not have and are prohibited by their subdivision plats from having driveway access to the street in front of the Lots. Vehicular access to those Lots are through alleyways on access easements across the rear of the Lots, as shown on the plats. No Lot owner may obstruct such easements or modify the improvements thereon.

8.8. *County Easement on Common Area.* The .4752-acre unplatted tract of land that is owned by the Association as common area is subject to a permanent non-exclusive easement for the benefit of the County of Travis over the 60 foot strip of land immediately east of the Association's 5.876-acre common area tract. The easement is for maintenance and access by the County. The easement is recorded in Vol. 9468, Page 413, Real Property Records of Travis County, Texas.

8.9 *Public Utility Easement on "Park" Area.* The 9.8254-acre tract of land designated as Lot 29, Block A, *Windermere, Phase F, Section One, a Townhouse Subdivision*, according to the plat recorded in Vol. 86, Page 196, Plat Records of Travis County, Texas is subject to a public utility easement for the benefit of the Windermere Utility Company. The easement is recorded in Vol. 9227, Page 952, Real Property Records of Travis County, Texas.

8.10 *Access and Public Utility Easement Prior to Plats.* Part of the rear access easements for Lots 12A through 22B, Block B, and Lots 12A through 22B, Block C, *Windermere, Phase C*, according to the plat recorded in Vol. 83, Pages 130B and 130C, Plat Records of Travis County, Texas were created by easement document prior to the recordation of the plat for such lots. Such rear access easements were created in part by a document recorded in Vol. 17726, Page 833, Real Property Records of Travis County, Texas, which is still in effect.

## ARTICLE IX. MISCELLANEOUS

9.1 *Duration.* This Revised Declaration shall continue until extinguished by a written instrument executed by the Owners of at least 66 2/3 % of the Lots within the Property then subject to this Revised Declaration.

9.2 *Amendment by Association members.* Except as provided in Sections 9.3 and 9.4, this Revised Declaration may be amended only by the written consent of at least 66 2/3 % of the Owners who are entitled to vote. No amendment shall be effective until recorded in the Real Property Records of Travis County, Texas.

9.3 *Amendment by Board.* Except as provided in Section 9.4, the Board may amend this Revised Declaration or the Bylaws by instrument duly signed, acknowledged and filed for record, for the purpose of having the Revised Declaration comply with financing eligibility requirements of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, Federal Housing Administration, or comparable federal agencies. The Board may also amend this Revised Declaration (1) to include any lot or tract that was in fact subject to the Original Declaration but which was not included, by oversight, in the Revised Declaration, or (2) to exclude any lot or tract that was not included in the Original Declaration but was included, by oversight, in the Revised Declaration. The Board may also amend this Revised

Declaration to specifically name lots that are subject to the Revised Declaration by virtue of the subdividing (plattng) of land that is described in Exhibit A and subject to the Revised Declaration but that is not yet subdivided (or platted) at the time of adoption of the Revised Declaration. The Board may amend the Revised Declaration to allow one or more townhouse lots described in Exhibit B to be used for single-family dwellings, regardless of whether such lots were restricted to townhouses in documents recorded in the Real Property Records or Plat Records of Travis County, Texas. The Board shall have the power to annex lots in Pflugerville Northwest, Section One and Two if the respective lots owner(s) agree by recorded instrument. The Board shall have the power to disannex, by a two-thirds vote of all Board members, the 89.45 acres referred to in Paragraph 21 of Exhibit A and shown on the Map in Exhibit D of this Revised Declaration. The Board shall also have the right, by a two-thirds vote of all Board members, to permanently waive the Board's power to disannex the 89.45 acres. The Board must give 30 days notice to the membership prior to any amendment of the Revised Declaration under this section. Amendment of this Revised Declaration by the Board under this section shall not require approval by the members of the Association.

9.4 *Mortgagee protection.* The Association and the Board shall not, without prior approval of all Mortgagees, abandon the Association or the Revised Declaration, or amend the Revised Declaration to adversely affect the rights of Mortgagees or the value of their collateral. Upon request to the Association, a Mortgagee may examine the books and records of the Association, may obtain copies of relevant Association records, and may receive notices of Association meetings. The Board may charge a reasonable fee to cover copying, mailing and other related expenses.

9.5 *Notices.* Any notice permitted or required to be given by this Revised Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association. Notices regarding Association remedies of liens, fines, foreclosures, suspension of use rights, and lawsuits shall be mailed certified mail, return receipt requested, to the Lot Owner's address according to Association records.

9.6 *Enforcement; Arbitration.* An Owner at his own expense and the Board at the Association's expense shall have the right to enforce the Revised Declaration, Bylaws, and Rules by any lawful means. However, if a Lot Owner disagrees with an alleged violation (other than nonpayment of assessments, late charges, returned check charges, or attorneys fees), the Association or any Owner who is a party in the matter may, by giving notice to the other parties within 30 days of the violation notice, require that the matter be submitted to binding arbitration. Any arbitration shall be by the American Arbitration Association or other body that the parties mutually agreed upon. The Association's exercise of enforcement rights on a matter submitted to arbitration shall be suspended pending the outcome of the arbitration.

9.7 *Nonwaiver.* Delay or failure to enforce any provision of the Revised Declaration, Bylaws, and Rules at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Revised Declaration, Bylaws, and Rules.

9.8 *Interpretation.* The provisions of this Revised Declaration shall be liberally construed to effectuate the purposes of the Revised Declaration. Nothing in this Revised Declaration shall be construed to require an Owner to relocate, significantly damage, or destroy a primary residence to comply with easement or setback restrictions if the residence was constructed prior to adoption of this Revised Declaration and pursuant to a Plan or Specification approved by the Architectural Control Committee. This Revised Declaration shall be governed under the laws of the State of Texas. The provisions of the Revised Declaration shall be independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles are intended solely for convenience of reference. Capitalization or lack of capitalization of the first letter of a word or phrase shall not change the obvious intent of a provision.

9.9 *Exhibits.* The exhibits attached to this Revised Declaration are as follows:

- Exhibit A - Legal Description of Property Subject to Revised Declaration
- Exhibit B - Legal Description of Lots Which May Be Used for Townhouses and Single Family Homes
- Exhibit C - Legal Description of Common Area
- Exhibit D - Map of Property Subject to Declaration
- Exhibit E - Certificate of Compliance
- Exhibit F - Bylaws Adopted on this Date
- Exhibit G - Additional Restrictions for Small Lot Subdivision, (*Windermere, Phase G, Section One*)
- Exhibit H - List of Amendments, Supplements, and Annexations to Original Declaration That Are Being Totally Superseded and Replaced by this Revised Declaration
- Exhibit I - Management Certificate

9.10 *Management certificate.* The Association shall be professionally managed. A management certificate shall be timely filed with the County Clerk of Travis County, Texas. A copy of the management certificate to be used is contained in Exhibit I and may be modified as needed or required by law. If a management agreement is terminated, the Association shall enter into a new management agreement with a new management agent prior to the effective date of the termination of the old management agreement if at all possible.

CERTIFICATION

I, as president of the Windermere Homeowners Association, Inc., hereby certify that the foregoing Revised Declaration was adopted by the Association in accordance with the amendment procedures contained in the Original Declaration and all amendments, supplements, and annexations thereto, on the 3rd day of December, 1996.

By: \_\_\_\_\_ President

Date: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF TRAVIS

This instrument was acknowledged before me on \_\_\_\_\_, 1996 by \_\_\_\_\_, as President of Windermere Homeowners Association, Inc., a nonprofit corporation incorporated under the laws of the State of Texas, on behalf of the corporation.

\_\_\_\_\_  
Notary Public for the State of Texas  
Printed name of notary \_\_\_\_\_  
My commission expires \_\_\_\_\_

*This instrument was prepared in the law offices of Niemann & Niemann, Attorneys at Law, Westgate Building, Suite 313, 1122 Colorado Street, Austin, Texas 78701, (512) 474-6901.*

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