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**SECOND AMENDED  
DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR MARSHALL'S HARBOR SUBDIVISION**

THIS SECOND AMENDED DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS, made on the date and year below by the Lot Owners whose names are listed below as having executed this Second Amended Declaration originally recorded by Declarant, Marshall's Harbor, Ltd. ("Original Declaration") prior to the expiration of Declarant's rights in accordance with the terms of the Original Declaration as amended.

**RECITALS**

WHEREAS, The Declarant was the owner of that certain 461.08 acres of land, more or less, in Travis County, Texas conveyed to it by deed recorded Document #2000114133 , Official Public Records of Travis County, Texas, and further described in that certain plat of Marshall's Harbor Subdivision, a plat of record in Document #200000248, Official Records of Travis County, Texas, and hereinafter referred to as the "Property".

WHEREAS, the Declaration of Covenants Conditions and Restrictions for Marshall's Harbor Subdivision was made on June 6, 2000 and recorded on June 9, 2000 in Document #2000089915, Official Public Records of Travis County, Texas (the "Original Declaration"); and

WHEREAS, the First Amended Declaration of Covenants Conditions and Restrictions for Marshall's Harbor Subdivision was made on August 11, 2000 and recorded on August 17, 2000 in Document #2000130749, Official Public Records of Travis County, Texas (the "First Amended Declaration"); and

WHEREAS, a super majority of the Lot Owners in the Marshall's Harbor Subdivision desire to amend said First Amended Declaration in accordance with the provisions of Section 9.9 of the First Amended Declaration by substituting and replacing this Second Amended Declaration of Covenants Conditions and Restrictions of Marshall's Harbor Subdivision ("Second Amended Declaration") in place of said First Amended Declaration such that the First Amended Declaration shall be of no further force or effect and shall be superseded in its entirety by the Second Amended Declaration; and

WHEREAS, The purpose of this Second Amended Declaration is to preserve so far as possible the natural beauty of this Property; to avoid harsh contrasts between structures and landscape; to guard against the erection of poorly designed or proportioned structures or use of unsuitable materials; to encourage and secure the erection of attractive improvements which are harmonious with their sites; and in general, to enhance the environmental quality and economic value of the Property.

NOW THEREFORE, the undersigned Lot Owners hereby file this Second Amended Declaration of Covenants Conditions and Restrictions and hereby declare the First Amended Declaration shall be of no further force or effect and is hereby superseded in its entirety by this

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Second Amended Declaration. The undersigned Lot Owners hereby declare that the Property described above shall be held, sold, used, developed, occupied, leased and conveyed subject to the following reservations, easements, restrictions, covenants and conditions, which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

- 1.1 "Architectural Control Committee" shall mean the committee created pursuant to Article 6 hereof. Such Architectural Control Committee shall hereinafter sometimes be referred to as the "ACC" or the "Committee."
- 1.2 "Architectural Control Committee Rules" shall mean such rules as are adopted by the ACC pursuant to the authority contained in Article 6 hereof.
- 1.3 "Assessment" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.
- 1.4 "Association or "Homeowners Association" shall mean Marshall's Harbor Homeowners Association, Inc., a Texas non-profit corporation, which the Members shall cause to be incorporated.
- 1.5 "Board" shall mean the Board of Directors of the Association.
- 1.6 "Bylaws" shall mean the Bylaws of the Association adopted by the Board, as from time to time amended.
- 1.7 "Declaration" shall mean the covenants, conditions, and restrictions herein set forth as the same may be amended from time to time.
- 1.8 "Development Plan" shall mean the plan for development of a Lot which is required to be submitted to the ACC pursuant to Article 6 hereof.
- 1.9 "Drainage Easements" and "Conservation Easements" shall be the areas designated on the Subdivision Plat as Drainage Easements or Conservation Easements and shall include any creeks, streams sedimentation basins or bar ditches thereon designated or constructed.
- 1.10 "Improvements" shall mean the buildings, garages, carports, streets, roads, antennas, driveways, parking areas, walls, hedges, plantings, planted trees and planted shrubs, lighting and all other structures or landscaping improvements of every kind and type affecting the natural conditions of the Property or the drainage of surface waters on, across or from the Property.

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- 1.11 "Lot(s)" shall mean each parcel of land shown as a Lot on the Subdivision Plat of the Property and designated on said plat or any replat or amending plat thereof by a separate number; provided, however, that for purposes of any and all rights and obligations of an Owner hereunder, an Owner of two or more adjacent Lots may take such actions as necessary to have the Lots legally replatted or amended as one or more Lot(s); provided no Lot or Lots may be resubdivided in such manner as to create more lots than existed prior to the replat or amending plat.
- 1.12 "Marshall's Harbor Subdivision" shall mean that certain Subdivision of land as recorded in Document #200000248, Official Records of Travis County, Texas, and shall include any amending plat or replat thereof of any lot or lots in the Subdivision which are recorded in accordance with State law.
- 1.13 "Members" shall mean and refer to all those Owners who are members of the Association as provided in this Declaration, together with all the Owners who are members of the Association as provided in all Supplemental Declarations.
- 1.14 "Owner(s)" shall mean and refer to the recorded Owner, whether one or more persons, associations or entities, of legal, equitable or beneficial title to any Lot or Residential Condominium Unit within the Property. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Any reference herein to Owners shall include Owners as defined herein and as defined or included in any Supplemental Declaration.
- 1.15 "Private Waste Disposal Systems" shall mean any septic tank, tank, septic system, evapotranspiration or other system for the disposal of sewage or waste from a residential structure, including all pipes, fittings, lines and other related equipment or attachments thereto.
- 1.16 "Property" shall mean and refer to that certain real property described in Recital No. 1 above, inclusive of any Property interest created by separate instrument out of property described in the Subdivision Plat of Marshall's Harbor recorded in Document #200000248, Official Public Records of Travis County, Texas, including the aerial and subsurface rights appurtenant thereto, and such additions thereto as may hereafter be annexed.
- 1.17 "Recreational Easements" shall be and include all those areas on or across any Lot or any portion of the Property, as designated by separate document by the Owner thereof, subject to the limitations of this Declaration, or as indicated on any current or subsequently recorded plat of the Property or a portion of the Property, which shall only be used for recreational purposes according to such rules as are adopted by the Homeowners Association pursuant to the authority contained in Article 7 hereof or such rules as are adopted by the ACC pursuant to the authority contained in Article 6 hereof.

- 1.18 “Residential Condominium Unit” shall mean a unit of property for residential use created in accordance with the Texas Uniform Condominium Act. The Owner of a Residential Condominium Unit within the Property shall be a Member of the Association and the Owner of each Residential Condominium Unit shall be entitled to one vote as a Member of the Association the same as a Lot Owner within the Subdivision.
- 1.19 “Single Family Residential Use” shall mean the occupation or use of a Structure as a residence or dwelling unit by a single person, or a group of persons related by blood, marriage or adoption and shall also include foster children and domestic servants, in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other State, County, or Municipal laws, rules, regulations, codes or ordinance. “Single Family Residential Structure” shall mean a structure used for Single Family Residential Use.
- 1.20 “Structure” shall mean anything erected, constructed, placed, laid or installed in, on, or over a Lot, the use of which requires a location on or in the ground, but not including vegetation, trees, shrubs or plantings.
- 1.21 “Subdivision” shall mean that certain recorded map or plat covering any or all of the Property referred to in this Declaration, as well as any other later filed maps or plats relating thereto.
- 1.22 “Supplemental Declaration” shall mean any Supplemental Declaration of Covenants, Conditions, and Restrictions for the use and development of the Property or additional property which may be annexed into the Association and the common scheme of development of the Property under the authority in Article 2 hereof. References herein (whether specific or general) to provisions set forth in any “Supplemental Declaration” shall be deemed to relate to all property covered by this or any Supplemental Declaration, unless otherwise expressly provided herein or therein.
- 1.23 “Visible from a neighboring Lot” shall mean that with respect to any given object, that such object is or would be in the direct line of sight of a person of average height standing on any part of a Neighboring Property. “Neighboring Property” shall be any portion of the land platted as a portion of Marshall’s Harbor Subdivision.

**ARTICLE 2**  
**PROPERTY SUBJECT TO RESTRICTION**

- 2.1 General Declaration. The Property is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a common plan or scheme for the subdivision, improvement and sale of the Property, and is established for the improvement and sale of the Property, and is further established for the purposes of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this

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Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of all Owners and their respective successors in interest.

- 2.2 The Lot Owners agree and declare that from and after the recording of this Second Amended Declaration, Lot 42A Amended Plat of Marshall's Harbor Subdivision shall be released from membership in the Marshall's Harbor Homeowners Association, Inc., and shall be released from all restrictions, obligations and privileges of the Second Amended Declaration such that all such restrictions shall be of no further force and effect with respect to said Lot 42A.

### ARTICLE 3 LAND USE

- 3.1 **Residential Use.** All Lots designated as Residential Use by the PDD Zoning Ordinance of the City of Lago Vista, Texas as amended shall be used for single family residential use unless specifically designated on the PDD Zoning map as Condominium Residential Use.
- 3.2 **Authorized Replat.** Pursuant to the Settlement Agreement in that certain lawsuit styled *Bobby L. Poe, et al. vs. City of Lago Vista, Texas and Villa Montechino, LP, et al.*; Cause No. D-GN-05-002184 in the 345<sup>th</sup> Judicial District Court of Travis County, Texas, the Lot Owners in the Subdivision, by a super majority of votes required to amend the Declaration in accordance with the requirements of Article 9 hereof have agreed that certain lots in the Subdivision may be replatted without vacation in accordance with the requirements of State law as follows:
- 3.2.1 **Hilltop Lots.** Lots 67-74 of Marshall's Harbor Subdivision, known as the "Hilltop Lots" may be replatted in such a manner as to allow, subject to appropriate zoning permits from the City of Lago Vista, the use of said Hilltop Lots for golf course; practice facility; golf clubhouse, pool and associated club amenities; restaurant and associated retail; hotel containing not more than three (3) stories in height; and not more than sixty (60) Garden Home/Residential Condominium Units to be built at the maximum density of five (5) Units per acre..
- 3.2.2 **Canyon Land Lots.** Lots 1-26 and Lot B of Marshall's Harbor Subdivision, known as the "Canyon Land Lots" may be replatted in such a manner as to allow, subject to appropriate zoning permits from the City of Lago of Vista, Texas, the use of the Canyon Land Lots for not more than 202 Single-Family Residential Units; one condominium lot including not more than 60 Residential Condominium Units;; and five commercial lots with frontage on Lohman's Ford Road. One restaurant lot and one community center will be permitted in the commercial area, and one restaurant lot will be permitted in the Village Cluster. No restaurant lot may front Austin Blvd.
- 3.2.3 **Marina Lots.** Lots 49AA, 49BB, 48 and 50 may be replatted or made part of an amending plat to facilitate, subject to appropriate zoning approval by the City of Lago Vista, a dry stack boat storage facility and accessory parking in connection

with the operation a Marina Facility adjacent to the Residential Condominium Units. The Dry Stack facility will be located on a newly formed Lot 50A. This lot will be comprised of a portion of Lots 49AA and 50. Lots 49AA, 49BB, 50, and 48 will all have to be replatted to accommodate the condominiums and the Dry Stack building in a new configuration. Following any replat or amending plat of the four lots, portions of Lot 50 and Lot 48 may continue to be used for single-family residential.

3.3 Development Plan. Each Owner shall be required to submit a detailed Development Plan prior to commencement of construction of any structure on a Lot describing such matters as the ACC shall require from time to time, pursuant to the ACC Rules, and such plan must be approved in writing prior to the commencement of construction of any Improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or excavation, shall commence without the prior written approval of the ACC. All construction and development shall comply strictly with the approved Development Plan. Any person purchasing any portion of the Property acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interest of other Owners and that the ACC or the Association, on behalf of such Owners, shall be entitled to seek injunctive relief, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder at law or in equity.

3.4 Time of Construction.

3.4.1 Construction of any Structure or Improvement shall be continuous and shall proceed in an orderly fashion without interruption, and any such Structure or Improvement shall be completed in a reasonable time, not to exceed twelve (12) months from the Commencement of Construction; provided, however, that such twelve (12) months period may be exceeded upon written approval of the ACC for good cause shown, provided such construction is diligently and continuously pursued thereafter without interruption.

3.4.2 Material and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot and shall not be left on any other Lots or roadways.

3.4.3 Prior to construction a trash containment system shall be established on site and a portable toilet delivered to the site.

#### ARTICLE 4 STRUCTURES AND LOTS

4.1 Residential Requirements. All Residential Structures shall be subject to the following requirements, and each enumerated item must be included in the Development Plan submitted and approved in writing by the ACC prior to the Commencement of Construction; provided, however, that the following requirements shall be in addition to

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those requirements and restrictions established in Section 5 of this Declaration. Once approved, no Structure or Improvement may vary from the Development Plan without further written approval of the ACC

4.1.1 Estate Lot Section. Lots 27-34, Lots 43-48 and Lot 50-66, Marshall’s Harbor Subdivision shall be known as the “Estate Lot Section”. The front yard setbacks in the Estate Lot Section shall be ninety feet (90’). No structure shall be located on any lot nearer than fifty feet (50’) to the edge of any bluff designated by the ACC. No structure shall be located on any lot nearer than forty feet (40’) to the edge of any 100-year flood plain designated on the most current FEMA map. Unless a structure is to be located on more than one lot, no principal structure or out building shall be located nearer than fifty feet (50’) to any interior Lot Line. The minium rear yard setback on all lots shall be fifty feet (50’).

4.1.1.1 The minimum slab elevation on Lot 34 shall be 740 feet above mean sea level. No vegetation may be cleared or trimmed within 10’ of any side Lot Line.

4.1.1.2 Minium Floor Areas for Estate Lots

<u>Lots</u>	<u>Square Feet</u>
Lots 29-30 and Lot 45	4,000
Lots 27-28, 32-34, 43-44, and 50-66	3,500
Lots 46-47	4,500

All minimum floor area requirements shall be calculated based on heated and cooled space exclusive of porches (open or closed), patios, garages, carports, balconies or decks.

4.1.2 Canyon Land Section. Lots 1-26 as the same may be replatted in accordance with the provisions of Section 3.2.2 above shall have building height, setback and minium floor areas as follows:

Lot Width	Bldg Height	Setbacks (front/ side/ rear)	Minimum Floor Area
50'	35'	25/5/15	1800 square feet
70'	35'	25/5/15	2000 square feet
ave 1+ acre	35'	25/5/15	3000 square feet

There will be a thirty-foot (30’) setback for all structures from the paved portion of Austin Blvd., or twenty-five feet (25’) from the edge of right-of-way of said street, whichever measurement yields a larger distance. Villa Montechino, LP or its successor developer shall construct a tree line on Austin Blvd. as a buffer to hide

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homes in the Canyon Area from view within six (6) months of the date of completion and acceptance by the City of utility construction serving such lots.

- 4.1.3 **Hilltop Section:** Lots 67-74, Marshall's Harbor Subdivision shall be known as the Hilltop Section. The Hilltop Section may be replatted in accordance with the provisions of 3.2.1 above. A hotel and golf clubhouse may be built within the Hilltop Section, provided neither shall exceed three stories in height or forty-two feet (42'). Garden Home/Residential Condominium Units may not exceed thirty-five feet (35') in height; and will contain minimum floor areas of 1800 square feet; may not exceed a total number of sixty (60) units. No Garden Home/Residential Condominium Unit shall be closer than twenty-five feet (25') from the front yard, five feet (5') from the side yard with any adjacent lot, or fifteen feet (15') from the rear yard of the lot.
- 4.1.4 **Lot 49AA Condominium Lot.** The Residential Condominium Units placed on Lot 49AA shall not exceed thirty-five (35') in height measured from the highest point on the lot. No Unit shall be placed closer than ten (10') from the front yard Lot Line, five feet (5') from any internal side yard, nor closer than 10' to the rear yard Lot Line.
- 4.1.5 **Canyon Land "Village Cluster" Residential Condominiums.** In accordance with the provisions of Section 3.2.2 above in the event Lots 1-26, Marshall's Harbor Subdivision are replatted in such a manner as to allow for one reconfigured lot to be developed with Residential Condominium Units. Building Height on such Residential Condominium lot shall not exceed forty-two feet (42') measured from the highest natural grade on the replatted lot. The total number of units in the Residential Condominium Project shall not exceed sixty (60) units and no unit shall be closer than twenty-five (25') from the front yard Lot Line; five feet (5') from any internal side yard Lot Line or fifteen feet (15') from the rear yard Lot Line.
- 4.1.6 **Building Materials:**
- 4.1.6.1 All **Single Family Residential Units** in the **Estate Lot Section**, the **Canyon Land Section** and **Hilltop Section Garden Home/Residential Condominium Units** shall have exterior facades of 100% stone or stucco material only, shall have roofs of clay or cement tile or slate.
- 4.1.6.2 All exterior facade materials for **Lot 49AA Condominium Lot** shall utilize 100% stone or stucco and shall have roof materials of clay or cement tile or slate only.
- 4.1.6.3 **Canyon Land "Village Cluster" Residential Condominium** shall utilize building materials of a minimum of 75% stone or stucco for the exterior facade. The roof material on said Condominium shall be of clay or cement tile or slate.

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4.1.7 Architectural Styles. In no event or circumstances shall a residence be constructed upon the Property which incorporates the following architectural styles: Colonial, Georgian, Federal, or Victorian. Each lot in the Estate Lot Section must contain a private garage for not fewer than three (3) automobiles and off street parking space for a minimum of two (2) automobiles, which off street parking shall be located no closer than 25-feet from the front lot line. Garage openings shall face the side line and otherwise comply with the side lot line setbacks as set forth in Section 4.1.1. The Architectural Control Committee's interpretation of the architectural style of a residence shall be final.

4.1.8 The ACC shall have the right to impose limitations on the exterior color and materials to be used in any Structure. This includes the color and materials of any roof, all of which shall have a non-reflective finish. All Single Family Residential Units in the Estate Lot Section and the Hilltop Section Garden Home/Residential Condominium Unit Area shall be one-hundred percent (100%) stone or stucco finish. Brick facade shall be prohibited. All solar panels or devices must be constructed as an integral part of the Structure's architecture and approved by the ACC.

#### 4.2 Commercial Requirements:

4.2.1 Canyon Land Commercial Lots. Lot A, Lot B and portions of Lots 1-26as the same may be replatted and, subject to appropriate zoning permits from the City of Lago Vista, Texas, may be used for commercial development. Structures on Commercial Use Lots in the Canyon Land Section shall be limited to forty-five feet (45') in height and a maximum of three (3) stories. All commercial structures shall have clay or cement tile, slate, or non-reflective metal roofs. Exterior facades shall contain a minimum of seventy-five percent (75%) stone or stucco veneer. All Structures built on said Lots shall maintain a minimum front yard setback of twenty-five feet (25'); a minimum side yard setback of five feet (5'), and minimum rear yard setback of fifteen feet (15').

4.2.2 The Hilltop Commercial Lots. In the event that a portion of Lot 67-74, Marshall's Harbor Subdivision are replatted for the construction of a golf clubhouse, associated retail and/or restaurant, and/or hotel, no such Structure shall exceed forty-two feet (42') in height. All such Structures shall have clay or cement tile, slate, or non-reflective metal roofs and shall have a minimum of seventy-five percent (75%) exterior facade of stone or stucco. Each Commercial Use Lot in the Hilltop shall have a minimum front yard setback of twenty-five feet (25'), minimum side yard setback of five feet (5'), and a minimum rear yard setback of fifteen feet (15').

4.3 Driveway: The ACC Shall have the right to impose reasonable limitations on driveway design, including materials, aprons, location and point of contact with roads, streets or private driveways in the Subdivision. Driveways must be concrete for the first one hundred feet (100') from the street edge.

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- 4.4 **Mailbox**: The mailbox for each Single Family Residential Structure shall be subject to the reasonable approval of the ACC. The Association reserves the right to establish and designate one or more central mail box station areas to the exclusion of all private mailboxes for the Subdivision.
- 4.5 **Garbage Containers**: The ACC shall have the right to require each Owner to conform to conform to a specified location for trash service and shall require each Owner to construct a permanent facility at approved location for the placement of garbage containers for collection purposes. Such permanent Structure shall meet the design and materials requirements of the ACC.
- 4.6 **Tanks**: The ACC Shall have the right to approve the location and construction of any tank used or proposed to be used in connection with any Lot or Structure, including tanks for storage of fuel, water, oil or propane gas and also including swimming pool filter tanks. No elevated tanks of any kind shall be erected, placed or permitted on any Lot. All tanks shall be screened so as not to be visible from a neighboring Lot. Propane tanks shall be buried. Well equipment shall be in a wood or masonry enclosure.
- 4.7 **Exterior Lighting**: The ACC shall have the right to approve the location, number, size and design of all exterior lighting. No mercury vapor lights will be allowed
- 4.8 **Trees, Shrubs and Landscaping**. The ACC shall have the right to approve the basic design and major changes relating to the landscaping of Lots, which shall be included in the Development Plan. A maximum of one-half (½) acre of non-native grass may be planted, maintained or kept on any Lot. All front yards must have shrubs or other landscaping planted near the foundation of the dwelling Structure to screen the foundation from view. Each owner shall endeavor to use native plants as much as possible in the landscaping of each lot, and areas that are disturbed during construction, but not occupied by buildings or impervious services must be replanted with native vegetation species. The ACC shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping.
- 4.9 **Fences, Walls and Hedges**. No barbed wire shall be allowed in the construction of any fence on the Property. Any fence, wall, hedge or other similar Structure or Improvement must be included in the Development Plan with respect to location, height and type of material and must be approved in writing by the ACC. No fence higher than six feet (6'), or composed of a material other than wire or wrought iron, will be approved, except that fences within thirty-five feet (35') of the extended side line of a dwelling Structure and within sixty feet (60') of the rear foundation of a dwelling Structure may be wood or masonry and of a height up to six feet, six inches (6'6"), provided that such fence does not unreasonably affect the line of sight of neighboring Lots. Stone fence columns at no less than 12-foot intervals in support of a wrought iron fence system are permitted. Chain link fences shall be prohibited. Notwithstanding any other provision of this Declaration to the contrary, a fence location approved by the ACC should be exempt from the front or interior Lot Line setbacks.

- 4.10 Windmills, Towers and Antennas. No visible antenna or other service for the transmission or reception of television signals, radio signals or any other form of electromagnetic radiation shall be erected, used or maintained on any lot, whether attached to a building or Structure or otherwise, without the prior approval of the ACC. All such towers, antennae and windmills approved shall be completely screened from the view of any other lot or street in the Subdivision. No radio signals, television signals, or any other form of electromagnetic radiation which may unreasonably interfere with the reception of any television or radio signal on any Lot in the Subdivision shall originate from any other Lot in the Subdivision. Windmills are not allowed.
- 4.11 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 any other type of line or wire shall be erected, placed or maintained anywhere in or upon any Property within the Subdivision unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Structures as approved in writing by the ACC; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or Structures which have been previously approved in writing by the ACC. The installation method, including, but not limited to the location and type of installation equipment, trenching method and other aspects of installation, for both temporary and permanent utilities, shall be included in the Development Plan and approved in writing by the ACC.
- 4.12 Temporary Structures/Occupancy During Construction. No trailer, basement or any incomplete building, tent, shack, garage, bus barn or temporary building of any kind shall be used at any time as a residence on the Property within the Subdivision, either on a temporary or a permanent basis.
- 4.13 Out Buildings. Any proposed out buildings must be included in the Development Plan and approved in writing by the ACC.
- 4.14 Signs. No signs or billboards (including, but not limited to, commercial and similar signs) which are visible from any neighboring Lot or visible from streets or access roads shall be erected or maintained on any Lot or parcel or property within the Subdivision, except the following types of signs, each of which must be approved in writing by the ACC:
- 4.14.1 Signs which may be required by legal proceedings;
- 4.14.2 Not more than one (1) residential identification sign (street number and/or name of Owner) for a maximum combined total face area of one hundred forty-four square inches (144”).

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- 4.14.3 During the time of construction of any building or other Improvement, one job identification sign not larger than three feet by three feet (3' x 3') having a face area not larger than nine (9) square feet;
- 4.14.4 Such signs, the nature, number and location of which have been approved in advance by the ACC;
- 4.14.5 A "For Sale" sign advertising that the Lot is being offered for sale, provided such sign shall not exceed a total of five (5) square feet.
- 4.15 Improvements and Alterations. No Structures, Improvements, alterations, repairs, excavations, installation or construction of anything which would affect the natural conditions of the Property or the drainage of surface waters on, across or from the Property, or other work which in any way alters the exterior appearance of any Structure within the Subdivision or the alteration of any Lot or other Improvements located thereon from its natural or improved condition as it exists on the date such Lot was first conveyed in fee to the current Owner shall be made or done without the prior written approval of the ACC.
- 4.16 Solar Equipment. The written approval of the ACC shall be required for the installation of any type of solar equipment, and a request for such approval shall be included in the Development Plan.
- 4.17 Garages. Each Single Family Residential Structure and each Garden Home/Residential Condominium Structure in the Hilltop Section shall have sufficient enclosed garage space, as approved by the ACC, to house all vehicles authorized by this Declaration. Each Lot or Garden Home/Residential Condominium Unit in the Hilltop Section must contain a private garage for not fewer than two (2) automobiles and off-street parking space for a minimum of two (2) automobiles. Estate Lot Residential structures shall have enclosed garage space for not fewer than three (3) automobiles as provided in Section 4.1.7.
- 4.18 Chemical Fertilizers, Pesticides or Herbicides. No inorganic fertilizers, pesticides or herbicides of any type shall be used on any of the Property. The use of organochlorine or organophosphate pesticides is prohibited. Further, the use of any other type of pesticide in a manner that is not in accordance with the manufacturer's directions is prohibited.
- 4.19 Recreational Vehicles. No recreational vehicles shall be parked or stored on any Lot in a location visible from a neighboring Lot or street in the Subdivision.
- 4.20 Swimming Pools. Swimming pools are subject to the setbacks established in Section 4.1.1. Any swimming pool constructed on a Lot must comply with all applicable governmental requirements, rules, regulations, codes, standards and ordinances. Nothing in this Section 4.20 is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable governmental regulations concerning swimming

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pool enclosure requirements. Pools above ground level are prohibited. Any variance to these requirements shall only be granted by the ACC upon application by a Lot Owner which demonstrates that due to unique circumstances or topographic constraints not of the applicant's own making, denial of the variance would create an unreasonable hardship on the applicant Lot Owner.

## ARTICLE 5 RESTRICTIONS

- 5.1 Animals: Horses-Household Pets. No animals other than those generally considered to be non-exotic, domestic household pets within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on any Property. No animals which may be kept on the Property shall be allowed to make unreasonable amounts of noise or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner, or the Lot of the Owner of an adjacent Lot who has agreed to such access. Upon the written request of the Owner, the ACC shall conclusively determine at its sole discretion, in accordance with its rules, whether an animal is a domestic household pet or whether an animal is a nuisance. The decision of the ACC in such matters is final and shall be enforced as other restrictions contained herein. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration and no kennels or breeding operations will be allowed on the Property. No animal which pursuant to this section may be kept on the Property shall be allowed to run at large and all such animals shall be kept within an area which must be neat, clean, sanitary and reasonably free of refuse, insects and waste at all times. No food shall be provided for any pet in such a manner that wild animals may also be able to obtain food. Each Owner shall be required to erect and maintain a fenced enclosure or other ACC approved method of keeping and maintaining of the domestic pets allowed pursuant to this section. Said enclosure shall be of a reasonable design and construction so as to adequately contain such animals in accordance with the provisions hereof and shall meet all the requirements herein as to fencing or other forms of construction.
- 5.2 Maintenance of Property. Each Owner shall keep all shrubs, grass and plantings of every kind located either on its Lot or on set back areas, utility easements, rights-of-way or other public or private property adjacent to such Owner's Property, properly cut and cultivated, and shall keep such Owner's Lot free of trash and other unsightly material. Upon an Owner's failure to maintain its Lot in accordance with the standards set forth in this section, the Association and the ACC shall have the right at any reasonable time, upon ten (10) days' written notice stating the nature of the problem requiring attention, to enter upon such Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, at Owner's sole expense.

- 5.3 Clothes Drying Facilities. Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Lot in a manner which will be visible from the street or any other lot in the Subdivision.
- 5.4 Hunting, Trapping, Firearms, Bows & Arrows, Fireworks. Hunting, trapping and discharge of firearms, bows and arrows and fireworks are expressly prohibited within the Subdivision, except to the extent such discharge of firearms is legal and necessary for the Owner's self-defense, or for the defense of the Owner's family or guests.
- 5.5 Dumping. Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive material is expressly prohibited within the Subdivision.
- 5.6 Mineral Exploration. No mining, quarrying, tunneling, excavation, exploratory drilling or removal of any minerals including oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted on the Property.
- 5.7 Nuisances. No nuisance, obnoxious or offensive activities shall take place on any Lot, or shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Property within the Subdivision and no odors shall be permitted to accumulate on or adjacent to any of the Property within the Subdivision and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or any other devices which are audible from any neighboring Lot (except security devices exclusively for security purposes) shall be located, used or placed on any Lot.
- 5.8 Garbage. No garbage or trash shall be kept on any Lot except in covered containers of standard type, which shall be located as provided in Section 4.1.9. In no event shall such containers be maintained so as to be visible from a neighboring Lot. All rubbish, trash and garbage shall be removed regularly from Lots and shall not be allowed to accumulate. No incinerator shall be kept on any Lot. No garbage or trash shall be permitted to be buried or burned on any Lot.
- 5.9 Vehicles and Equipment. No bus, truck larger than a one ton pickup, semi-trailer, tractor, machinery or equipment shall be kept, placed (except during the course of making deliveries for the purpose of loading or unloading), maintained, constructed, reconstructed or repaired within the Subdivision. No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired within the Subdivision in such a manner as to be visible from a neighboring Lot. Authorized vehicles of any type which are intended to be kept on a Lot by the Owner thereof must be placed in such manner that they will not be visible from a neighboring Lot or from adjacent streets. No motorized vehicle of any kind may be operated off the paved streets or in any manner which is dangerous, noisy or which

creates a nuisance. No passenger vehicles may be operated off of paved Subdivision road surfaces.

- 5.10 No Overnight Parking. No vehicle shall be allowed to park overnight on any road or street within the Subdivision.
- 5.11 Emergency or Temporary Maintenance Vehicles. The provisions of this Declaration shall not prevent any emergency vehicle repairs or the operation of any emergency vehicle (such as an ambulance or fire engine) within the Subdivision. The provisions of this Declaration shall not prevent the operation or temporary use of construction trailers, vans, or other trucks, machinery/equipment, construction shelters or facilities maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the ACC.
- 5.12 Motorcycles, Three Wheelers, Four Wheelers, and Golf Carts. The use of motorcycles within the Subdivision shall be limited to those which are legal for street use. Such use shall be absolutely limited to the streets within the Subdivision and shall be for Subdivision ingress and egress only. All motorcycles operated within the Subdivision shall be operated in such a manner as not to create an excessive amount of noise or dust, or otherwise create a nuisance. Three-wheeler and four-wheeler off-the-road or recreational vehicles are not to be operated in the Subdivision. Four wheel drive automobiles and trucks are not allowed off of the paved Subdivision roads. Electric golf carts shall be allowed but their use shall be restricted to roads, streets and approved trails.
- 5.13 Continuing Adequacy of Repair or Maintenance. No building or structure located within the Subdivision shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any exterior structure which was included in the Development Plan approved by the ACC approval.
- 5.14 Service and Storage Yards. Any service yard, storage yard, wood pile or storage pile shall be located so as not to be visible from a neighboring Lot or streets or access roads. Any structure of a permanent nature is to be built with regard to these items and must be included in the Development Plan and approved in writing by the ACC.
- 5.15 Outdoor Burning. No outdoor burning of any nature is allowed.
- 5.16 Mercury Vapor Lights. Mercury vapor lights are prohibited.
- 5.17 Vegetation Clearing. In accordance with the Balcones Canyon Lands Conservation Plan Participation Certificates for Marshall's Harbor, vegetation clearing activities must be conducted outside the vireo and warbler breeding season (March 1 to August 31), unless a survey conducted consistent with U.S. Fish & Wildlife Service Guidelines immediately prior to such activities reveal that no vireo or warbler territories are present within 300

feet of the proposed clearing activity. The cutting of hardwood trees with diameters greater than five (5) inches is strictly prohibited. Any cutting of these size trees must be approved by the ACC, even those trees falling within a building site

5.18 Boat Dock.

5.18.1 All private boat docks will be built according to the "Marshall's Harbor Boat Dock Criteria" set out in the Architectural Control Committee Rules.

5.18.2 Plans for all boat docks must be approved by the Architectural Control Committee in advance of commencement of construction or any re-model or addition to existing docks.

5.18.3 A private boat dock shall not be allowed on Lot 52.

5.18.4 Boats exceeding 36 feet in length shall not be moored or docked in Cottonwood Hollow except in a 40-foot slip in the Subdivision Marina.

5.19 Marina. It is the intent of the Owners that a Marina and dry dock storage facility will be developed on Lots 49BB and/or Lot 50A in the Subdivision. The operation, maintenance and construction of such facility shall not be deemed, in any manner whatsoever, to be in conflict with any of the residential restrictions or any other conditions, covenants or limitations contained in this Declaration, or in any supplements or amendments filed hereto. No commercial or community marina facility or boat slips shall be anchored in said Marina west of a line which connects the southern most point of Lot 49BB to the common Lot Line of Lots 34 and 48 at a water level of 681' above sea level. At lake levels lower than 681' above sea level the marina will extend past that point to meet the 2004 LCRA Marina Ordinance.

5.20 Feeding Deer and Birds. Feeding of deer on the property with or without feeders of any kind is prohibited. Providing food for birds is allowed if provided in tube or thistle feeders with small seeds (such as thistle or oilseed) or in feeders designed only for hummingbirds, except as may otherwise be allowed by the approved Wildlife Management Plan.

5.21 Irrigation Water. Lakefront Lot Owners may draw water from Lake Travis within any limits and restrictions set by the Lower Colorado River Authority ("LCRA"), but any pipes used in this connection must be buried in a trench or covered with rocks bonded together with concrete so as to present a natural appearance and resistant composition of the covering rocks. Final cosmetic appearance is subject to ACC approval. Any pipe which becomes exposed with passage of time must be recovered as provided herein within 30-day written notice from the ACC.



ARTICLE 6  
ARCHITECTURAL CONTROL COMMITTEE

6.1 Establishment and Composition. There is hereby established an Architectural Control Committee (the "ACC"), which shall consist of three members. The following persons are hereby designated as the initial members:

<u>Position</u>	<u>Name/Address</u>
Office No. 1	Brian Atlas, 21110 Twisting Trail, Lago Vista, Texas 78656
Office No. 2	Amy Garrard, 3211 Constitution Drive, Lago Vista, Texas 78645
Office No. 3	Chris Johnson, 4505 Las Virgenes Rd. #210, Calabasas, CA 9101

Members of the ACC shall serve without salary or pay and none of the members shall be required to be an architect or to meet any other particular qualifications for membership.

6.2 Voting. Except as otherwise provided herein, a vote or written consent of a majority of the regular members of the ACC at a meeting or otherwise shall constitute the act of the Committee.

6.3 Terms of Office. Unless the initial members of the ACC have resigned or have been removed, their terms of office shall be for the period of time indicated below (except as provided in Section 6.4 below):

6.3.1 The term of office of Position No. 1 shall expire five (5) years after commencement.

6.3.2 The term of office of Position No. 2 shall expire four (4) years after commencement.

6.3.3. The term of office of Position No. 3 shall expire three (3) years after commencement.

Thereafter, the term of each ACC member appointed shall be for a period of three (3) years provided terms shall be staggered, so only one Member's term shall expire each year, and initial appointees shall draw for a one, two, or three year initial term(s). Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or whose terms have expired may be reappointed.

6.4 Resignations. Any member of the ACC may resign at any time from the Committee by giving written notice thereof to the Association as the situation requires.

6.5 Vacancy. Vacancies on the ACC, however caused, shall be, except as provided in Section 6.4 of this Article, filled by the Board. A vacancy shall be deemed to exist in case of death, incapacity, resignation or removal of any regular member.

- 6.6 Transfer of Authority to the Association. The duties, rights, powers, and authority of the ACC constituted hereby may be assigned at any time, at the sole election of a majority of the regular members of the ACC, to the Board, and from and after the date of such assignment, and the acceptance thereof by the Board, the Board shall have full right, authority and powers, and shall be obligated to perform the functions of the ACC as provided herein (and in the Bylaws of the Association).
- 6.7 Address. Development Plans and requests for action by the ACC shall be submitted to the ACC at 21111 Twisting Trail, Lago Vista, Texas, 78656, or such other place as may from time to time be designated by the ACC by written instrument recorded in the real Property Records of Travis County, Texas; and the last instrument so recorded shall be deemed the Committee's proper address.
- 6.8 Duties.
- 6.8.1 General: It shall be the duty of the ACC to receive, consider and act upon all proposals, plans complaints, requests for determination, Development Plans or other matters submitted pursuant to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration.
- 6.8.2 Consultant: The ACC, may, but need not, hire specialized consultants and incur expenses to aid it in reviewing Development Plans and their incidents. The ACC shall not incur consultant fees and expenses that aggregate in excess of \$350.00 without approval from the submitting Owner. The cost of such specialized consultants and expenses shall be considered to be a cost of the Development Plan of the Owner and payment of such costs shall be considered as a filing requirement of the Development Plan and such Development Plan will not be considered complete unless and until such costs are paid. Said costs shall be in addition to any required Submission Fee as provided for in Section 6.20 herein.
- 6.9 Meetings. The ACC shall meet at its discretion from time to time to perform its duties hereunder. The Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise.
- 6.10 Action Without Formal Meeting. The ACC may take action without formal meeting by consenting in writing to any matter which they might consider at a formal meeting. Such written consent shall constitute the act of the Committee. For the purpose hereof, written consent shall mean writing signed by two (2) members of the ACC.
- 6.11 Procedure for Submission and Approval of Development Plan.
- 6.11.1 Submission and Approval of a Development Plan shall be in accordance with the Rules promulgated by the Association.
- 6.11.2 If the ACC fails to approve or disapprove any material or Development Plan submitted to it hereunder within thirty (30) days after the date shown on the

submittal receipt, or fails to give notice of its actions as above required, it shall be conclusively presumed that the Committee has approved such materials as submitted. If the Committee requests additional or amended materials or an amended Development Plan during the initial thirty (30) day period, or approves on condition that certain additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date upon which such additional or amended materials are received by and accepted for by the Committee. An additional fifteen (15) day extension shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received on or before the required date, then the Development Plan shall be deemed automatically disapproved, but may be resubmitted.

6.12 Waiver and Estoppel. The ACC's approval of any Development Plan, specifications, drawings or any accompanying materials which require the approval of the ACC shall not be deemed to constitute a waiver of, or create any right of estoppel against the Committee's right to withhold approval of any similar Development Plan, drawing, specification or matter subsequently submitted for approval.

6.13 ACC Rules.

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

6.13.2 Unless and until a political subdivision of the State of Texas regulates such matters by law, the rules promulgated by the ACC relating to the Property may include building codes governing all types of construction on the Property, a sanitary code governing the installation and maintenance of any water wells, wastewater disposal systems, animal sheltering or refuse handling or other health related matters, a fire code, a housing code and other similar codes as the ACC deems necessary and desirable. These building codes, sanitary codes and other codes shall be printed and made available through the ACC to all Owners for inspection.

6.14 Basis for ACC Approval or Disapproval. The Subdivision is intended to be a unique and cohesive development composed of homes of high quality and elegant appearance. Toward this end, it is intended that the ACC have the greatest degree of discretion possible in reviewing, approving or disapproving Development Plans. The ACC shall have the right to consider as the basis for any approval or disapproval of a Development Plan:

- (i) compliance or noncompliance with certain objective standards set out in this Declaration or in any rules or guidelines subsequently published or adopted by the ACC;
- (ii) the nature and quality of the building materials and methods of construction to be

used; (iii) the location of the proposed Improvements on the Lot; (iv) the visual impact of the proposed Improvements from the standpoint of style and consistency with other Improvements constructed or approved by the ACC for construction in the Subdivision; (v) such other subjective factors as the ACC shall, in its discretion, deem relevant or appropriate. Any person proposing to purchase any Lot in the Subdivision is advised to consult with the ACC concerning intended Improvements prior to purchasing such lot.

- 6.15 Decisions Conclusive. All decisions of the ACC shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the ACC, or any member thereof, for its or such member's approval or rejection of all or any portion of a Development Plan or of any materials submitted therewith, or for any other decision rendered under the authority of this Declaration.
- 6.16 Liability. Neither the ACC nor any member thereof shall be liable to any Owner, or any person or association or entity, for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or rejection of any Development Plan or any materials submitted therewith, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to an approved Development Plan or any materials submitted therewith; (iii) the development of the Property; (iv) the structural capacity or safety features of the proposed Improvement or Structure; (v) whether or not the location of the proposed Improvement or Structure on the building site is free from possible hazards from flooding, or from any other possible hazards whether caused by conditions occurring either upon or off the Property; (vi) soil erosion causing sliding conditions; (viii) compliance with governmental laws, ordinances and regulations; (viii) any decision made or action taken or omitted to be taken under the authority of this Declaration; or (ix) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any foregoing provisions of this Section, the ACC, or any member thereof, may, but is not required, to consult with or determine the view of any other Owner with respect to any Development Plan, or any materials submitted to the ACC.
- 6.17 Modifications and Waivers. The ACC, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of Article 4 or Article 5 of this Declaration or the ACC Rules. Such applications shall contain such information as the Committee may prescribe, and shall affirmatively show that application of such requirements under the circumstances creates unnecessary and undue hardship, and that its modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to the Owner of any other Lot. The Committee may decide the matter upon the application and any materials or written statements accompanying it, or may allow oral presentation in support of, or in opposition to the application prior to the decision, at its discretion. The Committee shall render a written decision, and shall forward one copy to the applicant, and retain one copy in its records. Without limiting the general applications

of such sections, the provisions of Section 6.16 and Section 6.17 of this Article shall apply to the actions and the decisions of the Committee and its members under this Section.

- 6.18 Governmental Agency and Approval. Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any Owner from also securing such approval (s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement of construction, maintenance, addition, change or alteration to or of any Improvement, and the Committee may require that a copy of such approval(s), certificate(s) or permit(s) be provided to the Committee as a final condition to approval of a Development Plan, or as additional assurance to the Committee that the Improvements and uses of an approved Development Plan meet governmental requirements.
- 6.19 Fees. In addition to any fees for consultants provided for Section 6.9.2 above, the ACC shall have the right to require a reasonable submission fee ("Submission Fee") for each proposed Development Plan. This fee shall not exceed \$150.00, without approval from the submitting Owner.

ARTICLE 7  
MARSHALL'S HARBOR HOMEOWNERS ASSOCIATION, INC.

- 7.1 The Association. The Association shall cause the formation and incorporation of the Association as a non-profit corporation organized and existing under the Texas Non-Profit Corporation Act, charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise change or interpreted so as to be inconsistent with this Declaration.
- 7.2 Membership. Each Owner (whether one or more persons or entities) of a Lot or Residential Condominium Unit shall, upon and by virtue of becoming such Owner, automatically become a member of the Association and shall remain a member thereof until their ownership ceases for any reason, at which time their membership in the Association shall automatically terminate. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot or Residential Condominium Unit and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary for any instrument to provide for transfer of such membership in the Association, and no certificate of membership will be issued.
- 7.3 Voting. All Owners of Lots and the Owner of each Residential Condominium Unit shall be entitled to one (1) vote for each Lot owned. Any property interest in a Lot or Residential Condominium Unit entitling the Owner to vote as herein provided which is held jointly or in common by more than one Owner shall require that such Owners thereof designate, in writing, a single Owner who shall be entitled to cast such vote and no other person shall be authorized to vote in behalf of such property interest. A copy of such written designation shall be filed with the Board before any such vote may be cast, and

upon the failure of the Owners thereof to file such designation, such vote shall neither be cast nor counted for any purpose whatsoever.

- 7.4 Quorum for Membership Action. At the first call of any annual or special membership meeting of the Association, such meeting, the presence at the meeting in person or by proxy of 40% of the total votes of the membership shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned to a new date not more than seven (7) days from the current date and the required quorum at such meeting shall be one-half (1/2) the required quorum at the immediately preceding meeting. This procedure shall be continued until a quorum has been obtained; provided, however, that such reduced quorum shall not be applicable at a subsequent meeting held more than fifteen (15) days following the originally scheduled meeting.
- 7.5 Board and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws, as the same may be amended from time to time.
- 7.6 Powers and Duties of the Association. The Association shall have such rights, powers and duties as are set forth in the Articles and Bylaws, as the same may be amended from time to time.
- 7.7 Control of the Association. The Association shall be controlled by its Members. Members shall retain the right to vote on all matters properly put before the members, all in accordance with the Certificate and the Bylaws, including the right to modify this Declaration.
- 7.8 Personal Liability/Indemnity. No member of the Board, of any committee of the Association or any of the officers of the Association shall be personally liable to any Owner, or any other party (including the Association), for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, negligence of the Association, the Board, any officer or any other representative or employee of the Association; provided, however, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant or agent of the Association or the Board, against all claims and expenses including attorneys' fees 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 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 person's conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith or in a manner which such person reasonably believed to be in, or not opposed to, the

best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is a director, officer, committee member, employee, servant or agent of the Association or the Board, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

- 7.9 **Maintenance Fund.** Except for the Annual Tax Assessments and Road Assessments described below in Sections 7.11 and 7.12 below, all funds collected by the Association from the Assessments provided for in this Declaration, together with all funds collected by the Association from Assessments imposed on the Lots in the Subdivision by all Supplemental Declarations, shall constitute and be known as the "Maintenance Fund." The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all members to promote the health, safety, recreation, and welfare of the members, including without limitation: (i) the installation, construction, erection, and relocation of Improvements related to the enhancement and beautification of the common areas landscaped entrances and boulevards and any other areas provided by this Declaration or any Supplemental Declaration to be developed or maintained by the Association, such as shrubbery, trees, trails and walkways, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the members; (ii) payment of utility charges in connection with the operation of common areas; (iii) payment of charges for private fire protection, garbage collection and other services contracted for by the Association; (iv) charges for liability and property insurance and other insurance related to the common areas and their use and operation; (v) the removal of restrictions or obstructions to flow in any Drainage Easements; (vi) the maintenance of a common antenna or satellite dish for television and radio (if any); (vii) the maintenance of any trails; and (viii) the payment of ad valorem taxes and other Assessments on said common areas.

The Association may, in the Board's sole discretion, give one or more of the purposes set forth in this Section 7.9 preference over other purposes, and it is agreed that expenditures and decisions made by the Association in good faith shall be binding and conclusive on all members.

- 7.10 **Assessments.** The Association shall have the right to make Assessments, including but not limited to the Annual Assessment, Annual Tax Assessment, Road Assessments and Special Assessments described herein, in accordance with this Declaration. The Assessments levied by the Association shall be limited to those reasonably necessary for the performance of the duties and functions of the Association and shall be levied on a uniform basis against each Lot or Residential Condominium Unit within the Property for the purpose of promoting the recreation, health, safety, and welfare of the residents within the Property and for the improvement and maintenance of the common areas. The

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Association shall have no right to assess for the construction of swimming pools, tennis courts, and other similar recreational facilities.

7.11 Annual Tax Assessment. Ad valorem taxes and other assessments in the nature of property taxes on the common areas will be prorated among all Owners.

7.12 Road Assessments. Any cost of maintaining, repairing or replacing any private roads within the Subdivision will be prorated among all Owners and shall be assessed either together with or separately from other Assessments provided for herein.

7.13 Annual and Special Assessments.

7.13.1 Until changed by the Association in accordance with the Bylaws and this Section, there shall be an annual Assessment (the "Annual Assessment") for each Lot, or created Residential Condominium Unit to be used as provided in Section 7.9. Except as otherwise provided below, the maximum Annual Assessment on each Lot or Residential Condominium Unit shall be \$300 per Lot or Unit, payable in lump sum annually within twenty days following notification of assessment, exclusive of the Annual Tax Assessment and Road Assessment.

7.13.1.1 On or before February 1<sup>st</sup> of each year or at such other time as the Board deems appropriate, the Board may set the Annual Assessment for the calendar year at whatever level they deem appropriate within the \$300 limitation set forth above.

7.13.1.2 Once the Annual Assessment has reached the maximum level, the Board may increase the Annual Assessment by a Maximum of fifteen percent (15%) without the express consent of 25% of the membership qualified to vote on such matters.

7.13.1.3 Any increase in Annual Assessment not provided for in this Section shall require the assent of seventy-five percent (75%) of the membership qualified to vote on such matters.

7.13.2 In addition to the Annual Assessment, the Board may impose a Special Assessment to cover costs arising from the actions of governmental and regulatory agencies, and those in the nature of an emergency.

7.14 Collection of Assessments. All Assessments shall be due within twenty (20) days from the date the amount of such Assessment(s) are set by the Board, or, if such Assessment is payable monthly as determined by the Board, in its sole discretion, then such monthly payments shall be due within five (5) days from the monthly payment date set by the Board. Any Assessment not paid when due shall accrue interest at the rate of fifteen percent (15%) per annum until paid. If, following a failure to pay an Assessment, collection is referred to an attorney, the non-paying Owner will also be responsible for

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reasonable attorneys' fees. Said Assessment(s) shall be subject to the provisions of Section 7.15 and the other enforcement provisions hereof.

- 7.15 Assessments to Run With Land. Each Owner, by his claim or assertion of ownership or by accepting a deed to any such Lot or Residential Condominium Unit, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and Assessments against such Owner as the same shall become due and payable, without demand.
- 7.16 Continuation, Creation and Enforcement of Lien. All Assessments and other charges provided for herein which are not paid when due, together with interest and collection costs and expenses as herein provided, shall be secured by a continuing lien and charge in favor of the Association on the Lot subject to such Assessment and any Improvements thereon, which shall bind such Lot and Improvements and the Owner thereof and such Owner's heirs, devisees, personal representatives, successors or assigns. The obligation to pay Assessments hereunder is part of the purchase price of each Lot when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby transferred and assigned to the Association. Additionally, a lien with a power of sale is hereby granted and conveyed to the Association to secure the payment of such Assessments. To evidence any Assessment liens hereunder, the Association may prepare a written Notice of Assessment Lien setting forth the amount of any unpaid Assessments, the name of the Owner subject to such Assessments, and a description of such Lot, which shall be signed by an officer of the Association and may be recorded in the Office of the County Clerk of Travis County, Texas. Any Assessment liens hereunder shall attach with the priority set forth herein from the date payment is due. Upon the written request of any mortgagee, the Association shall report to such mortgagee any Assessments then unpaid with respect to any Lot on which such mortgagee holds a mortgage.

Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Board the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Assessments and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Texas Property Code §51.002 (as same may be amended or revised from time to time hereafter), and in addition to and in connection therewith, by acceptance of the deed to such Lot, expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for), such Owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid Assessments, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and attested to by the Secretary of the

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Association and filed in the Office of the County Clerk of Travis County, Texas. In the event of the election by the Board to foreclose the liens herein provided for nonpayment of sums secured to be paid by such liens, it shall be the duty of the trustee, or his successor, as herein above provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Lot, and all rights appurtenant thereto in accordance with the statutory procedures for judicial or non-judicial foreclosure sales in Texas.

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

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

In the event such foreclosure is by court proceedings, or arbitration proceedings as provided herein, reasonable legal fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the Association to the extent permitted by law and this Declaration. Each Owner, by becoming an Owner of a Lot or Residential Condominium Unit in the Subdivision, HEREBY EXPRESSLY WAIVES any objection, including exemption from foreclosure under the homestead provisions of the Constitution of the State of Texas, to the enforcement and foreclosure of the Constitution of the State of Texas, to the enforcement and foreclosure of the herein provided liens in this manner.

7.17 Covenant to Pay Assessment. Each Owner, their heirs, executors, successors, administrators and assigns, by acceptance of a deed therefore, or by entering into a contract of purchase therefore, whether or not it shall be expressed in any such deed, contract of purchase, or other conveyance hereby covenants and hereby agrees:

7.17.1 That they will pay to the Association all Assessments and charges assessed by the Association on or prior to their due date, including interest as set forth in this Declaration, costs and reasonable attorney's fees; and

7.17.2 That the Assessments, together with the continuing obligation to pay all future Assessments shall be and remain a charge on the land and shall be secured by a

continuing vendor's lien and a lien with a power of sale upon such Owner's Lot or Residential Condominium Unit.

- 7.18 Owner's Liability for Payment of Assessments. In addition to assuming the charge and liens imposed by Section 7.16 hereof, each Owner of each Lot or Residential Condominium Unit, by the acceptance of a deed therefore or by entering into a contract of purchase therefore, shall be deemed to have covenanted, bargained and agreed to be PERSONALLY LIABLE for the payment of each Assessment and any interest and attorneys' fees as provided by this Declaration or applicable law and imposed by the Association during the period in which such Owner holds title to said Lot or Residential Condominium Unit.
- 7.19 Subordination of Lien to Mortgage. The liens as provided for in Section 7.16 above, shall be subordinate only to the lien of any first priority mortgage granted or created by the Owner of any Lot or Residential Condominium Unit to secure the payment of monies advanced and used for the purpose of purchasing and improving such Lot or Residential Condominium Unit, provided such purchase money or improvement lien shall have been duly perfected prior to the date such Assessments became due. The sale or transfer of any Lot or Residential Condominium Unit shall not affect said liens; however the sale or transfer of any Lot or Residential Condominium Unit pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the liens of such Assessments as to payments which become due prior to such sale or transfer; provided, however, that such foreclosure or proceeding in lieu thereof shall not extinguish or in any way affect the personal liability of the then record Owner of any such Lot or Residential Condominium Unit.
- 7.20 Association Rules. The Association, in addition to and in conjunction with its authority, power and duties as provided herein and in the Articles and Bylaws, shall have the authority to adopt, amend, add to, replace, rescind or revise rules for the use, enjoyment, and access to, the Common Facilities and Common Properties by the Owner, their tenants, guests, invitees, relatives or other persons. Any conflict between such rule(s) and any provision of this Declaration shall be resolved in favor of the Declaration. A copy of such Association rules, as in effect from time to time, shall be provided to any Owner or other user of the Common Facilities or Common Properties requesting the same in writing.

## ARTICLE 8 EASEMENTS

- 8.1 Existing Easements. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat as amended and all grants and dedications of easements, right-of-way and restrictions shown thereon are incorporated herein by reference and made a part of this Declaration for all purposes

- 8.2 Installation and Maintenance. There is hereby created an easement upon, across, over and under all the Property for ingress and egress in connection with the installation, replacement, repair, and maintenance of all utilities, including, but not limited to water, gas telephones, electricity, and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Structure. Notwithstanding anything contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be located or relocated on the Property until approved by the ACC. The utility companies furnishing service shall have the right to remove any trees situated within the utility easements shown on the Subdivision Plat, and to trim overhanging trees and shrubs located on portions of the Properties abutting such easements.
- 8.3 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the Drainage Easements. There shall be no development, Improvements or Structures in any Drainage Easement, except as approved in writing by the ACC.
- 8.4 Easements for Access. The ACC and the Association shall have the right and are granted a permanent easement to enter upon any and all Lots for the purpose of maintenance, repair and inspections relating to compliance with this Declaration. The ACC and the Association shall have the right to enter any Lot for the purpose of correction of any violation of any covenant contained herein.
- 8.5 Surface Areas. The surface of easement areas for underground utility services may be used for the planting of shrubbery, trees, lawns or flowers. No supplier of any utility service using any easement area shall be liable to any Owner or the Association for any damage done by them or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

ARTICLE 9  
GENERAL PROVISIONS

- 9.1 Cost of Performance. The cost and expense for performing any obligation or responsibility in this Declaration shall be borne by the person, association or entity charged with such performance or responsibility and shall be subject to the provision of Section 7.16
- 9.2 Extension for Time for Performance. If the performance of any act or obligation required by this Declaration is prevented or hindered by act of God, war, labor dispute or other

cause or causes beyond the control of the person, association or entity responsible for such performance, then the time for performance of such act or obligation will be extended for the period that such performance was prevented or delayed by such cause; provided, however, this provision shall not apply to the payment of any fees, charges or Assessments required hereunder.

- 9.3 Breach Not Ground for Rescission. No breach or continuing breach of the restrictions, covenants, condition, duties, or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision hereof.
- 9.4 Notice Before Enforcement. Except where damage or injury to persons or property is imminent as a result of the performance of (or failure to perform) any obligation imposed by this Declaration, no proceeding for the enforcement of the restrictions, covenants condition, right and duties imposed, allowed or granted by this Declaration shall be commenced until ten (10) days written notice of wrongful performance or failure of performance is given to the person, association, or entity responsible for such performance and such wrongful performance (or failure to perform) has not been cured within such time. Such notice shall be deemed to be given if deposited in the U.S. Mail, postage prepaid, certified or registered mail, return receipt requested. The above ten (10) day period shall commence to run on the date such notice is deposited in the United States Mail in the manner specified above.
- 9.5 Enforcement. The ACC, the Board or any Owner shall have the right to enforce, by proceeding at law or in equity, for damages or injunction or both, all restrictions, covenants, conditions, ACC Rules, Association Rules, rights and duties imposed, allowed or granted by the provisions of this Declaration. In any such proceeding, the prevailing parties shall be entitled to recover their costs and expenses, including reasonable attorneys' fees, and such costs and expenses shall be subject to the provisions of Section 7.16. Failure by the ACC, the Board or any Owner to enforce any restriction, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective right to do so at a later time.
- 9.6 Attachment of Covenant on Resale or Remodel. This Declaration shall be applicable to the lease or resale of the Property or any Lot or Residential Condominium Unit, and any remodel or other alteration of any Improvement which must be approved by the ACC through the Development Plan process.
- 9.7 Deviation from Approved Development Plan. All Development Plans approved in writing by the ACC shall be strictly followed. Any deviation, change or alteration not in compliance with said Development Plan must be further approved in writing by the ACC. Violation hereof shall be subject to enforcement in accordance with the provisions of this Declaration.

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- 9.8 Covenants to Run With the Land. The restrictions, easements, covenants, conditions, rights and duties of this Declaration shall run with the land within the Property, and shall inure to the benefit of the Owner of any Lot herein, for an initial term of twenty (20) years from the date this Declaration is recorded in the Real Property Records of Travis County, Texas, after which time such restrictions, easements, covenants, conditions, rights and duties shall automatically be extended for successive periods of ten (10) years.
- 9.9 Modification or Repeal During Initial Term. Any of the provisions of this Declaration may be amended or repealed for a period of twenty (20) years following the recordation of this Second Amended Declaration which is executed and acknowledged by the Owners of not less than 75% of the Lots or Residential Condominium Units, and their respective mortgagees, and recorded in the Real Property Records of Travis County, Texas; provided however, any future modification, amendment or repeal of any provision must also obtain in addition to the 75% super majority vote of all Owners of Lots and Residential Condominium Units, a 75% vote of the Lot Owners and Residential Condominium Unit Owners of any section (Canyon Land, Hilltop, or Estate Lot) affected by such proposed amendment, modification or repealed provision.
- 9.10 Modification or Repeal During Extension Terms. Any of the provisions of this Declaration may be amended or repealed during any ten-year extension term by a written instrument executed and acknowledged by the Owners of not less than seventy-five percent (75%) of the Lots and/or Residential Condominium Units, and their respective mortgagees, and recorded in the Real Property Records of Travis County, Texas; provided however, any future modification, amendment or repeal of any provision must also obtain in addition to the 75% super majority vote of all Lot Owners and Residential Condominium Unit Owners of any section (Canyon Land, Hilltop, or Estate Lot) affected by such proposed amendment, modification or repealed provision
- 9.11 Severability. Invalidation of any of the provisions hereof shall in no way affect or impair the validity of any other provision thereof.
- 9.12 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3<sup>rd</sup>) day (other than a Sunday or legal holiday) after being 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.
- 9.13 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the terms and provisions set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

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- 9.14 Singular Terms/Captions and Titles. Unless the context requires a contrary construction, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect the text of the paragraphs, sections and articles hereof.
- 9.15 Joint and Several Obligations. The terms and conditions of this Declaration in effect on the date of any lease or recording of a sheriff's deed, trustee's deed, deed in lieu of foreclosure, other deed, other order or decree declaring, settling or confirming title, pursuant to which one or more persons, associations or entities become a lessee of, or a New Owner of a Lot or Residential Condominium Unit, shall be binding upon such lessee or new Owner, and such lessee or new Owner shall be jointly and severally liable with his lessor or his predecessor in interest, as the case may be, for any continuing performance, failure of performance or defective performance imposed hereunder.
- 9.16 No Dedication. Nothing contained in this Declaration shall be deemed or interpreted to intend a gift or dedication of any portion of the Property to the general public or for any public purpose whatsoever, such intent being hereby expressly disavowed.
- 9.17 Successors. Deeds of conveyance of any Lot may incorporate the terms and conditions of this Declaration by reference; however, whether or not such reference is made in any or all of said deeds, by becoming an Owner of any of the Property, each such Owner, for himself, herself, or itself, his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself, or itself, and such heirs, personal representatives, successors, transferees and assigns, to all the provisions, restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof.
- 9.18 Word Meanings. The words such as "herein," "hereafter," "hereof," "hereunder" and "herein above" refer to this Declaration as a whole and not merely to a section, paragraph or article in which such words appear unless the context requires otherwise. Whenever used herein, the singular shall include the plural and the masculine gender shall include the feminine and neuter the vice versa unless the context requires otherwise.
- 9.19 Captions and Section Headings. The captions and headings of various articles, sections, paragraphs or subparagraphs of this Declaration are for convenience only and are not to be considered as defining or limiting in any way the intent of the provisions hereof.
- 9.20 Rentals. No portion of a Lot or Residential Condominium Unit other than the entire Lot or Residential Condominium Unit, together with the Improvements thereon, may be rented or leased, and then only to a Single Family.
- 9.21 Re-Subdivision. Except as otherwise provided in Article 3 hereof, no Lot within the Subdivision shall be further subdivided or separated into smaller Lots or parcels by any

Owner, and no portion of less than all of any such Lot, nor any easement or any other interest therein, shall be conveyed or transferred by any Owner.

9.22 Combining of Lots. An Owner of two or more contiguous Lots may, with the prior written approval of the ACC, combine said Lots into one or more Lots. Such combination shall be at the sole expense of said Owner. After combination, the resulting Lot or Lots shall be treated for all purposes of this Declaration, including the payment of Assessments and voting rights within the Association as the number of Lots as originally configured. By way of example, should an Owner of three contiguous Lots make an amending plat to create two amended Lots, such Owner shall continue to be assessed and shall be entitled to the number of votes as if such Owner still owned three lots.

9.23 Alternative Dispute Resolution.

9.23.1 In the event a dispute arises under this Declaration, the Homeowners Association, the ACC, and all other parties claiming an interest in or arising out of this Declaration (individually a "Party" and collectively, the "Parties"), agree to pursue alternative dispute resolution procedures ("ADR") as set out in this section.

9.23.2 Dispute: The Parties agree to recognize that a dispute has arisen when one party provides written notice to all other Parties that a dispute is in existence and the Party giving notice desires to undertake ADR. Only those Parties actually involved in any such dispute need be provided with notice.

9.23.3 If not an individual, the Party giving notice of dispute shall also designate one (1) fully authorized representative for ADR and negotiating purposes. Within five (5) days of receipt of the notice of dispute, the Party receiving notice shall, if not an individual, designate one (1) fully authorized representative for ADR and negotiating purpose

9.23.4 ADR Procedures:

9.23.4.1 Within ten (10) days after notice of dispute is received by the receiving Party, all Parties agree to arrange for and conduct a negotiating session. The negotiating sessions shall include all Parties notified that a dispute exists, or, if a lesser number, the Parties needed to fully resolve the noticed dispute. The authorized representatives of each Party shall attend the negotiating meeting. The Parties may schedule such further and additional negotiating meetings as may be desirable until the dispute is resolved.

9.23.4.2 Any time after the first direct negotiating meeting occurs, any Party may request mediation of the dispute. Notice of desire to mediate shall be given in the same manner as the notice of dispute, and the Parties shall agree upon a mediator within ten (10) days after the notice to mediate is given. Thereafter once

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the mediator is selected, the rules and regulations promulgated by the mediator shall control the mediation proceeding. Mediation shall occur within thirty (30) days of the giving of notice of intent to mediate, or at such other time as may be agreed upon by the Parties. If the Parties cannot agree upon a mediation date, the mediator shall select a date and the Parties shall be bound thereby.

9.23.4.3 In the event the dispute is not resolved within sixty (60) days of receipt of the notice of dispute, then, in that event, any Party may give notice of intent to refer this matter to binding arbitration.


9.23.4.4 In the event binding arbitration is invoked, the arbitrator shall have full authority to resolve all remaining disputes, including, without limitation, disputes concerning ACC Rules, Association Rules, Assessments, enforcement of Assessments and liens relating to Assessments, including foreclosure of Assessment liens. In the event said arbitrator shall award foreclosure of Assessment liens, foreclosure shall become part of any judicially enforceable award of the arbitrator.

9.23.4.5 In the event binding arbitration is invoked, the Parties may select such arbitrator or arbitrators as they may agree upon. In the event the Parties cannot agree within ten (10) days of the notice of referral to arbitration, then, in that event, all remaining disputes shall be tendered to the American Arbitration Association to be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

9.23.5 The Parties agree to engage in ADR procedures in good faith. For purposes of this ADR provision, good faith is defined as the appearance at and participation in each ADR procedure described herein with honesty in fact by each participant.

9.23.6 All Parties involved in a dispute involving ADR agree to bear the costs of a mediator on an equal pro rata basis. The payment of any arbitration costs shall be allocated by the arbitrator.

9.23.7 All ADR procedures undertaken pursuant to this section, except binding arbitration, shall be confidential and privileged in nature, and shall be deemed to be an ADR communication as defined in §154.073 of the Tex. Civ. Prac. & Rem. Code and is not subject to disclosure nor use as evidence for any purpose, including impeachment, in any judicial, administrative, or other proceeding. Such ADR communications that are discoverable or admissible outside of the ADR procedure are not excluded from discovery or admission as a result of its use in the ADR procedure.



9.23.8 In the event any dispute described in this section is placed in litigation, the court having jurisdiction thereof is hereby advised the Parties intend and prefer to engage in the ADR procedures set forth in this section and the Parties hereby agree and recommend that the matter be referred to the ADR procedures as set forth above upon request of any Party.

IN WITNESS WHEREOF, the undersigned Owners have executed this document as of the date set forth by such signature.

MARSHALL'S HARBOR SUBDIVISION LOT OWNERS:

SIGNED: VILLA MONTECHINO, LP

By: Atlas Interests LLC, its General Partner

By: [Signature] Date: 2/25/08

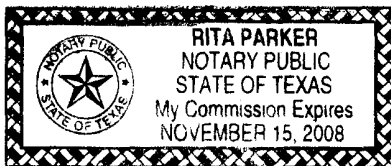
Brian S. Atlas, Manager

OWNER OF LOTS 1-26, 34, 45, 48, 50, 52, 57, 60, 61, 68, 70-72, LOT 49AA-49BB, LOT B.

THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared, Brian S. Atlas, Manager of Atlas Interests, LLC general partner to Villa Montechino, LP, a limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of said limited partnership.

GIVEN UNDER MY HAND AND SEAL of office this 25 day of Feb, 2008



[Signature]  
NOTARY PUBLIC, State of Texas

[Handwritten initials]

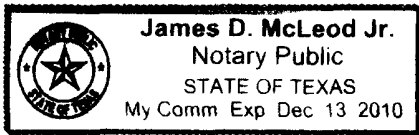
SIGNED:

Mickey Redwine Date: 3-7-08  
Mickey Redwine  
OWNER OF LOT 42A (consisting of Lots 27-32 & 35-42)

THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared Mickey Redwine, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 7<sup>th</sup> day of MARCH, 2008



James David McLeod  
NOTARY PUBLIC, State of Texas

SIGNED:

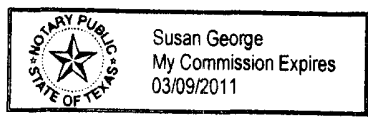
*[Handwritten Signature]*  
Date: 112907  
**Kyle Barrow**  
OWNER OF LOTS, 46, 67 AND 74

THE STATE OF TEXAS    §  
                                      §  
COUNTY OF TRAVIS    §

BEFORE ME, a Notary Public, on this day personally appeared Kyle Barrow, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 29<sup>th</sup> day of November, 2007.

*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC, State of Texas



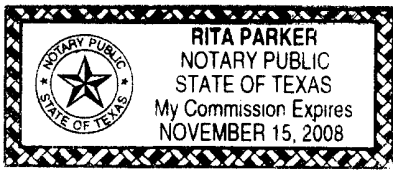
By: Brian S. Atlas  
Brian S. Atlas, OWNER OF LOT 43

Date: 3/7/08

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF TRAVIS    §

BEFORE ME, a Notary Public, on this day personally appeared, Brian S. Atlas, Manager of Atlas Interests, LLC general partner to Villa Montechino, LP, a limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of said limited partnership.

GIVEN UNDER MY HAND AND SEAL of office this 7 day of March 2008.



Rita Parker  
NOTARY PUBLIC, State of Texas

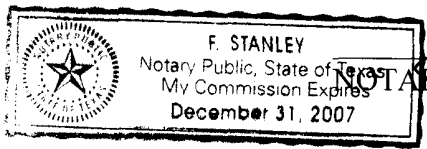
OWNER OF LOTS 58, 73:  
ARG Properties,

By: *Rhowan H. Collins* Date: 12/06/07  
Rhowan H. Collins  
Title: Chief Financial Officer

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF TRAVIS    §

BEFORE ME, a Notary Public, on this day personally appeared Rhowan H. Collins of ARG Properties, and known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of said entity.

GIVEN UNDER MY HAND AND SEAL of office this 6<sup>th</sup> day of December, 2007.

 *F. Stanley*  
NOTARY PUBLIC, State of Texas

SIGNED:

*James Otwell*

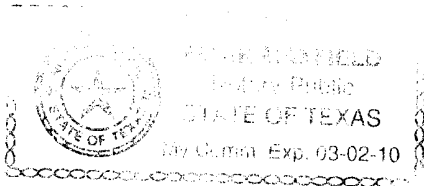
Date: 11/30/07

James Otwell, OWNER OF LOTS 55, 59 and 69

THE STATE OF TEXAS    §  
  §  
COUNTY OF TRAVIS     §

BEFORE ME, a Notary Public, on this day personally appeared James Otwell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 30 day of November, 2007.



*Mark D. Inglefield*  
\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

SIGNED:

Toni Anderson Abadi

Date: 12-11-07

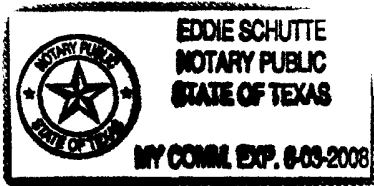
Toni Anderson Abadi,  
OWNER OF LOTS 63 and 64

THE STATE OF TEXAS    §  
  §  
COUNTY OF TRAVIS    §

BEFORE ME, a Notary Public, on this day personally appeared Toni Anderson Abadi, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 11<sup>th</sup> day of Dec., 2007.

Eddie Schutte  
NOTARY PUBLIC, State of Texas





SIGNED:

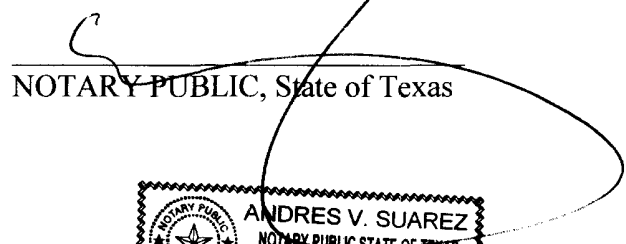
  
Joe Constantino, OWNER OF LOT 53

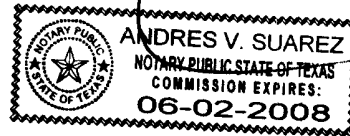
Date: 11/30/07

THE STATE OF TEXAS   §  
                                      §  
COUNTY OF TRAVIS   §

BEFORE ME, a Notary Public, on this day personally appeared Joe Constantino, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 30<sup>th</sup> day of Nov., 2007.

  
NOTARY PUBLIC, State of Texas



SIGNED:

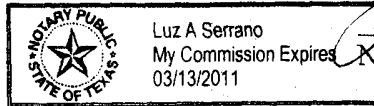
Sandra P. Wilkens  
Sandra Wilkens, OWNER OF LOT 47

Date: 19 Nov 2007

THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared Sandra Wilkens, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 19<sup>th</sup> day of November, 2007.



Luz A Serrano  
NOTARY PUBLIC, State of Texas

SIGNED:

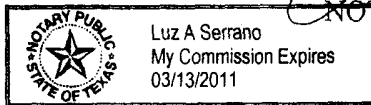
Richard B Wilkens III  
Richard Wilkens, OWNER OF LOT 47

Date: 19 Nov 2007

THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared Richard Wilkens, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 19<sup>th</sup> day of November, 2007.



Luz A Serrano  
NOTARY PUBLIC, State of Texas

SIGNED:

*Jim Marchak*  
Jim Marchak, OWNER OF LOT 65

Date: 12/4/07

THE STATE OF TEXAS    §  
                                      §  
COUNTY OF TRAVIS    §

BEFORE ME, a Notary Public, on this day personally appeared Jim Marchak, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 4<sup>th</sup> day of Dec, 2007.

*J. Fencak*  
NOTARY PUBLIC, State of Texas



SIGNED:

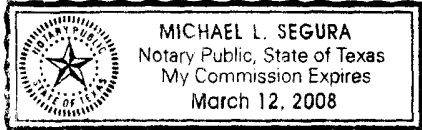
Michele Harris  
Michele Harris, OWNER OF LOT 51

Date: 12/3/07

THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared Michele Harris, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 3 day of Dec, 2007.



Michael L. Segura  
NOTARY PUBLIC, State of Texas

SIGNED:

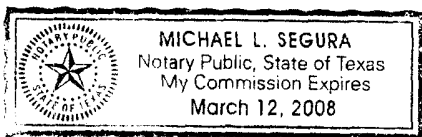
David Harris  
David Harris, OWNER OF LOT 51

Date: 12/3/2007

THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared David Harris, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 3 day of Dec., 2007.



Michael L. Segura  
NOTARY PUBLIC, State of Texas

SIGNED:

SIGNED:

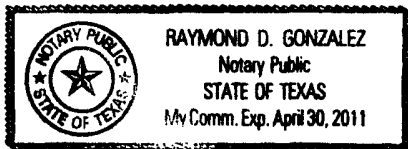
Jeff Batinick  
Jeff Batinick  
OWNER OF LOT 66

Date: 12/5/07

THE STATE OF TEXAS    §  
  §  
COUNTY OF TRAVIS    §

BEFORE ME, a Notary Public, on this day personally appeared Jeff Batinick, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 5<sup>th</sup> day of December, 2007.



[Signature]  
NOTARY PUBLIC, State of Texas

(Atlas/Redwine version)

SIGNED:

*Kevin J. Skol*

Date: 12/12/07

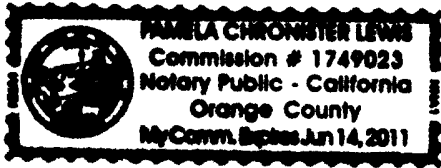
Kevin Skol, OWNER OF LOT 56

California  
THE STATE OF TEXAS §  
Orange §  
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared Kevin Skol, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 12<sup>th</sup> day of December 2007.

*Pamela Chronister Lewis*  
NOTARY PUBLIC, State of Texas



SIGNED:

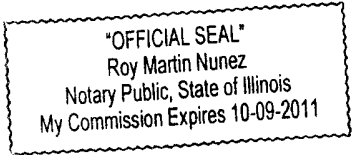
Sean McGrath  
Sean McGrath, OWNER OF LOT 54

Date: 12-20-07

THE STATE OF TEXAS    §  
  §  
COUNTY OF TRAVIS    §

BEFORE ME, a Notary Public, on this day personally appeared Sean McGrath, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 20<sup>th</sup> day of DECEMBER, 2007.



Roy Martin Nunez  
NOTARY PUBLIC, State of ~~Texas~~ ILLINOIS

SIGNED:

Cathy Bauguss  
Cathy Bauguss, OWNER OF LOT 44

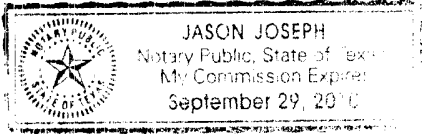
Date: 11/27/07

THE STATE OF TEXAS    §  
  §  
COUNTY OF TRAVIS    §

BEFORE ME, a Notary Public, on this day personally appeared Cathy Bauguss, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 27 day of NOVEMBER, 2007.

Jason Joseph  
NOTARY PUBLIC, State of Texas



AFTER RECORDING RETURN TO:  
Mr. Terrence L. Irion  
Attorney at Law  
3660 Stone Ridge Road, Suite B-102  
Austin, Texas 78746



SIGNED:

\_\_\_\_\_  
Dorothy Gudgell,  
OWNER OF LOTS 33 AND 62

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

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF TRAVIS   §

BEFORE ME, a Notary Public, on this day personally appeared Dorothy Gudgell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this \_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

Western United Life Assurance Company,  
A Washington insurance company,  
*In Receivership for the purposes of Rehabilitation*

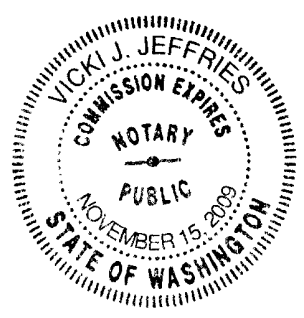
By: [Signature]  
Wayne C. Metcalf, III, in his sole capacity as  
Chief Deputy Receiver

OWNER OF LOT A

STATE OF WASHINGTON            )  
  )SS.  
COUNTY OF SPOKANE            )

I certify that I know or have satisfactory evidence that **Wayne C. Metcalf, III** is the person who appeared before me, and said person acknowledged that he signed this instrument, and on oath stated that he is authorized to execute the instrument and acknowledged it in his sole capacity as the Chief Deputy Receiver of Western United Life Assurance Company, a Washington Insurance Company, *In Receivership for the purpose of Rehabilitation*, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: November 17, 2007



[Signature]  
Notary Public in and for the State of Washington  
Residing at Spokane, WA  
Expiration date 11/15/2009

AFTER Recording Return To:  
MR. Terrence L. Irion  
Attorney at LAW  
3660 Stone Ridge Road, Suite B-102  
Austin, Texas 78746

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2008 Mar 21 12:16 PM 2008044894

MORALESB \$220.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS