

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ARBOR CREEK

THE STATE OF TEXAS ‘<§
 § ~~KNOW ALL MEN BY THESE PRESENTS~~
COUNTY OF TRAVIS §>‘

THIS **AMENDED AND RESEATED** DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ARBOR CREEK (this “Amended Declaration”), is made on the date hereinafter set forth by <LEGACY/MONTERREY> LEGACY/MONTERREY HOMES L.P., an Arizona limited partnership (“Declarant”) for the purpose of evidencing the covenants, conditions and restrictions contained herein.

WITNESSETH:

WHEREAS, Declarant, ~~is the~~ **as** owner of ~~that~~ certain real property ~~platted~~ **described** as Kuempel Tract Phase 2, Section 3 ~~as approved by the City of Pflugerville and filed of record on 11-26-2002 as Document Number TRV200200319~~, **a subdivision in Travis County, Texas, according to the map or plat thereof recorded November, 26, 2002, under Document No. 200200319** of the Plat Records of Travis County ~~Texas, and subdivision hereinafter referred to as the “Development” or the “Subdivision”, and such plat, as may be amended or further replatted, being referred to as the “Plat”, all of said real property being more specifically described on the Plat for the Development which are incorporated herein and made a part hereof for all purposes (the “Property”)~~, **Texas (the “Property”), executed a certain Declaration of Covenants, Conditions and Restrictions for Arbor Creek (the “Declaration”), which was recorded under Document No. 2003077767 of the Official Public Records of Travis County, Texas; and**

WHEREAS, Declarant has determined that the Declaration contains various errors, and should be amended and restated as more particularly described herein; and

WHEREAS, Declarant and the Owners have taken all action necessary to amend and restate the Declaration in accordance with its terms;

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions and conditions shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their theirs, successors and assigns, and shall inure to the benefit of Declarant and each owner thereof.

ARTICLE I

<ADDITIONAL DEFINITIONS> **DEFINITIONS**

<1.1 Declarant. The term “Declarant” shall mean LEGACY/MONTERREY HOMES L.P., a Texas limited partnership and any party to whom it shall expressly assign in writing, its rights, powers, privileges and prerogatives hereunder.>

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

<1.2 City. “City” shall mean>

1.1 ACC. “ACC” means the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property.

1.2 Articles. “Articles” means the Articles of Incorporation of Kuemple Arbor Creek HOA, Inc., as filed in the office of the Secretary of State of the State of Texas, and thereafter as from time to time amended.

1.3 Assessment. “Assessment” means the assessments levied by the Association under the terms and provisions of this Declaration.

1.4 Association. “Association” means Kuemple Arbor Creek HOA, Inc., a Texas nonprofit corporation.

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

1.6 Bylaws. “Bylaws” means the Bylaws of the Association adopted by the Board, as from time to time amended.

1.7 City. “City” means the City of Pflugerville, Texas.

<1.3> **1.8 County. “County”** <shall mean> **means** Travis County, Texas.

<1.4 Home. “Home” shall mean a single family residential unit constructed on a Lot being a part of the property, including the parking garage utilized in connection therewith and the Lot upon which the Home is located.>

<1.5 Lienholder. “Lienholder” or “Mortgagee” shall mean the holder of a first mortgage lien, either on any Home and/or any lot.>

1.9 Common Area. “Common Area” means either a fee simple or an easement interest in any land within or benefiting any portion of the Property, which is designated by Declarant, in Declarant’s sole discretion, as Common Area, and thereafter is maintained and operated by Declarant or the Association for the benefit of the

Property, including, but not limited to, all easements, roads, roadways, right-of-ways, parkways, medians, sidewalks, parks, paths, trails, water quality, drainage and/or detention areas, and ponds and lakes located within the Property.

~~<1.6 Lot. “Lot” or “Lots” shall mean and refer to a portion of the Property designated as a Lot of the Plats of the Property, excluding open spaces, streets, alleys and any area of common responsibility. Where the context requires or indicates, the tem Lot shall include the Home.>~~

1.10 Declarant. “Declarant” means Legacy/Monterey Homes, L.P., and Arizona limited partnership, or its successors or assigns. Any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of the Declarant shall not be sufficient to constitute an assignment of the right of Declarant.

~~<1.7 Owner. “Owner” shall mean and refer to the record Owner, other than Declarant whether one or more persons or entities, of a fee simple title to any Lot and shall include any homebuilder, but shall exclude those having such interest merely as security for the performance of an obligation. However, the term “Owner” shall include any Lienholder or Mortgagee who acquires fee simple title to any Lot which is part of the Property, through deed in lieu of foreclosure or through judicial or nonjudicial foreclosure.>~~

1.11 Home. “Home” means the main dwelling structure on a Lot.

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

1.13 Landscaping. “Landscaping” means any proposed modification to a Lot, including but not limited to any berms, irrigation systems, subsurface drainage systems, paving, introduced gravel or rock, nonstructural retaining walls, and introduced vegetation.

1.14 Lot. “Lot” means any parcel or parcels of land within the Property shown as a subdivided lot on the Plat and intended for single family residential use (e.g., excluding landscaping of other Common Area lots), together with all Improvements located thereon.

1.15 Mortgage. “Mortgage” means any mortgage or deed of trust covering any portion of the Property given to secure the payment of debt.

1.16 Mortgagee. “Mortgagee” means the owner and holder of a Mortgage.

- 1.17 **Owner.** “Owner” means any Person, including Declarant, holding a fee simple interest in any portion of the Property, but shall not include a Mortgagee (unless the Mortgagee acquires a fee simple interest in a portion of the Property).
- 1.18 **Person.** “Person” means any individual or entity having the legal right to hold title to real property.
- 1.19 **Plans and Specifications.** “Plans and Specifications” means the documents designed to guide or control the construction or erection of any Improvements, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specification on all building products and construction techniques, samples of exterior colors (including roof colors), plans for utility services, and all other documentation or information relevant to such Improvement. The Plans and Specifications shall locate by scaled drawings all sidewalks, driveways, utility lines and other Improvements.
- 1.20 **Plat.** “Plat” means the subdivision plat of Kuempel Tract Phase 2, Section 3, a subdivision in Travis County, Texas, according to the map or plat thereof recorded November 26, 2002, under Document No. 200200319 of the Plat Records of Travis County, Texas.
- 1.21 **Property.** “Property” means all property shown on the Plat.
- 1.22 **Public View.** “Public View” means, as to each Lot, visibility of a location on the Lot from a Street, Common Area or another Lot.
- 1.23 **Restrictions.** “Restrictions” means this Declaration, the Articles and Bylaws of the Association, and any rules of the Association or the ACC, as from time to time in effect and from time to time amended.
- 1.24 **Street.** “Streets” means a road or right-of-way that has been or is intended to be dedicated for use by the public.

ARTICLE II

CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

- 2.1 **Residential Use.** The Property shall be used for single-family residential purposed only. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family residence per Lot, which ~~residence~~ **building** may not exceed two and one-half (2 ½) stories in height ~~and~~, **plus** a private garage ~~as provided below, such residence~~. **Each building** shall be constructed to meet or exceed minimum Federal Housing Authority ~~<“FHA”>~~, Veteran’s Administration ~~<“VA”>~~ and City of Pflugerville standards, unless otherwise approved in writing by Declarant. ~~<Notwithstanding anything contained herein to the contrary, any construction meeting the minimum construction~~

~~requirements of the City of Pflugerville shall be deemed to meet the requirements of this Declaration.>~~

- 2.2 Single Family Use. Each residence shall be limited to occupancy by one family consisting of persons related by blood, adoption or marriage or no more than two unrelated persons residing together as a single housekeeping unit, in addition to any household or personal servant staff.
- 2.3 Garage Required. Each residence shall have an enclosed garage suitable for parking a minimum of two (2) standard size automobiles, which garage shall conform in design and materials with the main structure.
- 2.4 Restrictions on Resubdivision. No Lot shall be subdivided into smaller Lots, **except that Declarant may re-subdivide any Lot owned by Declarant.**
- 2.5 Driveway. All driveways shall be surfaced with concrete or similar substance approved by the Declarant.
- 2.6 Uses Specifically Prohibited.
 - a) ~~No temporary dwelling shop, trailer or mobile home of any kind or any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment which may be placed on a Lot only in places which are not visible from any street on which the Lot fronts) shall be permitted on any Lot except that the builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a specifically permitted Lot during construction of the residence on that Lot.~~ **No outbuilding or ancillary structure, whether of permanent or temporary construction, and including without limitation a tent, barn, shed, storage facility or greenhouse, shall be used, placed or built upon any Lot for any purpose, except that the ACC may permit guest quarters, pool houses or similar structures when it determines that such structures are compatible with the overall ambiance of the Property. The ACC shall allow temporary structures necessary for storing tools and equipment or for office space for architects, builders and foremen during the initial construction of a residence on a Lot, subject to such requirements as the ACC may establish with respect to the nature, size, duration and location of such structures, but such temporary structure shall be removed upon completion of the construction or sale of the Lot, whichever is applicable, or within ten (10) days after notice from the ACC.** No building material of any kind or character shall be placed or stored upon the Property until construction is ready to commence, and then such material shall be placed totally within the property lines of the Lot upon which the Improvements are to be erected.
 - b) No boat, marine craft, hovercraft, aircraft, recreational vehicle, pick-up camper, travel trailer motor home, camper body or similar vehicle or equipment may be parked for storage in the driveway or front yard of any dwelling or parked on any public street on the Property, nor shall any such vehicle or equipment be parked for storage in the side or

rear yard of any residence unless properly concealed from Public View. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any vehicle, machinery, or equipment temporarily parked while in use for the construction, maintenance or repair of a residence in the Development.

- c) Trucks with tonnage in excess of one and one-half (1.5) tons and any commercial vehicle with painted advertisement shall not be permitted to park overnight on the Property except those used by a builder during the construction of improvements.
- d) No vehicle of any size which transports flammable or explosive cargo may be kept on the Property at any time.
- e) No motorized vehicle or ~~similar~~ equipment shall be parked or stored in an area visible from a Street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (including those which attached bed campers) that are in operating condition, ~~and~~ have current license plates and inspection stickers and are ~~in current use~~ **being used by an Owner.**
- f) No structure of a temporary character, such as a trailer, tent, shack, barn, underground tank or structure or other out-building shall be used on the Property at any time as ~~a~~ **the primary** dwelling ~~house~~; provided, however, that any builder may maintain and occupy model houses, sales offices and construction trailers during the construction period, but not as a residence.
- g) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in or on the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Property. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Property.
- h) No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats or other qualified animals may be kept as household pets. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the Property so that no person shall quarter on ~~the premises~~ **any Lot** cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with peace and quiet and health and safety or the community. No more than four pets will be permitted on each Lot. Pets must be restrained or confined to the homeowner's rear yard within a secure fenced area or within the house. It is the pet owner's responsibility to keep the Lot clean and free of pet debris or odor noxious to adjoining Lots. All animals must be properly registered and tagged for identification in accordance with local ordinances.
- i) No Lot or other area of the Property shall be used as a dumping ground for rubbish or accumulation of unsightly materials of any kind, including without limitation, broken or rusty equipment, disassembled or inoperative cars and discarded appliances and furniture.

All containers for the storage or other disposal of such material shall be kept clean and sanitary condition. Materials incident to construction of improvements may only be stored in Lots during construction of the improvement thereon.

- j) No individual water supply system shall be permitted on any Lot.
- k) No individual sewage disposal system shall be permitted on any Lot.
- l) No garage~~<, garage house>~~ (**attached or detached**) or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person prior to the erection of ~~<a residence>~~ **the primary dwelling on a Lot.**
- m) No air-conditioning apparatus shall be installed on the ground in front of a residence~~<.~~ ~~No air conditioning apparatus shall be~~ **or** attached to any front wall or window of a residence. No evaporative cooler shall be installed on the front wall or window of a residence. **No air-conditioning apparatus shall be placed in Public View.**
- n) **Except as approved by the ACC** ~~<Except with the written permission of the Declarant>~~ or as preempted by the FCC or other governmental agency, no antennas, satellite dishes or other equipment for receiving or sending sound or video signals shall be permitted in or on the Property except antennas for AM or FM radio reception and UHF and VHF television reception. Such antennas shall be located inside the attic of the main residential structure except that, only ~~<upon the>~~ **with** prior ~~<written permission>~~ **approval** of the ~~<Declarant>~~ **ACC**, on antenna may be permitted to be attached to the roof of the main residential structure not to exceed above said roof more than a maximum of six (6.0) feet and one satellite dish or similar antenna may be placed in the rear yard of a Lot so long as it is completely screened from view from any adjacent street or other public area.
- o) No Lot or Improvement thereon shall be used for a business, professional, commercial or manufacturing purpose of any kind for any length of time. No business activity shall be conducted on the Property which is not consistent with single family residential purposes. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this paragraph shall prohibit a builder's temporary use of a residence as a sales/construction office for so long as such builder is actively engaged in construction on the Property. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as tutoring or giving art lessons so long as such activities do not materially increase the number of cars parked on the street or interfere with adjoining homeowner's peaceful use and enjoyment of their residences and yards.
- p) No fence, wall, hedge or shrub planting which obstructs sight lines at an elevation between three and six feet above the Street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Street right-of-way lines, or in the case of a rounded property corner, from the intersection of the Street right-of-way lines as

extended. The same sight-line limitations shall apply on any Lot within that area is ten feet from the intersection of a Street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at a minimum height of six feet above the adjacent ground line.

- q) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment **(all of which must be approved by the ACC and screened from Public View)**, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected on the Property.
- r) Within those easements on each Lot as designated on the Plat of the Development, ~~no improvements, structures, planting~~ **Improvement** or materials shall be placed or permitted to remain which might damage or interfere with the installation, operation and maintenance of public utilities, or which might alter the direction of flow within drainage channels or which might obstruct or retard the flow of water through drainage channels. The general grading, slop and drainage plan of a Lot as ~~established by the Declarant's approved development plans~~ **approved by the ACC** may not be altered without the approval of the City and/or other appropriate agencies having authority to grant such approval.
- s) **Except as approved by the ACC**, no sign of any kind or character ~~including (a) any signs in the nature of a "protest" or complaint against Declarant or any homebuilder, (b) or that describe, malign or refer to the reputation, character or building practices of Declarant or any homebuilder, or (c) discourage or otherwise impact or attempt to impact anyone's decision to acquire a lot or residence in the Subdivision shall be displayed to the public view on any Lot or from any home~~ **shall be displayed in Public View** on any Lot except for **(i)** one professionally fabricated sign of not more than five square feet advertising the property for rent or sale, ~~or~~ **(ii)** signs used by builder to advertise the property during the construction and sales period~~. Moreover, no~~, **(iii) signs required for legal proceedings, and (iv) from time to time (but no more than one at a time), professionally fabricated signs of not more than one square foot advocating a political position or candidate. No** owner may use any public medium such as the "internet" or any broadcast or print medium or advertising to similarly malign or disparage the building quality or practices of the homebuilder, it being acknowledged by all Owners that any complaints or actions against a homebuilder or Declarant are to be resolved in a private manner and any action that creates controversy to publicity for the Subdivision of the quality of construction of any homes within the Subdivision will diminish the quality and value of the Subdivision. Declarant, ~~any homebuilder~~, **the ACC, the Board** or their agents shall have the right, without notice, to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to liability for trespass or any other liability in connection with such removal. The failure to comply with this restriction **after notice and opportunity to cure as provided in the Texas Property Code** will also subject any Owner to a fine of \$100.00 per day (to be collected by Declarant) for each day that such Owner fails to

comply with this restriction. The non-payment of such fine can result in a lien against said Lot, which lien may be foreclosed on in accordance with the terms set forth in this Declaration in order to collect such fine by the Declarant or any Owner in the Subdivision.

- t) ~~Outdoor clothes lines and drying racks visible to adjacent Properties are prohibited. Owners or residents of Lots where the rear yard is not screened by solid fencing or other such enclosures, shall construct a drying yard or other suitable enclosure or screening to shield from public view clothes~~ **No outdoor clothes lines**, drying racks, yard maintenance equipment ~~and/or storage of~~ **or stored materials may be placed in Public View.**
- u) Except within fireplaces in the main residence dwelling and equipment for outdoor cooking, no burning shall be permitted anywhere on the Property.

2.7 **Minimum Floor Area.** The total air-conditioned living area of the main residential structure, as measured to the outside of exterior walls (but exclusive of open porches, garages, patios, and detached accessory buildings), shall be not less than One Thousand Four Hundred (1400) square feet or the minimum floor area as specified by the City, whichever is greater.

2.8 **Building Materials.** The total exterior wall area (excluding windows, doors and gables) of the entire first floor of each residence constructed on a Lot shall not be less than Seventy-five percent (75%) (but not less than the minimum percentage as established by the City by ordinance or building code requirement) brick, stucco, brick veneer, stone, stone veneer, cement plank, hardboard, fiber cement siding, or other masonry material approved by the Declarant. Windows, doors, other openings, gables or other areas above the height of the top of standard height first-floor windows are excluded from calculation of total exterior wall area.

2.9 **Setback Requirements.** No dwelling shall be located on any Lot nearer to the front lot line or nearer to the side lot line than the minimum setback lines shown on the Plat or as required by the City.

~~2.10 **Waver of Setback Requirements.** With the written approval of the Declarant and subject to plat zoning requirements, any building may be located further back from the front property line of a Lot than provided above, where, in the opinion of the Declarant, the proposed location of the building will enhance the value and appearance of the Lot and will not negatively impact the appearance of adjoining Lots.~~

2.10 **Fences and Walls.** All fences and walls shall be constructed of masonry, brick, wood, ~~or vinyl siding~~, or other material approved by the ~~Declarant~~ ACC. No fence or wall on any Lot shall extend nearer to any Street than the front of the residence thereon. Except as otherwise specifically approved by the ~~Declarant~~ ACC, all Street side yard fencing on corner Lots shall be set no closer to the abutting side Street than the property line of such Lot. No portion of any fence shall exceed six (6) feet in height. Any fence or portion thereof that faces a public Street shall be constructed so that all structural members and, unless

<Declarant> **the ACC** determines otherwise, support posts will be on the side of the fence away from the ~~<street and are not visible from any public right of way.>~~ **Street and out of Public View.**

- 2.11 **Sidewalks.** All walkways along ~~<public right of ways shall conform to the minimum property standards of the City, FHA and VA.>~~ **Streets shall comply with City Standards.**
- 2.12 **Mailboxes.** Mailboxes shall be standardized and shall be constructed of a material and design approved by the Declarant (unless gangboxes are required by the U.S. Postal Service).
- 2.12 **Windows.** Windows, jambs and mullions shall be composed of anodized aluminum or wood. All front elevation windows shall have baked-on painted aluminum windows (no mill finish).
- 2.13 **Landscaping.** ~~<Landscaping of each>~~ **Each** Lot shall be ~~<completed>~~ **Landscaped** within sixty (60) days **after the home construction is completed,** subject to extension for delay caused by inclement weather, ~~<after the home construction is completed>~~ and shall include grassed front yards.
- 2.14 ~~**General Maintenance of Lots.**~~ Following occupancy of the Home upon any Lot, each owner shall maintain and care for the Home, all improvements and all tress, foliage, plants, and lawns on the Lot and otherwise keep the Lot and all improvements thereon in good condition and repair and in conformity with the general character and quality of properties in the immediate area, such maintenance and repair to include but not limited to: (i) the replacement of worn and/or rotted components, (ii) the regular painting of all exterior surface, (iii) the maintenance, repair and replacement of roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, drives, parking areas and other exterior portions of the improvements to maintain an attractive appearance, and (iv) regular mowing and edging of lawn and grass areas. Upon failure of any Owner to maintain a Lot owned by him in the manner prescribed herein, any Owner, at their sole option and discretion, but without any obligation to do so, but only after ten days written notice to such Owner to comply herewith, may enter upon such Owner's Lot and undertake to maintain and care for such Lot to the condition required hereunder and the Owner thereof shall be obligated, when presented with an itemized statement, to reimburse said Owner for the cost of such work within ten days after presentation of such statement. This provision, however, shall in no manner be construed to create a lien in favor of any party on any Lot for the cost or charge of such work or the reimbursement for such work.
- 2.14 **Burglar Bars.** No bars or obstructions intended for the use as burglar bars or sold as devices intended to prohibit forced entry into a residence may be placed on the exterior of a residence, including but not limited to windows and doors.

ARTICLE III

MAINTENANCE

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

ARTICLE IV

ASSOCIATION MATTERS

- 4.1 Organization. Declarant has formed and incorporated the Association as a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed in its Articles and Bylaws, in this Declaration., and by applicable law. Neither the Articles nor the Bylaws shall be amended, changed or interpreted so as to be inconsistent with this Declaration.
- 4.2 Membership. Any Person upon becoming an Owner of a Lot automatically shall become a Member of the Association. Declarant shall be a Member of the Association so long as Declarant owns any portion of the Property. Membership shall be appurtenant to and shall run with (the property interest that qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such property interest.
- 4.3 Voting Rights. The right to cast votes and the number of votes which may be cast for election of the Board, and on all other matters to be voted on by the Members, shall be calculated as provided below. Owners entitled to votes pursuant to (a) below are hereinafter sometimes referred to as "Class A Members." Declarant is hereinafter sometimes referred to as the "Class B Member."
- a) The Owner (other than Declarant) of each Lot within the Property shall have one (1) vote for each Lot so owned.

- b) Declarant shall have three (3) votes for each Lot within the Property until such time as Declarant ceases to own any portion of the Property. Thereafter, the Class B membership shall cease, and each Owner shall have only one (1) vote for each Lot owned by it.

Any property interest entitling the Owner thereof to vote as herein provided held jointly or in common by more than one Owner shall require that such Owners thereof designate, in writing, a single Owner who shall be entitled to cast such vote and no other person shall be authorized to vote in behalf of such property interest, A copy of such written designation shall be filed with the Board before any such vote may be cast, and, upon the failure of the Owners thereof to file such designation, such vote shall neither be cast nor counted for any purpose whatsoever.

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

- a) accept, own, operate and maintain all personal and real property conveyed to or leased by the Association (“Association Property”), and which is approved by the Board, together with all Improvements thereon and all appurtenances thereto;
- b) own and maintain all Common Area and all Improvements thereon and all appurtenances thereto, all Streets (including median areas) which have been constructed but not accepted by the appropriate government entity, and all entry signs and association landscaping;
- c) pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Association Property and the Common Area, to the extent that such taxes and assessments are not levied directly upon the Members; and the Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments;
- d) obtain and maintain in effect any policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the functions of the Association;
- e) make, establish, promulgate, and in its discretion amend or repeal and reenact, the Bylaws and such rules not in conflict with this Declaration as it deems proper, covering any and all aspects of its functions, including the use and occupancy of the Association Property and Common Areas;
- f) keep books and records of the Associations affairs and make such books and records, together with a current copy of this Declaration, available for inspection by the Owners and the Mortgagees upon request during normal business hours; and
- g) carry out and enforce all duties of the Association set forth in this Declaration and in the Restrictions.

4.5 Powers and Authorities of the Association. The Association shall all powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for ot incidental to the exercise of any express power granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and Board, acting on behalf of the Association, shall have the following power and authority at all times;

- a) to levy Assessments in accordance with and as provided in this Declaration;
- b) to enter at any time in an emergency (or in a non-emergency after the notice to the Owner of the affected Lot prescribed by Section ____), without being liable to any Owner, upon any Lot or Common Area to enforce this Declaration or to maintain or repair any Lot, Common Area or Improvement so as to conform with this Declaration, as more particularly provided in Section ____ ;
- c) in its own name and on its own behalf, or in the name of and on behalf of an Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise or to restrain and enjoin any breach or threatened breach of, this Declaration, and to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce this Declaration; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns;
- d) to grant and convey to any person or entity any Association Property and/or any Common Area and/or any interest therein, including fee title leasehold estates, easements, rights-of-way, or Mortgages, out of, on, over, or under any of same for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder;
 - i. roads, Streets, walks, driveways, parking lots, trails, and paths;
 - ii. lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
 - iii. sewers, water systems, storm water drainage system, water quality facilities, sprinkler systems, and pipelines; or
 - iv. any similar Improvements or facilities.
- e) to retain and pay for the services of a manager to manage and operate the Association, including the Association Property and Common Area, to the extent deemed advisable by the Board; additional personnel may be employed directly by the Association or may be furnished by the manager (to the extent permitted by law, the Association and the Board may delegate any duties., powers, and functions to

the manager and each Owner hereby releases the Association and each member of the Board from liability for any omission or improper exercise by the manager of any such duty, power, or function so delegated);

- f) to retain and pay for legal and accounting services necessary or proper in the operation of the Association;
- g) to pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to and all maintenance of the Association Property and the Common Areas, in accordance with this Declaration;
- h) to obtain and pay for any other property and services and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or this Declaration;
- i) to construct new Improvements or additions to the Common Area, subject to the approval of the ACC;
- j) to enter into contracts with Declarant and with any other Person on such terms and provisions as the Board shall determine, and to acquire, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise; and
- k) to borrow money and to mortgage, pledge or hypothecate any or all of the Association Property as security for money borrowed or debts incurred subject to the limitation set forth in this Declaration.

4.6 Indemnity. To the maximum extent permitted by Article 2.22A of the Texas Non-Profit Corporation Act (the "Act") (without regard, however, to Section Q of such Article), the Association shall indemnify any person who is or was a director or officer of the Association against any and all judgments, penalties (including excise and similar taxes}, fines, settlements and reasonable expenses actually incurred by such person in connection with a proceeding (as defined in Article 2.22A of the Act) because of that person's service or status as a director or officer. Further, the Association shall pay or reimburse reasonable expenses incurred by a director or officer who was, is or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding to the maximum extent permitted by said Article 2.22A; provided, however that payment or reimbursement of expenses pursuant to the procedures set out in Section K of said Article 2.22A may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the officer or director in question to make the repayment referred to in such Section. Further, the Association may indemnify., and may reimburse or advance expenses to or purchase and maintain insurance or any other arrangement on behalf of, any person who is or was a director, officer, employee or agent of the Association, or who is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, director, employee., agent or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, in connection with any

liability asserted against such person because of such service or status, to such further extent, consistent with Article 2.22A of the Act and other applicable law, as the Board may from time to time determine. The provisions of this Section shall not be deemed exclusive of any other rights to which any such person may be entitled under any bylaw, agreement, insurance policy, or otherwise. No amendment, modification or repeal of this Section shall in any manner terminate, reduce or impair the right of any person to be indemnified by the Association in accordance with the provisions of this Section as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

ARTICLE V

ACC

- 5.1 Membership. The ACC shall have no more than three (3) members.
- 5.2 Declarant's Right of Appointment. Declarant shall have the right to appoint and remove all members of the ACC. Declarant may delegate to the Board, in whole or in part, its right to appoint and remove members of the ACC by written instrument. If no such instrument has been executed prior to the time when Declarant owns no portion of the Property, such delegation shall be deemed to have occurred automatically as of such time.
- 5.3 Term. Each member shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein.
- 5.4 Adoption of Rules. The ACC may adopt such procedural and substantive rules, standards, policies and development guidelines, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties add the orderly development of the Property, including but not limited to architectural and landscaping guidelines, and other similar codes or guidelines as it may deem necessary and desirable. Such rules, standards, policies, procedures and development guidelines shall be binding and enforceable against each Owner in the same manner as any other restriction set forth herein. Nothing contained herein shall be deemed to affect any approval granted by the ACC in accordance with the terms of this Declaration prior to the amendment of such rules, standards, polities, procedures or development guidelines.
- 5.5 Review of Proposed Construction. The ACC shall have the right whenever its approval is required under this Declaration to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts and information that the ACC, in its sole discretion, deems relevant. Except as otherwise specifically provided herein, before any Owner other than Declarant begins construction of any Improvement on any portion of the Property, the Plans and Specifications for that Improvement, together with the review fee, shall be submitted to the ACC. When ACC review is

required, construction may not begin unless and until the ACC has approved the Plans and Specifications in writing. A non-refundable review fee of \$100.00 will be charged by the ACC for reviewing Plans and Specifications submitted for approval in connection with the initial construction of Improvements, and a non-refundable review fee of \$50.00 will be charged by the ACC for reviewing Plans and Specifications submitted for approval after the initial Improvements are built, unless the ACC specifically waives the applicable fee in writing. The ACC may waive the requirement of plans for any Lot if the builder uses Plans and Specifications previously approved by the ACC for another Lot. There shall be no revisions made to approved Plans and Specifications without first submitting the revised plans to the ACC and receiving the ACC's approval of the revision. The ACC shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or from time to time by the Board, including without limitation, inspecting construction in progress to assure its conformance with Plans and Specifications approved by the ACC. The ACC may postpone review of any Plans and Specifications submitted for approval until it receives all information it deems necessary to its review. The ACC has authority to disapprove any proposed Improvement based upon this Declaration, and the decision of the ACC shall be final and binding so long as it is made in good faith. The ACC shall not review Plans and Specifications for, and its approval of Plans or Specifications shall not be deemed approval of any Plans, Specifications or Improvements from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

- 5.6 Variance. The ACC may grant variances from compliance with any restriction in this Declaration when, in its opinion and in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property or is justified due to aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument in recordable form, and must be signed by a majority of the members. The granting of a variance shall not operate to waive or amend any of the terms and provisions of this Declaration applicable to the Lots for any purpose except as to the particular Lot and the particular matter covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, change or amendment of the terms and provisions hereof.
- 5.7 Actions of the ACC. The ACC, by resolution unanimously adopted in writing, may designate any of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of a majority of all members, which may be taken without a meeting, shall constitute an act of the ACC
- 5.8 Failure to Act. If complete Plans and Specifications are submitted to the ACC in the manner required by this Declaration, and the ACC does not approve, or reject such Plans and Specifications within thirty (30) days after such submission, such Plans and Specifications shall be deemed approved. For purposes of the preceding sentence, Plans and Specifications shall not be deemed submitted until the date upon which the ACC has received any applicable review fee and all information which the ACC requires be submitted to it in connection with its review of Plans and Specifications (including any

supplemental information which the ACC may request}. In no event shall the ACC's failure to act upon a request for a variance within thirty (30) days (or any other time period) be deemed a consent to, or approval of, a variance, nor shall the ACC's failure to act serve as approval of any Plans and Specifications to the extent the Improvements described therein conflict with a specific provision of this Declaration. Variances may be approved only by a written document signed by the ACC.

- 5.9 No Waiver of Future Approvals. The ACC's approval or consent to any Plans and Specifications shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications or other matter whatever subsequently or additionally submitted for approval or consent by the same or a different Person.
- 5.10 Nonliability of ACC Members. Neither the ACC nor any member thereof, shall be liable to the Association, to any Owner or to any other Person for any loss, damage or injury arising out of or in any way connected with the performance of the ACC's duties under this Declaration, unless due to the willful misconduct or bad faith of such Person. Neither the ACC nor any member thereof shall be liable to any Owner due to the construction of any Improvement within the Property.
- 5.11 Address. Plans and Specifications shall be submitted to the ACC (c/o Meritage Corporation) at 3429 Executive Center Drive, Suite 100, Austin, Texas 78731, or such other address as may be designated by Declarant (or the Board, if Declarant has delegated such designation right to the Board) from time to time.

ARTICLE VI

ASSESSMENTS

- 6.1 Assessments. Assessments established pursuant to this Declaration shall be levied on a uniformed basis against each Lot within the Property for the purpose of enforcing these restrictions, maintaining the Common Areas and Association Property, and maintaining such other property as the Board may determine. If Lots are combined into one homesite, each Lot so combined shall be considered a Lot for purposes of Assessments (so that if two Lots are combined into one homesite, when the homesite is occupied, the Owner thereof shall be treated as owning two Lots).
- 6.2 Operating Fund. The Board shall establish an operating fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association shall be used solely for purposes authorized by this Declaration.
- 6.3 Regular Annual Assessments. Declarant shall establish the initial budget for the Association and the Association then shall levy against all Lots an initial annual Assessment based on that budget. Thereafter, before January 1 of each year, the Board shall estimate the net expenses of the Association for the upcoming fiscal year, which shall be (i) the expenses to be incurred by the Association during such year in

performing its functions under the Declaration, including but not limited to the cost of all duties required and activities authorized herein of the Association, the Board, and the ACC, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's operating fund, and shall establish a budget based on such estimates. Assessments sufficient to pay such estimated net expenses shall then be levied as provided herein. All Assessments levied hereunder shall be final and binding so long as they are made in good faith. Each Owner shall be given written notice of the amount of the annual Assessment at least thirty (30) days prior to the date such annual Assessment is due and payable. All such regular annual Assessments shall be due and payable to the Association, at the discretion of the Board, either in one (1) payment at the beginning of the fiscal year or in twelve (12) monthly payments equal to 1/12th of the total annual Assessment, or at such time and in such other manner as the Board may from time to time designate.

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

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

6.6 Assessment Lien and Foreclosure. All regular and special Assessments provided for herein which are not paid when due, together with interest and collection costs and expenses as herein provided, shall be secured by a continuing lien and charge in favor of the Association on the Lot subject to such Assessment and any Improvements thereon. which shall bind such Lot and Improvements and the Owner thereof and such Owner's heirs, devisees, personal representatives, successors or assigns. The obligation

to pay Assessments hereunder is part of the purchase price of each Lot when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby transferred and assigned to the Association. Additionally, a lien with a power of sale is hereby granted and conveyed to the Association to secure the payment of such Assessments. Such liens shall be superior to all other liens and charges against such Lot, except only for tax liens and the lien of any Mortgage of record and securing sums borrowed for the acquisition or improvement of such Lot. The Board in its sole discretion may subordinate its Assessment liens to any other lien, and any such subordination shall be signed by an officer of the Association. To evidence any Assessment liens hereunder, the Association may prepare a written Notice of Assessment Lien setting forth the amount of the unpaid Assessments, the name of the Owner of the Lot subject to such Assessments and a description of such Lot, which shall be signed by an officer of the Association and may be recorded in the Office of the County Clerk of Travis County, Texas, Any Assessment lien hereunder shall attach with the priority set forth herein from the date payment is due. Upon the written request of any Mortgagee, the Association shall report to such Mortgagee any Assessments then unpaid with respect to any Lot on which such Mortgagee holds a Mortgage.

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

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

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

Declarant intends that this Section 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 § 51.002.

ARTICLE VII

COMMON AREA

- 7.1 Conveyance of Common Area. At such time or times as Declarant determines appropriate, Declarant shall identify and convey to the Association, and the Association shall accept, fee simple or easement interests in portions of the Property which shall be held by the Association as Common Area. Declarant and the Association anticipate multiple conveyances of Common Area, and the Association's obligations set forth herein with respect to Common Area shall refer only to the Common Area owned by the Association at the particular point in time. Each conveyance shall be, at Declarant's election, by special warranty deed or easement with special warranty of title, subject in either instance to all matters set forth in this Declaration, all liens securing the payment of taxes for the current and all subsequent years, and all easements, liens, rights of way, prescriptive rights, encroachments, overlapping of improvements, discrepancies, conflicts, leases, reservations, mineral severances, restrictions, covenants, conditions,

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

actions, costs and expenses of whatsoever nature (including reasonable attorney's fees) to persons or property caused by or arising out of any use or activities of the Association or any of the Owners upon or within the Common Area.

ARTICLE VIII

GENERAL PROVISIONS

- ~~3.1 Easements. Easements <for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plats. Easements are also reserved for the installation, operation, maintenance and ownership of utility service lines from the property lines to the residences, Declarant reserves the right to make changes in and additions to the above-referenced easements for the purpose of most efficiently and economically installing improvements to the Lots.~~
- ~~3.2 Enforcements. Any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and changes now or hereafter imposed by the Declaration. Failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party.~~
- ~~3.3 Severability. If any condition, covenant or restriction herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remaining full force and effect.~~
- 8.1 Easements. Easements are reserved as indicated on the Plat for storm water drainage water quality and/or utility installation and maintenance. Within these easements, no Improvements (including Landscaping) or any other thing shall be placed or permitted to remain which may interfere with the purposes for which the easements are intended, no flow patterns may be disturbed (with respect to drainage and/or water quality easements), and the easement areas on each Lot shall be maintained continuously by the Owner of the Lot, except for improvements for which a public utility or public authority is responsible, Each Owner must provide access to the drainage easements and/or water quality easements situated on such Owner's Lot as may be necessary, and shall in no event prohibit access to such easements by the City or County. Except for Improvements to be maintained by a public authority, utility company or the Association, each Owner shall continuously maintain all easements areas (and Improvements therein) on such Owner's Lot. Declarant hereby reserves for the benefit of Declarant and any homebuilder Declarant may designate, a blanket easement on, over and under the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance. Declarant and any such homebuilder may remove trees or vegetation, without liability for replacement or damages, as necessary to provide adequate drainage facilities. In no event, however, shall this Declaration be interpreted to impose**

any duty upon Declarant or any homebuilder to correct or maintain any drainage facilities within the Property.

- 8.2 **Compliance/Enforcement.** Each Owner shall comply strictly with the provisions of the Restrictions as from time to time amended. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintain able by Declarant, the Association, or by any Owner. Without limitations if any Owner fails to comply with the duties or responsibilities set forth in the Restrictions, including the maintenance obligations set forth in Article III, then Declarant or the Association may give such Owner written notice of such failure and such Owner within ten (10) days after receiving such notice, shall comply with the duty or responsibility required. Should any such person fail to fulfill such duty and responsibility within such ten-day period, then Declarant or the Association shall have the right and power to enter onto the Lot and correct the failure without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work and shall promptly reimburse Declarant or the Association for such cost. If the Owner fails to reimburse the applicable party within ten (10) days after receipt of a statement for such work, then subject to applicable provisions of the Texas Property Code, said indebtedness shall be a personal debt to such Owner and shall constitute a lien against the Lot on which said work was performed. Such lien shall have the same attributes as the liens for Assessments set forth herein, which provisions are incorporated herein by reference, and Declarant and the Association shall have identical powers and rights in all respects, including by not limited to the right of foreclosure. Declarant may designate the ACC or the Board its agents for purposes of delivering any notice, performing any action, or otherwise enforcing each Owner's obligation in the manner described herein, in which event the ACC or Board, as applicable, shall have the same rights as are granted to Declarant under this Section 3.34. Except as otherwise provided herein, any Owner at such Owner's expense, Declarant, and/or the Association, may enforce any and all provisions of this Declaration and Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce any provision at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other such provision.

- 8.3 **Term.** The terms and provisions of this Declaration shall run with and bind the Property, and shall insure to the benefit of and be enforceable by Declarant (during the time it owns any Lots) or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five years from the date of this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote, of the then Owners of 67% of the Lots ~~<(and the City, if then a party hereto)>~~ agree in writing to terminate or change this Declaration in whole or in part and such writing is recorded in the ~~<Real Property>~~ **Official Public** Records of the County.

- 8.4 **Amendment.** ~~<a>~~ This Declaration may be amended or modified ~~<upon the express written consent of at least sixty six and two thirds (66 2/3%)>~~ **by the affirmative vote of at least**

~~two-thirds (2/3rds) of the outstanding votes held by the Owners at a meeting at which a quorum is present. If the proposed amendment involves a modification of any of the covenants or restrictions pertaining to the use, maintenance, operation, maintenance and/or supervision of any Areas of Common Responsibility, the approval of the City must also be obtained for such amendment. Any and all amendments, if any, shall be~~ **of the Members.** **Any such amendment shall be effective when** recorded in the office of the County Clerk of the County. Notwithstanding the foregoing, Declarant shall have the right to execute and record amendments to this Declaration without the consent or approval of any other party ~~if the sole purpose of the amendment is for the purpose of correcting~~ **in order to correct** technical errors or for purposed of clarification. Declarant or the Board further may amend this Declaration as necessary in order to cause same to comply with any requirement of the Federal Housing Authority, Veterans Authority, ~~Declarant intends that this Declaration may be amended to comply (if not in compliance with) all requirements of the~~ Federal Home Loan Mortgage Corporation **or** ~~(“FHLMC”),~~ Federal National Mortgage Association, ~~(“FNMA”), FHA and VA.~~ Notwithstanding anything to the contrary contained herein; if this Declaration does not comply with FLMC, FNMA, VA or FHA requirements, the Board and/or the Declarant shall have the power in its discretion (on behalf of each and every Owner) to amend the terms of this Declaration or to enter into any agreement with FLMC, FNMA, VA or FHA to allow their respective designees, reasonably required by FLMC, FNMA, VA or FHA to allow this Declaration to comply with such requirements. Should the FLMC, FNMA, VA or FHA subsequently delete any of their respective requirements which necessitate any of the provisions of this Declaration or make any such requirements less stringent the Declarant, without approval of the Owners, may, upon reasonable justification, cause an amendment to this Declaration to be executed and recorded to reflect such changes.

8.5 Severability. If any condition, covenant or restriction herein contained shall be held invalid by the final judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remain in full force and effect.

8.6 <Gender and Grammar> Construction. The singular wherever used herein shall be construed to mean the plural when applicable<, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, in all cases shall be assumed as though fully expressed in each case.>. **The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.**

~~8.7 Remedies. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity, including, without limitation, an action for injunctive relief, it being acknowledged and agreed that a violation of the covenants, conditions and restrictions contained herein could cause irreparable injury to Declarant and/or the other Owners and that the Declarant's and/or the other Owner's remedies at law for any breach of the Owners' obligations contained herein would be inadequate. Enforcement may be commenced by the Declarant, the City, or any Owner against any person or persons violating or attempting to violate them, and failure by the Declarant or any Owner to enforce any covenant or~~

~~restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The rights created herein are unique and enforceable by specific performance.~~

- 8.7 Notices to Owners. Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly delivered forty-eight (48) hours after deposited in the United States Mail, postage paid, certified or registered mail, and addressed to the last know address of the person who appears as an Owner.
- ~~8.8 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and constructed to include any other gender and words in the singular, shall be held to include the plural and visa versa unless the context requires otherwise.~~
- 8.8 Binding Effect. Each condition, covenant, restriction and agreement herein contained is made for the mutual benefit of, and is binding upon, each and every Person acquiring any part of the Property.~~←, it being understood that such~~ **Such** conditions, covenants, restrictions and agreements are not for the benefit of the owner of any land except ~~land in~~ the ~~Development~~ **Property**. This Declaration, when executed, shall be filed of record in the ~~Real Property~~ **Official Public** Records of Travis County, Texas so that each and every owner or purchaser of any portion of the Development is on notice of the conditions, covenants, restrictions and agreements herein contained.
- 8.9 ~~Recorded~~ Plat; Other Authorities. All dedications, limitations, restrictions and reservations ~~that are~~ shown on the Plat are deemed incorporated herein and shall be constructed as being adopted in each contract, deed or conveyance executed or to be executed by ~~the~~ Declarant~~→~~ conveying the Lots, whether specifically referred to therein or not. If other authorities, such as the City or the County, impose more demanding, expensive, extensive or restrictive requirements than those that are set forth herein (through zoning or otherwise) the requirements of such authorities shall be complied with. Other authorities' imposition of lesser requirements than those that are set forth herein shall not supersede or diminish the requirements that are set forth herein.
- 8.10 Additions to ~~the Development~~ Property. The Declarant may add or annex additional real property to the scheme of this Declaration by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of this Declaration to such property, provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties. ~~and as are not inconsistent with this Declaration.~~
- 8.11 No Warranty of Enforceability. ~~While the~~ Declarant has no reason to believe that any of the restrictive covenants or other terms or provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, **but** Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants. Any Owner acquiring a Lot ~~in the Development~~ in reliance on one or more of

such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom. ~~The~~ Declarant shall not be responsible for the acts or omissions of any individual, entity or other Owners.

8.12 ~~<Right of Enforcement>~~ **No Obligation to Enforce. Declarant's failure** to enforce any provision of this Declaration shall in no event subject Declarant to any claims, liability, costs or expense; it being the express intent of this Declaration to provide Declarant with the right (such right to be exercised at its sole and absolute discretion), but not the obligation to enforce the terms of this Declaration ~~<for the benefit of any Owner(s) of any Lot(s) in the Development.>~~.

8.13 Residential Construction Liability Act. Without waiving any rights under law or equity, all Owners acknowledge, covenant and agree that residential construction defect claims regarding any Home against ~~the~~ Declarant or any homebuilder in Texas are controlled by the Texas Residential Construction Liability Act (Tex. Prop. Code ~~<§>~~ **Sec. 27.001 et seq.**, as amended) which preempts the Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code ~~<§>~~ **Sec. 17.41 et seq.**, as amended) and any other law.

~~8.14 Additional Easements.~~

a) ~~Continued Maintenance Easement.~~ In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Declarant shall have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Declarant shall not be liable for any damage so created unless such damage is caused by the Declarant's willful misconduct or gross negligence.

b) ~~Drainage Easements.~~ Easements for installation and maintenance of utilities, storm water retention/detention ponds, and/or a conservation area are reserved as may be shown on the Plat. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Declarant is responsible. Declarant hereby reserves for the benefit of Declarant and any Builder a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property.

e) ~~Temporary Completion Easement.~~ All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant any Builder, their employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent thereto, provided that such easement shall terminate twelve (12) months after the date such burdened Lot is conveyed to the Owner by the Declarant or a Builder.

8.14 Construction Easement. The Lots are subject to an easement of ingress and egress for the benefit of Declarant, any homebuilder, their employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of each Lot as may be convenient or necessary to build, service or complete Improvements on adjacent Lots; provided that such easement shall terminate as to each Lot twelve (12) months after the date such Lot is conveyed to a party with a completed dwelling structure situated thereon.

8.15 ~~<d> Universal Easements.~~ The Owner of each Lot (including Declarant so long as Declarant is the Owner of any Lot) **<Easement of Encroachments. The Owner of a Lot (including Declarant)>** is hereby granted an easement not to exceed three (3) foot n width ~~<over all adjoining Lots>~~ **along each boundary with an adjacent Lot** for the purpose of accommodating **and maintaining** any encroachment or protrusion due to engineering or fence line errors, trees, landscaping or retaining wall located along property lines, errors in original construction, surveying, settlement or shifting of any ~~<building, or any other cause.~~ There shall be easements for the maintenance of said encroachment, protrusion, settling or shifting) **Improvements, or any other cause;** provided, however, that in no event shall **such** an easement ~~<for encroachment or protrusion>~~ be created in favor of an Owner ~~<or Owners of said>~~ **if the** encroachment or protrusion ~~<occurred due to>~~ **was created by the** willful misconduct of ~~<said>~~ **that** Owner ~~<or Owners. In addition,>~~. **Further,** the Owner of each Lot is hereby granted an easement for encroachments not to exceed three (3) feet in width ~~<by misplaced fences or fence lines and>~~ **along each boundary with an adjacent Lot for** overhanging roofs, eaves or other improvements as originally constructed ~~<over each adjoining>~~ **such** Lot and for the maintenance thereof. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to each affected Lot and shall pass with each conveyance of said Lot.

8.16 ~~<Utility and>~~ **Telecommunication and Utility Easements.** ~~<The>~~ Declarant hereby reserves the right to grant perpetual, non-exclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Property ~~<designated on the plat>~~ **which is dedicated or reserved for easements on the Plat** thereof for easements for the purpose of ingress, egress, installation, replacement, repair, maintenance, use and operation of any and all utility and service lines and service systems, public and private, including, without limitation, telephone, cable, fiber optic and any other cable or wiring system designed to provide or deliver communication of any form, video or telecommunications, computer access, "Internet" or e-mail access, security monitoring or other services to any Owner. The Declarant also reserves the right to grant perpetual, non-exclusive easements for the benefit of Declarant or its designers across and over any portion of the Property for the purpose of delivering satellite, "broadband", cellular or other wireless

communication designed to provide or deliver communication of any form, video or telephone communications, computer access, "Internet" or e-mail access, security monitoring or other services to any Owner. Declarant, for itself and its designees, reserves the right to retain or transfer title to any and all wires, pipes conduits, lines, cables, transmission towers or other improvements installed on or in such easements and to enter into franchise or other agreements with private or public providers of telecommunication type packages that are designed to provide such services to the ~~<Development>~~ **Property**.

8.17 EPA Compliance. ~~<The Owner of each Lot>~~ **Each Owner of a Lot is solely responsible for complying, and** agrees to comply, with all EPA rules and regulations regarding erosion control and compliance with the Storm Water Pollution Prevention Plan ~~<affecting>~~ **for** the ~~<Lots (the "Plan")>~~ **Property**, which will include elements necessary for compliance with the nationwide general permit for construction activities administered by the EPA under the National Pollutant Discharge Elimination System. ~~<Each>~~ **Once a Lot is sold with a completed residence thereon, each** Owner acknowledges that ~~<the>~~ **neither** Declarant ~~<and>~~ **nor** any homebuilder will ~~<not bear any responsibility>~~ **be responsible** for complying with ~~<a Plan on any Lot upon the sale of each Lot in the subdivision>~~ **such Plan as to the Lot so sold**.

3.18 Soil Movement. Each Owner **agrees and understands that the maintenance of the moisture content of the soils on each Lot is necessary to preserve the structural integrity of each Home, and** acknowledges that the failure or excessive movement of any foundation of any Home ~~<in the Subdivision>~~ can result in the diminished value and overall desirability of the ~~<entire Development>~~. ~~Each Owner agrees and understands that the maintenance of the moisture content of the soils on each Lot is necessary to preserve the structural integrity of each home in the Development. Each Owner also>~~ **Property. Each Owner** acknowledges that the long term value and desirability of the ~~<Development is contingent>~~ **Property depends** upon each Owner maintaining their Home so that no structural failure or excessive soil movement occurs within the ~~<Development>~~ **Property**.

EACH OWNER IS HEREBY NOTIFIED THAT THE SOIL COMPOSITION IN TEXAS IN GENERAL AND THE ~~<DEVELOPMENT>~~ **PROPERTY** IN PARTICULAR AND THE CONDITION OF THE LOTS MAY RESULT IN THE SWELLING AND/OR CONTRACTION OF THE SOIL IN AND AROUND THE LOT IF THE OWNER OF THE LOT DOES NOT EXERCISE THE PROPER CARE AND MAINTENANCE OF THE SOIL REQUIRED TO PERVENT SOIL MOVEMENT.

If an Owner fails to exercise the necessary precautions, damage, settlement, movement or upheaval to the foundation may occur. Owners are highly encouraged to install and maintain proper irrigation around their Home or take such other measures to ensure even, proportional, and prudent watering around the foundation of the Home.

By each Owner's acceptance of a warranty deed to any Lot, each Owner, on behalf of Owner and Owner's representatives, successors and assigns, hereby acknowledge that ~~<the developer,>~~ **neither** Declarant ~~<and all homebuilders>~~ **nor any homebuilder** in the ~~<Subdivision>~~ **Property** shall ~~<not>~~ be responsible or liable for any damage, settlement, movement, or upheaval to the foundation or any other part of the ~~<residence constructed on~~

said ~~Lot~~ **Home** and hereby releases and forever discharges, developer, all **such** homebuilders ~~<in the Subdivision and>~~, Declarant, and their respective shareholders, members, officers, directors, partners, employees, agents, representatives, affiliates, attorneys, successors and assigns, of and from any and all claim for the relief and/or causes of actions, liabilities, damages and claims whatsoever, known or unknown direct or indirect, arising from or relating to the foundation and/or the ~~<residence constructed upon the Lot>~~ **Home**, including but not limited to any damage thereto caused by and/or related in any fashion to the soil condition upon which the same are constructed, the presence of groundwater and any other subsurface condition affecting the Lot and/or from the failure or improper or uneven watering of the Lot, inadequate grading or drainage facilities to carry water away from the foundation, or planting of improper vegetation near the foundation or any action which affects the drainage of any Lot.

The Owner of each Lot, and the Owner's legal representatives, successors and assigns, shall assume all risk and consequences to the ~~<residential structure>~~ **Home**, including but not limited to those arising or relating to the subsurface and surface soil condition in and around the Lot, the failure of the Owner or any other person or entity to exercise prudent maintenance procedures and/or the Owner's negligence in protecting and maintaining the integrity of the foundation and structure of the residence.

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

IN WITNESS WHEREOF, ~~<the undersigned, being the Declarant herein, has hereto set~~ its hand this day of _____, 2002. **Declarant has executed this Declaration as of _____, 2004.**

DECLARANT:

**LEGACY/MONTEREY HOMES, L.P.,
an Arizona limited partnership**

**By: MTH-Texas GP, Inc., an Arizona
corporation, General Partner**

**By: _____
Richard L. Harvey, Vice President**

THE STATE OF TEXAS ‘

COUNT OF TRAVIS ‘