

STATE OF TEXAS §

COUNTY OF TRAVIS §

AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
VOLENTE HILLS AT PARK FOREST OWNERS ASSOCIATION, INC.
(ANDERSON MILL WEST, SECTIONS 19 AND 20)

Document reference. Reference is hereby made to that certain Declaration of Covenants, Conditions and Restrictions, Anderson Mill West, Sections 19 and 20 filed as Document No. 2000170377 in the Official Public Records of Travis County, Texas; that certain First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions, Anderson Mill West, Sections 19 and 20, filed as Document No. 2004127084 in the Official Public Records of Travis County, Texas; that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions, filed as Document No. 2004209860 in the Official Public Records of Travis County, Texas; and that certain Third Amendment to the Declaration of Covenants, Conditions and Restrictions, filed as Document No. 2005013957 in the Official Public Records of Travis County, Texas (cumulatively, the "**Prior Declaration**", which is *replaced and superseded by this filing*).

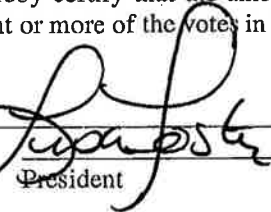
WHEREAS the Prior Declaration provides that owners of lots subject to the Prior Declaration are automatically made members of the Volente Hills at Park Forest Owners Association, Inc. (the "**Association**"); and

WHEREAS Section 7.2 of the Prior Declaration provides that the Prior Declaration can be amended with the consent of fifty-one percent (51%) or more of the Owners, and the amendments contained herein have received the requisite consent and approval;

THEREFORE the Prior Declaration has been, and by these presents is, AMENDED and RESTATED in its entirety as provided in the Amended and Restated Declaration attached hereto.

Certification

I the undersigned, in my capacity as President of Volente Hills at Park Forest Owners Association, Inc., do hereby certify that the amendments contained herein were approved by lot owners holding fifty-one percent or more of the votes in the Association.

By: 
Title: President

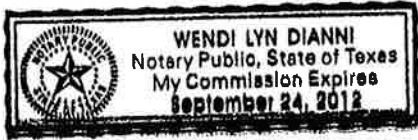
Acknowledgement

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was executed before me on the 15th day of March,
~~2008~~, by _____ in the capacity stated above.
2012

Wendi Lyn Dianni
Notary Public, State of Texas



**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
VOLENTE HILLS AT PARK FOREST OWNERS ASSOCIATION, INC.**

All the Property shall be held, sold, conveyed and occupied subject to the following liens, easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and shall run with, the Property, shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each such party, and each contract or deed which may hereafter be executed, delivered and accepted subject to the following liens, easements, covenants, conditions, and restrictions regardless of whether or not the same are set forth or referred to in said contract or deed.

**ARTICLE I
DEFINITIONS**

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

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

1.2 Articles. "Articles" shall mean the Articles of Incorporation of Volente Hills at Park Forest Owners Association, Inc., to be filed in the office of the Secretary of State of the State of Texas, as from time to time amended.

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

1.4 Association. "Association" shall mean Volente Hills at Park Forest Owners Association, Inc., a Texas nonprofit corporation.

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

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

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

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

1.9 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, 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.

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

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

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

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

1.14 Occupied Lot. "Occupied Lot" shall mean a Lot upon which building Improvements have been constructed and which has been occupied for residential use. Once a Lot has been so occupied and used, it will be deemed an "Occupied Lot" for purposes of this Declaration regardless of whether it ceases to be occupied at any time thereafter.

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

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

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

1.18 Plats. "Plats" shall mean the subdivision plats for Anderson Mill West Sections 19 and 20, to be recorded in the Plat Records of Travis County, Texas.

1.19 Property. "Property" shall mean the property to be platted for Anderson Mill West Sections 19 and 20, and being more particularly described on Exhibit "A" attached hereto and incorporated herein, **SAVE AND EXCEPT** the following lots:

Lots 7, 8, 14, 41 and 54, Block "I", Anderson Mill West Section 19, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Document 200000334, Plat Records of Travis County, Texas;

Lot 14, Block "M", Anderson Mill West Section 19, Resubdivision of Lots 1 and 25, Block H, Lots 1, 19-22, Block I and Lots 1-11 and 26, Block K, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Document 200100346, Plat Records of Travis County, Texas.

1.20 Restrictions. "Restrictions" shall mean this Declaration, the Articles and Bylaws of the Association, and any rules of the Association or its committees, as from time to time in effect and from time to time amended.

ARTICLE II **GENERAL RETRICTIONS**

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

2.1 Towers and Antennas. No antenna, satellite dish or other device for the transmission or reception of television signals, radio signals or any other form of electromagnetic radiation which is visible from the exterior of any building Improvement shall be erected, used or maintained on any Lot except with the written approval of the ACC; provided, however, that a satellite dish of not more than eighteen inches (18") in diameter may be placed upon any Lot subject to the ACC's approval as to location and screening. Any permitted satellite dish or other such device as may be approved by the ACC shall be located to the rear of the roof ridge line, gable line or center line of the principal residential structure if attached to structure and shall be located to the rear of the rear wall of the principal residential structure if it is a freestanding device. No such devise shall be permitted to extend above the roof of the primary residential structure so as to be visible from any street adjoining the Lot or any adjoining or neighboring Lot.

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

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

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

(a) builders may display one (1) sign of not more than six (6) square feet on a Lot to advertise the Lot and any residential structure situated thereon for sale during the construction and/or sale period,

(b) any Owner may display one (1) sign of not more than four (4) square feet on a Lot improved with a residential structure to advertise the Lot and residence for sale or rent;

(c) signs required for a legal proceedings, and

(d) for so long as a builder owns any Lot, such builder may display two (2) signs of not more than one hundred (100) square feet in the aggregate on a Lot owned by such builder which contains a model home.

(e) Student achievement signs issued by the respective student's school as recognition of achievement regarding participation of school activities will be allowed. These signs will be limited to those provided by the school or school sanctioned organization with the name of the student and the activity they are acknowledged for. The sign will be approximately eighteen inches (18") by twenty four (24") in size and will be displayed near the front entry, no further than six feet from the front of the dwelling.

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

2.6 Noise or Nuisance. No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property, except with the approval of the ACC. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants. No exterior

lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property (except any reasonable security, landscape, or tennis court lighting that has approval of the ACC). Upon being given notice by the ACC that any lighting is objectionable, the Owner shall take all necessary steps to properly shield same to the satisfaction of the ACC or else remove such objectionable lighting.

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

2.8 Repairs and Maintenance of Improvements. All Improvements upon any of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof. Such maintenance shall include, but not be limited to, the following, which shall be performed in a timely manner: (a) prompt removal of all litter, trash, refuse, and waste; (b) lawn mowing; (c) tree and shrub pruning; (d) watering; (e) keeping exterior lighting and mechanical facilities in working order; (f) keeping lawn areas alive, free of weeds, and attractive; (g) keeping driveways and sidewalks in good repair; (h) repainting of Improvements as needed; and (i) repair of exterior damage, wear and tear. This maintenance obligation shall include, without limitation, the obligation to maintain sidewalks, landscaping, and lawns in adjacent public rights-of-way, beginning at the curb of all adjacent streets and continuing to the front or side (with respect to corner Lots) Lot lines, which areas shall be maintained in a first-class manner.

2.9 Roofing Materials. Roofs shall consist of dimensional fiberglass asphalt or composition shingles or tile shingles of a weight equal to 235 pounds or more per square. If dimensional fiberglass asphalt or composition shingles are used, shingle color shall be weatherwood or barnwood. Roof pitch must be at least 6 to 12. Any other type of roof must be approved by the ACC.

2.10 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 portion of the Property unless the same shall be contained in conduit or cables installed or maintained underground or concealed in, under or on buildings or other Improvements as approved in writing by the ACC, provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements which have been previously approved in writing by the ACC.

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

2.12 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces or within barbecue units while attended and in use for cooking purposes.

2.13 Temporary Structures, Garage Apartments and Outbuildings. No (a) tent, shack, or other temporary building, improvement or structure, (b) garage apartment, or (c) outbuilding or storage shed shall be placed, erected, or permitted to remain upon the Property without the prior written approval of the ACC. No structure of a temporary character may be used at any time as a residence on the Property. The preceding sentences will not prohibit temporary structures necessary for storage of tools and equipment and for office space for architects, builders, and foremen during actual construction (or in the event of repair), which may be maintained with the prior written approval of the ACC. The ACC's approval may be conditioned on specifications as to the nature, size, duration and location of such structure. This Section 2.13 shall not prohibit a separate garage building, guest house, or servant's quarters so long as such building, house or quarters (a) does not exceed thirty feet (30') in height, (b) does not exceed six hundred (600) square feet of floor area, and (c) is attached to the main residence by a common wall or a covered passageway. Any permitted garage, guest house, or servant's quarters shall meet or exceed the masonry requirements set forth in Article 2, Section 2.20 below. All structures described in the Section 2.13, at a minimum, shall be constructed of the same or substantially similar materials and colors as the main structure on the Lot (as determined by the ACC), and shall have roofs of the same color and weight as the main structure on the Lot. Metal roofs are expressly prohibited.

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

2.15 Unightly Articles, Vehicles. No article deemed to be unsightly by the ACC shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall at all times, except when in actual use, be kept in enclosed structures or screened from view, and no repair or maintenance work shall be done on any of the foregoing or on any automobile (other than minor emergency repairs) except in enclosed garages or other structures. Each Lot shall house no more than the number of vehicles that can be garaged and/or be parked in the driveway in such a manner as not to obstruct the normal flow of sidewalk traffic. No inoperable automobiles or other vehicles may be parked overnight on any roadway within the Property. No automobiles or other vehicles may be parked overnight on any roadway within the Property for more than two (2) consecutive nights. Service areas, storage areas, air conditioning units, compost piles, and facilities for hanging, drying, or airing clothing or household fabrics shall be appropriately screened from view; no facilities for hanging, drying or airing clothing or household fabrics shall be visible from any street or neighboring Lot. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse, or trash

shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. This provision shall not prohibit the storage of new building materials used in the construction of Improvements on a Lot during the period of construction, so long as the construction progresses without unreasonable delay.

2.16 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers or recreational vehicles shall be parked on or near any Lot or on any street so as to be visible from adjoining property or public or private thoroughfares for any period in excess of forty-eight (48) hours.

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

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

2.19 Landscaping Requirements. It is the intent of the Restrictions to recognize, utilize, and supplement the existing landscape and visual resources and to permit and require a viable introduced landscape, so as to ensure consistent quality and provide for visual harmony through color and textural variety within the Property.

(a) Detailed landscape plans for each Lot shall be submitted as part of the Plans and Specifications, provided, however, that Owners who are homebuilders shall not be required to submit landscape plans. There shall be no revisions made to the approved plans without resubmittal to and approval by the ACC of the revised plans.

(b) Existing trees shall be deemed to be trees of 6" caliper and above measured three feet (3') above grade. During construction, existing trees shall be preserved and protected to the extent reasonable for the intended development, as determined in the ACC's discretion. Building or paving operations occurring adjacent to existing trees to be saved shall be in accordance with the Restrictions.

(c) Demolition of existing trees shall mean any operation, including transplanting, which removes, uproots or renders the tree incapable of sustaining a healthy and thriving condition. The ACC, at its option, may require that any tree which it deems to have been unnecessarily demolished shall be replaced with a tree approved by the ACC.

(d) All introduced vegetation shall be trees, shrubs, vines, ground covers, seasonal flowers, or sodded grasses which are commonly used in Central Texas for landscaping purposes and which are approved by the ACC.

(e) Landscaping shall mean any proposed modification to a Lot, including but not limited to any berming, irrigation systems, landscape subsurface drainage systems, paving, nonstructural retaining walls, and introduced vegetation according to the plans approved by the ACC. Landscaping in accordance with the approved plans shall be installed within ten (10) days after the date the City of Austin issues a Certificate of Occupancy with respect to the Improvements on such Lot. Extensions to the time limit may be granted by the ACC for up to an additional thirty (30) days on a case by case basis. The approved plans shall include permanent sodded grass in all sodded areas. Winter rye shall be considered a temporary measure to reduce soil erosion through the winter season, and shall be completely demolished and replaced with sodded grass according to the approved plans.

(f) Each Owner shall landscape front yards and side yards (in front of fences). Trees, shrubs, ground covers, seasonal color, and sodded grass shall be used in these areas to achieve the landscape intent according to the approved plans.

(g) Landscaping which has been installed on any Lot, including temporary landscaping, shall be properly maintained at all times. Recommendations by the ACC with respect to tree disease control must be followed immediately. Grasses and weeds shall at no time be allowed to exceed 6" on vacant Lots.

2.20 Construction Requirements.

(a) The exterior of each structure built upon any Lot shall be of at least seventy-five percent (75%) masonry construction. In calculating such percentages, gables and window and door opening will be excluded from the total area of the exterior structure. Brick, natural stone and stucco shall be considered to be masonry for purposes of this section, however, no non-clay brick, or brick with gray color tones, will be permitted unless approved by the ACC. Combinations of materials and the proportion thereof shall aesthetically and architecturally blend with and enhance the Property, and shall be subject to approval by the ACC.

(b) No garage shall be permitted to be used or enclosed for living purposes, but must be maintained for storage of automobiles and other vehicles and related purposes. All garages must have garage doors constructed or faced with wood siding or painted metal harmonious in quality and color with the exterior of the main residence, and shall be installed with electric opening and closing devices, which devices shall at all times be kept in a serviceable condition.

(c) All exterior wall materials must be continued down to twenty-four inches (24") above finish grade on the front wall. Any structure with a pier and beam foundation shall have all mechanical, electrical, plumbing lines and fixtures located thereunder screened from view from any public street and from adjacent Lots.

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

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

2.23 Location of Improvements. No buildings or other Improvements shall be located on any Lot nearer to the front Lot line than twenty-five feet (25'), and no garage shall be located on any Lot nearer to the front Lot line than thirty-five feet (35') unless the automobile door opening of such garage faces the side or rear of the Lot. The front of a primary dwelling structure shall face the front of a similar structure across the street whenever feasible, and the ACC shall resolve any conflicts arising from this requirement and make the final determination with regard to the orientation of the front of Improvements upon any Lot. No building shall be

located on any Lot nearer than ten feet (10') to any rear Lot line. No building shall be located on any Lot nearer than fifteen feet (15') to any side Lot line adjacent to a street. Unless the building is to be located on more than one Lot, no building shall be located nearer than five feet (5') to an interior Lot line. No swimming pool may be located between the front Lot line and the fence closest to such front Lot line. For the purposes of this Declaration, eaves, steps and unroofed terraces shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot. Notwithstanding the general guidelines herein set forth as to location of Improvements upon the Lot, it is the intention of Declarant to establish the importance of locating the Improvements so as to preserve existing natural trees, vegetation and topography to the extent reasonable and practical. The ACC shall be specifically empowered to require or to grant variances with respect to these guidelines, so long as the location of the Improvements will not encroach upon any other Lot, utility easement, or public right-of-way or result in any building being located closer than ten feet (10') from the primary dwelling structure on another Lot.

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

2.25 No Window Units. No window or wall type air conditioner which is visible from any street shall be permitted to be used, placed, or maintained on or in any building in any part of the Property.

2.26 Minimum Floor Area. The air conditioned portion of the primary dwelling structure erected on any Lot shall have a floor area of not less than one thousand six hundred (1,600) square feet for any Lot, such area to be exclusive of all porches, carports, garages and other rooms which are not air conditioned with the main living quarters.

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

2.28 Sidewalks; Driveways. Each Owner is hereby required to construct or cause to be constructed a sidewalk in the public street right-of-way adjacent to such Lot in accordance with the specifications set forth in the applicable Plat. Sidewalks located in the public right-of-way shall be extended from Lot line to Lot line and shall follow the pattern of the incoming sidewalks (as proposed or built) on adjacent Lots. Placement of sidewalks in public rights-of-way around the terminus of cul-de-sac streets shall follow the pattern of the incoming sidewalk (as proposed or built) on adjacent Lots and shall be placed four feet (4') from the curb line, so as to insure a continuous walk around the terminus. Owners of corner Lots shall install sidewalks in the right-of-way parallel to the front Lot line and the side street Lot line. If not otherwise provided, the Owners of corner Lots shall extend sidewalks to a terminus at and with the street curb in accordance with all applicable regulations respecting sidewalk construction and/or specifications. Any area encumbered by public utility easements provided along front and side Lot lines may be used for construction of the sidewalks which parallel the streets with the prior written approval of the ACC and of any utility companies furnishing utility service through such easements.

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

2.30 Swimming Pools. Above-ground swimming pools are expressly prohibited within the Property, except for movable children's wading pools no more than 18" deep. All swimming pools must be contained within fenced enclosures in compliance with all governmental requirements and screened from street view.

2.31 Composite Building Site. Any Owner of one or more adjacent adjoining Lots may consolidate such Lots into one single-family residential building site, and may place or construct Improvements on such site with the prior written approval of the ACC. In cases of such consolidation of Lots, setback lines shall be measured from the two side Lot lines existing after consolidation, rather than from the Lot lines shown on the Plat. The Owner may not thereafter resubdivide the consolidated Lots without the prior written approval of the Declarant.

2.32 Compliance with Provisions of Restrictions. Each Owner shall comply strictly with the provisions of the Restrictions as from time to time amended. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by Declarant, the Association, or by any Owner. Without limitation, if any Owner fails to comply with the duties or responsibilities set forth in the Restrictions, then Declarant may give such Owner written notice of such failure and such Owner, within fifteen (15) 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 fifteen-day period, then Declarant 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 such Declarant for such cost. If the Owner fails to reimburse such Declarant within ten (10) days after receipt of a statement for such work from such Declarant, then said indebtedness shall be a personal debt of such Owner and shall constitute a lien against the Lot on which said work was performed. Such lien shall have the same attributes as the liens or assessments set forth in this Declaration, which provisions are incorporated in this Section by reference, and Declarant shall have identical powers and rights in all respects, including but not limited to the right of foreclosure. Declarant shall have the right to designate the ACC or the Board their agent for purposes of delivering any notice, performing any action, or otherwise enforcing each Owner's obligations in the manner described herein, in which event the ACC or Board, as applicable, shall have the same rights as are granted to Declarant under this Section 2.32.

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

ARTICLE III
USE RESTRICTIONS

3.1 General. The Property shall be improved and used solely for single-family residential use, including related or ancillary uses approved by Declarant. "Single-family" shall mean a group of persons related by blood, marriage or adoption and shall also include foster children and domestic servants. Notwithstanding the foregoing, any Owner who is a homebuilder may construct a model home on any Lot owned by such Owner, and may conduct marketing, sales and interior design activities from such Lot(s) and Improvements thereon so long as such Owner owns other Lots within the Property.

3.2 Parkland Use. Notwithstanding any other provision in these Covenants, Conditions and Restrictions, Lot 25, Block K, Anderson Mill West, Section 19, may be used for parkland, including a park, pool, or any other recreation facilities approved by the Association, to include any signage, monumentation and other improvements deemed appropriate by the Association.

ARTICLE IV
ASSOCIATION MATTERS

4.1 Organization. Concurrently with the recordation of this Declaration, Declarant has caused the formation and incorporation of the Association. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed in its Articles and Bylaws, in this Declaration, and by applicable law. Neither the Articles nor the Bylaws shall for any reason be prepared, amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.2 Membership. Any Person upon becoming an Owner of a Lot automatically and concurrently shall become a Member of the Association. Declarant shall be a Member of the Association so long as Declarant owns any Lot. Membership shall be appurtenant to and shall run with the property interest, which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such property interest.

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 sometime referred to as "Class A Members". Declarant, which is entitled to vote pursuant to (b) below, 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 one hundred twenty-five (125) votes for each Lot within the Property, which Declarant owns, until such time as Declarant does not own any Lot within the Property. Thereafter, the Class B membership shall cease and be

converted to Class A membership, and each Owner shall have only one (1) vote for each Lot owned by it.

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

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 or leased by the Association ("Association Property"), and which is approved by the Board, together with all Improvements thereon and all appurtenances thereto,

(b) pay all real and personal property taxes and assessments levied upon or with respect to the Association Property, 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,

(c) 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,

(d) 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,

(e) keep books and records of the Association's affairs and make such books and records, together with a current copy of this Declaration, available for inspection by the Owners and Mortgagees upon request during normal business hours, and

(f) carry out and enforce all duties of the Association set forth in this Declaration and in the Restrictions.

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

(a) The Association shall have the power and authority to levy Assessments in accordance with and as provided in this Declaration.

(b) The Association shall have the power and authority to enter at any time in an emergency (or in a non-emergency after twenty-four (24) hours written notice to the Owner of the affected Lot), without being liable to any Owner, upon any Lot for the purpose of enforcing this Declaration or maintaining or repairing any Lot or Improvement so as to conform with the Restrictions, as more particularly provided in Section 2.32 above.

(c) The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of an Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of, this Declaration. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce this Declaration, provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

(d) The Association shall have the power and authority to grant and convey to any person or entity any Association Property and/or any interest therein, including fee title, leasehold estates, easements, rights-of-way, or Mortgages, out of, in, on, over, or under any of same for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:

- (1) roads, streets, walks, driveways, parking lots, trails, and paths;
- (2) lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- (3) sewers, water systems, storm water drainage systems, water quality facilities, sprinkler systems, and pipelines; or
- (4) any similar Improvements or facilities.

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

(e) The Association shall have the power and authority to retain and pay for the services of a manager to manage and operate the Association, including the Association Property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the manager. The Members of the Association hereby release

the Association and the members of the Board from liability for any omission or improper exercise by the manager of any such duty, power, or function so delegated.

- (f) The Association shall have the power and authority:
- (1) to retain and pay for legal and accounting services necessary or proper in the operation of the Association;
 - (2) to pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to and all maintenance of the Association Property, in accordance with this Declaration and the Restrictions;
 - (3) 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;
 - (4) to construct new Improvements or additions to the Association Property, subject to the approval of the ACC;
 - (5) 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
 - (6) 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 limitations 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) because of that person's service or status as a director or officer. Further, the Association shall pay or reimburse reasonable expenses incurred by a director or officer who was, is or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding, to the maximum extent permitted by Article 2.22A, provided, however, that payment or reimbursement of expenses pursuant to the procedures set out in Section K of Article 2.22A may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the officer or director in question to make the repayment referred to in such Section. Further, the Association may indemnify, and may reimburse or advance expenses to or purchase and maintain insurance or any other arrangement on behalf of, any person who is or was a director, officer, employee or agent of the Association, or who is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, director, employee, agent or similar functionary of another corporation, partnership,

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

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

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

5.2 **Declarant's Rights of Appointment.** Declarant shall have the right to appoint and remove all members of the ACC. Declarant may delegate to the Board, in whole or in part, their right to appoint and remove members of the ACC by written instrument.

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

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 which in its sole discretion are relevant. Except as otherwise specifically provided herein, before beginning construction of any Improvement on any portion of the Property, the Plans and Specifications for that Improvement, together with the review fee, shall be submitted to the ACC. Construction may not begin unless and until the ACC has approved the Plans and Specifications in writing. A non-refundable review fee of \$100.00 will be charged by the ACC for reviewing Plans and Specifications submitted for its approval unless the ACC specifically waives such fee in writing. Upon written request, the ACC may waive the requirement of such Plans for any Lot if the builder uses Plans and Specifications previously approved by the ACC for another Lot. There shall be no revisions made to the approved Plans without first submitting the revised plans to the

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

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

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 meeting, shall constitute an act of the ACC.

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

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

5.10 Nonliability of ACC Members and Board Members. Neither the ACC nor any member thereof shall be liable to the Association or to any Owner or to any other Person for any loss, damage or injury arising out of or in any way connected with the performance of the ACC's duties under this Declaration, unless due to the willful misconduct or bad faith of such Person. Neither the ACC nor any member of either the ACC or the Board 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 DR Horton Homes) at 14611 Burnet Road, Suite 106, Austin, Texas 78728, 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 **FUNDS AND ASSESSMENTS**

6.1 Assessments. Assessments established pursuant to this Declaration shall be levied on a uniform basis against each Occupied Lot within the Property for the purpose of enforcing these restrictions, maintaining Association Property, and maintaining such other property as the Board may determine. If two or more Lots are combined into one homesite, each Lot so combined shall be considered an Occupied 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 Occupied Lots). Assessments shall be levied against each Occupied Lot beginning on the first day of the year following the year in which Improvements on the particular Occupied Lot have been constructed and occupied for residential use.

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. Until January 1, 2002, 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, the annual assessment per Lot shall not exceed Two Hundred and No/100 Dollars (\$200.00). For the 2002 fiscal year, the Board shall establish a budget for the Association, and as of January 1, 2002, may levy assessments based on that budget against all Lots. For fiscal year 2002, and every year thereafter, the Board shall estimate the net expenses of the Association for such fiscal year, which shall be (i) the expenses to be incurred by the Association during such year in performing its activities authorized herein of the Association, the Board, and the ACC, and a reasonable provision for contingencies and appropriate replacement reserves, less (ii) any expected income and any surplus from the prior year's operating fund. Assessments sufficient to pay such estimated net expenses shall then be levied as provided herein, and the Assessments so levied by the Board shall be final and binding so long as it is made in good faith. In no event, however, may the Board increase an annual Assessment by more than five percent (5%) over the previous year's annual Assessment 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 such annual Assessments 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. The Bylaws shall set forth requirements for quorums of Members and eligibility to vote.

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 assessment shall be at the reasonable discretion of the Board. In no event shall the total special Assessment per Lot during the fiscal year 2001 exceed the sum of \$100.00 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 a matter, with at least a quorum of Members who are eligible to vote represented in person or by proxy. Each Owner shall be give 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 manner as the Board may designate, in its sole and absolute discretion. After 2001, the Association may levy in any fiscal year a special Assessment applicable to that year, only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital Improvement upon Association Property, provided that any such special Assessment shall have 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.

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 Owner of the Lot subject thereto shall be obligated to pay interest at the highest rate allowed by applicable laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1.5% per month), together with all costs and expenses of collection, including reasonable attorneys' fees. The Board shall have the right to charge a one-time late fee for delinquent payment of Assessments in such amount as the Board may from time to time deem appropriate.

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

6.7 Assessment Lien and Foreclosure. All regular and special Assessments provided for herein which are not paid when due, together with interest and collection costs and expenses as herein provided, shall be secured by a continuing lien and charge in favor of the Association on the Lot subject to such Assessment and any Improvements 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 records and securing sums borrowed from the acquisition or improvement of such Lot. The Board in its sole discretion may subordinate its Assessment lien to any other lien, and any such subordination shall be signed by an officer of the Association. To evidence any Assessment lien 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 written request of any Mortgagee, the Association shall report to such Mortgagee any Assessments then unpaid with respect to any Lot on which such Mortgagee holds a Mortgage.

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

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

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

It is the intent of the provisions of this Section to comply with the provision 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 provision hereof so as to comply with said amendments to §51.002.

ARTICLE VII MISCELLANEOUS

7.1 Term. This Declaration shall run until December 31, 2030, unless amended as herein provided. After December 31, 2030, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless amended in accordance with Section 7.2 below or terminated by a written instrument executed by seventy-five percent (75%) of the Owners.

7.2 Amendment. This Declaration may be amended by Declarant so long as Declarant owns any of the Lots. Thereafter, this Declaration may be amended by consent of fifty-one percent (51%) or more of the Owners. Any such amendment shall be effective upon recordation on the official public records of Travis County.

7.3 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the second (2nd) day (other than a Sunday or legal holiday) after deposit in the United States mail, postage prepaid, addressed to the Owner at the address

given by such Owner to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such Owner to the Association.

7.4 Interpretation. The provision 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 provision set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

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

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

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

7.8 Reservation of Easements. Easements are reserved as indicated on the Plats for utility and installation and maintenance. Within these easements, no structures, trees, vines, plants or any other thing shall be placed or permitted to remain which may interfere with the purposes for which the easements are intended, and the easements area of each Lot shall be maintained continuously by the Owner of the Lot, except for improvements which a public utility or public authority is responsible.

7.9 General.

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

- (b) Unless the context requires a contrary construction, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine or neuter shall each include masculine, feminine, neuter.
- (c) All captions and titles used in the 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.

DESCRIPTION

OF A 44.455 ACRE TRACT OR PARCEL OF LAND OUT OF AND PART OF THE RACHAEL SAUL SURVEY, ABSTRACT NO. 551, THE PHILLIP M. CUNEY SURVEY, ABSTRACT NO. 203, AND THE BANYAN PAYNE SURVEY NO. 528, ABSTRACT NO. 637, SITUATED IN TRAVIS COUNTY, TEXAS; AND BEING ALL OF THAT CERTAIN 44.455 ACRE TRACT CONVEYED TO D. B. HORTON-TEXAS, LTD., A TEXAS LIMITED PARTNERSHIP, BY DEED RECORDED AS DOCUMENT NO. 2000022313 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; THE SAID 44 455 ACRES FORMERLY BEING A PORTION OF THAT CERTAIN 54.186 ACRE TRACT CONVEYED TO BILL MILBURN BY DEED OF RECORD IN VOLUME 8577, PAGE 583 OF THE SAID REAL PROPERTY RECORDS, AND A PORTION OF THAT CERTAIN 75 802 ACRE TRACT CONVEYED TO BILL MILBURN INVESTMENTS, INC, BY DEED OF RECORD IN VOLUME 11649, PAGE 393 OF THE SAID REAL PROPERTY RECORDS; THE SAID 44 455 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod in concrete found at the intersection of the northerly right-of-way line of F M 2769 (Volente Road), a public roadway (right-of-way varies), with the easterly right-of-way line of County Road No 182 (Dies Ranch Road), a public roadway (right-of-way varies), for the southwest corner of the above mentioned 75 802 acre tract, and the southwest corner of the tract described herein,

THENCE, leaving the north line of said F M 2769 (Volente Road), and proceeding along the east line of the said County Road 182 (Dies Ranch Road), same being the west line of the said 75 802 acre tract, the following eight (8) courses and distances

- 1) N08°23'10"W, a distance of 383 35 feet to a 1/2 inch iron rod found for an angle point,
- 2) N05°52'41"W, a distance of 208 67 feet to a 1/2 inch iron rod found for an angle point,
- 3) N07°23'02"E, a distance of 119 47 feet to a 1/2 inch iron rod found for an angle point,
- 4) N16°32'09"E, a distance of 127 50 feet to a 7/8 inch iron pipe in a rock found for an angle point,
- 5) N16°24'18"E, a distance of 347 53 feet to a 1/2 inch iron rod found for an angle point,
- 6) N21°29'13"E, a distance of 327 35 feet to a 1/2 inch iron rod found for an angle point,
- 7) N01°57'09"E, a distance of 253 51 feet to a 1/2 inch iron rod found for an angle point,
- 8) N02°02'30"W, a distance of 155 78 feet to a 1/2 inch iron rod found for the most westerly, northwest corner of the said 75 802 acre tract, same being the most westerly, southwest corner of the said 54 186 acre tract,

THENCE, continuing along the easterly right-of-way line of said County Road 182 (Dies Ranch Road), same being the westerly line of the said 54.186 acre tract, the following eight (8) courses and distances.

- 1) N01°16'51"E, a distance of 350.81 feet to a 1/2 inch iron rod found for an angle point,
- 2) N04°34'57"E, a distance of 180 85 feet to a 1/2 inch iron rod found for an angle point;
- 3) N15°00'32"E, a distance of 226 81 feet to a 1/2 inch iron rod found for an angle point;
- 4) N34°05'19"E, a distance of 277 47 feet to a 1/2 inch iron rod found for an angle point;
- 5) N23°10'09"E, a distance of 81.22 feet to a 1/2 inch iron rod found for an angle point,
- 6) N17°18'06"E, a distance of 88 99 feet to a 1/2 inch iron rod found for an angle point,

- 7) N22°22'12"E, a distance of 38.98 feet to a 1/2 inch iron rod found for an angle point,
- 8) N27°02'57"E, a distance of 121.77 feet to a 1/2 inch iron rod set for the intersection with the centerline of Proposed Anderson Mill Road, same being a point in the westerly line of Anderson Mill West Section 21, a subdivision of record in Volume 93, Pages 323-325 of the Plat Records of Travis County, Texas, same also being the most northerly corner of the herein described tract,

THENCE, leaving the east line of the said County Road 182, going over, across and through the said 54.186 acre tract and the said 75.802 acre tract, along the west line of the said Anderson Mill West Section 21, and the west line of Anderson Mill West Section 18, a subdivision of record in Volume 93, Pages 320-322 of the said Plat Records of Travis County, Texas, same being along the centerline of the said Proposed Anderson Mill Road, a proposed public roadway (120' ROW), the following three (3) courses and distances

- 1) S01°54'11"W, a distance of 758.67 feet to a 1/2 inch iron rod found for the point of curvature of a curve to the left;
- 2) along the said curve to the left, having a radius of 1023.41 feet, passing at an arc distance of 300.49 feet, a 1/2 inch iron rod found for the common westerly corner of the above referenced Anderson Mill West Sections 18 and 21, continuing along the said curve to the left through a total central angle of 36°01'15", a total chord distance of 632.86 feet (chord bears S16°06'26"E), a total arc distance of 643.40 feet to a 1/2 inch iron rod set for the point of tangency, from which, a 1/2 inch iron rod found, bears N34°07'03"E, 0.52 feet,
- 3) S34°07'03"E, a distance of 386.70 feet to a 1/2 inch iron rod found in the northerly line of that certain 14.812 acre tract conveyed to Eric F. Bindock, et ux, by deed of record in Volume 8109, Page 497 of the said Real Property Records, for the southwest corner of the said Anderson Mill West Section 18, same being an exterior ell corner of the herein described tract,

THENCE, leaving the centerline of the said Proposed Anderson Mill Road, along the common line between the said 75.802 acre Bill Mulburn Investments, Inc., tract, and the said 14.812 acre Eric F. Bindock, et al, tract, the following six (6) courses and distances

- 1) S79°17'31"W, a distance of 384.92 feet to a 3/4 inch iron pipe found for the northwest corner of the said 14.812 acre tract, same being an interior ell corner of the said 75.802 acre tract,
- 2) S48°14'33"E, a distance of 70.14 feet to a 1/2 inch iron rod set for an angle point,
- 3) S48°15'43"E, a distance of 27.83 feet to a 1/2 inch iron rod found for an angle point,
- 4) S47°42'14"E, a distance of 469.06 feet to a 1/2 inch iron rod found for an angle point,
- 5) S47°49'54"E, a distance of 230.58 feet to a 1/2 inch iron rod found for an angle point,
- 6) S47°49'09"E, a distance of 369.81 feet to a 1/2 inch iron pipe found in the north right-of-way line of the above mentioned F.M. 2769 (Volcote Road), for the southeast corner of the said 75.802 acre tract, and the southeast corner of the herein described tract,

THENCE, along the north line of said F.M. 2769 (Volcote Road), same being the south line of the said 75.802 acre tract, the following seven (7) courses and distances

- 1) S59°25'34"W, a distance of 299.76 feet to a 3/4 inch iron rod found for the point of curvature of a non-tangent curve to the right,
- 2) along the said curve to the right, having a radius of 1382.58 feet (radius point bears N30°26'25"W), a central angle of 11°22'04", a chord distance of 273.86 feet (chord bears S65°14'37"W), an arc distance of 274.31 feet to a 7/8 inch iron pipe found at a point of non-tangency;
- 3) S70°53'27"W, a distance of 324.44 feet to a 1/2 inch iron rod found for the point of curvature of a non-tangent curve to the left,

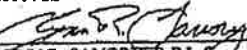
FN NO 494
44 455 Acres
Page Three

- 4) along the said curve to the left, having a radius of 1005.46 feet (radius point bears S19°03'16"E), a central angle of 20°19'58", a chord distance of 354.94 feet (chord bears S60°46'45"W), an arc distance of 356.81 feet to a 7/8 inch iron rod found at a point of non-tangency,
- 5) S50°30'23"W, a distance of 247.01 feet to a 1/2 inch iron rod found for the point of curvature of a non-tangent curve to the left,
- 6) along the said curve to the left, having a radius of 1005.37 feet (radius point bears S39°24'51"E), a central angle of 08°19'12", a chord distance of 145.86 feet (chord bears S46°25'33"W), an arc distance of 145.99 feet to a 1/2 inch iron rod found at a point of non-tangency,
- 7) S85°23'22"W, 51.97 feet to the POINT OF BEGINNING, containing 44 455 acres of land area, more or less, within these metes and bounds. The boundary survey for this fieldnote description having been completed November, 1994

STATE OF TEXAS §
 KNOW ALL BY THESE PRESENTS §
COUNTY OF TRAVIS §

THAT I, LYNN R. SAVORY, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE ABOVE DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION

WITNESS MY HAND AND SEAL AT AUSTIN, TRAVIS COUNTY, TEXAS THIS 30th DAY OF MARCH, 2000 A.D.


LYNN R. SAVORY, R.P.L.S.
STATE OF TEXAS NO 4598
INTERSTATE SURVEYING COMPANY
1530 Eos Cave Road, #202
Austin, Texas 78746



(symbolicseal)Circle no. 001 700Ca-494 doc1

Fileserver:CLIENTS:VolenteHills:A&RDeclaration11-11.doc

After recording, please return to:

Nieman & Heyer, L.L.P.
Attorneys At Law
Westgate Building, Suite 313
1122 Colorado Street
Austin, Texas 78701

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**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**

Dana DeBeauvoir

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

March 13 2012 10:15 AM

FEE: \$ 128.00 2012038422