

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
WINDY WALK ESTATES**

STATE OF TEXAS

COUNTY OF TRAVIS

} **KNOW ALL MEN BY THESE PRESENTS:**

THAT WHEREAS, Concor Development LLC, a Texas Limited Liability company, hereinafter called "DECLARANT", is the owner and developer of Windy Walk Estates, a subdivision located in Travis County, Texas, (the "property") according to the plat filed in Document No. _____ of the Official Public Records of Travis County, Texas described as follows:

All property as shown in the attached Exhibit "A".

Said subdivision hereinafter referred to as Windy Walk Estates; and

WHEREAS, the DECLARANT desires to convey the Property or portions thereof subject to certain protective covenants, conditions, restrictions, liens and charges hereinafter set forth; and

WHEREAS, the DECLARANT desires to and herein reserves the right to add additional property to the provisions, covenants, condition, restrictions, liens and charges hereinafter set forth; and

WHEREAS, the DECLARANT, desires to create and carry out a uniform plan for the improvement, development and sale of the Property and portions thereof for the benefit of the present and future owners of the Property, hereby adopts and establishes the following declarations, reservations, restrictions, covenants, conditions and easements to apply uniformly to the use, improvements, occupancy and conveyance of all or any portion of the Property, including the roads, streets, and alleys therein; and each contract, instrument or deed which may be hereafter executed, delivered and accepted subject to the following (regardless of whether or not the same are set out in full or by reference in said contract or deed):

NOW THEREFORE, it is hereby declared that all of the Property shall be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and shall be binding on all parties having an 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 Owner thereof.

ARTICLE A

Definitions

(A.01) **Architectural Approval Committee:** “Architectural Approval Committee” (hereinafter sometimes called “Architectural Approval Committee” or “AAC”) shall mean the committee created pursuant to this Declaration and having the authority and responsibility delegated thereto by this Declaration.

(A.02) **Articles:** “Articles” shall mean the Articles of Incorporation of HOA Windy Walk Estates, Inc., which will be filed in the office of the Secretary of State of the State of Texas, as the same are from time to time amended.

(A.03) **Assessments:** “Assessments” or “Assessment” shall mean assessments of the Association and includes regular annual assessments, special assessments, and assessments benefiting specific areas.

(A.04) **Association:** “Association” shall mean and refer to HOA Windy Walk Estates, Inc., a Texas non-profit corporation.

(A.05) **Association Property:** “Association Property” shall mean all real or personal property now or hereby owned by or leased to the Association.

(A.06) **Beneficiary:** “Beneficiary” shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust.

(A.07) **Board:** “Board” shall mean the Board of Directors of the Association.

(A.08) **Bylaws:** “Bylaws” shall mean the Bylaws of the Association, which may be adopted by the Board, as the same are from time to time amended.

(A.09) **Common Area:** “Common Area” or “Common Areas” shall mean and include (i) any portion of the Property designated by the DECLARANT as a common area for the primary benefit of the Owners and occupants of the Property or a particular area of the Property (ii) Private Roadways (as defined in Section G.04 hereof), (iii) Recreation and Open Space (as defined in Section A.27), or (iv) any other area designed as a common area by DECLARANT on any applicable plat of the Property. Common Areas may be owned by DECLARANT and leased to the Association or its members, or may be part of the Association Property or may be portions of the Property which the Owners have an easement or other right to enjoy. Without limitation upon the foregoing, DECLARANT may, at any time, at DECLARANT’s option, convey title to any Common Areas to the Association for a consideration equal to the cost of the amenities and other improvements to the Common Area. The Association shall at all times maintain the Common Areas in accordance with this declaration.

(A.10) **DECLARANT:** “DECLARANT” shall mean CONCOR Development, LLC., a Texas Limited Liability company, its duly authorized representatives or its successors or assigns, provided that any assignment of the rights of Concor Development, LLC., as 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 DECLARANT shall not be sufficient to constitute an assignment of any one or more of the rights of DECLARANT hereunder.

(A.11) **Declarations:** “Declaration” shall mean this instrument and as it may be amended from time to time.

(A.12) **Easements:** “Easements” shall mean the easement for installation and maintenance of utilities and drainage facilities that are located in the (sixty) 60 ft right-of-way shown on the plat of the subdivision. There is a ten (10) foot Private Utility Easement (PUE) along the side and rear lot lines and a twenty five (25) foot PUE across the front of every lot. Side lot electric service must be located within the PUE, except for the common side lot lines of contiguous lots owned by one owner. Within these easements, no structure or other materials shall be placed or permitted to remain which may change the direction of flow or surface water drainage in the easement. Within such easement the right of use, ingress and egress shall be had at all times for the installation, construction, operation, maintenance, repair, replacement, relocation, or removal of any utility and drainage facility, together with the right to remove any obstruction or improvements that may be placed within any such easement which may interfere with the use of such easement of the purpose herein set forth. The easement area of each tract and all improvements in it shall be maintained continuously by the owner of the tract, except for those improvement for which a public authority or utility company is responsible. A utility easement may be used for any and all utilities, water, sewage disposal, telephone, gas and/or electricity unless expressly limited to a specific use on the recorded plat of the subdivision or stated in the conveyance out of Owner.

(A.13) **Entrance Monument Easement.** Shall mean the easement designated as a Common area by the meets and bounds description in Exhibit “B” which will be maintained, improved, and be repaired by the “Maintenance Fund”.

(A.14) **Improvements:** “Improvement” or “Improvements” shall mean every structure, installation, or modification, and all appurtenance thereto, of every type and kind, made upon, placed upon, or made with respect to the Property or any portion thereof, including, but not limited to streets, buildings, outbuildings, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, landscaping planted trees and shrubs, poles, signs, exterior air conditioning equipment, water softener fixtures or equipment, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connections with water, sewer, gas, electric, telephone, regular or cable television, or other utilities, and alteration or addition thereto.

(A.15) **Lot:** “Lot” or “Lots” shall mean any lot within the Property as described on a duly recorded subdivision plat.

(A.16) **Manager:** “Manager” whether one or more, shall mean the person or persons, firm or corporation, if any, employed by the Association pursuant to this Declaration and delegated certain or all duties, powers or functions of the Association.

(A.17) **Maintenance Fund.** “Maintenance Fund” shall mean the fund used for the proper repair, maintenance and/or improvement of property designated by the DECLARANT. The DECLARANT or the Association may use the Maintenance Fund or any part thereof, for developing, improving, operating and maintaining any and all of the Association Property and common areas or easements which the owners and/or occupants of Lots may be privileged or shall have the right to use, regardless of who may own such common areas and regardless of their location. It is agreed and understood that the judgment of DECLARANT or the Association, as custodian and administrator of said Maintenance Fund, when used in good faith in the expenditure of said funds, or any part thereof, shall be binding, final and conclusive upon all parties in interest.

(A.18) **Member:** “Member” shall mean any person who is a member of the Association.

(A.19) **Mortgage:** “Mortgage” shall mean any mortgage or deed of trust given to secure the payment of a debt.

(A.20) **Notice of Hearing:** “Notice and Hearing” shall mean ten (10) days written notice and a hearing by the Board, at which hearing the person to whom notice is directed shall have the opportunity to be heard in person or by counsel at his/her expense, or such other notice and hearing, if any, required by the Texas Residential Property Owners Protection Act, TEX. PROP. CODE 209, et seq., as amended.

(A.21) **Owners:** “Owner(s)” shall mean the person or entity, including DECLARANT, holding a fee simple interest in any Lot or in all or any portion of the Property, but shall not include the Beneficiary of a Mortgage.

(A.22) **Person:** “Person” shall mean an individual or entity or trust having the legal right to hold title to real property.

(A.23) **Plans and Specifications:** “Plans and Specifications” shall mean any and all documents designed to guide and control the construction or erection of any Improvement, including but not limited to, those indicating size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications for all building products and construction techniques, samples or exterior color, plans for utility services, and all other documentation or information relevant to such improvement.

(A.24) **Property:** “Property” shall mean the land described as Windy Walk Estates, a subdivision located in Travis County, Texas, according to the plat filed in Document No. _____ of the Official Public Records of Travis County, Texas being all of the real property described in Exhibit A attached hereto and incorporated herein, together with all land added to this Declaration as amendments or additional exhibits added in accordance with the provisions hereof.

(A.25) **Private Streets.** “Private Streets” shall have the meaning set forth in Section G.04 hereof.

(A.26) **Record, Recorded and Recordation:** “Record”, “Recorded” and “Recordation” shall mean with respect to any document, the recordation of such document in the office of the County Clerk of Travis County, Texas.

(A.27) **Recreation and Open Space.** “Recreation and Open Space” shall mean all areas designated by DECLARANT, sometimes herein referred to as amenities, as recreational areas for the benefit of all Owners, and may include such items as a swimming pool, tennis courts, clubhouse, hiking/biking trails, and similar types of recreational facilities. DECLARANT, at DECLARANT’s option, may, at any time, convey title to said Recreation and open Spaces to the Association for a consideration equal to the cost of the amenities and other Improvements to the Recreation and Open Spaces. The DECLARANT and/or the Association may levy charges for the use of the Recreation and Open Spaces by Owners or Non-Owners, and access to any such area or facilities may be limited to persons currently paying assessments, fees, and other charges, or otherwise conditioned or restricted, or made available to non-owners, all on such terms and condition as the Board may determine, in its sole discretion.

(A.28) **Subdivision:** “Subdivision” shall mean a parcel of the Property, which has been shown on a final subdivision plat recorded in the Plat Records of Travis County, Texas.

(A.29) **Supplemental Declaration:** “Supplemental Declaration” shall mean any declaration of covenants, conditions and restrictions, which may be hereafter recorded by DECLARANT, subject to all of the terms and restrictions of this Declaration and not in conflict herewith.

(A.30) **Visible From Neighboring Property:** “Visible From Neighboring Property” shall mean that with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of an adjoining Lot. An adjoining Lot shall be any Lot having a common lot line except for the intervention of a street, road, right-of-way or easement.

(A.31) **Windy Walk Estates Residential Restrictions:** “Windy Walk Estates Residential Restrictions” shall mean this declaration, together with any and all Supplemental Declarations, as either may be amended from time to time, together with the Articles, Bylaws, and all easements and restrictive covenants set forth in any recorded plat of the Property.

(A.32) Windy Walk Estates Residential Rules: “Windy Walk Estates Residential Rules” shall mean the rules and regulations adopted by the Board and/or the AAC pursuant to the powers granted herein, as they may be amended from time to time.

ARTICLE B

DEVELOPMENT, ANNEXATION AND WITHDRAWAL OF LAND

(B.01) Development by DECLARANT. DECLARANT may add land as provided in Section **B.02** and may divide or subdivide existing and/or additional Property into several areas, sell part or all of the Property DECLARANT owns free of these restrictions, develop part or all of the Property as Common Area or for other purposes for the benefit of the developed areas, in accordance with DECLARANT’s master plan for the Property. DECLARANT may at any time and from time to time release from these Restrictions any part of the Property owned by DECLARANT. It is contemplated that the Property will be developed pursuant to a master concept plan, which may, from time to time, be amended or modified, in which the development of and restrictions upon each portion thereof will benefit each other portion and the whole thereof. As each area is developed or dedicated, DECLARANT may record one or more Supplemental Declarations and designate the use, classification, and such additional covenants, conditions, and restrictions, as DECLARANT may deem appropriate for that area. Any Supplemental Declarations may, but need not, provide for the establishment of a sub-association to be comprised of Owners within the area subject thereto. Any Supplemental Declaration may provide its own procedure for the amendment of any provisions thereof, as for example, by a specified vote of only the Owners of some of the Property within the area subject thereto. All lands, Improvements and uses in each area so developed shall be subject to both this Declaration and the Supplemental Declaration, if any, for that area.

(B.02) Annexation: DECLARANT may at any time and from time to time add additional land to the Property. Said land to be added shall at the time be bound by the terms of these restrictions and any future modification thereof, by filing of record a Supplemental Declaration.

ARTICLE C GENERAL RESTRICTIONS

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

(C.01) **Antennas:** No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any Lot, which is visible from any street, common area or other Lot unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a visible location as approved by the AAC. The AAC may require as much screening as possible while not substantially interfering with reception. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Property. No satellite dishes shall be permitted which are larger than one meter in diameter. No broadcast antenna mast may exceed the height of the center ridge of the roofline. No Multichannel Multipoint Distribution Service (“MMDS”) antenna mast may exceed the height of twelve feet (12’) above the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property. The Declarant by promulgating this Section is not attempting to violate the Telecommunications Act of 1996 and rules and regulations promulgated thereunder (the “ACT”), as same may be amended from time to time. This Section shall be interpreted to be as restrictive as possible while not violating the Act.

(C.02) **Obnoxious Activities:** No nuisance, obnoxious or offensive activities shall be carried on any Lot so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no excessive dog barking, no exterior speaker horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property which are audible from neighboring Property.

(C.03) **Subdividing and Resubdividing.** No Lot shall be further divided or subdivided, nor may any easements be conveyed by the Owner thereof (including any sub-association) without the prior written approval of the AAC; provided, however, that when DECLARANT is the Owner thereof, DECLARANT may further divide and subdivide any Lot and convey any easement or other interest less than the whole, all without the approval of the AAC or any other Owner. Each Owner of a Lot, subject to the provisions of this Declaration, by acceptance of a Deed to said Lot, whether it is expressly stated in said Deed or not, hereby irrevocably grants to DECLARANT all consent and authority required by law to vacate the subdivision plat of which the Lot is included, or a portion thereof. And resubdivided the vacated portion, and each Owner does hereby and irrevocably appoint DECLARANT as his/her attorney-in-fact for the purpose of executing

such instrument, or instruments, as may be required to accomplish such vacating and resubdiving; provided, however, that:

- 1) Any vacating and resubdiving shall require the consent of appropriate governmental authorities, as required; and
- 2) The location, Lot lines and size of any Lot not owned by DECLARANT shall not be changed or altered by the resubdivision without the written consent of the Owner of the affected Lot.

Nothing herein shall be deemed to require the approval of the AAC for the transfer or sale of any Lot, including Improvements thereon, to more than one person, to be held by them as tenants-in-common or joint tenants, or for the grant of any Mortgage.

(C.04) **Signs.** No signs of any kind shall be displayed to the public view without the prior written approval of the AAC, except for signs, which are part of DECLARANT's overall marketing plan for the Property, Builders may erect one sign, no larger than four (4) square feet in area, per Lot, which has a model home or home under construction or for sale. Such sign will be removed from the property immediately upon sale and closing of the home. Except as provided by this Section, the AAC shall have the right to approve signs of any type advertising a portion of the Property for sale or lease and it may set standards for the same. DECLARANT, or its assigns, will have the right to enter any Lot and remove any sign, advertisement, billboard, or advertising structure that does not comply with the above, and in so doing shall not be subject to any liability of trespass or other tort in connection therewith or arising out of such removal. Owners may erect small identification sign with their names and address subject to the AAC approval.

(C.05) **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 AAC) shall be placed or permitted to accumulate upon any portion of the Property, and no odors shall be permitted to arise therefrom so as to render the Property or and portion thereof unsanitary, unsightly, offensive or detrimental to any other portion of the Property or to adjoining property or their respective occupants. The AAC 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 portion of the Property or to adjoining property or their respective occupants, and the decision of the AAC shall be final and binding on all parties. Refuse, garbage and trash shall be kept at all times in a covered container, and such container shall be kept within an enclosed structure or appropriately screened from view. No garbage or trash shall be permitted to be buried on any Lot at any time. Composting shall be permitted only of vegetative matter and only if such composting is: (1) confined to an area to the rear of the house and in a receptacle approved by the AAC, (2) not Visible From Neighboring Property or from any street, and (3) maintained in an inoffensive manner.

(C.06) Construction of Improvements. No improvements shall hereafter be constructed upon any portion of the Property without the prior written approval of the AAC. During the construction of the primary residence or other substantial Improvement, the Owner shall provide or assure that the contractor employed by the Owner provide portable toilet facilities which will be maintained and serviced by a certified sanitary service company and a trash dumpster, which shall be regularly maintained. During the construction of any Improvements, the Owner of the Lot(s) upon which the Improvements are being constructed shall keep, and shall cause all contractors and subcontractors constructing the Improvements to keep, the roads and passageways of the Property clear and free of debris and the Lot free from Trash. The positioning of all Improvements upon Lots within the Property is hereby expressly made subject to AAC review and approval.

(C.07) Lot Maintenance. The Owners or occupants of all Lots shall at all times keep all weeds and grass cut in an attractive manner, and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements as incident to construction of Improvements thereon as herein permitted. DECLARANT reserves the exclusive right to storage materials and equipment upon any portion of the Property as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other Improvements upon the Property.

The exterior of each residence and garage shall be maintained in good repair, including but not limited to the maintenance of: (1) exterior paint such that no peeling of the paint exists, and (2) rain gutters and downspouts such that they are properly attached to the residence and are functional and operational for their intended purpose. All fences, if any, which have been erected on any Lot by DECLARANT or others shall be maintained in good repair by Owner, and Owner shall promptly repair or replace the same in event of partial or total destruction. The drying of clothes outside is prohibited. New building materials used in the construction of Improvements erected upon any Lot may be placed upon a Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the Improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

(C.08) Use of Recreation and Open Spaces. No land within any Recreation and Open Space shall be improved, used or occupied, except in such manner as shall have been approved by DECLARANT in its sole and absolute discretion.

(C.09) Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alter the exterior appearance of any Improvement, or the removal, alteration or demolition of any Improvement, shall be performed only with the written approval of the AAC.

(C.10) Violation of Declaration, Bylaws or Rules.

(1) Each Owner and Owner's family, guests, lessees and licensees, shall comply with and be subject to the Windy Walk Estates Residential Restrictions, the Bylaws of HOA Windy Walk Estates, Inc., the Windy Walk

Estates Residential Rules promulgated by the Board of Directors and any easement or restrictive covenant recorded in the public records of Travis County, Texas and affecting the Property or any portion thereof. A violation by an Owner, or by an Owner's family, guest, lessees or licensees, of the Windy Walk Estates Residential Restrictions, the Bylaws of HOA Windy Walk Estates, Inc., the Windy Walk Estates Residential Rules promulgated by the Board of Directors and any easement or restrictive covenant recorded in the public records of Travis County, Texas and affecting the Property or any portion thereof, shall authorize the Board to avail itself of any one or more of the following remedies:

(a1) The right to enter the Property and Improvements and cure or abate such violation and to charge the expense thereof, if any, to such Owner, or

(b1) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to, attorney's fees and court costs.

Before the Board may invoke the remedy provided in Paragraphs (a1) and (b1) above, it shall afford the Owner Notice and a Hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute.

(2) Failure to Pay Assessment. The voting right of an Owner who fails to pay any assessment authorized or permitted by this Declaration, or special charges, shall automatically be suspended and shall remain suspended until any such assessment or special charge, including penalty interest and attorney's fees added to such assessment as authorized in **ARTICLE H** hereof, is paid in full.

(C.11) **Drainage.** There shall be no interference with the established draining patterns over any of the Property, except by DECLARANT, unless adequate provision is made for proper drainage and written approval by the AAC is obtained prior to any construction work or other activity which may cause such interference with established drainage patterns. No object or structures, including but not limited to buildings, fences, or landscaping shall be allowed in a drainage easement except as may be appropriate by the AAC and all appropriate governmental authorities.

(C.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 shall be discharged upon the Property, no open fires shall be lighted or permitted except in a contained barbecue unit (while attended and in use for cooking purposes), within a safe and well-designed interior fireplace or fire-pit.

(C.13) **Temporary Structures.** No tent, trailer, garage, barn, shack, portable building, portable toilet or other Improvement structure of a temporary nature shall be placed upon the Property, except that temporary structures

necessary for storage for tools and equipment, and to accommodate architects, builders and foreman during actual construction may be maintained with the approval of the AAC, such approval to include the nature, size, duration and location of such structure. DECLARANT reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of the Property as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other Improvements upon the Property. Such facilities may be in the form of permanent or portable buildings, trailers or other facilities and may include, but not necessarily be limited to sales, construction and financing office, storage areas, models units, signs, and portable toilets facilities.

(C.14) **Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, drilling, boring, or exploring for or removing (1) oil, gas, or other hydrocarbons, or (2) minerals.

(C.15) **Animals.** No kennel or other facility for raising or boarding dogs or other animals for commercial or other purposes shall be kept on any part of the Property. The keeping of ordinary household pets such as dogs or cats is allowed, but no poultry, fowl, pigs, livestock or other animals may be kept on any portion of the Property. A maximum of four (4) adult dogs and/or four (4) adult cats shall be permitted. Every Owner shall erect appropriate fencing to confine all of their household pets within their Lot.

(C.16) **Unsightly Articles: Vehicles:** No item deemed to be unsightly by the AAC shall be permitted to remain on any portion of the Property so as to be visible from adjoining Lots or public or Private Roadways. Liquid propane, gas, oil, and other exterior tanks approved by the AAC shall be permanently screened from view. Pool and HVAC equipment approved by the AAC and other exterior equipment shall be permanently screened from view. All utility equipment, including but not limited to, electrical boxes and meters shall be screened from view with the use of vegetation. The use of all motorized and non-motorized vehicle on the Property shall be subject to regulation in the Windy Walk Estates Residential Rules, which may regulate, prohibit or limit the use thereof within the Property or Specific parts of the Property. Except as may be permitted in the Windy Walk Estates Residential Rules, no motor vehicle, trailer, boat, marine craft, aircraft, machinery or equipment or any part thereof of any kind may be serviced, repaired (except minor emergency repairs) or stored, on any part of any Lot, easement, right-of-way, or Common Area or in the Private Roadway to such Lot unless such object is concealed from public view on a Lot inside a garage or other approved enclosure. The phrase “approved enclosure” as used in this Section shall mean any fence, structure or other Improvement approved by the AAC. If a complaint is received about a violation of any part of this Section, the AAC will be the final authority on the matter. This restriction shall not apply to any vehicle, machinery, or maintenance equipment temporarily parked and in use for the construction, repair or maintenance of a house or other Improvement in the immediate vicinity.

(C.17) **Mobile Homes, Travel Trailers and Recreation Vehicles.** No mobile homes shall be parked or placed on any portion of the Property at any time, and no travel trailers or recreational vehicles shall be parked outside an approved

enclosure on or near any portion of the Property so as to be visible from adjoining Property or from public or private thoroughfares for more than ninety – six (96) hours.

(C.18) **Fences.** The construction of fences shall be restricted, and no fence shall be constructed on the Property without the prior written consent of the AAC. Galvanized chain link and wire fences are specifically prohibited. The AAC may, in its sole discretion, prohibit the construction of any proposed fence, or specify a different type of material for which any proposed fence must be constructed, or require that any proposed fence be screened so as not to be visible from other portions of the Property.

(C.19) **Mailboxes.** No mailbox shall be erected on a Lot without prior written consent of the AAC. All mailboxes must be 100% masonry.

(C.20) **Siding; Roofs.** One-story plans must have 100% masonry on the front elevation and side elevations (exclusive of side gables, all dormers, front porches, and front gables on non-load bearing areas). Two-story plans must have 100% masonry on the front elevation and side elevations (exclusive of side gables, all dormers, front porches, front gables on non-load bearing areas, and walls not supported by masonry below). Notwithstanding the foregoing, the AAC is empowered to reject or accept a plan that does not meet these masonry requirements, if in the AAC's sole discretion the building would enhance, blend in, or detract from the general appearance of the Lot and/or adjoining property, as the case may be. All siding shall be a lightweight concrete product. Hardy board siding is expressly prohibited, except on eaves and soffits. The eaves and soffits shall not be considered in computing the amount of exterior siding used. The decision of the AAC as to the percentage of exterior siding used, or shown on a construction plan, shall be final and binding on all parties. All roofs shall be tile or nonreflective metal, and are subject to approval by the AAC.

(C.21) **Hunting/Trapping/Firearms.** Hunting, trapping and discharge of firearms or fireworks are expressly prohibited within the Property.

(C.22) **Dumping.** Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive material is expressly prohibited within the Property.

(C.23) **No Overnight Parking.** No vehicle of any kind shall be allowed to park overnight on any street within the Property. Each Lot shall provide reasonable on-site parking for guests.

(C.24) **Motorcycles.** The use of motorcycles and any motorized vehicles shall be limited to those, which have been approved and are legal for street use. Such use shall be limited to the public streets, and the use of motorcycles and any motorized vehicle on any Common Area is expressly prohibited. No off-road use of any motorcycles or motorized vehicle shall be permitted, and all motorcycles operated within the Property shall have mufflers installed in good condition, which limits the exhaust noise to no more than eighty (80) decibels, ten (10) feet from the end of the exhaust pipe.

(C.25) **Trees, Shrubs and Landscaping.** The AAC shall have the right to approve the removal and/or addition of trees, shrubs, hedge, ground cover and all other landscaping, notwithstanding the landscaping requirements referenced in Section **D.07**. All landscaping must be maintained in a healthy and attractive condition and be consistent with the overall style and appearance of the Property.

(C.26) **Underground Utility Lines.** Except as may be otherwise approved by the AAC, 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 the property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved in writing by the AAC; provided, however, that no provision hereof shall be deemed to forbid the erection or temporary power or telephone structures incident to the construction of buildings or structures which have been previously approved in writing by the AAC. The installation method, including, but not limited to, location and type of installation, for both temporary and permanent utilities shall be included in the Plans and Specifications and approved in writing by the AAC.

(C.27) **Improvements and Alterations.** No structure, Improvements, alterations, repairs (excluding routine repairs), excavations or other work which in any way alters the exterior appearance of any structure within the Property or the appearance of any other Improvement located thereon from its natural or improved state existing on the date such Property was first conveyed in fee to the current Owner, purchased or annexed by DECLARANT, whichever is later, shall be made or done without the prior approval of the AAC.

(C.28) **Solar Equipment.** Request for approval of installation of any type of solar equipment shall be included in the Plans and Specifications and approved in writing by the AAC.

(C.29) **Garages.** Each single family residential structure shall have a minimum two-car garage. No attached or detached garage shall face the street (front-loaded). A front load garage will require a variance from the AAC.

(C.30) **Trees.** The native trees larger than eight (8) inches in diameter, measured six (6) feet from the base of the tree, on any Lot shall not be destroyed or removed from any Lot without the prior approval of the AAC.

(C.31) **Culvert/Drainage Improvements Construction.** As part of the construction on a Lot of any driveway or other passageway that connects to or will connect to a public or private road, the Owner of such Lot is required to construct such culverts and other drainage improvements as may be required by the AAC, Travis County, or any other governmental authorities. All such culverts and drainage improvements shall comply with the specifications of Travis County and other applicable governmental authorities. Unless required by the AAC or Travis County, no culvert shall be constructed on any driveway in the Property.

ARTICLE D

RESIDENTIAL RESTRICTIONS

In additions to the general restrictions set forth above, the Property and any portion thereof that has been subdivided into Lots shall be subject to the following limitations and restrictions, which are designed to protect the residential character of the Property.

(D.01) **Residential Use.** All Lots within the Property shall be improved and used solely for single- family residential use, except that, as to any specific areas, DECLARANT may, in its sole and absolute discretion, permit other Improvements and uses.

(D.02) **Plans and Specifications.** Each Owner shall submit detailed Plans and Specifications pursuant to the rules of the AAC, and such Plans and Specifications must be approved in writing prior to the commencement of construction of any Improvements. The Plans and Specifications shall include, but not be limited to:

- 1) A site plan showing the location of the home, fences, mailbox, driveway(s), septic system, septic field, utilities, and all other Improvements to the Lot.
- 2) A set of house plans by a registered architect, builder or designer that clearly demonstrates that the house described by the Plans is designed for the specific Lot, except where a master set of plans has been approved by the AAC and can be repeated; and floor plans, foundation plans, building section, landscape plan, specifications including detailed descriptions and samples of all exterior materials and finishes.

(D.03) **Time for Construction**

(1) The construction of a structure or Improvement shall be continuous and proceed in an orderly fashion without interruption, and any structure or Improvement on a Lot shall be completed in a reasonable time after commencement of construction, not to exceed eighteen (18) months from the commencement of construction.

(2) Construction shall take place Monday through Saturday from 7:00am to 7:00pm. No construction shall take place at night or before sunrise. No construction shall take place on Sunday.

(3) Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, excavation or site preparation for the purpose of constructing the foundation.

(4) Materials and equipment necessary for construction, and all debris resulting from clearing or construction shall be confined to the Lot and stored in either a dumpster or bin and removed at the

end of construction, and shall not be left on any other Lots, Common Areas, or roadways.

(D.04) **Improvement and Use.** The Property shall be used as home sites for single-family residences only. All Lots within such areas shall be improved and used solely for single-family residences. All Lots are subject to the LCRA Highland Lakes Watershed Ordinance. No Lots within any portion of the Property designated by DECLARANT for use as single-family residential shall be improved or used except by a dwelling or structure designated to accommodate not more than a single family, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-family residence. Each such dwelling on a platted Lot shall have an attached or detached garage for two (2) or more cars. Garages shall be used for the storage of automobiles and other personal property. No garage shall be converted into living space unless a replacement garage complying with the provisions of this Declaration is constructed prior to such conversion and such conversion is approved by the AAC. All outbuildings will be constructed of the same materials and be consistent with the architectural design of the primary residence. As used herein, the term “residential purposes” shall be construed to prohibit mobile homes or trailers being placed on the Lots, or the use of said Lots for garage apartments. No Lot shall be used for business or professional purposes of any kind (including, without limitation, childcare, and group homes), for any commercial or manufacturing purposes. Outbuildings and storage sheds shall be permitted subject to the prior written approval of the AAC. All one-story single-family residential structures shall have a living area of not less than Three Thousand (3,000) square feet, exclusive of open and closed porches, patios, garages, port-a-caches, balconies or decks. All two-story single family residential structures shall have a living area of not less than Three Thousand Five Hundred (3,500) square feet exclusive of open and closed porches, patios, garages, port-a-caches, balconies or decks.

(D.05) **Rentals.** Nothing in this Declaration shall prevent the rental of any Property within the Property by the Owner thereof for residential purposes. Leases must be for periods of at least six (6) months.

(D.06) **Construction in Place.** All dwellings and structures, except children’s playhouses constructed within the property, shall be built in place on the Lot, it being the intent of the Declaration that only new construction be placed and erected on the Property.

(D.07) **Set-Back Requirements.** Building set back lines shall be a guide to locating the house and varies as to location. This line is not meant to encourage all houses to be aligned but to retain the estate concept and place houses away from the roadway. It is encouraged for building sites to be a minimum of sixty-five (65’) feet from the front property line. Likewise, no building or structure shall be located nearer than twenty feet (20’) in an interior Lot line shown on the plat. No building or structure shall be located nearer than Ten feet (10’) of a Lot line shown on the plat that is on the boundary of the subdivision. Fences and Driveways shall not be considered as part of a structure for purposes of this Section. In the event a buyer purchases two (2) or more adjoining Lots and desires to construct a dwelling across the common side Lot line(s), the AAC may

permit such act by written waiver of the side Lot line setbacks, provided there is not then, or known to be planned, any utility easement along the common side Lot line. Said approval will be subject to the approval of and compliance with any City, County or State statutes or guidelines.

(D.08) **Yards and Sprinkler Systems.** All yards, including trees plantings of all types shall be well maintained and kept neat, trim and free of debris at all times. The front yard of any residence shall consist of that area between the street (or streets) adjacent to the Lot, the Property lines on each side of the Lot, and the front building line or lines of the resident extended to the Property lines on each side of the Lot. The front yard of each residence shall be sodded for a length of fifty (50) feet (measured from the front yard, and extending to side lot lines) and contain an underground sprinkler system of a design adequate to water such area, provided, however, that those areas reserved for trees or other plantings and landscaping as approved by the AAC need not be sodded. Above ground watering systems are prohibited. All Landscaping plans must be submitted to the AAC prior to installation. All front yard landscaping is required within sixty (60) days after construction is completed.

(D.09) **Driveways.** All driveways must be at least twelve feet (12') wide and constructed of concrete or pavers. Garage doors shall not be visible from the street or streets adjacent to the Lot, unless permitted otherwise by the AAC.

(D.10) **Swimming Pools.** Moveable aboveground swimming pools are strictly prohibited. All swimming pools must be in a fenced enclosure.

(D.11) **Front Door Height.** The front door of each residence constructed on the Property shall be no less than eight (8) feet tall, unless permitted otherwise by the AAC.

ARTICLE E

The ASSOCIATION

(E.01) **Organization.** The Association shall be a non-profit corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law or set forth in its Articles and Bylaws and in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(E.02) **Membership.** The Owner of each Lot, whether such Owner be one or more persons or entities, shall, upon and by virtue of becoming such Owner, automatically become a member of the Association and shall remain a member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the fee ownership of each Lot and may not be separated from such ownership. Whenever the fee ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument be provided for transfer of membership in the Association, and no certificate of membership will be issued.

(E.03) Voting. The DECLARANT shall be entitled to four (4) votes per Lot owned by DECLARANT. All other Owners shall be entitled to one (1) vote per Lot owned. If more than one (1) person holds an interest in any Lot, all such persons shall be members of the Associations; and the vote for such multiple-owned Lot shall be exercised as the Owners among themselves determined, but in no event shall more than one (1) vote be cast with respect to any Lot not owned by DECLARANT.

(E.04) Joint or Common Ownership. Any Property interest, entitling the Owner(s) thereof to vote as herein provided, held jointly or in common by more than one (1) person, shall require that the Owners(s) thereof designate, in writing, the individual person or Owner who shall be entitled to cast such vote(s) and no other person shall be authorized to vote on behalf of such Lot. A copy of such written designation shall be filed with the Secretary of the Board before any such vote be casted, and upon the failure of the Owner(s) thereof to file such designation, such votes shall neither be cast nor counted for any purpose whatsoever.

(E.05) Proxy Voting. Any Owner, including DECLARANT, may give a revocable written proxy to any person, authorizing such person to cast the Owner's votes on any matter. Such written proxy shall be in such form as may be prescribed by the Bylaws, but no such proxy shall be valid for a period of greater than eleven (11) month, and shall not be valid unless filed with the Secretary of the Board of Directors in the manner required by the Bylaws.

(E.06) Cumulative Voting. The cumulative system of voting shall not be allowed.

(E.07) Quorum for Membership Action. With respect to any annual or special "general" membership meeting of the Association, at the first call of such meeting, the presence at the meeting in person or by proxy of sixty-six percent (66%) of the total votes of the membership shall constitute a quorum. If the required quorum in not forthcoming, at such meetings, the meeting may be adjourned and recalled on the same day, and the required quorum at such meeting shall be one-half (1/2) the required quorum at such meeting immediately preceding. This procedure may be continued until a quorum had been obtained.

(E.08) Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and Bylaws, as the same be amended from time to time. Initially, the Board will be composed of appointees of DECLARANT. After eighty percent (80%) of the Lots in the Subdivision, including any and all Lots which may be added to the Subdivision pursuant to Section B.02 hereof, have been conveyed by Contract for Deed or Deed, and DECLARANT has no intention of adding any additional Lots or sections to the Subdivision, then the initial members of the Board shall arrange for an election of the members to elect three (3) members of the Association to replace them on the Board. The election shall be in accordance with Section E.03 hereof.

(E.09) Duties of the Association. Subject to and in accordance with these restrictions, the Association, acting through the Board, shall have and perform each of the following duties:

(1) Association Property.

(a) Ownership and Control. To operate and maintain all Association Property and Private Roadways, Recreation and Open Spaces and other Common Areas, right-of-way, and Entrance Monument Easement together with all Improvements of whatever kind and for whatever purpose which may be located in said areas; to accept and own Private Roadways, Recreation and Open Spaces, and other Common Areas conveyed to it by DECLARANT, and to accept, own, operate and maintain all other property, real and personal, conveyed to the Association. All of the areas designated as Common Areas on the Plat are hereby dedicated as common areas for the use and benefit of all persons and entities owning property or an interest in any property in the Subdivision.

(b) Repair and Maintenance of Common Areas. To maintain in good repair and condition, and make capital improvements to all Association Property and Common Areas.

(c) Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect upon or with respect to any Association Property or Common Area, to the extent that such taxes and assessments are not levied directly upon the Members. Notwithstanding the foregoing, each Owner, including without limitation, the Owner(s) of Lots 1 and 15, shall be obligated to pay the real estate taxes upon any portion of the Common Areas that are a part of such Owner's Lot(s). The Association shall have all rights granted by law to contest the legality and the amount of taxes and assessments levied against the Association Property.

(2) Insurance. To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount to carry out the Association functions.

(3) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Windy Walk Estates Residential Rules and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of its functions, including the use and occupancy of Association Property and Common Area. Without limiting the generality of the foregoing, such Windy Walk Estates Residential Rules may set dues and fees and prescribe the regulations governing the operation of Association Property and Common Area. Such Windy Walk Estates Residential Rules may also prescribe regulations governing the use of the Common Areas and establish charges for the use of the Recreation and Open Space by Owners or non-Owners. Each Member shall be entitled to examine such Windy Walk Estates Residential Rules and Bylaws at any time during normal working hours at the principal office of the Association.

(4) **Architectural Control Committee.** To appoint and remove Members of the AAC after DECLARANT has delegated such rights to the Association pursuant to **ARTICLE F, Section F.16.**

(5) **Enforcement.** To enforce on its own behalf and on behalf of all Owners, this Declaration, as beneficiary of said covenants, conditions and restrictions and as assignee of DECLARANT; and to perform all other acts, whether or not anywhere expressly authorized herein, as may be reasonably necessary to enforce any of the provisions of Windy Walk Estates Residential Restrictions and Windy Walk Estates Residential Rules. The Board shall be authorized to institute litigation, settle claims, enforce liens and take all such actions as it may deem necessary or expedient to enforce the provisions of Windy Walk Estates Residential Restrictions and Windy Walk Estates Residential Rules; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against DECLARANT, its heirs, successors and assigns.

(6) **Financing.** To execute mortgages, both construction and permanent for the construction of facilities, including Improvements on Property owned by or leased to the Association, and to accept lands in Recreation and Open Space, whether or not improved, from DECLARANT subject to such mortgages or be assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether DECLARANT or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien as shall be deemed appropriate by borrower, whether DECLARANT or the Association, on the Improvement or other facility to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of the Members of the Association, or otherwise, or any combination thereof, as may be deemed appropriate by DECLARANT or the Association, as the case may be, but subject to the limitation imposed by this Declaration.

(7) **Records.** To keep books and records of the Association's affairs.

(8) **Other.** To carry out and enforce all duties of the Association set forth in Windy Walk Estates Residential Restrictions and Windy Walk Estates Residential Rules.

(E.10) **Powers and Authority of the Association.** The Association shall have the powers of a Texas non-profit corporation, subject only to such limitation upon the exercise of such power as are expressly set forth in the 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 shall have the power and authority at all times as follows:

(1) **Assessments.** To levy assessments as provided in **Article H** below. An assessment is defined as that sum which must be levied in the manner and against the Property set forth in Article H hereof in order to raise the total amount for which the levy in question is being made.

(2) **Right of Entry and Enforcement.** To enter at any time in an emergency, or in a non-emergency after reasonable prior written notice, without being liable to any Owner, upon any portion of the Property or into any Improvement thereon, or onto any Common Area for the purpose of enforcing Windy Walk Estates Residential Restrictions or Windy Walk Estates Residential Rules or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the restrictions or Windy Walk Estate Residential Rules. An emergency shall exist where circumstances result in an immediate threat to property, or the health and welfare of persons. The Association shall also have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of Windy Walk Estates Residential Restrictions.

(3) **Conveyance.** To grant and convey to any person or entity interests in the Association Property, including fee title, leasehold estates, easements, right-of-way, or mortgages out of, in, over or under any Association Property for the purpose of constructing, erecting, operation or maintaining thereon, therein or thereunder:

- (a) Parks, parkways, campgrounds, or other recreational facilities or structures;
- (b) Roads, streets, walks, driveways, trails and paths;
- (c) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (d) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and
- (e) Any similar public, quasi-public, or private Improvements or facilities.

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

(4) **Manager.** To retain and pay for the services of a persons or firm (the "Manager") to manage and operate the Association, including its 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 Board may delegate any

other duties, powers and functions to the Manager. The Owners hereby releases 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. Any management agreements entered into by the Association shall provide that the agreement may be terminated by the Association, without cause, upon sixty (60) days written notice.

(5) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association, the operation and management of its Property, the enforcement of Windy Walk Estates Residential Restrictions and Windy Walk Estates Residential Rules, or in the performance of any other duty, right, power or authority of the Association.

(6) Common Area Services. To pay for water, sewer, garbage removal, landscaping, gardening, electric and all other utilities, services and maintenance for the Association Property and Common Area.

(7) Other Areas. To maintain and repair easements, roads, roadways, rights-of-way, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Property, as appropriate.

(8) Common Area. To own the Common Areas and/or to maintain and operate the Common Area whether or not owned by the Association. The Associations, with the consent of DECLARANT, may open the Recreation and Open Space for use by non-Owners and may levy charges in such amount as may be deemed reasonable by the Association for the use of Recreation and Open Space by either Owners or non-Owners.

(9) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or the terms of Windy Walk Estates Residential Restrictions.

(10) Construction on Common Areas. To construct new Improvements or additions to the Common Areas and Association Property.

(11) Contracts. To enter into contract with DECLARANT and other persons, on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or Recreation and Open Space, or to provide any service or perform any function on behalf of DELCARANT or other person.

(12) Permits/Licenses. To obtain and hold any and all types of permits and licenses and to operate restaurants and club facilities, if applicable.

(13) Own Property. To acquire and own and to dispose of all manner of real and personal property whether by grant, lease, gift or otherwise.

(14) Create Another Association. To create a subsidiary or other association to have the rights and powers, and to perform the duties,

obligations or functions necessary to the obtaining of a tax exemption, if it shall ever be ruled or held that an exemption under the IRS code is unavailable to the Association under this Declaration; or alternatively, the Association may retain the rights, powers, duties, obligations and functions which prevent the obtaining of the tax exemption and transfer some or all of its other rights, powers, duties, obligations, and functions to such subsidiary or other association.

(E.11) Indemnification.

(1) Determination by Board. The association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that he is or was a director, officer, committee member, employee, servant or agent of the Association against expenses (including attorney's fees, judgments, fines and amounts paid in settlement) actually and reasonably determined by the Board or a court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *Nolo Contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

All liability, loss, damage, cost and expense incurred or suffered by the Association be reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses of the Association; provided, however, that nothing contained in this Article E shall be deemed to obligate the Association to indemnify any Member or Owner, who is or has been a director, officer, committee member, or non-compensated agent of the Association, with respect to any duties or obligation assumed or liabilities incurred by him under and by virtue of the restrictive covenants as a Member of the Association or Owner of a Lot covered thereby.

(2) Insurance. The Board may purchase and maintain insurance on behalf of any person who is or was a director, office, committee member, employee, servant or agent of the Association, against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

ARTICLE F

Architectural Approval Committee

(F.01) **Membership of Architectural Approval Committee.** The AAC shall consist of not less than one (1) and no more than (5) voting members (“Voting Members”), and such additional non-voting members serving in an advisory capacity (“Advisory Members”) as the Declarant deems appropriate.

(F.02) **Action by AAC.** Items presented to the AAC shall be decided by a majority vote of the current Voting Members of the AAC.

(F.03) **Term.** Each Voting Member and Advisory Member of the AAC shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein.

(F.04) **DECLARANT’S Rights of Appointment.** DECLARANT shall have the right to appoint and remove all Voting Members and Advisory Members of the AAC, prior to the delegation of such power to the Owner(s), if ever, pursuant to Section **F.16** hereof. In making such appointment to the AAC, DECLARANT shall consider, but not be bound by, nomination made by the Owner(s). Nothing herein shall be construed to limit or restrict in any manner the DECLARANT’S right to remove Voting Members and Advisory Members of the AAC who were appointed by DECLARANT, whether or not such persons were nominated by the Owner(s).

(F.05) **Power and Duties.**

(1) **General.** The AAC shall have all powers and duties conferred or imposed upon it by this Declaration and all inherent powers necessary or proper in the performance of its duties, as set forth in this Declaration or its rules. In addition thereto, and without limiting the generality of the foregoing, the AAC shall have the following specific powers and duties:

- (a) To approve all Plans and Specifications;
- (b) To review and inspect all construction or proposed construction in the Property;
- (c) To set such height elevation and setback requirements as it deems necessary or proper whether or not such limitations are contained herein or on the face of any applicable plat;
- (d) To prescribe for any given section or area of development certain building or architectural restrictions, method of development, limitation on types of building materials, placement of structures, colors, or other similar restrictions or limitation as it may see fit;
- (e) To control the spacing or orientation of all dwelling units, buildings, garages, accessory buildings or structures of any type whatsoever, with relation to the front and side yard orientation thereof;
- (f) To prescribe design or construction criteria for sidewalks, driveways, fences, walls, landscaping, or other Improvements;
- (g) To specify types, colors, quality of roofing materials to be applicable to any given area or street;
- (h) To prescribe and charge fees for its services.

(2) **Consultant.** The AAC may, but need not, hire specialized consultants and incur expenses to aid it in reviewing Plan and Specifications. The cost of such specialized consultants and expenses shall be considered to be a cost of the Plan and Specifications of the Lot Owner. Payment of such costs shall be considered as a filing requirement of the Plans and Specifications, and such Plans and Specification will not be considered complete unless and until such costs are paid.

(F.06) Adoption of Rules.

(1) The AAC may adopt such procedural and substantive rules, not in conflict with the Declaration, as it may deem necessary or proper for the performance of its duties.

(2) Unless and until a political subdivision of the State of Texas regulates such matters by law in the Property, the rules promulgated by the AAC may include building codes governing all types of construction of the Property, a fire code, a housing code, and other similar codes as the AAC deems necessary and desirable. To the extent possible, these codes shall (1) be performance based, (2) encourage the use of new technologies, techniques and materials, and (3) be compatible with the codes of Travis County, Texas and the Uniform Building Code.

(F.07) Review of Proposed Construction. Whenever in this Declaration or in any Supplemental Declaration the approval of the AAC is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts, which, in its sole discretion, are relevant. Except as provided in Section **I.06** and **I.07** below, prior to commencement of any construction of any Improvement on the Property or any portion thereof, the final Plans and Specifications thereof shall be submitted to the AAC, and construction thereof may not commence unless and until the AAC has approved such Plans and Specification in writing. The AAC 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 as from time to time shall be assigned to it by the Board, including the inspection of construction in progress, to assure its conformance with Plans and Specifications approved by the AAC. The AAC 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.

(F.08) Procedure for Submission and Approval of Plans and Specifications

- (1) Submission and approval of Plans and Specifications shall be in accordance with the rules promulgated by the AAC, as authorized by this Section F.08.**
- (2) If the AAC fails to approve or disapprove any materials or Plans Specifications submitted to it hereunder within forty-five (45) days after the date shown on the submittal receipt (“Approve Period”) and to give notice of its actions, it shall be conclusively presumed that the AAC has approved such materials as submitted. If the AAC requests additional or amended materials or amended Plans and Specifications (“Amendments”) during the initial Approval Period, the Approval Period shall be automatically extended for twenty-five (25) days following the date upon which such Amendments have been submitted. If the Amendments are not submitted on or before the date specified by the AAC (or if no time is specified, within twenty-five (25) days after the Amendments are requested) (“Amendment Deadline”), then the Plans and Specifications shall be automatically disapproved. If the AAC approves Plans and Specifications on the condition that certain Amendments be submitted (“Conditional Approval”), such Conditional Approval shall expire if the Amendments are not received by the Amendment Deadline.**

(F.09) Meetings of the Architectural Approval Committee. The AAC shall meet from time to time as necessary to perform its duties hereunder. The AAC may, by resolution unanimously adopted in writing, designate one of its Voting Members to take any action or perform any duties for and on behalf of the AAC, except the granting of variance as hereinafter provided. In the absence of such designation, the vote of a majority of all the Voting Members of the AAC taken without a meeting shall constitute an act of the AAC.

(F.10) Action Without Formal Meetings. The AAC may take action without formal meeting by unanimously consenting in writing on any matter which it might consider at a formal meeting. Such unanimous written consent shall constitute the act of the AAC. For the purpose hereof, unanimous written consent shall mean a writing by Voting Members of the AAC.

(F.11) No Waiver of Future Approvals. The approval or consent of the AAC to any Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the AAC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

(F.12) Non-liability of Architectural Approval Committee Members. Neither the AAC, nor any Voting Member or Advisory Member thereof, nor the Board 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 their being in any way connected with the performance of the AAC’s or the Board’s respective

duties under this Declaration unless due to the willful misconduct or bad faith of the AAC or its member or the Board or its member, as the case may be. Neither the AAC nor the Voting Members and Advisory Members thereof shall be liable to any Owner due to the construction of any Improvements within the Property or the creation thereby of an obstruction to the view from such Owner's Lot or Lots.

(F.13) **Variance.** The AAC may grant variance from compliance with any of the provisions of this Declaration or any Supplemental Declaration, including, but not limited to, restrictions upon height, bulk, size, shape, floor area, land area, placement of structures, set-backs, building envelopes, colors, Materials, or land use when in the opinion of the AAC, in its sole and absolute discretion, such variance will not be adverse to the overall development plan for the Property. Such variance must be evidenced in writing and must be signed by at least a majority of the Voting Members of the AAC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular portion of the Property for which a variance is issued and in the particular instance covered be the variance.

(F.14) **Guidelines for Building.** The AAC may promulgate a set of guidelines not in the conflict with the Declaration and any Supplemental Declarations for building and developing in the subdivision, which shall be general in nature and may be amended from time to time by the AAC. Said guidelines, if any, shall be a part of the Windy Walk Estates Residential Rules.

(F.15) **Submission of Final Plans and Specifications.** The final Plans and Specifications shall be submitted in triplicate to the AAC Attention: Concor Development, LLC; 1736 Bee Creek RD, Spicewood, TX 78669, or such other address as may be designated from time to time, one copy of which will be returned to the person submitting the Plans with an endorsement as to the date received by the AAC.

(F.16) **Delegation of Appointment Powers.** The DECLARANT shall have the right, but not the obligation to delegate to the Association in writing the right to determine the number of Voting Members and Advisory Members and the right to appoint and remover Voting Members and Advisory Members of the AAC and upon such written delegation of authority filed of record in the Real Property Records of Travis County, Texas, the selection of Voting Members and Advisory Members to serve on the AAC shall be by separate election in which the Owners shall have the same relative voting power as provided hereinabove for elections of the Association.

(F.17) Inspection of Work.

(1) Completed Work. Inspection of completed work and correction of defects shall proceed as follows:

(a) Upon the completion of any Improvement for which the final Plans and Specifications were approved under this Declaration, the Owner shall give written notice of completion to the AAC.

(b) Within such reasonable time as the AAC set in its rules, but not to exceed twenty (20) days, thereafter, the AAC or its duly authorized representative may inspect such Improvement. If the AAC finds that such work was not done in strict compliance with all approved Plans and Specifications, it may notify the Owner in writing of such noncompliance within seven (7) days, specifying in reasonable detail the particulars of noncompliance, and may require the Owner to remedy the same.

(c) If upon the expiration of forty – five (45) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the AAC shall notify the Board of Directions in writing of such failure. Upon notice to the Owner, given as provided in Section I.04, the Board shall conduct a Hearing at which it shall determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of the announcement of the Board ruling. If the Owner does not comply with the Board's ruling within such a period, the Board, at its option, may either remove the non-complying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for all reasonable expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy as assessment against such Owner and Improvement in question, and the land upon which the same is situated, for reimbursement. And the same shall constitute a lien upon such land and Improvement and be enforced in the same manner provided for assessment liens in Article H hereof.

ARTICLE G USE OF COMMON AREAS

(G.01) **Use.** Each owner, the member of his family who reside with him and each lessee of any portion of the Property and the members of his family who reside with him in the Subdivision shall be entitled to use the Common Areas subject to:

(a) The provisions of Windy Walk Estates Residential Restriction and Windy Walk Estates Residential Rules, and each person who uses any Common Areas, in using the same, shall be deemed to have agreed to comply therewith:

(b) The right of the DECLARANT and the Association to charge reasonable dues and use fees, which fees shall be in addition to assessments levied pursuant to **Section H.**

(c) The right of the DECLARANT and the Association to suspend the rights to the use of any Common Areas by any members or lessee and their respective families, guests and invitees for any period during which any assessment against the Member's Property remains past due and unpaid; and, after Notice and Hearing by the Board, the right of the DECLARANT and the Association to invoke any remedy set forth herein for any other infraction.

(d) The right of the DECLARANT and Association, upon demand, to require that a security deposit be made and kept with the DECLARANT or the Association to secure all sums, and to guarantee performance of all duties, due and owing or to become due and owing, to the DECLARANT and the Association;

(e) Such right to use Common Areas as may have been granted to others; and

(f) Such covenants, conditions and restrictions as may have been imposed by the Association.

(g) The right of the DECLARANT and the Association to limit the use of certain Common Areas to Owners or occupants within certain areas of the Property.

(G.02) **Damages.** Each Owner and other party authorized to use the Common Areas under Section **G.01** above shall be liable to the DECLARANT and the Association for any damage to Common Areas, which may be sustained by reason of the conduct, including the negligent or intentional misconduct, of such person or his family, guests or invitees. If the Lot, the ownership or leasing of which entitles the Owner or lessees thereof to use Common Areas, is owned or leased jointly or in common, the liability of all such joint or common Owners or lessees shall be joint and severable. The amount of such damage may be assessed against such person's real and personal property on or within the Property, including the leasehold estate of any lessee or the lessor of such lessee, and may be collected as provided in Section H below for the collection of assessments.

(G.03) Damage and Destruction. In case of destruction of or damage to Common Areas by fire or other casualty, the available insurance proceeds shall be paid to the Association for the benefit of the Members and their mortgagees, and the Association shall contract to repair or rebuild the Common Areas so damaged. Should the insurance proceeds be insufficient to pay all of the costs of repairing or rebuilding the damage, the Association may levy a special assessment as provided for the **Article H.** to make good any deficiency. If the Board determines not to rebuild any Common Areas so destroyed or damaged, or to build facilities substantially different from those, which were destroyed or damaged, it shall call a special meeting of the Members to consider such decision. If the Members, by three-fourths (3/4) of the votes cast at such meeting, elect to ratify such decision, the Board shall act accordingly; but if the Members do not by such percentage elect to ratify such decision, the Board shall proceed to repair or rebuild the damaged or destroyed facility with payment therefor to be made as set forth in this Section.

(G.04) Ownership, Maintenance, and Assessments for Maintenance of Private Roadways within Windy Walk Estates.

(a) In accordance with the provision and authority granted under **E.09(1)(a)** and **E.10(1)** and **Section H** of this Declaration, the Association shall have the obligation to maintain, and to levy and collect assessments for the maintenance of any private roadways located in the Subdivisions that are owned by the Association or the DECLARANT and are not dedicated to and maintained by Travis County Texas or another appropriate government authority (collectively, the “Private Roadways”), as those Private Roadways, if any, are depicted on the final subdivision plat for the Property or are otherwise designated by the Association or the DECLARANT, and any security gates or other devices controlling access (the “security facilities”) to the Private Roadways. Without limitation upon the foregoing, Windy Walk Cove shall be maintained as Private Roadways occupying **Lot 16** of the Property and appurtenant Common Areas. The Association shall be responsible for the maintenance and operation of all Private Roadways, and all roadside ditches, drainage channels, reno mattresses, headwalls, culverts and other drainage infrastructure appurtenant to and utilized for the Private Roadways within the Property. All Private Streets and appurtenance drainage improvements shall be maintained by the Association at a minimum to Travis County standards for public streets and drainage. Travis County shall have no responsibility or obligation whatsoever to maintain the Private Roadways and/or private drainage infrastructure.

(b) Except as otherwise provided below, no barriers may be placed permanently or temporarily in the Common Areas which would result in obstructing vehicles or pedestrian traffic over the Private Roadways or which would inhibit flow onto drainage easements located upon the Property. Notwithstanding, the foregoing, (i) Security Facilities, and (ii) temporary barriers for directing traffic away from or around areas where construction or repairs are taking place or limiting access to certain parts or all of the Property in an emergency or

apparent emergency shall be permitted. As express easement is hereby granted across the Private Roadways and any adjoining Common Areas for the use of the surface for all government functions, vehicular and non-vehicular, including fire and police protection, solid and other waste materials pick up and any other purpose any governmental authority deems necessary. Owners and their respective tenants, agents, and invitees shall have the benefits or use of the Private Roadways as provided in and subject to the provisions of Section G.01 hereof and the other terms and provisions of this Declaration, it being the intent of Declarant, that subject to any Security Facilities and the terms and provisions of this Declaration, there be a free flow of traffic over the Private Roadways.

(c) The Association shall levy assessments against each Lot for the cost of maintenance of and taxes assessed against the Private Roadways and the Security Facilities, as the Association determines appropriate and in accordance with the provisions of the Declaration. The Association may from time to time dedicate some or all of the Private Roadways to Travis County or other appropriate governmental authorities.

(d) If the Private Roadways are acquired by Travis County or other appropriate governmental authorities, an inspection by Travis County and/or other governmental authorities may be required and modification and improvements to said Private Roadways may be necessary before the Travis County or other governmental authorities will accept the streets, and all Security Facilities shall be removed by the Association to meet governmental standards.

ARTICLE H FUNDS AND ASSESSMENTS

(H.01) Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) quarterly or yearly Assessments or charges, (b) special Assessments for capital Improvements, and (c) reimbursement Assessments, all of such Assessments to be established and collected as hereinafter provided. In addition to the foregoing, and where any Assessment benefiting a specific area owned by such Owner as provided in Section H.10 below and any Assessment upon the transfer of Property or portions thereof as provided in Section H.18 below. The quarterly, yearly, special, reimbursement and other Assessments together with interest, costs and reasonable attorney's fees, shall to the full extent permitted by law, be a charge of the land and the payment thereof shall be secured by a continuing lien upon the property against which each such Assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the Personal obligation of the party who was the Owner of such property at the time when the assessment fell due, notwithstanding any subsequent transfer of title to such Lot.

(H.02) Purpose of Assessments. The assessments levied by the Association shall be used to maintain, preserve and operate the Common Area and Association Property for the benefit of the Owners, and to promote the recreation, health, safety and welfare of the Owners and invitees of the Owners, and to carry out the powers, duties and functions of the Association as set forth in the Declaration. Such purpose shall also include, but not limited to, providing utility service to the Common Area and Association Property, paying ad valorem taxes thereon, maintaining amenities and/or recreational facilities for the benefit of the Owners, maintaining and preserving said property, creating reasonable reserves for future maintenance, preservation, operation and/or capital improvements or expansion of said property, and doing any other thing necessary or desirable in the opinion of the Board to keep and maintain the Property, in good and neat order, or which the Board considers of general benefit to the Owners or occupants of the Property, so long as said judgment is exercised in good faith.

(H.03) Property Subject to Assessment.

The Association shall levy:

One Assessment against each Lot, regardless of whether or not the Lot is improved.

(H.04) Exempt Property. Anything in this Article H to the contrary notwithstanding, no Assessment shall be levied against any portion of the Property owned by DECLARANT. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the Assessment created herein. However, no land or Improvements devoted to dwelling use shall be exempt from said Assessments.

(H.05) Assessment Prorated. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.

(H.06) Personal Liability. Each Owner shall be personally liable for an Assessment and the same shall become a lien against each lot and all Improvement thereon. The Association may enforce payment of such Assessment in accordance with the provision of the Article.

(H.07) Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursement shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes permitted hereunder. To the extent compatible with current operation needs, excess funds of the Association shall be maintained in a checking or savings account or securities.

(H.08) Regular Annual Assessments (Billed Quarterly). Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions hereunder, including a reasonable provision for contingencies and appropriate replacement reserves. Except in the case of special Assessments as provided for herein, uniform and equal Assessments sufficient to pay such estimated expenses shall then be levied. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association at any time, and from time to time, may levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association in advance in quarterly installments on or before the first day of January, April, July, October, or in such other manner as the Board, in its sole and absolute discretion, may designate.

(H.09) Special Assessments. In addition to the regular quarterly Assessments provided for about Section **H.08**, the Board may levy in any Assessment year special Assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair, maintenance or replacement of a capital Improvement upon any Common Area, including fixtures and personal property related thereto.

(H.10) Assessment Benefiting Specific Areas. The Association shall also have authority to levy Assessments against specific local areas and Improvements which Assessment expended for the benefit of the properties so assessed. The Assessment levied under this Section shall be levied in proportion to the benefits conferred or to be conferred, as determined by the Board, and, therefore, the amount levied against each parcel of land or Improvement need not be equal. Any such Assessment shall constitute a lien on the properties so assessed and such liens shall be enforced in the same manner and to the same extent as provided in this Article.

(H.11) Commencement and Collection of Quarterly Assessments. The initial Quarterly Assessment is hereby established by Declarant in the sum of \$225 per Lot, and shall be due and payable at the purchase of the Lot from Declarant, subject to prorating as described in Section H.05. The Board shall thereafter fix the amount of the yearly Assessment, billed Quarterly against each Lot thirty (30) days in advance of each January 1st or as soon thereafter as is practicable, and shall fix the date such amounts shall become due. Notice of Assessment shall be sent to every Owner subject thereto. The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the Assessment against a specific Lot has been paid.

(H.12) Nonpayment; Liens, Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall be deemed past due and in default. Past due Assessment shall bear interest at a rate set by the Board. No diminution of Assessment or setoff shall be claimed or allowed by any alleged failure of the Board or Association to take any action required to be

taken by the Board or Association or for the inconvenience arising from making repairs or Improvements which are the responsibility of the Association, or from any action taken to comply with any applicable law, ordinance or regulation of any governmental authority, or for any other reason. No owner shall be exempt from payment of Assessments because of non-use of any of the property or facilities in connection with which the Assessment has been made. The amount of any Assessment, whether regular or special, assessed against any property plus interest on such Assessment at such lawful rate as the Board may designate from time to time, and the cost of collecting the same, including reasonable attorney's fees, shall be a charge on the land and shall be secured by a continuing lien (Which shall be deemed to be a vendor's liens, if permitted by applicable law) upon such Lot and the Improvements thereon. Such lien shall be prior to any declaration of homestead. The Association may either (a) bring an action at law against the Owner personally obligated to pay the same or (b) foreclose said lien against the Lot, or (c) both. No Owner may waiver or otherwise escapes liability for any Assessment by nonuse of Common Areas or Association Property, or any other common area or by the abandonment of any Lot.

Each Owner, by such Owner's acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such Assessment as a debt and to enforce such lien by any method available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale. All Owners expressly grant to the Association a power of sale in connection with the non-judicial foreclosure of such liens and the right to appoint a trustee or successor trustee to post or cause to be posted any required notices and to exercise such power sale and conduct any non-judicial foreclosure sale. Non-judicial foreclosure shall be conducted by notice and posting of sale in accordance with the then applicable laws of the State of Texas. The Association shall have the right to bid on such Lot in connection with any such non-judicial foreclosure. The lien provided for herein shall be in favor of the Association, for the benefit of all of the Owners. No provision in this Article H setting forth a specific remedy with respect to enforcement of Assessment shall be construed to limit or waive any other remedy provided in this Declaration or by law.

In addition to the remedies specified in the preceding paragraph, the Board may, after Notice and Hearing to such non-paying Owner, in addition to all other rights and remedies available, restrict the right to such non-paying Owner to use the Association Property and/or Common Areas in such manner as the Board deems appropriate, suspend the voting rights of such non-paying Owner for so long as such default exists, and/or impose such reasonable fines as the Board determines are appropriate and reasonable. Such fines shall be deemed a reimbursement expense.

A certificate executed and acknowledged by a majority of the members of the Board stating the indebtedness secured by such lien shall be conclusive upon the Association as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon request and for a reasonable charge.

(H.13) Mortgage Protection. Notwithstanding any other provision of this Declaration, no lien created under this Article H or under any other article of this Declaration, nor any lien arising by reason of any breach of the Windy Walk Estates Residential Restrictions or Windy Walk Estates Residential Rules, nor the enforcement of any provision of the Declaration or of any Supplement Declaration shall defeat or render invalid the rights of the beneficiary under any recorded mortgage or deed of trust of first and senior priority (or any second lien if granted by DECLARANT as an Owner) now or hereafter made in good faith and for value. However, after the foreclosure of any such first (or second) mortgage or deed of trust or after conveyance in lieu of foreclosure, such Lot shall remain subject to this Declaration and shall thereafter be liable for all regular and special Assessments levied by the Association.

(H.14) Effect of Amendments on Mortgages. No amendment of Section H.13 of this Declaration shall affect the right of any beneficiary whose mortgage or deed of trust has the first and senior priority (or second priority) as provided in Section H.13 and who does not join in the amendment thereof, provided that such mortgage or deed of trust is recorded in the mortgage records of Travis County, Texas, courthouse prior to the recordation of such amendment, provided however, that after foreclosure, or conveyance in lieu of foreclosure the property which was subject to such mortgage or deed of trust shall be subject to such amendment.

(H.15) Subordination. The lien for Assessments provided for herein shall be subordinated to the lien of any first mortgage or second mortgage if granted by DECLARANT as Owner). Sale or Transfer of any property subject to unpaid Assessment shall not affect the Assessment lien. However, the sale or transfer of any property subject to Assessment pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such property subject to Assessment from liability for any Assessments thereafter becoming due or from the lien thereof.

(H.16) Reimbursement Assessment as Remedy. The Board, after a Notice and Hearing, shall have the right to levy a reimbursement Assessment against an Owner for costs, including reasonable attorney's fees, incurred or determined as the cost, in bringing the Owner, the Owner's Lot or Improvements thereon into compliance with Windy Walk Estates Residential Restrictions and Windy Walk Estates Residential Rules. The amount of a reimbursement Assessment shall be due and payable within (10) days after notice of the reimbursement Assessment and an amount has been given to the Owner thereof by the Board.

(H.17) Reimbursement of DECLARANT. If DECLARANT elects, without having any obligation to do so, to subsidize the cost of maintenance of the Association Property and/or the Common Area and the administration of the Association, the Board (whether the same is DECLARANT, or DECLARANT's agent or employees, and without being liable for any claim made by any member of the Association that the DECLARANT's fiduciary duty to the other members of the Association has been breached due to a conflict of interest) may execute promissory notes and/or other documents evidencing any debt of the Association

owed to the DECLARANT for expenditures by DECLARANT, and the proceeds of Assessments may be used to repay such debt to DECLARANT.

(H.18) **Assessment on Sale, Transfer or Conveyance of Property.** In the event any Property is sold, transferred, or conveyed by an Owner (the "Transfer"), whether by deed, contract for deed, contract for sale, assignment or other instrument transferring title, then upon the Transfer, a One Hundred Dollar (\$100.00) Assessment shall automatically be levied against the Property and shall be paid by the seller to the Association at the time the Transfer of the Property is closed. DECLARANT reserves the right to waive such transfer fee to builders or developers as it, in its sole discretion, determines necessary. This Assessment shall not apply to the following:

1. Transfers by devise or descent or by operation of law upon death of an Owner;
2. The creation of a lien or encumbrance upon the Property;
3. Transfer upon foreclosure of a lien judicial or non-judicial, or transfer in contemplation of foreclosure; and
4. Transfer by the holders of mortgage lien, where title to the Property was acquired by the holder on the lien at a judicial or non-judicial sale or conveyance in contemplation of a judicial or non-judicial sale.

The DECLARANT shall have the right to waive the provisions of this Section 8.06 on any sales made by DECLARANT.

ARTICLE I MISCELLANEOUS

(I.01) **Term.** This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until December 31, 2030, unless amended as herein provided. After December 31, 2030, this Declaration, including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least three-quarters (3/4) of the Lots then subject to this Declaration.

(I.02) **Amendment.**

(A) **By DECLARANT.** This Declaration may be amended by the DECLARANT without the consent of any other Owner so long as DECLARANT holds a majority of the votes of the Association. Further, this Declaration may be amended by the DECLARANT without the consent of any other Owner whether or not DECLARANT holds a majority of the votes of the Association if the amendment is made to add land that will become subject to this Declaration and any Supplemental Declaration, or

to correct a typographical error, or to comply with the requirement of the Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), Government National Mortgage Association (GNMA), Federal Housing Administration (FHA), or Department of Veterans Affairs (VA). No amendment by DECLARANT shall be effective until there has been recorded in the Deed Records of Travis County, Texas an instrument executed and acknowledged by DECLARANT and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Board certifying that the DECLARANT had the requisite number of votes.

(B) **By Owners.** In addition to the method in **I.02(A)**, this Declaration may be amended by the recording in the Travis County Real Property Records of an instrument, executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least two-thirds (2/3) of the number of votes entitled to be cast pursuant to Sections **E.03**.

(I.03) **Utility Easements.** The DECLARANT reserves the right to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on any areas conveyed to Association or reserved as Common Areas, sewer and other pipelines, conduits, wires and any public utility functions beneath or above the surface of the ground, with the approval of the AAC and with the right of access to the same at any time for the purpose of repair and maintenance.

(I.04) **Notices.** Unless otherwise provided herein, any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

(I.05) **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Community set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas, and all obligations herein shall be performed in Travis County, Texas.

(I.06) **Construction Activities.** This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by the Owner (including DECLARANT) 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, is in compliance with the provisions of this Declaration, and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provisions, including, but not limited to, any provision prohibiting structures, may be granted by the AAC, provided that such waiver shall be only for reasonable period of such construction. Notwithstanding the foregoing, without the approval of the AAC, construction and construction activities on the Property shall be from 7:00am to 7:00pm, Monday through Saturday.

(1.07) **Exemption of DECLARANT.** Notwithstanding any provision in this Declaration to the contrary, neither the DECLARANT nor any of DECLARANT's activities shall in any way be subject to the control of or under the jurisdiction of the AAC. 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 other types of Improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property.

(1.08) **Assignment of DECLARANT.** Notwithstanding any provision in the Declaration to the contrary, DECLARANT may, in writing assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person and may permit the participation, in whole or in part, by any other person in any of its privileges, exemptions, rights and duties hereunder.

(1.09) **Enforcement and Nonwaiver.**

(1) **Right of Enforcement.** Except as otherwise provided herein, any Owner at his own expense, DECLARANT, and/or the Board, shall have the right to enforce all of the provisions of Windy Walk Estates Residential Restrictions. Such right of enforcement shall include both damages, for and injunctive relief against, the breach of any such provision.

(2) **Violations of Restrictions.** Every act or omission whereby any provision of Windy Walk Estates Residential Restrictions or Windy Walk Estates Residential Rules is violated in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner (at this own expense), DECLARANT, or the Board.

(3) **Violation of Law; Compliance with Laws.** Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any of the Property is hereby declared to be a violation of Windy Walk Estates Residential Restrictions and subject to all of the enforcement procedures set forth in said restrictions. At all times, each Owner shall comply with all applicable federal, state, county, and municipal laws, ordinances, rules, and regulations with respect to the use, occupancy, and condition of the Property and any improvements thereon. If any provision contained in the Declaration or amendment

thereto is found to violate any law, then the provision shall be interpreted to be as restrictive as possible to preserve as much of the original provisions as allowed by law.

(4) **Nonwaiver.** The failure to enforce any provision of Windy Walk Estates Residential Restrictions or Windy Walk Estates Residential Rules at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

(5) **Liens.** The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot in the Property in order to enforce any right or effect compliance with this Declaration.

(I.10) **Construction**

(1) **Restrictions Severable.** The provisions of Windy Walk Estates Residential Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(2) **Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(3) **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles hereof.