

AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR ELLIOTT RANCH

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS FOR ELLIOTT RANCH (this "Declaration") is made the date set forth below, by Jim C Elliott and Dalton G Elliott, Co-Independent Executors of the ESTATE OF ROY C ELLIOTT, DECEASED ("Declarant")

RECITALS:

A By Declaration of Covenants and Restrictions for Elliott Ranch recorded in Volume 1241, Page 69 of the Official Records of Hays County, Texas (the "Prior Declaration"), Declarant imposed certain covenants, restrictions, charges and liens upon all of the lots in Elliott Ranch, Phase One, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Book 7, Pages 195 & 196 of the Plat Records of Hays County, Texas, as part of the creation of a subdivision known as "Elliott Ranch" with roads, storm water controls and certain other common facilities for the benefit of the said subdivision

B Declarant has determined that the Elliott Ranch subdivision shall be developed as a single-family residential community with private streets, and towards that end, the above-described subdivision plat of Elliott Ranch, Phase One has been vacated by instrument recorded in Volume 1476, Page 384 of the Official Records of Hays County, Texas, and the real property covered by said prior plat has been resubdivided as ELLIOTT RANCH, PHASE ONE, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Book 8, Pages 273-277 of the Plat Records of Hays County, Texas ("Phase One").

C As the owner of all of the Lots within Phase One and in accordance with Article 14 of the Prior Declaration, Declarant desires to amend and restate the terms of the Prior Declaration in its entirety as hereinafter set forth in order to (i) provide for the preservation of the values and amenities in said subdivision and for the maintenance of said private streets, storm water controls and common facilities, (ii) subject the real property described in Article 2 to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof and for the efficient preservation of the values, attractiveness and desirability of the lots in said Elliott Ranch subdivision, and (iii) create a homeowners association for the purpose of maintaining the private streets and certain other common facilities, administering and enforcing certain covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created

NOW, THEREFORE, Declarant declares that the Prior Declaration is hereby amended and restated in its entirety and that this Declaration shall in all respects replace and supersede the Prior Declaration for all purposes, and that the real property described in Article 2, is and shall be held,

transferred, sold, conveyed and occupied subject to the covenants, restrictions and easements (sometimes referred to as "covenants and restrictions") hereby imposed on said property, and such restrictions and covenants shall constitute covenants running with the land and shall be binding upon all parties having any right, title or interest in any portion of said property, their heirs, successors and assigns, and shall inure to the benefit of each owner of any such property, to wit

ARTICLE I

DEFINITIONS

(a) The "Committee" shall mean the Architectural Control Committee created pursuant to this Declaration to review and approve the Plans and Specifications for the construction of Improvements upon the Property

(b) The "Association" shall mean the Elliott Ranch Homeowners Association, Inc., a Texas nonprofit corporation.

(c) An "Assessment" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration

(d) The "Board" shall mean the Board of Directors of the Association

(e) The "Common Area" shall mean either fee simple or an easement interest in any and all real property and all improvements located thereon, including the Private Streets within the Property, any limited access gates and controls, and landscaping and other improvements located within the right-of-way of the Private Streets and the entryways, the Greenbelt and structural or nonstructural drainage facilities and water quality controls, from time to time (1) conveyed and/or granted to the Association by Declarant, and (2) expressly designated by Declarant to be "Common Area" for the benefit of the Owners and/or the Association and the Members thereof

(f) "Declarant" shall mean Jim C Elliott and Dalton G Elliott, Co-Independent Executors of the ESTATE OF ROY C ELLIOTT, DECEASED, or their respective successors or assigns; provided that any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder

(g) The "Greenbelt" shall mean and refer to Lot 1, Block B of Phase 2 as reflected on the approved Preliminary Plan for the Elliott Ranch subdivision attached hereto as Exhibit A, and which lot when finally platted shall be designated by Declarant to be Common Area for the exclusive use and benefit of the Owners and the Association as a private greenbelt, drainage easement and conservation easement.

(h) "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, barns, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, windmills and any facilities used in connection with water, sanitary sewer, wastewater, septic tank, storm sewer, drainage, gas, electric, telephone, regular or cable television, or other utilities.

(i) "Lot" shall mean and refer to any of the numbered lots shown upon any recorded subdivision map of the Property (including Lots in any permitted resubdivision and Lots in any Additional Land added to this Declaration as provided herein), other than the Private Streets, the Greenbelt or other Common Area

(j) "Member" shall mean each and every person or legal entity who shall hold membership rights in the Association

(k) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, but excluding those having such interest merely as security for the performance of an obligation. Where matters within this Declaration require a vote of the Owners, each Owner (including Declarant) of a Lot shall be entitled to one (1) vote for each Lot so owned. Where a Lot is held jointly or in common by more than one (1) Owner, such Owners thereof designate one (1) Owner among them who shall be entitled to cast such vote and no other person shall be authorized to vote in behalf of such property interest except by proxy signed by such Owners

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

(m) The "Property" shall mean and refer to the real property described in Article 2 hereof, and any Additional Land that may be brought under the scheme of this Declaration as provided in Article 2 hereof, and which is subject to this Declaration or any Supplemental Declaration

(n) "Private Street" shall mean any lot, parcel or tract within the Property designated as a "private street" on any recorded subdivision plat or map of the Property, or any portion thereof, or otherwise designated by Declarant to be used as a private right-of-way or as an access easement to provide ingress and egress to and from the Lots and any public highway, street or road. As used herein, the term "Private Street" shall not include any private driveway, roadway, trail or other accessway located on any Lot

(o) "Supplemental Declaration" shall mean any declaration of covenants, conditions and restrictions which may be hereafter recorded by Declarant to (1) add any Additional Land to the Property, or (2) subject any portion of the Property to further covenants, conditions, or restrictions or (3) to withdraw any real property from the Property

ARTICLE 2
PROPERTY SUBJECT TO THIS DECLARATION

(a) The Property The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Hays County, Texas, and is more particularly described as follows

All lots in ELLIOTT RANCH, PHASE ONE, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Book 8, Pages 293 297 of the Plat Records of Hays County, Texas. and

(b) Phased Subdivision Addition of Land It is contemplated that Declarant may develop certain real property (now owned by Declarant) in the vicinity of the Property for residential purposes and may include such real property within the definition of the Property Declarant, its successors and assigns, shall have the right (but not the obligation) at any time and from time to time, without the consent or approval of any other Owner of any Lot, to bring within the scheme of this Declaration additional land (the "Additional Land") so long as such land is within the land described on Exhibit A attached hereto and provided such Additional Land has been subdivided and platted in accordance with the applicable subdivision regulations of the City of Hays and Hays County, Texas.

As each phase of such land is platted, dedicated and/or developed, Declarant may (but shall not be required to) record one or more Supplemental Declarations and designate such uses, classifications, and covenants, conditions and restrictions as Declarant may deem appropriate for such Additional Land. Any Supplemental Declaration may, but need not, provide that certain provisions of this Declaration are not applicable to the Additional Land covered by such Supplemental Declaration, or may amend or modify the provisions of this Declaration as to any Additional Land Any Supplemental Declaration may provide for its own procedure for the amendment of any provision thereof, as for example, by specified vote of only the Owners of the property within the area subject thereto or a specified vote of only the Owners of some of the property within the area subject thereto. Furthermore, additional properties may be annexed into the Property at any time with the assent of two-thirds (2/3rds) of the votes for each class of Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter

(c) Withdrawal of Land Declarant shall have the right at any time prior to the Transfer Date, as defined in Article 11(c), to reduce or withdraw lands then owned by Declarant from the Property, subject to the approval of a replat, or an amended plat, of the Property in accordance with

the applicable regulations of the City of Hays and Hays County, Texas. Upon any such withdrawal this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to the lands withdrawn. In order to withdraw lands from the Property hereunder Declarant shall be required replat, or amend the plat(s) of the Property in accordance with the applicable regulations of the City of Hays and Hays County, Texas, record such replat or amended plat in the Plat Records of Hays County, Texas, and to record in the Official Property Records of Hays County, Texas, a notice of withdrawal of such land from this Declaration. A copy of such notice of such withdrawal shall be given to the City of Hays. Notwithstanding the foregoing, All Common Area, including the Private Streets and the Greenbelt, shall be transferred and conveyed to the Association, and Declarant may not withdraw any Common Area, including the Private Streets and the Greenbelt, without the approval of the Association, or prior to the incorporation of the Association, without the approval of the City of Hays, and without approval of a replat, or an amended plat, of the Property in accordance with the applicable regulations of the City of Hays and Hays County, Texas.

ARTICLE 3 LAND USE

(a) Lots. Each Lot (other than the Private Streets, the Greenbelt or any other Common Area) shall be used only for single family residential purposes, including related or ancillary uses approved by Declarant, and for no other purpose. No portion of a Lot, nor any building, structure or other Improvement located thereon, except for the entire Lot, together with all Improvements located thereon, may be rented, and such entire Lot may be rented only for single family residential purposes. Garage and other apartments, duplexes, condominiums, townhouses, and other multifamily residential, office, commercial, retail, and industrial buildings and uses are prohibited. Notwithstanding the foregoing, living quarters that are located in an accessory building or structure, that are occupied by members of the family or employees of the Owner or occupant of the Lot, and that are not rented or otherwise used as a separate domicile, shall be permitted.

(b) Common Area. No land within any Common Area shall be improved, used or occupied except in such manner as shall have been approved by the Committee, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and improvement, provided, the use of the Greenbelt shall be limited to use as a private greenbelt, drainage easement and conservation area for the exclusive benefit of the Owners and the Association, and as a public utility easement. No improvements shall be constructed or placed within the Greenbelt, other than drainage, detention and/or water quality facilities and related improvements, such as passive recreational facilities, such as trails, paths or accessways and related improvements, and landscaping that do not change the direction or flow of drainage channels within the Greenbelt or that may obstruct or retard the flow of stormwater runoff or drainage to or through such drainage channels, and public utility lines.

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(c) Signs and Sales Programs No signs of any kind shall be displayed for public view on any Lot excepting that one professional sign of not more than three square foot in size, one sign of not more than thirty-two (32) square feet advertising the property for sale or rent, or signs of modes dimensions used by a builder to advertise the property during the construction and sale period may be permitted. A separate and permanent sign identifying the Elliott Ranch Subdivision may also be erected at each of the entrances to the Property. All signs constructed after the adoption by the City of Hays of sign regulations that apply to the Property shall comply with the applicable provisions of such regulations.

(d) Oil, Gas, Mineral, Mining and Excavation Operations No oil, gas, mineral, mining or excavation operations of any kind or character, no drilling of prospecting for oil, gas or other minerals, no oil, gas or other mineral development operations, refining, quarrying, or mining operations shall at any time be permitted upon any Lot or other area within the Property.

(e) Hunting and Firearms Hunting, trapping, the use or discharge of firearms, and the use or discharge of firecrackers and fireworks on and within the Property is prohibited.

(f) Livestock, Animals, Household Pets No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small and domesticated household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Except as provided in the immediately preceding sentence, no animals, including pigs, hogs, swine, poultry, fowl, wild or dangerous animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property, provided, a limited number of animals may be permitted for limited periods of time if such animals are kept for purposes of students participating in educational, "4H," "FFA," or similar programs. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with the Plans and Specifications approved by the Committee, which shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any Private Street.

(g) Trucks, Buses and Trailers No truck, bus, motor home, recreational vehicle, boat or trailer shall be parked in the Private Street in front of any Lot except for construction and repair equipment while a residence is being built or repaired thereon, and no truck, bus, motor home, recreational vehicle, boat, or trailer shall be parked on the driveway or any portion of the Lot as to be visible from the Private Street in front of any Lot.

(h) Storage and Vehicle Repairs No unsightly storage shall be permitted that is visible from the Private Street in front of any Lot. No boat, trucks or other vehicles shall be stored or kept for the purpose of repair on any Lot, except in enclosed garages or storage facilities protected from the view of the other residents.

(i) Nuisances No noxious or offensive activities of any kind shall be permitted upon any Lot, nor shall anything be done thereon which constitutes a nuisance or which may be or may become an annoyance to the neighborhood.

(j) Temporary Structures No structure or emplacement of a temporary character, mobile home, trailer, derelict, junk or racing motor vehicle, or any motor vehicle without a current license tag, or any tent, shack, or other outbuildings (except a barn as approved by the Committee) which exceeds eight (8) feet in height or is in excess of eight (8) feet in width and ten (10) feet in length, shall be erected, placed, driven onto, altered, or permitted to remain on any Lot at any time, either temporarily or permanently, without the prior written consent of the Committee. No mobile home or preconstructed building of any kind may be moved upon any Lot for any purpose, save and except that Declarant, or its successors or assigns, or duly authorized agents may utilize temporary structures for a sales office or construction office which may be moved onto a Lot.

(k) Garbage and Refuse Disposal No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste and the same shall not be kept, except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and shall be screened so as not to be visible from any other portion of the Property. The Committee shall have the right to require each Owner to subscribe to a specific location for trash service and for the placement of garbage containers for collection purposes.

(l) Maintenance of Lots The Owner of each Lot shall keep grass, weeds and vegetation trimmed or cut so that the same shall remain in a neat and attractive condition. No fence, wall or shrub or other structure or planting which obstructs sight lines shall be permitted without the specific approval of the Committee. The digging or removal of dirt or other surface material from any Lot, except as necessary in connection with landscaping or construction of improvements, is prohibited.

(m) Chemical Fertilizers, Pesticides and Herbicides No chemical fertilizers, pesticides or herbicides other than those approved by the Committee shall be used on any Lot. In addition, the Owner of each Lot shall comply with the terms and provisions of any city-wide, Integrated Pest Management Program that may be adopted by the City of Hays that applies uniformly to all land located within the City of Hays.

(n) Development by Declarant Notwithstanding anything contained in this Declaration to the contrary, Declarant, its successors, transferees, or assigns may conduct business activities related to the development and sale of the Property, and may maintain such Improvements as Declarant determines, in Declarant's sole discretion, to be necessary or appropriate therefor.

ARTICLE 4
ARCHITECTURAL CONTROL COMMITTEE

(a) Membership The Committee shall be composed of three (3) persons. The initial members of the Committee are JIM C ELLIOTT, DALTON G ELLIOTT and CHRIS CAMPBELL, as appointed by Declarant pursuant to a Designation of Architectural Control Committee for Elliott Ranch Subdivision recorded in Volume 1246, Page 549 of the Official Public Records of Hays County, Texas. The appointment of said members of the Committee is hereby in all respects confirmed and ratified. No member of the Committee shall be entitled to any compensation for services performed pursuant to this Declaration. Prior to the Transfer Date as defined in Article 11(c)(11), Declarant shall have the right to appoint and change the membership of the Committee. At any time and from time to time after the Transfer Date, the Board shall have the power to change the membership of the Committee. Any member of the Committee may resign therefrom, and the remaining members of the Committee shall appoint his successor, subject to change by Declarant prior to the Transfer Date or the Board after the Transfer Date.

(b) Approval of Plans and Specifications. No Improvement, and no antenna nor any mechanism or device that provides for the collection, storage or distribution of solar or wind energy for use as thermal, mechanical or electrical energy and that is not part of a building, shall be erected, placed, altered or maintained on any Lot until a copy of the Plans and Specifications and a plan showing the location of such Improvements have been delivered to and approved by the Committee as to the quality of workmanship and materials, harmony of external design with the existing Improvements and as to the location with respect to topography and finished grade elevations. The Committee shall have the power to employ professional consultants to assist it in discharging its duties. The Committee may require the payment by each applicant of a fee in the amount as established from time to time by the Committee as a condition to its review and approval of such Plans and Specifications, and may further condition its approval of such Plans and Specifications upon the payment of the Construction Deposit as hereinafter provided. All decisions of the Committee shall be by the vote of at least two (2) members of the Committee. The decision of the Committee shall be final, conclusive, and binding upon the applicant.

(c) Approval Procedure Two (2) complete sets of the final Plans and Specifications for all Improvements shall be submitted to the Committee prior to the construction of any Improvement. The Plans and Specifications shall be properly prepared in a manner so as to be clearly understood. Each application shall be considered on its own merit, and approval of specific elements for one Lot shall not necessarily be approval for another Lot. The Committee is authorized and empowered to consider and review any and all aspects of construction, construction of other Improvements and location, quality and quantity of landscaping on the property, which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Property. Also, the Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials that may be permitted, in accordance with the reasonable opinion of the Committee. The Committee is authorized to request the submission of samples of proposed construction materials. At the option

of the Committee, one complete set of the Plans and Specifications will be retained by the Committee, and one complete set of plans will be marked "Approved" and returned to the Owner or his designated representative. If found not to be in compliance with this Declaration, one set of such Plans and Specifications shall be marked "Disapproved," accompanied by a reasonable statement of items found not to comply with this Declaration. The Committee's approval or disapproval, as required herein, shall be in writing, provided, if the Committee fails to approve or disapprove the Plans and Specifications within thirty (30) days after the Plans and Specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval by the Committee will not be required. Unless prohibited by this Declaration, when, in the opinion of the Committee, a waiver or modification of any of the restrictive covenants therein would not impair or detract from the high quality of the Property, it may, by written instrument in recordable form, waive or modify any restriction. Any material modifications or changes to the approved set of Plans and Specifications must again be submitted to the Committee for its inspection and approval. Material modifications or changes in Plans and Specifications for residential improvements must be approved or disapproved in writing within ten (10) business days or such modifications or changes shall be deemed to be approved.

(d) Construction Deposit Notwithstanding anything contained herein, the construction of the first residence on a Lot shall not commence unless and until, the Owner of such Lot shall pay to the Association the sum of \$2,000.00 (the "Construction Deposit") to secure the obligation of such Owner to repair any damage to the Private Streets or the Common Areas caused by the Owner, or its contractors, and their respective agents, employees, subcontractors, or suppliers during the construction of the single family residence on such Lot ("Construction Damage"). The Construction Deposit shall be held in an account established by the Association, without liability to the Owner for any interest on the Construction Deposit. Each Owner shall be responsible for and shall at such Owner's sole cost and expense repair any Construction Damage prior to the occupancy of the single family residence constructed on such Owner's Lot. If an Owner fails to so repair all Construction Damage, the Association may cause the Construction Damage to be repaired and may use the Construction Deposit to pay the cost incurred by the Association in repairing the Construction Damage. The Construction Deposit, however, shall not be construed or in any way considered to be the measure of an Owner's liability for any Construction Damage or to limit the obligation of an Owner to pay for the actual amount required to repair all Construction Damage. Each Owner shall be liable for the costs to repair all Construction Damage in excess of the Construction Deposit, and such Owner's Lot shall be subject to a special Assessment levied against such Owner's Lot for such excess costs in addition to the liens provided in Article 9 of this Declaration. The Construction Deposit shall be returned to the Owner upon the Board, or its designee, confirming that all Construction Damage has been repaired by the Owner.

(e) Adoption of Rules The Committee may adopt such procedural and substantive rules, standards, policies and development guidelines, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties and the orderly development of the Property, including but not limited to a building code, a fire code, a housing code, architectural guidelines, landscaping guidelines, and other similar codes or guidelines as it may deem necessary and

desirable. Such rules, standards, policies, procedures and development guidelines shall be binding and enforceable against each Owner in the same manner as any other restriction set forth herein. Nothing contained herein shall be deemed to affect any approval granted by the Committee in accordance with the terms of this Declaration prior to the amendment of such rules, standards, policies, procedures or development guidelines. The approval, or deemed approval, of any Plans and Specifications by the Committee shall not in any manner be deemed or construed to constitute any representation, assurance, opinion or determination that such Plans and Specifications comply with any applicable code or regulation, including without limitation, compliance with the applicable provisions of the plumbing code or other regulations of the City of Hays with respect to connection to the City of Hays water system. The Owner of each Lot shall be required to comply with the plumbing code, water conservation program and other rules and regulations adopted from time to time by the City of Hays that apply uniformly to all residential properties connected to the City of Hays water system.

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

(g) Nonliability of Committee Members Neither the Committee nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's or the Board's respective duties under this Declaration, unless due to the willful misconduct or bad faith of such person. Neither the Committee nor any member thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

(h) Address Plans and Specifications shall be submitted to the Committee at 4105 Medical Parkway, Austin, Texas 78756, or such other address as may be designated from time to time by the Committee by written designation of such address recorded in the Real Property Records of Hays County, Texas. A copy of such designation of address shall be given to the City of Hays, Texas.

ARTICLE 5 RESTRICTIVE COVENANTS

(a) Dwelling Types and Garages. No dwelling shall be erected, altered, placed or permitted on any Lot other than one detached, single-family dwelling, and with a private garage for not less than two (2) cars. All garages shall open to the side or rear of the Lot and shall not face or open onto any Private Street. No carports shall be erected or permitted on any Lot without the express approval of the Committee.

(b) Height. No building, structure, antenna or other Improvement erected or placed on any Lot shall exceed two and one-half (2 1/2) stories or forty-five (45) feet in height

(c) Dwelling Size. No one-story single-family residential dwelling, exclusive of open porches and garages, shall contain less than 2,000 square feet. No two-story nor two and one-half (2 1/2) story single-family residential dwelling, exclusive of open porches and garages, shall contain less than 2,500 square feet, of which not less than 1,800 square feet shall be on the first floor

(d) Setback Requirements. No dwellings and other Improvements (other than fences and landscaping as provided herein) shall be constructed or permitted on any Lot within the building setbacks as designated on the plat of the Property within which such Lot is located.

(e) Fences Walls and Hedges. No exterior fences, walls and hedges may be erected, placed, or altered on any Lot which extends beyond the front of the dwelling erected thereon toward the Private Street or any public street, road or highway on which the Lot is situated unless and until the Plans and Specifications showing the construction and location of such walls, fences or hedges are submitted to the Committee and approved as to design, materials, and height, provided in no event shall any such fences, walls or hedges be located closer than twenty-five (25) feet from the front Lot line on the Private Street or any public street, road or highway on which the Lot is located, except those fences as approved by the Committee located along driveways. All fences shall be a "3-rail PCV" fence or constructed of metal pipe of at least 1 1/2" in diameter, ornamental iron, masonry, rock, wood or any combination thereof. No barbed wire, T-Bar post, hog wire, chicken wire or chain-link fences shall be permitted on any Lot within five (5) feet from any front Lot line.

(f) Masonry Requirements. All single-family dwellings shall have a minimum of 100% of the exterior front wall facing the Private Street or any public street, road or highway on which the Lot is located of stone or masonry construction, and no less than 75% of the total of all exterior walls shall be of stone or masonry construction. In computing these percentages, (1) all gables shall be excluded from the total area of exterior walls; (2) all windows and door openings shall be excluded from the total area of the exterior walls, and (3) stone and masonry used on fireplaces, chimneys and walls of an attached garage may be included in the computation as stone or masonry used. A substitute for the masonry requirements of certain select cedar, redwood, or other similar materials may be submitted to the Committee for approval

(g) Roofs. Roofs shall consist of non-glare metal, tile or three-dimensional fiberglass asphalt or composition shingles with a life of 20 years or more. Shingle color shall be subject to the approval of the Committee; provided no white roof color or reflective roofing materials shall be permitted. Any other type of roof must be approved by the Committee

(h) Driveways. All driveways providing access to a dwelling shall be constructed of concrete or asphalt, and shall extend from the Private Street or any public street, road or highway on which the Lot is located to the garage. All driveways shall be installed and constructed so as to not interfere with drainage facilities located within, to not obstruct or retard the flow of stormwater

or drainage within, or that should inhibit the maintenance of, any Private Street, or any public street, road or highway, or any drainage easement. The Committee shall have the right to impose limitations on all driveways (including all internal driveways or accessways) and related drainage facilities (including culverts and pipes) with respect to design, materials, aprons, location and point of contact of such driveways with the Private Street or public street, road or highway on which the Lot is located.

(i) Exterior of Structures. The exterior walls of all buildings, barns, outbuildings and other structures shall be weather-proofed by painting or other appropriate method.

(j) Antennas Satellite Dishes No radio or television aerial wires, antennas or satellite dishes shall be placed forward of the main ridgeline of the dwelling or the midpoint of the main ridgeline of any dwelling whose ridgeline is not parallel to the Private Street or public street, road or highway on which the Lot is located. No antennae or satellite dish shall be visible from any Private Street, public street, road or highway, or other Lot, and shall be screened by fence or hedge to conceal them from view from any Private Street, public street, road or highway, or any Common Area.

(k) Solar Collectors, Wind Generators No solar collectors or wind generators shall be erected or maintained on any Lot without the approval of the Committee, except for solar collectors integrated into the design of the dwelling. Any such approved installation shall be in harmony with the design of the dwelling, and shall be installed in a location or shall be screened from view from any Private Street, public street, road or highway, or Common Area.

(l) Recreational Equipment. No recreational equipment, including but not limited to swing sets, basketball courts or nets, sport courts, or swimming pools, shall be located between the front of the dwelling and the Private Street or public street, road or highway on which the Lot is located.

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

(n) Unfinished Structures No structure shall remain unfinished for more than twelve (12) months after construction has commenced.

(o) Exterior Lighting All Owners shall submit a lighting plan for any exterior lighting to be installed or placed on a Lot, showing locations, spacing, standard types and light type and sizes, provided reasonable Christmas lighting and displays shall be permitted during the month of December without prior approval; provided all such lighting shall be removed by January 15 of each year. Exterior lighting shall be designed and shielded to minimize affect on other Lots and any Common Areas. No exterior lighting shall be installed or maintained that is found to be objectionable, and upon notice that the Committee that such lighting is objectionable, such lighting shall be removed or modified in such manner so that it is no longer objectionable to surrounding Owners.

(p) Landscaping All Owners shall submit a landscaping plan as part of the Plans and Specifications. It is intended that all landscaping shall recognize, utilize and supplement the existing landscape and visual resources by retaining the natural character of the Property, and that all landscaping introduced shall be viable, of a consistent quality and provide for visual harmony through color and textural variety. Native landscaping and drought tolerant plant species should be used to the maximum extent reasonable practicable. Landscaping shall not be placed in any drainage easement or buffer area that will change the direction or flow of drainage within the easement or that may obstruct or retard the flow of stormwater runoff or drainage to or through such easement, or that would inhibit the maintenance of such drainage easement. Existing trees in excess of eight (8) inches in diameter measured three (3) feet from natural grade shall be preserved and protected to the maximum extent reasonably possible. All Owners shall be required to landscape all areas that are disturbed by an construction on the Lot, the yard area between the dwelling and the Private Street or public street, road or highway on which the Lot is located, the back and side yards but not to exceed seventy-five (75) feet of the dwelling, and adjacent to the foundations of all buildings and structures located on the Lot. Trees, shrubs, ground covers, seasonal color and turf grass shall be used in these areas to achieve the landscape intent of this Declaration. Either permanent turf grass or Winter Rye shall be established in all turf areas shown on the approved landscape plan by the Owner or builder prior to the occupancy of any residence constructed on a Lot. Winter Rye shall be considered a temporary measure to reduce soil erosion through the winter season. It shall be completely replaced with turf grass according to the approved landscape plan by May 1 of the following year. Trees, shrubs and turf areas (as provided above) shall be planted by the Owner or builder prior to the occupancy of any residence constructed on a Lot, the season notwithstanding.

ARTICLE 6 RESUBDIVISION OF LOTS

No Lot may be resubdivided into two or more lots without the specific approval of the Committee and without approval of a replat, or an amended plat, of such lots in accordance with the applicable regulations of the City of Hays and Hays County, Texas, provided, two or more adjacent Lots, at least one of which has no improvements, may be resubdivided in order to combine or increase the size of such Lots without the approval of the Committee if such resubdivision reduces the number of such Lots and does not result in the reduction of the size of any of such Lots. Any such resubdivision approved by the Committee or permitted without the approval of the Committee

as provided above shall require the approval of a replat, or an amended plat, in accordance with all applicable requirements of the City of Hays and Hays County, Texas. Notwithstanding any provision of this Declaration to the contrary, in the event any Lot is resubdivided in accordance with the provisions hereof, for purposes of the Assessments provided for in Article 12, the amount of the Assessment levied against any such resubdivided Lot shall be adjusted proportionately as follows (1) for any resubdivided Lot that was created by dividing an original Lot into two or more Lots, the Assessment shall be an amount equal to the per Lot Assessment for Lots that have not be resubdivided multiplied by a percentage, the numerator of which is the acreage contained within the resubdivided Lot and the denominator of which the acreage of the original Lot from which the resubdivided Lot was created, or (2) for any resubdivided Lot that was created by combining two or more original Lots, the Assessment shall be an amount equal to the per Lot Assessment for Lots that have not be resubdivided plus the per Lot Assessment for Lots that have not be resubdivided multiplied by a percentage, the numerator of which is the acreage contained within the portion of the adjacent original Lot that was added to create the resubdivided Lot and the denominator of which the total acreage of the adjacent original Lot from which land was added to create the resubdivided Lot.

ARTICLE 7 EASEMENTS

(a) Utility and Drainage Easements Easements for installation and maintenance of utilities and drainage facilities have been provided as shown on any plat of any part of the Property, and certain other easements and related rights affecting a Lot or the Property may have heretofore been granted, created and dedicated, and each conveyance of any Lot is made and accepted subject to all of such easements, dedications and reservations, if any, to the extent and only to the extent the same may be in force and effect of record in the Office of the County Clerk of Hays County, Texas, or that may be apparent on the Property. Within these easements, no structure, trees, vines, plants or any other thing shall be placed or permitted to remain which may in any way damage or interfere with the installation or maintenance of utilities, drainage or water quality facilities, or drainageways, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Each Owner covenants to provide easements for drainage and water flow as required by the land contours and the arrangement of Improvements approved by the Committee. The easement areas within each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Prior to the Transfer Date, Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically inserting, repairing or maintaining public utilities, and further reserves the right to grant, dedicate, reserve or otherwise create, at any time and from time to time, easements for public utility purposes along and on either or both sides of any Lot line, which easement shall not exceed seven and one-half (7-1/2) feet in width on each side of any Lot line, provided, Declarant's rights to make such changes in and additions to the above easements shall automatically be transferred to the Association on the Transfer Date. There is further hereby created an easement upon, across, over and under all of the Property and easement for purposes of ingress

and egress in connection with the installation, maintenance and repair of all public utilities and appurtenances thereto. No easement granted to the City of Hays may be altered or modified without the written consent of the City of Hays

(b) Access Easement Over the Private Streets, Easements of Enjoyment Subject to the provisions of this Declaration every Member shall have the right and easement of enjoyment over and across the Private Streets for purposes of pedestrian and vehicular access to and from the Lots, and in and to any Common Area hereafter conveyed to the Association, which rights and easements shall be an appurtenant to each Lot.

(c) Private Streets Declarant shall convey the Private Streets to the Association, and the Association shall thereafter be responsible for the operation and maintenance of the Private Streets.

(d) Greenbelt, Association Property and other Common Area. On or before the Transfer Date, Declarant shall convey the Greenbelt, the Association Property and any other Common Area to the Association. The Association shall thereafter be responsible for the operation and maintenance of the Association Property and any other Common Area, subject to the terms and provisions of this Declaration and the easements and uses shown on the plat(s) of the Property

(e) Insurance The Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements within the right-of-way of the Private Streets, or on the Association Property and any other Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of the insurable improvement within the right-of-way of the Private Streets or on the Association Property or any other Common Area in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Private Streets, the Association Property and any other Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its agents, and may, at the discretion of the Board, obtain directors' and officers' liability insurance. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) combined coverage limit. Premiums for all such insurance shall be at the expense of the Association. The insurance policy or policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(e) Extent of Easements. The rights and easements of enjoyment created hereby with respect to the Private Streets, the Greenbelt and any Common Area shall be subject to the following:

- (i) The right of the Association to prescribe rules and regulations for the use, enjoyment, and maintenance of the Private Streets and the Association Property and any other Common Area,

- (ii) The right of the Association to sell and convey any Common Area, or any part thereof, provided such sale or conveyance is approved by two-thirds (2/3rds) of the votes for each class of Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting,
- (iii) The right of the Association to borrow money for the purpose of constructing, maintaining and improving the Private Streets, the Association Property or any other Common Area, or any part thereof, and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
- (iv) The right of the Association to take such steps as are reasonably necessary to protect the Private Streets, the Association Property and any other Common Area, or any part thereof, against foreclosure;
- (v) The right of the Association to suspend the easements of enjoyment with respect to the Association Property and any other Common Area of any Member of the Association during which time any Assessment levied under the provisions of this Declaration remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (vi) The subdivision, platting and other applicable regulations of the City of Hays and Hays County, Texas, and the terms, conditions and provisions of any easement granted to the City of Hays, Hays County, or the public as to any portion of the Private Streets, the Greenbelt or other Common Area.

ARTICLE 8 UTILITIES

(a) Wastewater Service No dwelling or other structure shall be occupied unless and until connected to a public sanitary sewer system or a private, on-site wastewater system that has been approved by the Hays County Environmental Health Department. Unless and until a public wastewater system is available to a Lot, the Owner of each Lot, at his sole cost and expense, shall be solely responsible for obtaining all permits and approvals required for an individual wastewater system. No private collective wastewater system shall be permitted without the approval of Declarant, and any such private collective wastewater system so approved shall comply with the applicable regulations of the governmental authorities having jurisdiction over the same. The Owner of each Lot shall be required to connect to a public wastewater system within eighteen (18) months after such a public wastewater system is functioning and available to a boundary of such Owner's Lot.

(b) Water Service No dwelling or other structure shall be occupied unless and until connected to the City of Hays public water system. Notwithstanding the foregoing, until such water system is functioning and available to the boundary of a Lot within Phase 1, connection of a dwelling on any Lot within Phase 1 to an individual water well shall be permitted, and the Owner of each Lot in Phase 1, at his sole cost and expense, shall be solely responsible for obtaining all permits and approvals required for an individual water well. The Owner of each Lot in Phase 1 which has obtained water service from a private well prior to the date the City of Hays public water system is functioning and available to such Owner's Lot shall be required to connect the dwelling to the City of Hays' public water system within eighteen (18) months after such a public water system is functioning and available to a boundary of such Owner's Lot and such dwelling shall not be permitted to receive water service from such well, provided, an individual private well installed within Phase 1 prior to the date the City of Hays water system is functioning and available to such Lot shall be permitted to supply water solely for irrigation purposes, subject to compliance with all applicable governmental regulations for such well. After the date the City of Hays water system is functioning and available to the boundary of each Lot, all Lots shall be required to connect to the City of Hays water system. Except for dwellings within Phase 1 as and subject to the limitations provided above, no dwelling or other structure shall be connected to or obtain water from a private water well. Certain ground water rights with respect to all of the Property have been transferred to the City of Hays, and the City of Hays has committed to provide water service to all of the Lots within the Property, in accordance with a Development Agreement for Elliott Ranch Subdivision between Declarant and the City of Hays. Pursuant to the terms of the Development Agreement for Elliott Ranch Subdivision, Declarant shall convey to the City of Hays certain property within the Property on which a ground storage tank and pumping station shall be located as part of the City of Hays public water system. Each Owner is advised that the City of Hays may, at its discretion, construct an elevated storage tank on such property as it may determine to be appropriate or advisable in connection with the upgrade and operation of its water system.

(c) Electric Service The Owner of each Lot shall, at his own cost and expense, furnish, install, own and maintain (all in accordance with the requirements of local governmental authorities and the National Electrical Code) electrical service and appurtenances (except as herein provided) from the meter installed upon the Lot by the electric company to such point as may be designated by such company on the property line of such Lot. The company furnishing electric service shall make the necessary connection at the property line and at the meter.

(d) Solid Waste Collection. Pursuant to the terms of a Solid Waste Collection Agreement between Declarant and the City of Hays, the City of Hays will provide solid waste collection service to each Lot within the Subdivision. The Owner of each Lot shall be required to obtain solid waste collection service from the City of Hays and to comply with all applicable rules and regulations pertaining to such service during the term of such Solid Waste Collection Agreement with the City of Hays. During the term of such Solid Waste Collection Agreement with the City of Hays, the Owner of each Lot shall not be entitled to obtain solid waste collection service from any other entity or person providing such services. Notwithstanding the foregoing, in the event the Property or any Lot within the Subdivision is annexed by the City of Hays, upon such annexation by the City of Hays

the Owner of each Lot so annexed shall be required to obtain solid waste collection services from the City of Hays in accordance with the solid waste collection service requirements, rules and regulations adopted from time to time by the City of Hays that apply uniformly to all properties within the City of Hays

ARTICLE 9
COMPLIANCE WITH PROVISIONS OF RESTRICTIONS,
LIEN FOR MAINTENANCE COSTS AND FORECLOSURE

Each Owner shall comply strictly with the provisions of this Declaration as from time to time amended. Failure to comply with any of the provisions of this Declaration shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by any Owner or the Board. The Committee shall have the power to enter at any time in an emergency, or in a non-emergency after twenty-four (24) hours' written notice, without being liable to any Owner, upon any Lot or into any Improvement thereon, for the purpose of enforcing this Declaration or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Declaration, and the expense incurred by the Committee or its duly authorized agents in connection with the entry upon any Lot or Improvement and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, payable within five (5) days after written demand for reimbursement, and shall be secured immediately by a lien upon the Lot entered upon and the Improvements thereon. To evidence the aforesaid lien for payment of such maintenance costs, the Committee may prepare a written notice of maintenance lien setting forth the amount of the unpaid indebtedness, a description of the Lot encumbered by the lien and the name of the Owner of such Lot. Such notice shall be signed by one of the members of the Committee and shall be recorded in the Official Property Records of Hays County, Texas. The aforesaid lien for payment of maintenance costs shall attach on the date the payment of such maintenance costs becomes delinquent. The Committee may enforce such lien by the foreclosure sale of the defaulting Owner's Lot in like manner as a foreclosure of a mortgage or contractual lien on real property as provided in Article 51.002 of the Texas Property Code, as the same may be amended or modified, or the Committee may institute suit against the Owner for monetary damages and/or for the judicial foreclosure of the aforesaid lien. The Owner of the affected Lot shall be required to pay all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Committee in connection with any foreclosure proceeding, whether judicial or non-judicial. The Committee shall have the power to bid on any Lot at any foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The lien for payment of maintenance costs provided for herein shall not be affected or extinguished by the sale or transfer of any Lot, whether by judicial or non-judicial foreclosure sale or otherwise; provided, however, that in the event of foreclosure of any first lien Mortgage superior to the lien for the delinquent maintenance costs, the lien for the delinquent maintenance costs will be extinguished, and the delinquent maintenance costs shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the first lien Mortgage. The extinguishing of any lien for payment of maintenance costs as herein provided will not relieve any Owner from the obligation to pay such maintenance costs subsequently becoming due and payable.

ARTICLE 10
NO WARRANTY OF ENFORCEABILITY

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

ARTICLE 11
THE ASSOCIATION

(a) Organization. At any time after the date of this Declaration, but in all events on or before the Transfer Date, Declarant shall cause the formation and incorporation of the Association. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed in its Articles and Bylaws, in this Declaration, and by applicable law. Neither the Articles nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) Membership. Each Owner, including Declarant, of a Lot shall automatically and concurrently shall become a Member of the Association upon the formation and incorporation of same. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such property interest.

(c) Voting Rights. The right to cast votes and the number of votes which may be cast for election of the Board, and on all other matters to be voted on by the Members, shall be calculated as provided below. Owners entitled to votes pursuant to (i) below are hereinafter sometimes referred to as "Class A Members." Declarant, which is entitled to vote pursuant to (ii) below, is hereinafter sometimes referred to as the "Class B Member."

- (i) The Owner (other than Declarant) of each Lot within the Property shall have one (1) vote for each Lot so owned.
- (ii) Declarant shall have one (1) vote for each Lot owned by Declarant and three (3) votes for each vote held by the Class A Members until the earlier of (1) the date the Declarant elects to terminate the Class B membership, or (2) December 31, 2011 (the "Transfer Date"). Thereafter, the Class B membership shall cease and be converted to Class A membership, and Declarant shall have only one (1) vote for each Lot owned by it, if any. The total votes held by the Class A members and the total votes held by the Class B members shall be recalculated upon the recording of a Supplemental Declaration which results in any addition to or subtraction of lands from the Property.

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

(d) Duties of the Association. Subject to and in accordance with this Declaration and after the incorporation of the Association, the Association acting through the Board shall have and perform each of the following duties.

- (i) accept, own, operate, and maintain the Private Streets, the Greenbelt, and all personal and real property conveyed to or leased by the Association ("Association Property"), together with all Improvements thereon and all appurtenances thereto, including any other Common Area hereafter conveyed or leased to the Association by Declarant,
- (ii) to maintain the Private Streets, the Greenbelt, and any other Common Area and all Improvements thereon and all appurtenances thereto, including the drainage easements, water quality buffers, conservation areas, detention ponds and related storm water structures and features that may be located thereon, in accordance with their design, the unpaved areas (including any median areas) within any Private Street, and any entry improvements, signs and associated landscaping,
- (iii) pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Association Property and any Common Area, to the extent that such taxes and assessments are not levied directly upon the Members, and the Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments,
- (iv) obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the functions of the Association,
- (v) make, establish, promulgate, and in its discretion amend or repeal and reenact, the Bylaws and such rules not in conflict with this Declaration as it deems proper, covering any and all aspects of its functions, including traffic controls, speed limits and other regulations of the use of the Private Streets, the Greenbelt, the Association Property and any Common Area,
- (vi) keep books and records of the Association's affairs and make such books and records, together with a current copy of this Declaration, available for inspection by the Owners and the Mortgagees upon request during normal business hours, and
- (vu) carry out and enforce all duties of the Association set forth in this Declaration

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

- (i) The Association shall have the power and authority to levy Assessments in accordance with and as provided in this Declaration
- (ii) The Association shall have the power and authority to enter at any time in an emergency (or in a non-emergency after twenty-four (24) hours written notice to the Owner of the affected Property), without being liable to any Owner, upon any Lot or any Common Area for the purpose of enforcing this Declaration or for the purpose of maintaining or repairing any Private Street, the Greenbelt, any Lot, Common Area, Improvement, or other facility so as to conform to this Declaration. Notwithstanding any provision herein to the contrary, the Association may not alter or demolish any items of construction on a Lot in enforcing this Declaration before judicial proceedings are instituted by the Association. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the affected Lot, shall be a lien upon such Lot and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided herein for regular and special Assessments
- (iii) The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of an Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of, this Declaration. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce this Declaration; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.
- (iv) The Association shall have the power and authority to grant and convey to any person or entry any Association Property and/or any Common Area and/or any interest therein, including fee title, leasehold estates, easements, rights-of-way, liens or security interests, out of, in, on, over, or under any of same for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder

walks, driveways, parking lots, trails, and paths,

lines, cables, wires, conduits, pipelines, or other devices for utility purposes.

sewer, wastewater and water systems, storm water drainage systems, sprinkler systems, and pipelines or

any similar Improvements or facilities

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

- (v) The Association shall have the power and authority to retain and pay for the services of a manager to manage and operate the Association, including the maintenance and repair of the Private Streets, the Greenbelt, the Association Property and any other Common Area, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the manager of any such duty, power, or function so delegated.
- (vi) The Association shall have the power and authority
 - a. to retain and pay for legal and accounting services necessary or proper in the operation of the Association,
 - b. to pay for all maintenance, repair, replacement, upgrade, resurfacing and other improvements required to maintain the Private Streets in a good and passable condition consistent with similar private streets in the surrounding area,
 - c. to pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to and all maintenance of the Common Areas, including the entryway Improvements and the unpaved areas within the Private Streets, and the Association Property in accordance with this Declaration;
 - d. to obtain and pay for any other property and services and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or this Declaration,
 - e. to construct new Improvements or additions to the Association Property or any Common Area, subject to the approval of the Committee,

f to enter into contracts with Declarant and with any other person on such terms and provisions as the Board shall determine to carry out the duties of the Association under this Declaration, and to acquire, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise, and

g to borrow money and to mortgage, pledge or hypothecate any or all of the Association Property as security for money borrowed or debts incurred subject to the limitation set forth in this Declaration

(f) Indemnity The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant or agent of the Association or the Board, against all claims and expenses including attorney's fees reasonably incurred by such person in connection with such action, suit or proceeding, if it is found and determined by the Board or a Court that such person (i) acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Association, or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith or in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association or the Board, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise

ARTICLE 12 ASSESSMENTS

(a) Assessments Assessments established pursuant to this Declaration shall be levied against each Lot within the Property for the purpose of promoting the recreation, health, safety, and welfare of the residents within the Property and for the improvement and maintenance of the Private Streets, the entryway Improvements, the unpaved areas within the Private Streets, any Common Area, and the Association Property. The funds of the Association shall be used solely for purposes authorized by this Declaration.

(b) Operating Fund The Board shall establish an operating fund into which shall be deposited the portion of the Assessments allocated to the operation of the Association as provided below and all other monies paid to the Association (except the portion of the Assessment allocated to capital replacements as provided below) and from which disbursements shall be made in performing the general operations and management functions of the Association under this

Declaration

(c) Capital Replacement Reserve The Board shall establish a capital replacement reserve account into which shall be deposited the portion of the Assessments allocated to capital replacements and from which disbursement shall be made in performing major repairs, upgrade and replacements of the Private Streets, the Association Property and the Improvements in the Common Areas

(d) Regular Annual Assessments For the fiscal year of the year of incorporation of the Association, the Board shall establish a budget for the Association, and as of January 1 of the year following incorporation, may levy assessments based on that budget against all Lots. The budget shall include such items as may be appropriate for the anticipated costs to repair, upgrade and replace the Private Streets, the Association Property and the Improvements in the Common Areas, and based on the budget, the Board shall determine the portion of the Assessments allocated to general operations and management of the Association and the portion of the Assessments allocated to the capital replacements. The regular annual Assessments may be levied in a uniform amount against all Lots, or at the discretion of the Board, the annual Assessment may be levied in different amounts as to groups of Lots based on the use or benefit determined by the Board to be derived by such groups of Lots from the costs of the Association for which the Assessments are levied. The annual Assessment per Lot for the first fiscal year shall not exceed Four Hundred Twenty and No/100 Dollars (\$420.00) without the assent of two-thirds (2/3rds) of the votes of each class of Members who are eligible to vote at a meeting duly called to vote on such matter with at least sixty percent (60%) of Members who are eligible to vote represented in person or by proxy. For each fiscal year thereafter, the Board shall estimate the net expenses of the Association for such fiscal year, which shall be (i) the expenses to be incurred by the Association during such year in performing its functions under this Declaration, including but not limited to the cost of all duties required and activities authorized herein of the Association, the Board, and the Committee, and a reasonable provision for contingencies and the replacement reserves, less (ii) any expected income and any surplus from the prior year's operating fund. Assessments sufficient to pay such estimated net expenses shall then be levied as provided herein, and the Assessments so levied by the Board shall be final and binding so long as it is made in good faith. All such regular annual Assessments shall be due and payable to the Association, at the discretion of the Board, either in one (1) payment within sixty (60) days after the beginning of the fiscal year or in twelve (12) monthly payments equal to 1/12th of the total annual Assessment, or at such time and in such other manner as the Board may from time to time designate.

(e) Declarant Assessment Notwithstanding the foregoing provisions of this Article, with respect to any Lots owned by Declarant, Declarant shall be required to pay the portion of the Assessment allocated to the capital replacement reserve for each Lot owned by Declarant and in lieu of the portion of the Assessment allocated to general operations for all Lots owned by Declarant, Declarant shall be required to pay an amount equal to the difference between the total of the portion of the Assessment allocated to general operations for all Lots not owned by Declarant and the amount of the actual expenses incurred by the Association. Nothing in this subsection shall be construed to relieve an Owner other than Declarant from payment of full annual Assessments for every year after a Lot is conveyed by Declarant.

(f) Special Assessments In addition to the regular annual Assessments provided herein, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration, including without limitation the maintenance of the Private Streets and the storm water control structures that may be located on any Common Area. The amount of any special Assessments shall be at the reasonable discretion of the Board. In no event shall the total special Assessment per Lot during the first fiscal year exceed One Hundred and No/100 Dollars (\$100.00) per Lot without the assent of two-thirds (2/3rds) of the votes of all of the Members who are eligible to vote at a meeting duly called to vote on such matter, with at least sixty percent (60%) of the Members who are eligible to vote represented in person or by proxy. All such special Assessments shall be due and payable to the Association at such time and in such other manner as the Board may designate, in its sole and absolute discretion. The Association may levy in any fiscal year a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area.

(g) Owner's personal Obligation for Payment of Assessments The regular and special Assessments provided for herein shall be the personal and individual debt of the Owner as of the date of levy of the Lot subject to each such Assessment, and no Owner shall be exempt from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot subject thereto shall be obligated to pay interest at the highest rate allowed by applicable laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 2% per month), together with all costs and expenses of collection including reasonable attorneys' fees. The Board shall have the right to charge late fees for delinquent payment of Assessments in such amount as the Board may from time to time deem appropriate. In addition, any Owner who is in default in the payment of any Assessment shall not be entitled to vote on any matter requiring a vote by the Owners under this Declaration, shall not be entitled to vote as a Member on matter requiring a vote of the Members under this Declaration, and shall be subject to the loss of the right to use any Common Area, if the Board so determines, until all Assessments, interest and late charges owing by such Owner have been paid in full.

(h) Exempt Property All Private Streets, the Greenbelt, all Association Property and any other Common Area and all portions of the Property dedicated to, and accepted by, a local public authority and all portions of the Property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the Assessments created herein. Without limiting the generality of the foregoing, no assessments shall be made against any Lot owned by the City of Hays for the operation or maintenance of the water system or for any other public purpose. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

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

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

Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Board the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Assessments and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Texas Property Code § 51.002 (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the deed to his Lot, expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid Assessment, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and attested to by the Secretary of the Association and filed in the Office of the County Clerk of Hays County, Texas. In the event of the election by the Board to foreclose the liens herein provided for nonpayment of sums secured to be paid by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Lot, and all rights appurtenant thereto, at the door of the County Courthouse of Hays County, Texas, on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash at public vendue after the trustee and the Board, respectively, shall have given notice of the proposed sale in the manner hereinafter set forth and to make due conveyance to purchaser or purchasers, with general warranty of title to such purchaser or purchasers binding upon the Owner or Owners of such Lot and his heirs, executors, administrators and successors. The trustee shall give notice of such proposed sale by posting a written notice of time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Hays County, Texas, and, in addition, the Board shall serve written notice at least twenty-one (21) days preceding the date of sale or the proposed sale by certified mail on each

of such Owner or Owners according to the records of the Association. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner or Owners at the most recent address as shown by the records of the Association, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service.

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

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

ARTICLE 13 TERM

This Declaration are covenants running with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants are recorded, after which time these covenants shall be automatically extended for successive periods of ten (10) years, unless amended in accordance with Article 14 below or terminated (i) by the Owners entitled to cast at least three-fourths (3/4ths) of the votes for each class of Members who are voting in person or by proxy at a meeting duly called to vote on such matters (if the Association has been incorporated), or (ii) by a written instrument executed by at least three-fourths (3/4ths) of the Owners.

ARTICLE 14 AMENDMENT

This Declaration may be amended as follows

- (a) Prior to the Transfer Date, this Declaration may be amended by an affirmative vote of (i) eighty percent (80%) of the Members present in person or by proxy at a meeting duly called to vote on such matter at which a quorum of the Members is so present (which quorum shall be sixty percent (60%) of the Members), if the Association has been duly incorporated by Declarant, or (ii) by joint action of Declarant and the Owners of eighty percent (80%) of the

Lots, if the Association has not been incorporated

- (b) After the Transfer Date, and in addition to any amendment pursuant to subparagraph (a), this Declaration may be amended by the recording in the Hays County Official Property Records of an instrument executed and acknowledged (i) by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by at least three-fourths (3/4ths) of a quorum of the Members present in person or by proxy at a meeting duly called to vote on such matter (which quorum shall be sixty percent (60%) of the Members), if the Association has been incorporated, or (ii) by at least three-fourths (3/4ths) of the Owners, if the Association has not been incorporated
- (c) In addition to the foregoing, prior to the Transfer Date, Declarant may amend this Declaration, without the consent or approval of the Members or the Owners, at any time to correct any ambiguity, typographical or grammatical errors, or to the extent necessary to comply with Veterans Administration and/or Federal Housing Administration requirements for approval of the Property for participation in financing or loan programs.
- (d) Any amendment to this Declaration as provided herein shall be effective upon recordation in the Hays County Official Property Records of an instrument setting forth the amendment and reflecting compliance with the applicable provisions of this Article 14 authorizing such amendment.

ARTICLE 15 NOTICES

Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after being deposited in the United States mail, certified, return receipt requested, postage prepaid, addressed to the person at the address of the Lot. Such address may be changed from time to time by notice in writing given by such person to the Committee.

ARTICLE 16 MISCELLANEOUS

(a) Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the terms and provisions set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas and enforceable in Hays County, Texas.

(b) Exemption of Declarant Notwithstanding any provision herein to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Association, the Board, or the Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all types of Improvements, including but not limited to construction, sales, and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property. It is expressly provided, however, that any resubdivision, replat or amendment or other modification of any plat of the Property shall be subject to, and require compliance with the applicable regulations of the City of Hays and Hays County, Texas, and that Declarant shall not modify any drainage easements, water quality buffers, or conservation easements without the approval of the City of Hays and Hays County, Texas, as applicable. No drainage channels, detention ponds or other drainage or water quality improvements shall be modified in a manner that will increase the rate of flow or volume of water on any other person's property without such person's consent unless pursuant to rights granted under an easement for such purposes.

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

(d) Severability The provisions of this Declaration 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 or portion thereof.

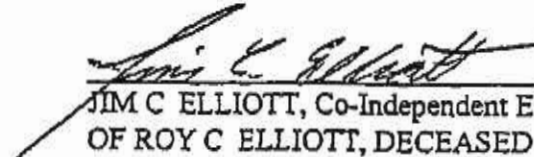
(e) Gender Unless the context requires a contrary construction, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.


(f) Captions All recitals, captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect the text of the paragraphs, sections and articles hereof.

ARTICLE 17
ENFORCEMENT

Except as otherwise provided herein, any Owner, at such Owner's expense, shall have the right, and the Declarant and the Association shall have the right (but not the duty), to enforce any and all provisions of this Declaration and this Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce any such provision at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other such provision. Enforcement shall be by proceeding in law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation, enforce specific performance, to recover damages, or any one or more of such remedies. Reasonable attorney's fees shall be allowed to any party prevailing in any action in any court of competent jurisdiction to enforce any of the provisions contained in this instrument

EXECUTED this the 26th day of February, 1999


JIM C ELLIOTT, Co-Independent Executor of the ESTATE
OF ROY C ELLIOTT, DECEASED

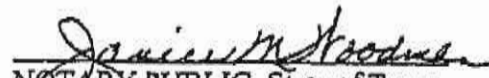

DALTON G. ELLIOTT, Co-Independent Executor of the
ESTATE OF ROY C ELLIOTT, DECEASED

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 26th day of February, 1999, by JIM C. ELLIOTT, as Co-Independent Executor of the ESTATE OF ROY C. ELLIOTT, DECEASED



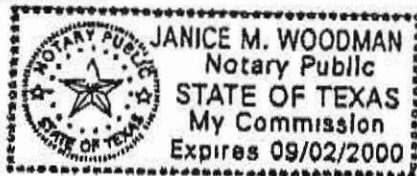

NOTARY PUBLIC, State of Texas
Print Name: JANICE M WOODMAN

1512 943

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 26th day of February, 1999, by DALTON G. ELLIOTT, as Co-Independent Executor of the ESTATE OF ROY C. ELLIOTT, DECEASED



Janice M. Woodman
NOTARY PUBLIC, State of Texas
Print Name: Janice M. Woodman

AFTER RECORDING, RETURN TO:

~~R. Alan Haywood~~
~~Graves, Dougherty, Hearon & Moody, P C~~
~~P.O. Box 98~~
~~Austin, Texas 78767~~
~~Ron Pritchard~~
K.C. Engineering
4601 South Lamar, Suite 230
Austin, Tx 78745