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RUTHERFORD WEST
INDEX

GOVERNANCE

1. Master Covenant recorded May 9, 2006 as Document No. 06013324, Official Public Records of Hays County, Texas
2. Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant recorded April 19, 2007 as Document No. 70011317, Official Public Records of Hays County, Texas
3. Second Amendment to Master Covenant recorded May 3, 2007 as Document No. 70012933, Official Public Records of Hays County, Texas
4. Notice of Applicability Section One and Section Two recorded July 30, 2007 as Document No. 70022293, Official Public Records of Hays County, Texas
5. Development Area Declaration Section One and Section Two recorded July 30, 2007 as Document No. 70022294, Official Public Records of Hays County, Texas
6. Design Guidelines Section One and Section Two recorded July 30, 2007 as Document No. 70022295, Official Public Records of Hays County, Texas
7. First Amendment to Development Area Declaration Section One and Section Two recorded September 14, 2007 as Document No. 70027405, Official Public Records of Hays County, Texas
8. Adoption of Working Capital Assessment recorded June 19, 2007 as Document No. 70017647, Official Public Records of Hays County, Texas
9. Second Amendment to Development Area Declaration Section One and Section Two recorded May 2, 2008 as Document No. 80011785, Official Public Records of Hays County, Texas
10. Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant recorded December 17, 2015 as Document No. 2015-15039720, Official Public Records of Hays County, Texas
11. Appointment of Rutherford West Reviewer recorded May 3, 2016 as Document No. 2016-16013783, Official Public Records of Hays County, Texas

12. Notice of Applicability [Section Four] recorded September 14, 2017 as Document No. 2017-17032576, Official Public Records of Hays County, Texas
13. Development Area Declaration [Section Four] recorded September 14, 2017 as Document No. 2017-17032587, Official Public Records of Hays County, Texas
14. Design Guidelines [Section Four] recorded September 14, 2017 as Document No. 2017-17032596, Official Public Records of Hays County, Texas
15. Notice of Applicability [Section Five] recorded November 5, 2019 as Document No. 19040681, Official Public Records of Hays County, Texas
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17. Design Guidelines [Section Five] recorded November 5, 2019 as Document No. 19040713, Official Public Records of Hays County, Texas

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1. Certificate of Formation
2. Bylaws
3. Resolutions of the Board of Directors Adopting Rules for Rutherford West Homeowners Association, Inc. recording _____, 2013, as Document No. 13011503, Official Records of Hays County, Texas

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1. Development Activity Rutherford West
2. Rutherford West, Section 4, recorded August 29, 2017 as Document No. 17030404, Official Public Records of Hays County, Texas
3. Rutherford West, Section 5, recorded October 10, 2019 as Document No. 19036946, Official Public Records of Hays County, Texas

MISCELLANEOUS

After Recording Return To:

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RUTHERFORD WEST MASTER COVENANT

[ESTATES AND TRAILS]

NOTE "A": NO PORTION OF THE PROPERTY DESCRIBED ON EXHIBIT "A" IS SUBJECT TO THE TERMS OF THIS COVENANT UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE PROPERTY IS FILED IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, IN ACCORDANCE WITH SECTION 10.05 BELOW.

NOTE "B": THIS INSTRUMENT AMENDS AND RESTATES THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED IN VOL. 2438, PAGE 796, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (THE "ORIGINAL COVENANT"). UPON RECORDING THIS INSTRUMENT IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, THE TERMS AND PROVISIONS OF THIS INSTRUMENT WILL SUPERSEDE AND REPLACE THE TERMS AND PROVISIONS OF THE ORIGINAL COVENANT.

Declarant: WFCRW, LLC, a Texas limited liability company

RUTHERFORD WEST MASTER COVENANT

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RUTHERFORD WEST MASTER COVENANT

This Rutherford West Master Covenant (the "Covenant") is made by WFCRW, LLC, a Texas limited liability company (the "Declarant"), and is as follows:

RECITALS:

A. Declarant is the present owner of certain real property located in Hays County, Texas, as more particularly described on Exhibit "A" attached hereto (the "Property").

B. Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property.

C. A portion of the Property was previously made subject to the terms and provisions of that certain Declaration of Covenants, Conditions and Restrictions, recorded in Vol. 2438, Page 796, Official Public Records of Hays County, Texas (the "Original Covenant"). Section 9.02 of the Original Covenant provides that the Declaration may be amended or terminated by recording in the Official Public Records of Hays County, Texas, an instrument setting forth the amendment executed and acknowledged by Declarant, acting alone, or Declarant and at least 70% of the Owners. Declarant is the current "Declarant" under the terms and provisions of the Original Covenant. Declarant currently owns all of the property which is subject to the terms and provisions of the Original Covenant and represents 100% of the Owners. Declarant intends to amend and restate the Original Covenant in its entirety as set forth in this Covenant.

D. Portions of the Property may be made subject to this Covenant upon the filing of one or more notices of applicability pursuant to *Section 10.05* below, and once such notices of applicability have been filed pursuant to *Section 10.05*, the portions of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Covenant, and the Development in turn will be comprised of separate Development Areas (as defined below) which will be governed by and subject to separate Development Area Declarations (as defined below) in addition to this Covenant.

No portion of the Property is subject to the terms and provisions of this Covenant until a Notice of Applicability (as defined in *Section 10.05*) is filed in the Official Public Records of Hays County, Texas. A Notice of Applicability may only be filed by Declarant. If Declarant is not the owner of any portion of the Property then being made subject to the terms and provisions of the Covenant, the owner of the Property must execute the Notice of Applicability evidencing its consent to its recordation.

Property versus Development versus Development Area

"Property"-	Described on <u>Exhibit "A"</u> . This is the land that <u>may be made</u> subject to this Covenant, from time to time, by the filing of one or more Notices of Applicability.
"Development"-	This is the portion of the land described on <u>Exhibit "A"</u> that <u>has been made</u> subject to this Covenant through the filing of a Notice of Applicability.
"Development Area"	This is a portion of the Development. In most circumstances, a Development Area will comprise a separately platted subdivision within the Development.

D. By the filing of this Covenant, Declarant serves notice that upon the further filing of one or more notices of applicability pursuant to the requirements of *Section 10.05* below, portions of the Property identified in such notice or notices will be subjected to the terms and provisions of this Covenant.

NOW, THEREFORE, it is hereby declared: (i) that those portions of the Property as and when subjected to this Covenant pursuant to *Section 10.05* below will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying those portions of the Property which are subjected to this Covenant pursuant to *Section 10.05* will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Covenant uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Covenant, the text will control.

ARTICLE I
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Covenant will have the meanings hereinafter specified:

"Assessment" or **"Assessments"** means assessments imposed by the Association under this Covenant.

"Assessment Unit" has the meaning set forth in *Section 5.07*.

"Association" means Rutherford West Homeowners Association, Inc., a Texas non-profit corporation, which will be created by Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Covenant.

"Board" means the Board of Directors of the Association.

"Bulk Rate Contract" or "Bulk Rate Contracts" means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots and/or Condominium Units. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick up services, propane service, natural gas service, lawn maintenance services and any other services of any kind or nature which are considered by the Board to be beneficial.

"Bylaws" means the Bylaws of the Association as adopted and as amended from time to time.

"Certificate" means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

"Common Area" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations. Common Area includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area will be for the use and enjoyment of the Owners and members of the public.

"Condominium Unit" means an individual unit, including any common element assigned thereto, within a condominium regime, if any, established within the Development.

"Declarant" means WFCRW, LLC, a Texas limited liability company, its successors or assigns; provided that any assignment(s) of the rights WFCRW, LLC, as Declarant, must be expressly set forth in writing and recorded in the Official Public Records of Hays County, Texas.

The "Declarant" is the party who causes the Property to be developed for actual residential use. Declarant enjoys special privileges to help protect its investment in the Development. These special rights are described in this Covenant. Many of these rights do not terminate until either Declarant: (i) has sold all Lots or Condominium Units which may be created out of the Property; or (ii) voluntarily terminates these rights by a written instrument recorded in the Official Public Records of Hays County, Texas.

"Design Guidelines" means the standards for design, construction, landscaping, and exterior items placed on any Lot or Condominium Unit adopted pursuant to *Section 6.05(b)*, as

the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Development. Declarant may adopt the Design Guidelines applicable to the Development or any Development Area.

"Development" refers to any and all portions of the Property that are made subject to this Covenant pursuant to *Section 10.05* of this Covenant.

"Development and Sale Period" refers the period of time that Declarant owns or has the option to acquire all or any portion of the Property. The Declarant may terminate the Development and Sale Period by an instrument executed by the Declarant and recorded in the Official Public Records of Hays County, Texas.

"Development Area" means any part of the Development (less than the whole), which Development Areas may be subject to Development Area Declarations in addition to being subject to this Covenant.

"Development Area Declaration" means, with respect to any Development Area, the separate instruments containing covenants, restrictions, conditions, limitations and/or easements, to which the property within such Development Area is subjected. A Development Area Declaration may take the form of a condominium declaration filed in accordance with Chapter 82 of the Texas Property Code or any successor statute.

"Development Owner" refers to any Owner who acquires a Lot for the purpose of resale to a Homebuilder.

"Homebuilder" refers to any Owner who is in the business of constructing residences for resale to third parties and intends to construct a residence (including a Condominium Unit) on such Lot for resale to a third party.

"Improvement" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

"Lot" means any portion of the Development designated by Declarant or as shown as a subdivided lot on a Plat other than Common Area, Special Common Area or a Lot on which a condominium regime that has been established pursuant to Chapter 82 of the Texas Property Code or any successor statute.

"Manager" has the meaning set forth in *Section 3.06(h)*.

"Master Restrictions" means the restrictions, covenants, and conditions contained in this Covenant, any Development Area Declaration, the Design Guidelines, Bylaws, or in any rules and regulations promulgated by the Association pursuant to this Covenant or any Development Area Declaration, as adopted and amended from time to time. See Table 1 for a summary of the Master Restrictions.

"Members" means every person or entity that holds membership privileges in the Association.

"Membership Agreement" means an agreement in the form specified by the Board for execution by each Member, evidencing such Member's acknowledgment of and agreement to be bound by the terms of this Covenant. As provided in *Section 3.03(b)* below, the Board must elect to require each Member to execute a Membership Agreement.

"Mortgage" or **"Mortgages"** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot or Condominium Unit.

"Mortgagee" or **"Mortgagees"** means the holder(s) of any Mortgage(s).

"Owner" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot or a Condominium Unit, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot or Condominium Unit pursuant to foreclosure of the lien of its Mortgage.

"Plat" means a subdivision plat of any portion of the Development as recorded in the Official Public Records of Hays County, Texas, and any amendments thereto.

"Property" means all of that certain real property described on Exhibit "A", attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 10.03* and *Section 10.04* of this Covenant.

"Rutherford West Reviewer" means Declarant or its designee until Declarant no longer owns any portion of the Property. When Declarant no longer owns any portion of the Property, the rights of the Rutherford West Reviewer will automatically be transferred to the architectural control committee appointed by the Board.

"Service Area" means a group of Lots and/or Condominium Units designated as a separate Service Area pursuant to this Covenant for purpose of receiving benefits or services from the Association which are not provided to all Lots and Condominium Units. A Service Area may be comprised of more than one housing type and may include noncontiguous Lots. A Lot or Condominium Unit may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.04*.

"Service Area Assessments" means assessments levied against the Lots and/or Condominium Units in a particular Service Area to fund Service Area Expenses, as described in *Section 5.05*.

"Service Area Expenses" means the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Covenant.

"Special Common Area" means any interest in real property or improvements which is designated by Declarant in a notice of applicability filed pursuant to *Section 10.05*, in a Development Area Declaration, or in any written instrument recorded by Declarant in the Official Public Records of Hays County, Texas (which designation will be made in the sole and absolute discretion of Declarant) as common area which benefits one or more, but less than all of the Lots, Owners or Development Areas, and is or will be conveyed to the Association, or otherwise held by Declarant for the benefit of the Owners of property to which such Special Common Area benefits. The notice of applicability, Development Area Declaration, or written notice will identify the Lots, Owners or Development Areas benefited by such Special Common Area. By way of illustration and not limitation, Special Common Area might include such things as private roadways or gates, entry features, or landscaped medians which primarily benefit certain Lots and/or Condominium Units. All costs associated with maintenance, repair, replacement, and insurance of Special Common Area will be assessed as a Special Common Area Assessment against the Owners of the Lots and/or Condominium Units to which the Special Common Area is assigned.

TABLE 1: MASTER RESTRICTIONS

Covenant (recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property made subject to the Covenant by the filing of a Notice of Applicability.
Notice of Applicability (recorded)	Describes the portion of the Property being made subject to the terms and provisions of the Covenant.
Development Area Declaration (recorded)	A recorded covenant which includes additional covenants, conditions and restrictions governing portions of the Development.
Certificate of Formation: (filed with the Secretary of State)	The Certificate of Formation of the Association, which establish the Association as a not-for-profit corporation under Texas law.
By-Laws: (adopted by the Association)	The By-Laws of the Association which govern the Association's internal affairs, such as elections, meetings, etc.
Design Guidelines: (adopted)	The design standards and architectural and aesthetics guidelines adopted pursuant to <i>Article 6</i> , which govern new construction of Improvements and modifications thereto.
Rules: (adopted by the Board of the Association)	The use restrictions and rules of the Association adopted pursuant to <i>Section 3.06(a)</i> , which regulate use of property, activities, and conduct within the Development.
Board Resolutions: (adopted by the Board of the Association)	The resolutions adopted by Board which establish rules, policies, and procedures for internal governance and activities of the Association.

ARTICLE II GENERAL RESTRICTIONS

2.01 General. All Lots and Condominium Units within the Development to which a notice of applicability has been filed in accordance with *Section 10.05*, will be owned, held, encumbered, leased, used, occupied and enjoyed subject to: (i) the applicable conditions, restrictions, reservations, and easements contained in this Covenant; (ii) any applicable conditions, restrictions, reservations, and easements contained in the Development Area Declaration covering the Development Area in which such Lot or Condominium Unit is located; (iii) the Design Guidelines, as amended or modified as to such Lots or Condominium Units; and (iv) any rules and regulations adopted by the Board. NO PORTION OF THE PROPERTY WILL BE SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT UNTIL A NOTICE OF APPLICABILITY HAS BEEN FILED FOR SUCH PROPERTY IN ACCORDANCE WITH SECTION 10.05 OF THIS COVENANT.

Ordinances and requirements imposed by local governmental authorities are applicable to all Lots and Condominium Units within Development. Compliance with this Covenant and the Design Guidelines is not a substitute for compliance with such ordinances and regulations. Please be advised that neither the Covenant nor the Design Guidelines purport to list or describe each restriction which may be applicable to a Lot or Condominium Unit located within the Development. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot or Condominium Unit prior to submitting plans to the Rutherford West Reviewer for approval. Furthermore, approval by the Rutherford West Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot or Condominium Unit. Certain encumbrances may benefit parties whose interests are not addressed by the Rutherford West Reviewer.

Each Owner is further advised that as of the date of this Covenant, local governmental authorities may require that the Owner obtain from the Rutherford West Reviewer approval of all Improvements proposed to be located on a Lot or Condominium Unit prior to submitting plans for the Improvements to the local governmental authorities for approval. Each Owner is further advised that if any local governmental authority requires pre-approval of all Improvements prior to submission to the local authority for approval, any approval granted by the Rutherford West Reviewer, or any notation on the plans signifying Rutherford West Reviewer approval, is conditional and no Improvements may be constructed on the Lot or Condominium Unit until the Owner has submitted to the Rutherford West Reviewer a copy of the plans and specifications approved by the local governmental authority and the Rutherford West Reviewer has issued to the owner a "Notice to Proceed." In the event of a conflict between the plans and specifications approved by the Rutherford West Reviewer and the plans and specifications approved by a local governmental authority, the Rutherford West Reviewer may require that the Owner resubmit the plans and specifications for re-approval by the Rutherford West Reviewer, may withdraw the approval previously granted to the Owner, or

may require that the Owner apply to the Rutherford West Reviewer for a variance. Each Owner acknowledges that no local governmental authority has the authority to modify the terms and provisions of this Covenant, any Development Area Declaration, or the Design Guidelines applicable to the Development. A local governmental authority may change or modify the requirements and procedures applicable to their approval of plans and specifications for the construction of Improvements, and each Owner is advised to contact each local governmental authority to obtain a current version of such requirements and procedures.

NOTICE

This Covenant, any Development Area Declaration, the Design Guidelines, and the rules and regulations adopted by the Board are subject to change from time to time. By owning or occupying a Lot or Condominium Unit, you agree to remain in compliance with this Covenant, any applicable Development Area Declaration, the Design Guidelines, and the rules and regulations, as they may change from time to time.

2.02 Incorporation of Development Area Declarations. Upon recordation of a Development Area Declaration in the Official Public Records of Hays County, Texas, such Development Area Declaration will, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Covenant, to the extent not in conflict with this Covenant, but will apply only to the Development Area described in and covered by such Development Area Declaration.

2.03 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any homebuilder or other developer of any portion of the Property or the Development makes any representation or warranty concerning such land uses and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property or the Development. Each Owner who acquires a Lot within the Development acknowledges that the Development is a master planned community, the development of which is likely to extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to changes in the Conceptual Plans as they may be amended or modified from time to time.

The Development is a master planned community which will be developed over a number of years. Changes may be made to the plans for the Development from time to time.

2.04 Provision of Benefits and Services to Service Areas.

(a) Declarant, in a notice of applicability filed pursuant to *Section 10.05* or in any written notice recorded in the Official Public Records of Hays County, Texas, may assign Lots and/or Condominium Units to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots and/or Condominium Units in addition to those which the Association generally provides to the Development. Declarant may unilaterally amend any notice of applicability or any written notice recorded in the Official Public Records of Hays County, Texas, to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots and/or Condominium Units within the Service Area as a Service Area Assessment.

(b) In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots and/or Condominium Units as a Service Area for the purpose of receiving from the Association: (a) special benefits or services which are not provided to all Lots and/or Condominium Units, or (b) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a majority of the Lots and/or Condominium Units within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the charge to made therefor, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot and/or Condominium Unit among all Service Areas receiving the same service). Upon written approval of the proposal by Owners of at least sixty-seven percent (67%) of the Lots and/or Condominium Units within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal. The cost and administrative charges associated with such benefits or services will be assessed against the Lots and/or Condominium Unit within such Service Area as a Service Area Assessment.

2.05 Environmental Protection Considerations. The Property lies within the contributing and recharge zones of the Barton Springs Segment of the Edwards Aquifer. Because of its hydrogeologic character, the Edwards Aquifer has been ranked by the state of Texas as the aquifer most vulnerable in Texas to manmade contamination. The incorporation of specific requirements set forth in this Covenant, and applicable Development Area Declarations, are an expression of Declarant's intent that the waters of the Edwards Aquifer be protected during development and use of the Property.

2.06 Impervious Cover. Unless otherwise approved in advance by the Rutherford West Reviewer or as otherwise provided in any Development Area Declaration as to a particular Lot within such Development Area, Impervious Cover on any Lot shall not exceed

7000 square feet per Lot. "Impervious Cover" shall mean and refer to the total horizontal area of all Improvements, roofed or covered spaces, paved surface areas, walkways and driveways or other types of construction covering the natural surface of the Lot. Notwithstanding any provision in the Master Restrictions to the contrary, any impervious cover limitation set forth in the Master Restrictions shall in no event supercede the impervious cover limitations established by any governmental authority and applicable to any Lot or the Property.

ARTICLE III
RUTHERFORD WEST HOMEOWNERS ASSOCIATION, INC.

3.01 Organization. The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Covenant.

3.02 Neighborhoods. Every Lot and Condominium Unit will be located within a Neighborhood. Lots and Condominium Units are grouped into "Neighborhoods" to: (i) facilitate a system of representative voting on matters which this Covenant or any Development Area Declaration require approval of the Association's membership; and (ii) to promote a sense of community and belonging by permitting Owners and residents within a Neighborhood to share, discuss and take action on issues unique to their Neighborhood. A Neighborhood may be comprised of any number of Lots or Condominium Units and may include Lots or Condominium Units of more than one type, as well as Lots or Condominium Units that are not contiguous to one another. Each Neighborhood will elect one "Neighborhood Delegate" to cast the votes allocated to all Lots and Condominium Units in that Neighborhood on matters requiring a vote of the Owners, as described below in this Article 3.

Each notice of applicability filed pursuant to *Section 10.05* for the purpose of annexing portions of the Property into the Development shall initially assign the property described therein to a specific Neighborhood which may then be existing or newly created. Declarant may record an amendment to any previously recorded notice of applicability filed pursuant to *Section 10.05* to designate or change Neighborhood boundaries.

3.03 Membership.

(a) Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot or Condominium Unit that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot or Condominium Unit, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot or Condominium Unit.

If you acquire a Lot or Condominium Unit you automatically become a member of the Association. <u>Membership is Mandatory!</u>

(b) If required by the Board, each Owner, other than Declarant, must execute a Membership Agreement and deliver the same to the Association prior to or concurrently with the recording of a deed conveying fee title to a Lot or Condominium Unit to such Owner. Each Owner must notify the immediate transferee of his Lot or Condominium Unit of such transferee's obligation to execute and deliver a Membership Agreement, but the failure to notify a transferee will not relieve such transferee of his obligations under this *Section 3.03(b)*. The failure to execute a Membership Agreement will not prevent any person from being a Member or Owner under the terms of the Certificate, Bylaws or Master Restrictions, or excuse any Member from the payment of Assessments. If a Membership Agreement is required by the Board, an Owner who has not executed and delivered a Membership Agreement will automatically forfeit his right to vote as a Member and additionally forfeit his right to the use and enjoyment of the Common Area and applicable Special Common Area. Such Owner will not be entitled to restoration of his voting privileges and rights in the Common Area or applicable Special Common Area until execution and delivery of a Membership Agreement by such Owner. However, the Board may, at the Board's sole discretion, provide that a Member will be entitled to the full privileges of membership in the Association, notwithstanding the failure to execute a Membership Agreement. In the event Members are entitled to a key, membership card or other token evidencing or facilitating the right to use any Improvements erected or placed on the Common Area or Special Common Area, the Board may require any Member who has not executed a Membership Agreement to return the same to the Board immediately.

Within thirty (30) days after acquiring legal title to a Lot or Condominium Unit, each Owner must provide the Association with: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot or Condominium Unit; (2) the Owner's address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name and phone number of any resident other than the Owner.

You may be required to execute a Membership Agreement before using any of the Association's property or voting on any Association matter. Your obligation to pay assessments to the Association and comply with this Covenant, any applicable Development Area Declarant, the Design Guidelines, or the rules and regulations will not be affected by your failure to execute a Membership Agreement. Also, you must provide certain information to the Association upon acquiring a Lot or Condominium Unit.

(c) Every Member will have a right and easement of enjoyment in and to all of the Common Area and an access easement by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot or Condominium Unit, subject to *Section 3.03(b)* above and subject to the following restrictions and reservations:

- (i) The right of the Association to suspend the Member's voting rights and right to use the Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such member is in violation of any provision of this Covenant;
- (ii) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;
- (iii) The right of the Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;
- (iv) The right of the Association to make reasonable rules and regulations regarding the use of the Common Area and any Improvements thereon;
- (v) The right of the Association to make rules and regulations associated with the protection and upkeep of certain common area designated, from time to time, as conservation areas, which rules may limit access, require specific fencing, or prohibit certain uses of Improvements; and
- (vi) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

(d) Each Owner of a Lot or Condominium Unit which has been designated as a beneficiary of Special Common Area in a notice of applicability, Development Area Declaration, or other recorded instrument, will have a right and easement of enjoyment in and to all of such Special Common Area, and an access easement by and through such Special Common Area, which easement will be appurtenant to and will pass with title to such Owner's Lot or Condominium Unit, subject to *Section 3.03(b)* above and subject to the following restrictions and reservations:

- (i) The right of Declarant to restrict the use of the Special Common Area to the beneficiaries designated in a notice of applicability filed pursuant to *Section 10.05* or a Development Area Declaration;
- (ii) The right of the Association to suspend the Members voting rights and right to use the Special Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during

which such Member is in violation of any provision of this Covenant;

- (iii) The right of the Association to dedicate or transfer all or any part of the Special Common Area to any public agency, authority or utility for any purpose;
- (iv) The right of the Association to borrow money for the purpose of improving the Special Common Area, and, in furtherance thereof, mortgage the Special Common Area;
- (v) The right of the Association to make reasonable rules and regulations regarding use of the Special Common Area and any Improvements thereon; and
- (vi) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

3.04 Voting Rights. Due to the number of Lots and Condominium Units that may be developed in the Development, this Covenant provides for a representative system of voting. The Owners of Lots and Condominium Units in each Neighborhood elect a "Neighborhood Delegate" and an alternative Neighborhood Delegate, in the manner provided below, to cast the votes of all Lots and Condominium Units in the Neighborhood on matters requiring a vote of the membership, except where this Covenant specifically requires a vote of the Owners. However, until such time as the Board first calls for election of a Neighborhood Delegate for a particular Neighborhood, each Owner of a Lot or Condominium Unit in such Neighborhood shall be considered a "Neighborhood Delegate" and may personally cast the vote allocated to such Owner's Lot or Condominium Unit on any issue requiring a vote of the Neighborhood Delegates under this Covenant. **Notwithstanding the foregoing or any provision to the contrary in this Covenant, as provided in Section 3.05(c) below, until expiration or termination of the Development and Sale Period, Declarant will be entitled to appoint and remove all members of the Board.**

Candidates for election as the Neighborhood Delegate and alternate Neighborhood Delegate from a Neighborhood shall be Owners of Lots or Condominium Units in the Neighborhood, spouses of such Owners, or residents of the Neighborhood. The Neighborhood Delegate and the alternate Neighborhood Delegate shall be elected on a biennial basis (once every two years), either by written ballot or at a meeting of the Owners within each Neighborhood, as the Board determines; provided, upon written petition signed by Owners holding at least ten percent (10%) of the votes within any Neighborhood, the election for such Neighborhood shall be held at a meeting. The presence, in person or by proxy, of Owners representing at least forty percent (40%) of the total votes in a Neighborhood shall constitute a quorum at any Neighborhood meeting.

The Board shall call for the first election of a Neighborhood Delegate from a Neighborhood not later than four (4) years after the first conveyance of a Lot or Condominium Unit in the Neighborhood to a Person other than Declarant. Subsequent elections shall, if necessary, be held within thirty (30) days of the same date each year. The candidate for each position who receives the greatest number of votes shall be elected to serve until his or her successor is elected.

Any Neighborhood Delegate may be removed, with or without cause, upon the vote or written petition of Owners holding a majority of the votes allocated to the Lots and Condominium Units in the Neighborhood that the Neighborhood Delegate represents.

The Neighborhood Delegate or, in his or her absence, the alternate Neighborhood Delegate attends Association meetings and casts all votes allocated to Lots and Condominium Units in the Neighborhood that he or she represents on any matter as to which such Neighborhood Delegate is entitled to vote under this Covenant. A Neighborhood Delegate may cast all votes allocated to Lots and Condominium Units in the Neighborhood in such delegate's discretion and may, but need not, poll the Owners of Lots and Condominium Units in the Neighborhood which he or she represents prior to voting.

Neighborhood Delegates are subordinate to the Board and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

In any situation in which an Owner is entitled personally to exercise the vote allocated to such Owner's Lot or Condominium Unit, if there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Lot or Condominium Unit determine among themselves and advise the Secretary of the association in writing prior to the close of balloting. Any co-Owner may cast the vote for the Lot or Condominium Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Lot or Condominium Unit protests promptly to the President or other person presiding over the meeting on the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the Lot or Condominium Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently.

3.05 Vote Allocation.

(a) The Owner of each Lot will be allocated one (1) vote for each Lot so owned. In the event of the re-subdivision of any Lot into two or more Lots: (i) the number of votes to which such Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision, e.g., each Lot resulting from the re-subdivision will be entitled to one (1) vote; and (ii) each Lot resulting from the re-subdivision will be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights and Assessments will continue to be determined

according to the number of original Lots contained in such consolidated Lot. Nothing in this Covenant will be construed as authorization for any re-subdivision or consolidation of Lots, such actions being subject to the conditions and restrictions of the applicable Development Area Declaration.

(b) Each Owner of a Condominium Unit will be allocated the number of votes for such Condominium Unit so owned as determined by Declarant at the time that a Development Area Declaration is first recorded in the Official Public Records of Hays County, Texas for the Development Area within which such Condominium Unit is located. Declarant will determine such votes in its sole discretion, taking into account, among other things, the relationship of Condominium Units to the entire Development. Declarant's determination regarding the number of votes to which such Owners will be entitled will be final, binding and conclusive. Such determination of Declarant may also be set forth in the notice filed by Declarant pursuant to *Section 10.05* below for the Development Area within which such Condominium Unit(s) are located. Prior to the time any Condominium Units in a Development Area are conveyed by Declarant to any person not affiliated with Declarant, Declarant may amend or modify its allocation of votes by filing an amended notice in the Official Public Records of Hays County, Texas, setting forth the amended allocation. In addition, Declarant, in its sole and absolute discretion, may modify or amend (which amendment or modification may be effected after Declarant's conveyance of any Condominium Units to any person not affiliated with Declarant) the number of votes previously assigned to a Condominium Unit if the Improvements actually constructed on the Condominium Unit differ substantially from the Improvements contemplated to be constructed thereon at the time a notice allocating votes thereto was originally filed. In the event of a modification to the votes allocated to a Condominium Unit, Declarant will file of record an amended vote determination setting forth the revised allocation of votes attributable to such Condominium Unit.

(c) In addition to the votes to which Declarant is entitled by reason of *Section 3.05(a)* and *Section 3.05(b)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development and Sale Period. Notwithstanding any provision to the contrary in this Covenant, until the expiration or termination of the Development and Sale Period, Declarant will be entitled to appoint and remove all members of the Board. Declarant may terminate its right as to the appointment and removal of one or all the Board members by the recordation of a termination notice executed by Declarant and recorded in the Official Public Records of Hays County, Texas. In the event Declarant terminates its right to appointment and remove less than all of the Board members, the Board positions to which the termination applies will be elected by the Neighborhood Delegates. Each Board member elected by the Neighborhood Delegates in accordance with the foregoing sentence will be elected for a term of one (1) year.

(d) At such time as Declarant no longer has the right to appoint and remove all members of the Board as provided in *Section 3.05(c)*, the Board will be increased to

five (5) members. The President of the Association will thereupon call a meeting of the Members of the Association where the Members, as represented by their Neighborhood Delegates or alternate Neighborhood Delegates, will elect one (1) Director for a three (3) year term, two (2) Directors for a two (2) year term, and two (2) Directors for a one (1) year term. Upon expiration of the term of a Director elected by the Members as provided herein, his or her successor will be elected (by the Members, as represented by their Neighborhood Delegates or alternate Neighborhood Delegates) for a term of two (2) years. A Director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

(e) When more than one person or entity owns a portion of the fee simple interest in any Lot or Condominium Unit, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot or Condominium Unit will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot or Condominium Unit (or in the Membership Agreement relating to such Lot if required by the Board), and in no event will the vote for such Lot or Condominium Unit exceed the total votes to which such Lot or Condominium is otherwise entitled under this *Section 3.05*.

(f) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) or Condominium Unit(s) remain past due, for any period during which such Owner or such Owners' Lot(s) or Condominium Unit(s) are in violation of this Covenant, and, as provided in *Section 3.03(b)* above, for any period during which such Owner has failed to execute and deliver a Membership Agreement. In addition, Declarant may suspend the right of any Owner to vote during the period such Owner's Lot or Condominium Unit is exempt from Assessments in accordance with *Section 5.07(f)*.

3.06 Powers. The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that 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 this Covenant. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) **Rules and Bylaws.** To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, and Bylaws not in conflict with this Covenant, as it deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Association.

When you acquire a Lot or Condominium Unit, you will be required to comply with the terms of this Covenant, the Development Area Declaration applicable to your Lot or Condominium Unit, the Design Guidelines, and any rules and regulations adopted by the Board. Yes, there are lots of rules!

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Master Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect assessments and to determine Assessment Units, as provided in *Article 5* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon or into any Condominium Unit for the purpose of enforcing the Master Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Covenant, a Development Area Declaration, or the Design Guidelines. The expense incurred by the Association in connection with the entry upon any Lot or into any Condominium Unit and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot or the Condominium Unit so entered, will be deemed a special Assessment against such Lot or Condominium Unit, will be secured by a lien upon such Lot or Condominium Unit, and will be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Master Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Master Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or their successors or assigns. The Association may not alter or demolish any Improvements on any Lot or Condominium Unit other than Common Area or Special Common Area in enforcing this Covenant before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) or Condominium Unit(s) has been obtained. **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM**

ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.06(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area or Special Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Master Restrictions or by any governmental authority.

(h) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon sixty (60) days written notice to the Manager. To the extent permitted by law, the Board may delegate any other duties, powers and functions to the Manager. **THE MEMBERS 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.

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for the Property and any Common Area, including but not limited to private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law (including the Texas Non-Profit Corporation Act) or under the terms of the Master Restrictions or as determined by the Board.

(k) Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, Special Common Area, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise.

(n) Authority with Respect to Development Area Declaration. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any Development Area Declaration. Any decision by the Association to delay or defer the exercise of the power and authority granted by this Section 3.06(n) will not subsequently in any way limit, impair or affect ability of the Association to exercise such power and authority.

(o) Allocation of Votes. To determine votes when permitted pursuant to Section 3.04 above.

(p) Membership Privileges. To establish rules and regulations governing and limiting the use of the Common Area, Special Common Area, and any Improvements thereon.

(q) Maintenance of Water Quality Easement. The Association is responsible for maintenance of the water quality/drainage easements established alongside the roadways. These consist of the vegetated filter strips and roadside swales. Maintenance shall consist of the following:

- (i) Routine Maintenance for All Vegetated "BMPs" – Once a vegetated area is well established, little additional maintenance is generally necessary. The key to establishing a viable vegetated feature is the care and maintenance it receives in the first few months after it is planted. Irrigation may be required to establish a dense and healthy vegetative cover. Once established, all vegetated Best Management Practices ("BMPs") require some basic maintenance to insure the health of the plants including:

- (1) All vegetated BMPs shall be inspected twice annually.
- (2) Bare spots and areas of erosion identified during semi-annual inspections must be replanted and restored with native grasses. Construction of a level spreader device may be necessary to reestablish shallow overland flow.
- (3) Sediment built up in vegetated BMPs must be removed during semi-annual inspections.

(ii) Native Vegetated Filter Strips

- (1) Grass clipping and brush debris shall not be deposited on native vegetated filter strip areas.
- (2) Along roadways mow at least twice annually or as needed to limit vegetation height and invasion of undesirable species.

(iii) Vegetated Swales

- (1) Inspect swale at least two times annually for erosion or damage to vegetation. Restore to proper conditions.
- (2) Sediment build up must be removed when the sediment reaches a level to impede the flow of water resulting in standing pools after a rain event, or if the sediment interferes with the growth and vitality of the vegetative cover.

- (3) Mow at least twice annually or as needed to limit vegetation height and invasion of undesirable species.

3.07 **Acceptance of Common Area and Special Common Area.** The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Development, or the Development and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Such property will be accepted by the Association and thereafter will be maintained as Common Area or Special Common Area, as applicable, by the Association for the benefit of the Development and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment to the extent conveyed in error or needed to make minor adjustments in property lines.

3.08 **Indemnification.** To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will 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 he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was 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 his conduct was unlawful.

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

3.10 **Control by Declarant.** Notwithstanding anything to the contrary, Declarant, or its successors or assigns, will have the absolute right to appoint members of the Board and their successors (any appointment of a successor will be a deemed removal of the Board member being replaced by such appointment) until the expiration or termination of the Development

and Sale Period. Declarant, at its option, may assign or delegate, in whole or in part, its rights and powers to the Association, the Board or any other entity provided such designation is in writing.

3.11 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 3.06* hereinabove, the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot or Condominium Unit. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Covenant with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot or Condominium Unit which is reserved under the terms and provisions of this Covenant. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the occupant of such Owner's Lot or Condominium Unit) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the occupant of such Owner's Lot or Condominium Unit) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

3.12 Community Systems. The Association is specifically authorized to provide, or to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Development ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be

entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

ARTICLE IV INSURANCE

4.01 **Insurance.** Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot or Condominium Unit. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot or Condominium Unit. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot, a Condominium Unit, or any Improvements or personal property located on a Lot or contained within a Condominium Unit.

4.02 **Restoration.** In the event of any fire or other casualty, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) will be added to the Assessment chargeable to the Owner's Lot or Condominium Unit. Any such amounts added to the Assessments chargeable against a Lot or Condominium Unit will be secured by the liens reserved in the Covenant for Assessments and may be collected by any means provided in this

Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot or Condominium Unit. EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

4.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this Article 4, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE V COVENANT FOR ASSESSMENTS

5.01 Assessments.

(a) Assessments established by the Board pursuant to the provisions of this Article 5 will be levied against each Lot and Condominium Unit in amounts determined pursuant to Section 5.07 below. The total amount of Assessments will be determined by the Board pursuant to Section 5.03, 5.04, 5.05 and/or 5.06.

(b) Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot or Condominium Unit against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon and each such Condominium Unit (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

(c) Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots and Condominium Units for any fiscal year by the

payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. Any subsidy and the characterization thereof will be disclosed as a line item in the annual budget prepared by the Board and attributable to such Assessments. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

5.02 Maintenance Fund. The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Covenant. The funds of the Association must be used solely for purposes authorized by this Covenant, as it may from time to time be amended.

5.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Covenant, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the covenants and restrictions contained herein, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. The budget prepared by the Association for the purpose of determining Regular Annual Assessments will exclude the maintenance, repair and management costs and expenses associated with any Service Area and Special Common Area. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such regular Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.04 Special Common Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget covering the estimated expenses to be incurred by the Association to maintain, repair, or manage any Special Common Area. The budget will be an estimate of the amount needed to maintain, repair and manage such Special Common Area including a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and surplus from the prior year's fund. The level of Special Common Area Assessments will be set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including non-payment of any individual Special Common Area Assessment, the Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All

such Special Common Area Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.05 Service Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year. The total amount of estimated Service Area Expenses for each Service Area will be allocated equally among all Lots and/or Condominium Units in the benefited Service Area and will be levied as a Service Area Assessment. All amounts that the Association collects as Service Area Assessments will be held in trust for and expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general funds.

5.06 Special Assessments. In addition to the regular annual Assessments provided for above, 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 Covenant. The amount of any special Assessments will be at the reasonable discretion of the Board. In addition to the special Assessments authorized above, the Association may, in any fiscal year, levy a special Assessment applicable to that fiscal 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 or Special Common Area. Any special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. Any special Assessments levied by the Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Special Common Area will be levied against all Owners who have been designated as a beneficiary of such Special Common Area and will be allocated among such Owners based on Assessment Units.

5.07 Amount of Assessment.

(a) The Board will levy Assessments against each "Assessment Unit" (as defined in *Section 5.07(b)* below). Unless otherwise provided in this Covenant, Assessments levied pursuant to *Section 5.03* and *Section 5.06* will be levied uniformly against each Lot and Condominium Unit based on the Assessment Units allocated thereto. For example, if the total regular Assessments to be levied by the Board during any fiscal year is equal to \$10,000, and the regular Assessment is to be allocated among one hundred (100) Lots each being allocated one (1) Assessment Unit and one hundred (100) Condominium Units each being allocated 0.7 Assessment Units, the regular Assessment for each Assessment Unit would be equal to \$58.82 ($\$10,000 \div 170$ Assessment Units). Special Common Area Assessments levied pursuant to *Section 5.04* will be levied uniformly against each Lot and Condominium Unit which has been

designated as a beneficiary of the Special Common Area to which such Special Common Area Assessment relates based on the Assessment Units allocated to such Lots and Condominium Units. Service Area Assessments levied pursuant to *Section 5.05* will be levied uniformly against each Lot and Condominium Unit which has been included in the Service Area to which such Service Area Assessment relates based on the Assessment Units allocated to such Lots and Condominium Units.

(b) Each Lot will constitute one "Assessment Unit" unless otherwise provided in *Section 5.07(c)*. Each Condominium Unit will constitute that number of "Assessment Units" as determined by Declarant at the time that the Development Area Declaration first recorded in the Official Public Records of Hays County, Texas for the Development Area within which such Condominium Unit is located. Declarant will determine such Assessment Units in its sole and absolute discretion, taking into account, among other things, the relationship of such Condominium Units to the entire Development. Declarant's determination regarding the number of Assessment Units applicable to each Condominium Unit will be final, binding and conclusive. Such determination of Declarant (or the Board, as the case may be) may also be set forth in the notice filed by Declarant pursuant to *Section 10.05* for the Development Area within which such Condominium Unit(s) are located. Declarant, in its sole and absolute discretion, may modify or amend the number of Assessment Units previously assigned to a Condominium Unit if the Improvements actually constructed on the Condominium Unit differ substantially from the Improvements contemplated to be constructed thereon at the time the notice allocating Assessment Units thereto was originally filed. In the event of a modification to the Assessment Units allocated to a Condominium Unit, Declarant will file of record an amended notice setting forth the revised Assessment Units attributable to the Condominium Unit.

(c) Declarant, in Declarant's sole and absolute discretion, may elect to allocate more than one "Assessment Unit" to a Lot. An allocation of more than one Assessment Unit to a Lot must be made in a notice filed by Declarant pursuant to *Section 10.05* or in a Development Area Declaration for the Development in which the Lot is located. Declarant's determination regarding the number of Assessment Units applicable to a Lot pursuant to this *Section 5.07(c)* will be final, binding and conclusive.

(d) Prior to the time any Lots or Condominium Units in such Development Area are conveyed to any person not affiliated with Declarant, Declarant may modify its determination regarding the allocation of Assessment Units by filing a notice in the Official Public Records of Hays County, Texas, setting forth the amended allocation.

(e) Notwithstanding anything in this Covenant to the contrary, no Assessments will be levied upon Lots or Condominium Units owned by Declarant.

(f) Declarant may, in its sole discretion, elect to: (i) exempt any platted, unplatted, improved, or unimproved portion of the Development, Lot or Condominium

Unit from Assessments; or (ii) delay the levy of Assessments against any platted, unplatted, unimproved or improved portion of the Development, Lot or Condominium Unit.

5.08 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be a charge upon the Lot or Condominium Unit owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot or Condominium Unit; provided, however, such charge will never exceed the maximum charge permitted under applicable law.

5.09 Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Condominium Unit will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of 1 and 1/2% per month), together with all costs and expenses of collection, including reasonable attorneys fees.

5.10 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article 5 is, together with late charges as provided in Section 5.08 and interest as provided in Section 5.09 hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to Section 5.01(b) above, and will bind each Lot or Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot or Condominium Unit, except only for tax liens and all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot or Condominium Unit in question, provided such Mortgage was recorded in the Official Public Records of Hays County, Texas before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice may be signed by one of the officers of the Association and will be recorded in the Official Public Records of Hays County, Texas. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Covenant will be deemed conclusively to have granted a

power of sale to the Association to secure and enforce the Assessment lien granted hereunder. Such lien for payment of Assessments may be enforced by the non-judicial foreclosure of the defaulting Owner's Lot or Condominium Unit by the Association in like manner as a real property mortgage with power of sale under Tex. Pro. Code § 51.002. (For such purpose, Robert D. Burton of Travis County, Texas, is hereby designated as trustee for the benefit of the Association, with the Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Covenant, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any first-lien Mortgage securing indebtedness incurred to acquire such Lot or Condominium Unit, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first lien Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 5.10*, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer of the Association. **NOTWITHSTANDING ANY PROVISION IN THIS SECTION 5.10 TO THE CONTRARY, THE ASSOCIATION WILL NOT HAVE THE AUTHORITY TO FORECLOSE ON A CONDOMINIUM UNIT FOR NON-PAYMENT OF ASSESSMENTS IF THE ASSESSMENTS CONSIST SOLELY OF FINES.** In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such 12 day period) to such Owner, in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any service provided under a Bulk Rate Contract or any other service provided by the Association, including but not limited to utility or cable services, provided through the Association and not paid for directly by a Owner or occupant to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar

language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Any utility or cable service will not be disconnected or terminated on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by applicable law, the sale or transfer of a Lot or Condominium Unit will not relieve the Owner of such Lot or Condominium Unit or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot or Condominium Unit and on the date of such conveyance Assessments against the Lot or Condominium Unit remain unpaid, or said Owner owes other sums or fees under this Covenant to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot or Condominium Unit, and such sums will be paid in preference to any other charges against the Lot or Condominium Unit other than a first lien Mortgage or Assessment Liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot or Condominium Unit which are due and unpaid. The Owner conveying such Lot or Condominium Unit will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Condominium Unit also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Lot or Condominium Unit to a third party; provided, however, that no administrative transfer fee will be due upon the transfer of a Lot or Condominium Unit from Declarant to a third party.

Yes, the Association can foreclose on your Lot or Condominium Unit!
If you fail to pay assessments to the Association, you may lose title to your Lot or Condominium Unit if the Association forecloses its assessment lien.

5.11 **Exempt Property.** The following area within the Development will be exempt from the Assessments provided for in this Article:

- (a) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Public Records of Hays County, Texas;
- (b) The Common Area and the Special Common Area; and
- (c) Any portion of the Property or Development owned by Declarant.
- (d) No portion of the Property will be subject to the terms and provisions of this Covenant, and no portion of the Property (or any owner thereof) will be obligated to pay assessments hereunder unless and until such Property has been made subject to the terms of this Covenant by the filing of a notice of applicability in accordance with *Section 10.05* below.

5.12 **Fines and Damages Assessment.** The Board may assess fines against an Owner for violations of any restriction set forth in this Covenant, any Development Area Declaration,

the Design Guidelines, or any rules adopted by the Board which have been committed by an Owner, an occupant of the Owner's Lot or Condominium Unit, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 5.12* will be considered an Assessment pursuant to this Covenant. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or Special Common Area or any facilities located by the Owner or the Owner's family, guests, agents, occupants, or tenants. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

The procedure for assessment of fines and damage charges will be as follows:

- (a) the Association, acting through an officer, Board member or Manager, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;
- (b) the notice of the fine or damage charge must describe the violation or damage;
- (c) the notice of the fine or damage charge must state the amount of the fine or damage charge;
- (d) the notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and
- (e) the notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation (if the violation is capable of being remedied) and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges will be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot or Condominium Unit is, together with interest as provided in *Section 5.09* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.01(b)* of this Covenant. Unless otherwise provided in this *Section 5.12*, the fine and/or damage charge will be considered an Assessment for the

purpose of this Article, and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 5*.

5.13 Working Capital Assessment. Each Owner (other than Declarant) of a Lot or a Condominium Unit will pay a one-time working capital assessment to the Association in such amount as may be determined by the Board from time to time in its sole and absolute discretion. Such working capital assessment need not be uniform among all Lots and/or Condominium Units, and the Board is expressly authorized to levy working capital assessments of varying amounts depending on the size, use and general character of the Lots and/or Condominium Units then being made subject to such levy. The levy of any working capital assessment will be effective only upon the recordation in the Official Public Records of Hays County, Texas of a written notice, signed by a duly authorized officer of the Association, setting forth the amount of the working capital assessment and the Lots and/or Condominium Units to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who (i) is a Homebuilder; or (ii) a Development Owner will not be subject to the working capital assessment; however, the working capital assessment will be payable by any Owner who acquires a Lot and/or a Condominium Unit from a Homebuilder or Development Owner for residential living purposes or by any Owner who: (i) acquires a Lot and/or a Condominium Unit and is not in the business of constructing single-family residences for resale to a third party; or (ii) who acquires the Lot for any purpose other than constructing a single-family residence (including a Condominium Unit) thereon for resale to a third party. In the event of any dispute regarding the application of the working capital assessment to a particular Owner, Declarant's determination regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this *Section 5.13*. The working capital assessment will be in addition to, not in lieu of, any other assessments levied in accordance with this Article 5 and will not be considered an advance payment of such assessments. The working capital assessment hereunder will be due and payable to the Association immediately upon each transfer of title to the Lot or Condominium Unit, including upon transfer of title from one Owner of such Lot or Condominium Unit to any subsequent purchaser or transferee thereof. The Association will have the power to waive the payment of any working capital assessment attributable to a Lot or Condominium Unit by the recordation in the Official Public Records of Hays County, Texas of a waiver notice executed by a majority of the Board members of the Association.

ARTICLE VI RUTHERFORD WEST REVIEWER

6.01 Purpose. This Master Covenant creates rights to regulate the design, use, and appearance of the Lots in order to preserve and enhance the Property's value and architectural

harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent Improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to the then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing Improvements, including but not limited to dwellings, buildings, fences, landscaping, retaining walls, yard art, sidewalks, and driveways, and further including replacements or modifications of original construction or installation. During the Development and Sale Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control. Until expiration of the Development and Sale Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

6.02 Architectural Control By Declarant. During the Development and Sale Period, neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Until expiration of the Development and Sale Period, the Rutherford West Reviewer for Improvements is Declarant or its designee.

(a) Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property. Accordingly, each Owner agrees that during the Development and Sale Period no Improvements will be started or progressed without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

(b) Delegation by Declarant. During the Development and Sale Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to an architectural control committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (a) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (b) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

6.03 Architectural Control by Association. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development and Sale Period

is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development and Sale Period, or earlier if delegated in writing by Declarant, the Association, acting through an architectural control committee (the "ACC") will assume jurisdiction over architectural control and will have the powers of the Rutherford West Reviewer hereunder.

(a) ACC. The ACC will consist of at least three (3) but not more than seven (7) persons appointed by the Board, pursuant to the bylaws of the Association. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

(b) Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

6.04 Prohibition of Construction, Alteration and Improvement. No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the Rutherford West Reviewer. The Rutherford West Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement, provided that such action is not visible from any other portion of the Development or Property.

NO IMPROVEMENT MAY BE CONSTRUCTED, ALTERED, OR MODIFIED WITHOUT THE ADVANCE WRITTEN APPROVAL OF THE RUTHERFORD WEST REVIEWER.

6.05 Architectural Approval.

(a) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines or any additional rules adopted by the Rutherford West Reviewer together with any review fee which is imposed by the Rutherford West Reviewer in accordance with *Section 6.05(b)*. Contact information for

the Rutherford West Reviewer will be set forth in the Design Guidelines. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by the Rutherford West Reviewer. The Rutherford West Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Rutherford West Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Rutherford West Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Rutherford West Reviewer, in its sole discretion, may require. Site plans must be approved by the Rutherford West Reviewer prior to the clearing of any Lot, or the construction of any Improvements. The Rutherford West Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Rutherford West Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(b) Design Guidelines. Declarant will have the power to adopt the initial Design Guidelines. The Rutherford West Reviewer will have the power, from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Master Covenant, the terms and provisions of this Master Covenant will control. In addition, the Rutherford West Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Master Covenant. Such charges will be held by the Rutherford West Reviewer and used to defray the administrative expenses incurred by the Rutherford West Reviewer in performing its duties hereunder; provided, however, that any excess funds held by the Rutherford West Reviewer will be distributed to the Association at the end of each calendar year. The Rutherford West Reviewer will not be required to review any plans until a complete submittal package, as required by this Master Covenant and the Design Guidelines, is assembled and submitted to the Rutherford West Reviewer. The Rutherford West Reviewer will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Master Covenant, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(c) Failure to Act. In the event that any plans and specifications are submitted to the Rutherford West Reviewer as provided herein, and the Rutherford

West Reviewer fails to either approve or reject such plans and specifications for a period of sixty (60) days following such submission, the plans and specifications will be deemed disapproved.

(d) Variances. The Rutherford West Reviewer may grant variances from compliance with any of the provisions of this Master Covenant or any Development Area Declaration, including, but not limited to, restrictions upon impervious cover, height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Rutherford West Reviewer, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and, if Declarant has assigned its rights to the ACC, must be approved by at least a majority of the members of the ACC. Each variance must also be recorded in the Official Public Records of Travis County, Texas; provided, however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the Rutherford West Reviewer, Declarant, the Board or the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Master Covenant or any Development Area Declaration will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Master Covenant, or any Development Area Declaration, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Master Covenant or any Development Area Declaration.

(e) Duration of Approval. The approval of the Rutherford West Reviewer of any final plans and specifications, and any variances granted by the Rutherford West Reviewer will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Rutherford West Reviewer, and the Rutherford West Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this Section 6.05(e) and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(f) No Waiver of Future Approvals. The approval of the Rutherford West Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Rutherford West Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or

consent be deemed to establish a precedent for future approvals by the Rutherford West Reviewer.

(g) Non-Liability of Rutherford West Reviewer. THE RUTHERFORD WEST REVIEWER WILL NOT BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE RUTHERFORD WEST REVIEWER'S DUTIES UNDER THIS MASTER COVENANT, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT OR BAD FAITH OF THE RUTHERFORD WEST REVIEWER OR ONE OR MORE INDIVIDUALS ACTING ON ITS BEHALF, AS THE CASE MAY BE.

ARTICLE VII MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots or Condominium Units within the Development. The provisions of this Article apply to the Covenant and the Bylaws of the Association.

7.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot or Condominium Unit to which its Mortgage relates (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot or Condominium Unit on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot or Condominium Unit subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Master Restrictions relating to such Lot or Condominium Unit or the Owner or occupant which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

7.02 Examination of Books. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

7.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law will relate only to the individual Lots or Condominium Units and not to any other portion of the Development.

ARTICLE VIII
GENERAL PROVISIONS

8.01 **Term.** Upon the filing of a notice pursuant to *Section 10.05*, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Covenant will run with and bind the portion of the Property described in such notice, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Covenant is recorded in the Official Records of Hays County, Texas, and continuing through and including January 1, 2056, after which time this Covenant will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Hays County, Texas. Notwithstanding any provision in this *Section 8.01* to the contrary, if any provision of this Covenant would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire (twenty one) 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

8.02 **Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Covenant is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot and/or Condominium Unit. In the event any proceeds attributable to acquisition of Special Common Area are paid to Owners who have been designated as a beneficiary of such Special Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot and/or Condominium Unit.

8.03 **Amendment.** This Covenant may be amended or terminated by the recording in the Official Public Records of Hays County, Texas, of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (unless Declarant has relinquished such right by written instrument recorded in the Official Public Records of Hays County, Texas) and Members entitled to cast at

least seventy percent (70%) of the number of votes entitled to be cast by members of the Association. No amendment will be effective without the written consent of Declarant, its successors or assigns. Specifically, and not by way of limitation, Declarant may unilaterally amend this Covenant and any Development Area Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot or Condominium Unit; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots and/or Condominium Units; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

8.04 Roadway and Utility Easements. Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, relocated, constructed, erected, and maintained in and on any streets maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Common Area or Special Common Area, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of repair and maintenance.

8.05 Enforcement. The Association or Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Covenant. Failure to enforce any right, provision, covenant, or condition granted by this Covenant will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

8.06 Higher Authority. The terms and provisions of this Covenant are subordinate to federal and state law, and local ordinances. Generally, the terms and provisions of this Covenant are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

NOTICE

Users of this Covenant, any Development Area Declaration, and the Design Guidelines should periodically review statutes and court rulings that may modify or nullify the terms and provisions of those documents or their enforcement, or which may create rights or duties not contemplated therein.

8.07 Severability. If any provision of this Covenant is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Covenant, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

8.08 Conflicts. If there is any conflict between the provisions of this Covenant, the Certificate of Formation, the Bylaws, or any rules and regulations adopted pursuant to the

terms of such documents, or any Development Area Declaration, the provisions of this Covenant will govern.

8.09 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

8.10 Acceptance by Grantees. Each grantee of Declarant of a Lot, Condominium Unit, other real property interest in the Development, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Covenant or to whom this Covenant is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Development, and will bind any person having at any time any interest or estate in the Development, and will inure to the benefit of each Owner in like manner as though the provisions of this Covenant were recited and stipulated at length in each and every deed of conveyance.

8.11 Damage and Destruction.

(a) Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 8.11(a)*, means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Any damage to or destruction of the Common Area or Special Common Area will be repaired unless a majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) In the event that it should be determined by the Board that the damage or destruction of the Common Area or Special Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Special Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

(d) If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 5*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a special Assessment, as provided in *Article 5*, against all Owners designated as a beneficiary of such Special Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(f) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

(g) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Special Common Area, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners who have been designated as a beneficiary of such Special Common Area and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

(h) In the event that any proceeds of insurance policies are paid to Owners, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

8.12 No Partition. Except as may be permitted in this Covenant or amendments thereto, no physical partition of the Common Area or Special Common Area or any part will be permitted, nor will any person acquiring any interest in the Development or any part seek any such judicial partition unless the Development in question has been removed from the provisions of this Covenant pursuant to *Section 10.04* below. This *Section 8.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Covenant, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

8.13 View Impairment. Neither the Declarant nor the Association guarantee or represent that any view over and across the Lots and/or Condominium Units, or any open space within the Development will be preserved without impairment. The Declarant and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area or Special Common Area) will have the right to

add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

8.14 **Safety and Security.** Each Owner and occupant of a Lot or Condominium Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Lot or Condominium Unit that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Lots and Condominium Units and the contents of Lots and Condominium Units, resulting from acts of third parties.

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

ARTICLE IX **EASEMENTS**

9.01 **Right of Ingress and Egress.** Declarant, its agents, employees and designees will have a right of ingress and egress over and the right of access to the Common Area or Special Common Area to the extent necessary to use the Common Area or Special Common Area and the right to such other temporary uses of the Common Area or Special Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Development.

9.02 **Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and

related rights made by Declarant prior to the Development becoming subject to this Covenant are incorporated herein by reference and made a part of this Covenant for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Development.

9.03 Utility Easements. Declarant hereby reserves unto itself and Declarant's successors and assigns a perpetual non-exclusive easement over and across the Development for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Development and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Development and any other property owned by Declarant; and (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Development and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and improvements described in (i) through (iii) of this Section 9.03. The exercise of the easement reserved herein will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or Condominium Unit or residence or Improvement constructed thereon.

9.04 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Covenant, each Owner, by accepting a deed to a Lot or Condominium Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Lot or Condominium Unit, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot or Condominium Unit, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Covenant. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

9.05 Greenbelt and Access Easements. Greenbelt and access easements may exist on or across portions of the Lots. Each Owner is advised to ascertain the location of any greenbelt or access easement prior to the installation of landscaping or any other Improvement on a Lot. Any plans or specifications submitted to the Rutherford West Reviewer for the installation of landscaping or any other Improvement must reflect all greenbelt and access easements affecting the Lot. Declarant hereby reserves the right as to any particular Lot (which right will expire as

to a particular Lot on the date Declarant conveys such Lot to a third party) to establish a greenbelt and access easement over and across a Lot. If a greenbelt or access easement is established on a Lot, then unless otherwise approved by the Declarant (and then the Board upon expiration or termination of the Development and Sale Period), the Owner may not construct or install any Improvement on the portion of the Lot encumbered by the greenbelt and/or access easement. Fences, trails, roadways, subdivision signage and other similar construction may be constructed by Declarant (or the Association after such easements have been assigned or conveyed to the Association).

9.06 Conservation Easements. It is anticipated that conservation easements will be established on portions of Lots within the Development. If a conservation easement is established on a Lot, each Owner is advised that (i) no impervious cover, whether temporary or permanent, including, but not limited to, buildings, outbuildings, sheds, signs, parking, sidewalks, driveways, paving, or any other structures shall be constructed on any portion of the area subject to the conservation easement; and (ii) no fence may be constructed on any portion of the area subject to the conservation easement.

ARTICLE X

DEVELOPMENT RIGHTS

10.01 Development by Declarant. It is contemplated that the Development will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to designate Development Areas, to create and/or designate Lots, Special Common Areas and Common Areas and to subdivide with respect to any of the Development pursuant to the terms of this *Section 10.01*, subject to any limitations imposed on portions of the Development by any applicable Plat. These rights may be exercised with respect to any portions of the Property in accordance with *Section 10.05*. As each area is developed or dedicated, Declarant may record one or more Development Area Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Development Area Declaration may provide its own procedure for the amendment of any provisions. All lands, Improvements, and uses in each area so developed will be subject to both this Covenant and the Development Area Declaration, if any, for that Area.

10.02 Special Declarant Rights. Notwithstanding any provision of this Covenant to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots or Condominium Units in the Development; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Development. The construction placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 10.02* until two (2) years after the expiration or termination of the Development and Sale Period.

10.03 Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property and, upon the filing of a notice of addition of land, such land will be considered part of the Property for purposes of this Covenant, and upon the further filing of a notice of applicability meeting the requirements of *Section 10.05* below, such added lands will be considered part of the Development subject to this Covenant and the terms, covenants, conditions, restrictions and obligations set forth in this Covenant, and the rights, privileges, duties and liabilities of the persons subject to this Covenant will be the same with respect to such added land as with respect to the lands originally covered by this Covenant. To add lands to the Property, Declarant will be required only to record in the Official Public Records of Hays County, Texas, a notice of addition of land (which notice may be contained within any Development Area Declaration affecting such land) containing the following provisions:

(a) A reference to this Covenant, which reference will state the volume and initial page number of the Official Public Records of Hays County wherein this Covenant is recorded;

(b) A statement that such land will be considered Property for purposes of this Covenant, and that upon the further filing of a notice of applicability meeting the requirements of *Section 10.05* of this Covenant, all of the terms, covenants, conditions, restrictions and obligations of this Covenant will apply to the added land; and

(c) A legal description of the added land.

10.04 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, including the Development, and remove and exclude from the burden of this Covenant and the jurisdiction of the Association: (i) any portions of the Development which have not been included in a Plat; (ii) any portion of the Development included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portions of the Development included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal and renewal this Covenant and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development withdrawn. To withdraw lands from the Development hereunder, Declarant will be required only to record in the Official Public Records of Hays County, Texas, a notice of withdrawal of land containing the following provisions:

(a) A reference to this Covenant, which reference will state the volume and initial page number of the Official Public Records of Hays County wherein this Covenant is recorded;

(b) A statement that the provisions of this Covenant will no longer apply to the withdrawn land; and

(c) A legal description of the withdrawn land.

10.05 Notice of Applicability. Upon the filing in the Official Public Records of Hays County, Texas, this Covenant serves to provide notice that at any time, and from time to time, all or any portion of the Property may be made subject to the terms, covenants, conditions, restrictions and obligations of this Covenant. This Covenant will apply to and burden a portion or portions of the Property upon the filing of a notice of applicability describing such Property by a legally sufficient description and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants conditions, restrictions and obligations of this Covenant. To be effective, a notice of applicability must be executed by Declarant and the record title owner of the Property being made subject to this Covenant if such Property is not owned by Declarant. Declarant may also cause a notice of applicability to be filed covering a portion of the Property for the purpose of encumbering such Property with this Covenant and any Development Area Declaration previously recorded by Declarant (which notice of applicability may amend, modify or supplement the restrictions, set forth in the Development Area Declaration, which will apply to such Property). To make the terms and provisions of this Covenant applicable to a portion of the Property, Declarant will be required only to cause a notice of applicability to be recorded containing the following provisions:

(a) A reference to this Covenant, which reference will state the volume and initial page number of the Official Public Records of Hays County, Texas wherein this Covenant is recorded;

(b) A reference, if applicable, to the Development Area Declaration which will apply to such portion of the Property (with any amendment, modification, or supplementation of the restrictions set forth in the Development Area Declaration which will apply to such portion of the Property), which reference will state the volume and initial page number of the Official Public Records of Hays County, Texas wherein the Development Area Declaration is recorded;

(c) A statement that all of the provisions of this Covenant will apply to such portion of the Property;

(d) A legal description of such portion of the Property; and

(e) If applicable, a description of any Special Common Area which benefits the Property and the beneficiaries of such Special Common Area.

NOTICE TO TITLE COMPANY

NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT AND THIS COVENANT DOES NOT APPLY TO ANY PORTION OF THE PROPERTY UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PROPERTY AND REFERENCING THIS COVENANT HAS BEEN RECORDED IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

10.06 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

ARTICLE XI DISPUTE RESOLUTION

11.01 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all parties subject to this Covenant (collectively, the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Development without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 11.02* in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" will refer to any claim, grievance or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Covenant, any Development Area Declaration, the Design Guidelines, the Certificate, Bylaws, and rules and regulations adopted by the Board; or
- (ii) the rights, obligations, and duties of any Bound Party under the Covenant, any Development Area Declaration, the Design Guidelines, the Certificate, Bylaws, and rules and regulations adopted by the Board; or
- (iii) the design or construction of improvements within the Development, other than matters of aesthetic judgment under *Article 6*, which will not be subject to review.

The following will not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 11.02*:

- (1) any suit by the Association to collect assessments or other amounts due from any Owner; and

- (2) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Covenant; and
- (3) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Covenant, any Development Area Declaration, the Design Guidelines, the Certificate, Bylaws, and rules and regulations adopted by the Board; and
- (4) any suit in which any indispensable party is not a Bound Party; and
- (5) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by *Section 11.02 (a)*, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

11.02 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") will give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in *Section 11.02(a)* (or within such other period as the parties may agree upon), the Claimant will have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Hays County, Texas.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant will be deemed to have waived the Claim, and the Respondent will be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant will thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party will bear its own costs of the mediation, including attorney's fees, and each Party will share equally all fees charged by the mediator.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award will, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

11.03 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association will not initiate any judicial or administrative proceeding unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, excluding the votes held by Declarant, except that no such approval will be required for actions or proceedings:

(a) initiated while Declarant owns any portion of the Property or the Development; or

(b) initiated to enforce the provisions of the Covenant, any Development Area Declaration, the Design Guidelines, the Certificate, Bylaws, and rules and

regulations adopted by the Board, including collection of assessments and foreclosure of liens; or

- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings; or
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section will not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment will also be approved by Declarant until the expiration or termination of the Development and Sale Period.

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Hays County, Texas.

[SIGNATURE PAGE FOLLOWS]

DECLARANT:

WFCRW, LLC, a Texas limited liability company

By: David Goodrum

Printed Name: DAVID GOODRUM

Title: VP DEVELOPMENT

THE STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on the 9th day of May, 2006,
by David Goodrum, VP Development of WFCRW, LLC, a Texas limited liability
company, on behalf of said limited liability company.

(Seal)



Sarah A. Shannon

Notary Public Signature

EXHIBIT "A"

DESCRIPTION OF PROPERTY

1. Lot 1, Block A, Rutherford West, Section One, a subdivision located in Hays County, Texas, according to the map or plat thereof recorded in Vol. 12, Pages 378-379 in the Official Public Records of Hays County, Texas; and
2. That certain 650.45 acre tract of land, more or less, located in Hays County, Texas being more particularly described in the metes and bounds description on Exhibit "A-1", attached hereto.

650.265 Acres
Page 1

Free Love Woody Survey No. 23
Gregorio Esparza Survey File No. D-762
Thomas W. Moore Survey No. 12
Thomas F. Gray Survey No. 11
C. Wilhelm Survey File No. P-492
Juan Armendaris Survey No. S-1173
November 25, 2003
99533.13

STATE OF TEXAS

COUNTY OF HAYS

§
§
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FIELDNOTE DESCRIPTION of a 650.265 acre tract out of the Free Love Woody Survey No. 23, the Gregorio Esparza Survey File No. D-762, the Thomas W. Moore Survey No. 12, the Thomas F. Gray Survey No. 11, the C. Wilhelm Survey File No. P-492, and the Juan Armendaris Survey File No. S-1173, Hays County, Texas, being a portion of that 577.094 acre tract conveyed to SGL Development, Ltd. by deed recorded in Volume 1696, Page 581 of the Deed Records of Hays County, Texas and a portion of the remainder of that 281.398 acre tract as conveyed to SGL Development, Ltd. by deed recorded in Volume 1696, Page 573 of the said Deed Records; the said 650.265 acre tract is more particularly described by metes and bounds as follows:

BEGINNING at a fence corner post found for an angle point in the northerly line of said 577.094 acre tract, being the most easterly, southeast corner of that 177.762 acre tract conveyed to LSM Ranch Ltd. by deed recorded in Volume 1628, Page 206 of the said Deed Records, and the southwest corner of Lot 164, Amended Goldenwood West, Section IV, a subdivision recorded in Book 6, Pages 37 through 41 of the Plat Records of Hays County, Texas;

THENCE, leaving the easterly line of the said 177.762 acre tract, with the common line between the said 577.094 acre tract and Amended Goldenwood West, Section IV, for the following three (3) courses:

- 1) S89°33'48"E, 449.75 feet to a 5/8" iron rod found for the common corner of Lot 164 and Lot 146, Amended Goldenwood West, Section IV;
- 2) S89°39'34"E, at 111.33 feet pass a 5/8" iron rod found 0.30 feet to the right for the common corner between Lot 146 and Lot 145, Amended Goldenwood West, Section IV, for a total distance of 308.51 feet to a 3/8" iron rod found for an angle point;
- 3) N88°41'17"E, at 66.07 feet pass a 5/8" iron rod found 0.48 feet to the right for the common corner of Lot 145 and Lot 144, Amended Goldenwood West, Section IV, at 342.19 feet pass an 5/8" iron rod found for the common corner of Lot 144 and Lot 143, Amended Goldenwood West, Section IV, for a total distance of 442.88 feet to a 5/8" iron rod found for an angle point;

November 25, 2003

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8k 581

THENCE, N88°34'18"E, continuing with the north line of the said 577.094 acre tract, at 60.02 feet pass a 5/8" iron rod found for the common corner of Lot 142, Amended Goldenwood West, Section IV and Lot 91, Amended Goldenwood, Section III, a subdivision recorded in Book 2, Pages 311 and 312 of the said Plat Records, at 196.59 feet pass a 5/8" iron rod found 0.74 feet to the left for the common corner of Lot 91 and Lot 90, Amended Goldenwood, Section III, at 771.62 feet pass a 5/8" iron rod found for the common corner of Lot 90 and Lot 89, Goldenwood, Section III, for a total distance of 804.18 feet to a fence corner post found for an angle point;

THENCE, N88°28'09"E, continuing with the north line of the said 577.094 acre tract, at 103.07 feet pass a 5/8" iron rod found 0.36 feet to the left for the common corner of Lot 89 and Lot 81, Amended Goldenwood, Section III, at 578.02 feet pass a 5/8" iron rod found 0.31 feet to the left for the common corner of Lot 81 and Lot 80, Goldenwood, Section III, at 945.18 feet pass a 5/8" iron rod found for the common corner of Lot 80, Goldenwood, Section III and Lot 61, Goldenwood, Section II, a subdivision recorded in Book 2, Pages 263 and 264 of the said Plat Records, for a total distance of 1089.47 feet to a fence corner post found for an angle point;

THENCE, N88°25'41"E, with the common line between the said 577.094 acre tract and Goldenwood, Section II, at 155.74 feet pass a 5/8" iron rod found 0.11 feet to the left for the common corner of Lot 61 and Lot 60, at 525.69 feet pass a 5/8" iron rod found for the common corner of Lot 60 and Lot 59, at 896.01 feet pass a 5/8" iron rod found 0.22 feet to the right for the common corner of Lot 59 and Lot 58, at 1285.60 feet pass a 5/8" iron rod found 0.60 feet to the right for the common corner of Lot 58 and Lot 54, at 1459.53 feet pass a 5/8" iron rod found 0.11 feet to the left for the common corner of Lot 54 and Lot 53, for a total distance of 1748.06 feet to a 1/2" iron rod with plastic cap stamped "Capital Surveying Co. Inc." found for the northeast corner of the herein described tract, being also a westerly corner of that 2724.144 acre tract conveyed to Cypress-Hays L.P. by deed recorded in Volume 1671, Page 276 of the said Deed Records, from which a fence corner post found for an angle point on the aforesaid common line between the 577.094 acre tract and Lot 53, Goldenwood, Section II, bears N88°25'41"E, 146.24 feet;

THENCE, S01°02'37"E, leaving the southerly line of said Lot 53, Goldenwood, Section II, with the common line between the said 577.094 acre tract and the said 2724.144 acre tract, at 2761.80 feet pass the northeasterly corner of the aforesaid remainder of the 281.398 acre tract, for a total distance of 4185.44 feet to a 1/2" iron rod with plastic cap stamped "Capital Surveying Co. Inc." found on a curve to the left for the southwest corner of the said 281.398 acre tract, being the southwest corner of the said 2724.144 acre tract

and a point on the northerly right-of-way line of State Highway FM 967 (80.00' right-of-way), from which a TxDOT concrete monument found on the common line between the aforesaid 2724.144 acre tract and FM 967 bears S64°24'02"E, a chord distance of 395.65 feet;

THENCE, leaving the said 2724.144 acre tract, with the common line between the said remainder of the 281.398 acre tract and the northerly right-of-way of State Highway FM 967 for the following two (2) courses:

- 1) With the said curve to the left having a central angle of 20°23'48", a radius of 1949.86 feet, a chord distance of 690.47 feet (chord bears N80°25'18"W), for an arc distance of 694.13 feet to a TxDOT concrete highway monument found for the point of non-tangency, being 40.00 feet right of State Highway centerline station 464+44.3;
- 2) S89°26'26"W, 591.88 feet to a ½" iron rod set, from which a TxDOT concrete monument found, being 40.00 feet right of State Highway centerline station 487+01.2, bears S89°26'26"W, 1663.74 feet;

THENCE, leaving the northerly right-of-way line of State Highway FM 967, across the said remainder of the 281.398 acre tract, for the following four (4) courses:

- 1) N14°38'07"W, 243.10 feet to a ½" iron rod set;
- 2) N28°17'12"W, 700.84 feet to a ½" iron rod set;
- 3) N41°11'28"W, 443.52 feet to a ½" iron rod set;
- 4) N55°31'08"W, at 187.80 feet pass the common line between the said remainder of the 281.398 acre tract and 577.094 acre tract, for a total distance of 394.09 feet to a ½" iron rod set;

THENCE, across the said 577.094 acre tract, for the following ten (10) courses:

- 1) N60°32'57"W, 357.51 feet to a ½" iron rod set;
- 2) N69°36'33"W, 310.47 feet to a ½" iron rod set;
- 3) N54°29'24"W, 174.59 feet to a ½" iron rod set;

Free & Woody Survey No. 23
Gregorio Esparza Survey File No. D-762
Thomas W. Moore Survey No. 12
Thomas F. Gray Survey No. 11
C. Wilhelm Survey File No. P-492
Juan Armendaris Survey No. S-1173
November 25, 2003
99533.13

- 4) N87°24'00"W, 149.04 feet to a ½" iron rod set;
- 5) S62°22'41"W, 160.40 feet to a ½" iron rod set;
- 6) N78°19'51"W, 48.79 feet to a ½" iron rod set;
- 7) N62°59'38"W, 252.42 feet to a ½" iron rod set;
- 8) N57°36'51"W, 286.27 feet to a ½" iron rod set;
- 9) S56°07'48"W, 146.21 feet to a ½" iron rod set;
- 10) S00°36'02"E, 650.13 feet to a ½" iron rod with plastic cap stamped "Capital Surveying Co. Inc." found on the common line between the said remainder of the 281.398 acre tract and 577.094 acre tract;

THENCE, S89°24'00"W, with the common line between the said remainder of the 281.398 acre tract and the 577.094 acre tract, 3957.12 feet to a ½" iron rod with plastic cap stamped "Capital Surveying Co. Inc." found;

THENCE, S01°02'37"E, leaving the southerly line of the said 577.094 acre tract, across the said 281.398 acre tract, 1360.58 feet to a ½" iron rod with plastic cap stamped "Capital Surveying Co. Inc." found on the southerly line of the said 281.398 acre tract, being on the aforesaid northerly right-of-way line of State Highway FM 967, from which a TxDOT concrete monument found, being 40.00 feet right of State Highway centerline station 500+14.5, bears N88°26'41"E, 3630.69 feet;

THENCE, with the common line between the said remainder of the 281.398 acre tract and the northerly right-of-way of State Highway FM 967 for the following two (2) courses:

- 1) S88°26'41"W, 928.72 feet to a TxDOT concrete monument found for the point of curvature of a non-tangent curve to the right, being 40.00 feet right of State Highway centerline station 545+72.7;
- 2) With the said curve to the right having a central angle of 9°54'14", a radius of 1392.39 feet, a chord distance of 240.39 feet (chord bears N86°33'18"W), for an arc distance of 240.68 feet to a ½" iron rod with plastic cap stamped "Capital Surveying Co. Inc." found for the southeast corner of that 2.00 acre tract conveyed to Pedernales Electric Cooperative,

Freek . Woody Survey No. 23
Gregorio Esparza Survey File No. D-762
Thomas W. Moore Survey No. 12
Thomas F. Gray Survey No. 11
C. Wilhelm Survey File No. P-492
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November 25, 2003
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Inc., by deed recorded in Volume 243, Page 949 of the said Deed Records, from which a TxDOT concrete monument found bears N65°35'22"W, a chord distance of 768.22 feet;

THENCE, leaving the northerly right-of-way line of said State Highway FM 967, along the said 281.398 acre tract, with the east and north lines of the said 2.00 acre tract for the following two (2) courses:

- 1) N00°43'19"E, 332.70 feet to a brass disk in concrete found;
- 2) N89°16'41"W, 295.50 feet to a ½" iron rod with plastic cap stamped "Capital Surveying Co. Inc." found for the northwest corner of the said 2.00 acre tract, being on a westerly line of the aforesaid remainder of the 281.398 acre tract and a point on the easterly line of that 26.25 acre tract conveyed to Denton E. Ragland, Patrice Ragland and Marilyn Ragland by deed recorded in Volume 282, Page 373 of the said Deed Records, from which a brass disk in concrete found for the southwest corner of the said 2.00 acre tract, being the southeast corner of the 26.25 acre tract bears S00°31'49"W, 259.61 feet;

THENCE, N00°31'49"E, leaving the northerly line of the said 2.00 acre tract, with the common line between the said 281.398 acre tract and the 26.25 acre tract, at 1019.05 feet pass the northwest corner of the 281.398 acre tract, being the southwest corner of the aforesaid 577.094 acre tract, for a total distance of 1087.30 feet to a fence corner post found for an angle point;

THENCE, N00°42'40"W, with the common line between the said 577.094 acre tract and the 26.25 acre tract, 446.87 feet to a fence corner post found for the northeast corner of the said 26.25 acre tract, being the most southerly southeast corner of that 522.268 acre tract conveyed to John Richard Rutherford by deed recorded in Volume 1214, Page 548 of the said Deed Records;

THENCE, N01°00'52"W leaving the northerly line of the said 26.25 acre tract, with the common line between the said 577.094 acre tract and the 522.268 acre tract, at 19.81 feet pass a 5/8" iron rod with aluminum cap stamped "Kent McMillan, Land Surveyor, RPLS 4341" found 0.07 feet to the right, at 218.93 feet pass a 5/8" iron rod with aluminum cap stamped "Kent McMillan, Land Surveyor, RPLS 4341" found in a rock mound 4.39 feet to the right, for a total distance of 2046.09 feet to a metal fence post found for the northwest corner of the said 577.094 acre tract;

THENCE, leaving the easterly line of the said 522.268 acre tract, with the north line of the said 577.094 acre tract, for the following two (2) courses:

- 1) S88°52'35"E, 99.16 feet to a ½" iron rod found with plastic cap marked "Capital Surveying Co., Inc." for corner;
- 2) N00°30'49"W, 81.56 feet to a ½" iron rod found with plastic cap marked "Capital Surveying Co., Inc." on the aforesaid southerly line of the 177.762 acre tract;

THENCE, with the common line between the said 577.094 acre tract and 177.762 acre tract, for the following two (2) courses:

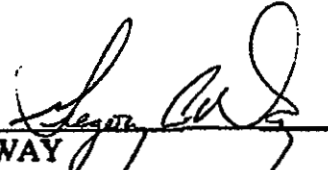
- 1) N87°51'36"E, 1575.39 feet to a 5/8" iron rod with aluminum cap stamped "Kent McMillan, Land Surveyor, RPLS 4341" found for an angle point;
- 2) N88°47'58"E, at 2751.65 feet pass a 5/8" iron rod with aluminum cap stamped "Kent McMillan, Land Surveyor, RPLS 4341" found, for a total distance of 2781.34 feet to the PLACE OF BEGINNING, CONTAINING within these metes and bounds 650.265 acres of land area.

NOTES: "½ inch iron rod set" denotes a ½ inch iron rod, with a plastic cap marked "Capital Surveying Company, Inc.", set for corner.

That I, Gregory A. Way, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the
25 day of November, 2003.




GREGORY A. WAY
Registered Professional Land Surveyor
No. 4567 - State of Texas

ON ABOUT 200 ACRES FOR
GREENHAWK W.C.D. 2 ANNEXATION
HAYS COUNTY, TEXAS

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650.265 ACRES INCLUDED

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[illegible]**NOTES:**

- [illegible]

2nd. In the case of a person who is not a member of the church, the church should not be allowed to sue for damages.

Given by me
Karl H. D. Smith, Jr.

[illegible]

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WELL IN DEPTHS SHE HAS COME TO MIND AFRICAN.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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On: May 09, 2006 at 12:46P
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Lee Carlisle, County Clerk
Hays County



AFTER RECORDING RETURN TO:
ROBERT D. BURTON
ARMBRUST & BROWN, L.L.P.
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

ASSIGNMENT OF DECLARANT'S RIGHTS
AND FIRST AMENDMENT TO RUTHERFORD
WEST MASTER COVENANT

Hays County, Texas

Cross reference to Rutherford West Master Covenant, recorded in Volume 2918, Page 524, in the
Official Public Records of Hays County, Texas

**ASSIGNMENT OF DECLARANT'S RIGHTS AND FIRST AMENDMENT TO
RUTHERFORD WEST MASTER COVENANT**

This Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant (this "Assignment") is made by WFCRW, LLC, a Texas limited liability company ("Assignor"), and WILSON FAMILY COMMUNITIES, INC., a Delaware corporation ("Assignee"), and is as follows:

RECITALS

A. Assignor is the current "Declarant" under that certain Rutherford West Master Covenant, recorded in Volume 2918, Page 524, in the Official Public Records of Hays County, Texas (the "Declaration").

B. Assignor desires to transfer and assign all of its rights, title, and interest as Declarant under the Declaration to Assignee.

C. *Section 10.06* of the Declaration provides that Declarant may, in writing, assign, in whole or in part, any of its privileges, exemptions, rights and duties under the Declaration to any other person and may permit the participation, in whole or in part, by any other person in any of its privileges, exemptions, rights and duties under the Declaration.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Transfer and Assignment of Declarant's Rights.** Assignor does hereby grant, sell, set over, transfer, and assign to Assignee, its successors and assigns, all of Assignor's right, title, interest, powers, privileges, benefits, and obligations as Declarant under the Declaration. Assignee shall hereinafter have all rights to act and exercise all rights, powers, privileges, benefits, and obligations as the Declarant under the Declaration.

2. **Amendment to Declaration.** Assignor, as Declarant, does hereby modify and amend the Declaration to substitute in its place, Assignee, as the "Declarant" for all intents and purposes. Assignee shall hereinafter have all rights to act and exercise all rights, powers, privileges, benefits and obligations as the Declarant under the Declaration.

3. **Assignee's Acceptance of Assignment.** Assignee accepts the assignment of Assignor's right, title, and interest as Declarant under the Declaration and expressly assumes and agrees to keep, perform, and fulfill all of the obligations of Assignor under the terms and provisions of the Declaration.

4. **No Other Changes.** Except as specifically set forth in this Assignment, the terms and provisions of the Declaration shall remain unmodified, and the Declaration is hereby confirmed as being in full force and effect as amended herein.

5. **Defined Terms.** All defined terms delineated with initial capital letters in this Assignment that are not defined herein shall have the meaning ascribed to them in the Declaration. Other terms have the meanings commonly ascribed to them.

6. **Survival of Provisions.** This Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

7. **Captions.** The captions of sections in this Assignment are for convenient reference only and are not to be construed in any way as part of this Assignment and Amendment.

8. **Execution.** To facilitate execution, this instrument may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties be contained in any one counterpart hereof. Additionally, the parties hereto hereby covenant and agree that, for purposes of facilitating the execution of this instrument, the signature pages taken from separate individually executed counterparts of this instrument may be combined to form multiple fully executed counterparts. All executed counterparts of this instrument shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same instrument.

Executed to be effective this 16th day of APRIL, 2007.

[SIGNATURE PAGE FOLLOWS]

ASSIGNOR:

WFCRW, LLC, a Texas limited liability company

By: *Clark N. Wilson*

Printed Name: CLARK N. WILSON

Title: MANAGER

ASSIGNEE:

WILSON FAMILY COMMUNITIES, INC., a
Delaware corporation

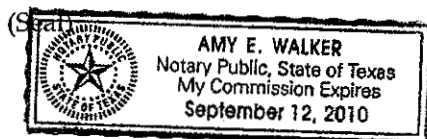
By: *Clark N. Wilson*

Printed Name: CLARK N. WILSON

Title: PRESIDENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

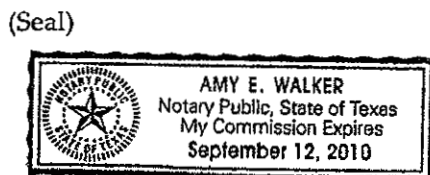
This instrument was acknowledged before me on the 16th day of APRIL, 2007,
by CLARK N. WILSON, MANAGER of WFCRW, LLC, a Texas limited liability
company, on behalf of said limited liability company.



A. E. Walker
Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 16th day of APRIL, 2007,
by CLARK N. WILSON, PRESIDENT of Wilson Family Communities, Inc., a Texas
corporation, on behalf of said corporation.



A. E. Walker
Notary Public Signature

Bk Vol Pg
70011317 DPR 3149 509

Filed for Record in:
Hays County
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Lynn Curry, Deputy

Linda C. Fritsche, County Clerk
Hays County



After Recording Return To:

Robert D. Burton
Armbrust & Brown, L.L.P.
100 Congress Ave., Suite 1300
Austin, Texas 78701

SECOND AMENDMENT TO **RUTHERFORD WEST MASTER COVENANT**

[ESTATES AND TRAILS]

Declarant: WILSON FAMILY COMMUNITIES, INC., a Delaware corporation

Cross reference to that certain Rutherford West Master Covenant, recorded in Volume 2918, Page 524, in the Official Public Records of Hays County, Texas, and that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in the Official Public Records of Hays County, Texas.

**SECOND AMENDMENT TO
RUTHERFORD WEST MASTER COVENANT**

This Second Amendment to Rutherford West Master Covenant (the "Amendment") is made by **WILSON FAMILY COMMUNITIES, INC.**, a Delaware corporation (the "Declarant"), and is as follows:

RECITALS:

A. **WFCRW, LLC**, a Texas limited liability company ("**WFCRW**"), previously executed and recorded that certain Rutherford West Master Covenant, recorded in Volume 2918, Page 524, in the Official Public Records of Hays County, Texas (the "**Master Covenant**").

B. **WFCRW** previously assigned to Declarant all of its right, title and interest as the "Declarant" under the Master Covenant in that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in the Official Public Records of Hays County, Texas.

C. Pursuant to *Section 8.03* of the Master Covenant, the Master Covenant may be amended by Declarant acting alone.

D. Declarant now desires to amend the Master Covenant as set forth hereinbelow.

NOW THEREFORE, Declarant hereby amends and modifies the Master Covenant as follows:

1. **Additional Restrictions.** *Section 2.07* is hereby added to Article II of the Master Covenant as follows:

2.07. **Additional Restrictions.** The following restrictions apply to all Lots within Rutherford West, Section Two, a subdivision located in Hays County, Texas, according to the map or plat thereof recorded in the Official Public Records of Hays County, Texas:

(a) **Driveways and Culverts.** The design, construction materials, and location of (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, shall be approved by the Rutherford West Reviewer. Driveways shall be no greater than twelve feet (12') in width through the building line set back and be limited to a maximum disturbed area of ten feet (10') on either side of the driveway. Driveways located off the building line may exceed twelve feet (12'). Driveways on corner lots abutting a cul-de-sac and another roadway shall access off the cul-de-sac. No asphalt driveways shall be permitted within

fifty feet (50') of the front property line. Driveways must be located a minimum of ten feet (10') from the side yard lot line and there shall be at least a twenty foot (20') buffer between driveways on adjoining lots. The Rutherford West Reviewer shall establish design and materials requirements for all culverts to insure that they are consistent in appearance throughout the Property.

(b) Trees and Drainage Easements. No trees and/or significant vegetation shall be removed from any Lot without the advance written approval of the Rutherford West Reviewer. No Improvements other than driveway crossings shall be placed within a drainage easement.

(c) Rainfall Harvesting. The utilization of rainfall harvesting techniques is encouraged for each Lot. The rainfall harvesting technique, facilities, design and location shall be approved in advance by the Rutherford West Reviewer. The maintenance and repair of all rainfall harvesting facilities located on any Lot shall be the sole responsibility of the Owner of such Lot.

(d) Disturbance Area around Building Structures. A fifty foot (50') maximum limit of disturbance area shall be maintained around all building structures.

(e) IPM Plan. Owners shall comply with the Integrated Pest Management Plan ("IPM Plan") adopted for the Property. The Association will have the authority to implement the IPM Plan.

(f) Owner Education. All Owners of Lots must follow the IPM Plan, incorporate undisturbed native vegetation buffers in the landscape design, and refrain from use of non-native grasses such as St. Augustine in order to help protect the natural character of the land and water courses. The Association will implement procedures to periodically educate Owners, through periodic newsletters or the distribution of appropriate written materials, about the sensitivity of the Edwards Aquifer and each Owner's potential impact on water quality.

(g) Greenbelt and Drainage Easement Areas. Conservation easements may exist on or across portions of the Lots. Each Owner is advised to ascertain the location of conservation easements prior to the installation of landscaping or any other Improvement on a Lot. Any plans or specifications submitted to the Rutherford West Reviewer for the installation of landscaping or any other Improvement must reflect all conservation easements and other easements and setbacks affecting the Lot. Declarant hereby reserves the right as to any particular Lot (which

right will expire as to a particular Lot on the date Declarant conveys such Lot to a third party) to establish a conservation easement over and across a Lot. If a conservation easement is established on a Lot, the portion of the Lot affected by the conservation easement must remain in its native vegetative state. Fences, trails and other similar construction which does not significantly alter the existing vegetation may be permitted with the advice and written approval of the Rutherford West Reviewer.

2. **Miscellaneous.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Master Covenant. Unless expressly amended by this Amendment, all other terms and provisions of the Master Covenant remain in full force and effect as written, and are hereby ratified and confirmed.

EXECUTED to be effective the 3rd day of MAY, 2007.

DECLARANT:

WILSON FAMILY COMMUNITIES, INC., a
Delaware corporation

By: *David Goodrum*

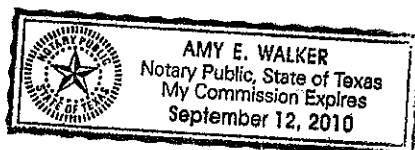
Printed Name: DAVID GOODRUM

Title: VPO of Development

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 3rd day of MAY, 2007, by DAVID GOODRUM, VICE PRESIDENT of Wilson Family Communities, Inc., a Delaware corporation, on behalf of said corporation.

(Seal)



Amy E. Walker
Notary Public Signature

Filed for Record in:
Hays County
On: May 03, 2007 at 02:36P
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By:
Olga Martinez, Deputy
Linda C. Fritsche, County Clerk
Hays County

SECOND AMENDMENT TO
RUTHERFORD WEST MASTER COVENANT

AFTER RECORDING RETURN TO:

Robert D. Burton, Esq.

Armbrust & Brown, L.L.P. | 100 Congress Ave., Suite 1300 | Austin, Texas 78701



NOTICE OF APPLICABILITY SECTION ONE AND SECTION TWO

Declarant: WILSON FAMILY COMMUNITIES, INC., a Delaware corporation

Cross reference to Rutherford West Master Covenant, recorded in Volume 2918, Page 524, Official Public Records of Hays County, Texas.

**NOTICE OF APPLICABILITY OF
RUTHERFORD WEST MASTER COVENANT
[SECTION ONE AND SECTION TWO]**

This Notice of Applicability of Rutherford West Master Covenant [Section One and Section Two] is made and executed by **WILSON FAMILY COMMUNITIES, INC.**, a Delaware corporation ("**Declarant**") and is as follows:

1. Applicability of Master Covenant. This Notice of Applicability is filed with respect to all Lots located within Rutherford West, Section One, a subdivision located in Hays County, Texas, according to the map or plat thereof recorded in Volume 12, Pages 378-379 in the Official Public Records of Hays County, Texas and all Lots located within Rutherford West, Section Two, a subdivision located in Hays County, Texas, according to the map or plat thereof recorded in Volume 14, Pages 49-53 in the Official Public Records of Hays County, Texas (collectively, the "**Development Area**"). Declarant is the owner of the Development Area. Pursuant to that certain Rutherford West Master Covenant, recorded in Vol. 2918, Page 524 in the Official Public Records of Hays County (the "**Master Covenant**"), Declarant served notice that portions of the property described on Exhibit "A" to the Master Covenant (the "**Community**"), upon the filing of appropriate notices of applicability from time to time, may be made a part of the Development and thereby fully subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Covenant.

2. Property Incorporated Into Development. The provisions of the Master Covenant shall apply to the Development Area. The Development Area is hereby included within and made a part of the Development, and is hereby subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Master Covenant.

3. Designation of Neighborhood. Pursuant to *Section 3.02* of the Master Covenant, Declarant hereby assigns the Development Area to Neighborhood A, subject to all terms and provisions of the Master Covenant which relate to Neighborhoods so designated within the Community.

4. Miscellaneous. This notice constitutes a notice of applicability under *Section 10.05* of the Master Covenant. Any capitalized terms used and not otherwise defined in this notice shall have the meanings set forth in the Master Covenant.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the 26th day of July, 2007.

DECLARANT:

WILSON FAMILY COMMUNITIES, INC.,
a Delaware corporation

By: David Goodrum

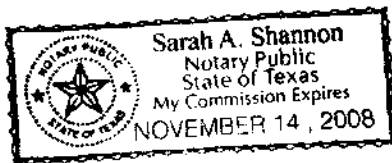
Printed Name: DAVID GOODRUM

Title: VP of Development

THE STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the 26th day of July, 2007, by David Goodrum, VP of Development of Wilson Family Communities, Inc., a Delaware corporation, on behalf of said corporation.

(Seal)



Sarah A. Shannon

Notary Public Signature

Filed for Record in:
Hays County
On: Jul 30, 2007 at 01:44P
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Receipt Number - 176002
By:
Christina Sanchez, Deputy
Linda C. Fritscher, County Clerk
Hays County

AFTER RECORDING RETURN TO:
Robert D. Burton, Esq.
Armbrust & Brown, L.L.P. | 100 Congress Ave., Suite 1300 | Austin, Texas 78701



DEVELOPMENT AREA DECLARATION SECTION ONE AND SECTION TWO

Declarant: WILSON FAMILY COMMUNITIES, INC., a Delaware corporation

Cross reference to Rutherford West Master Covenant, recorded in Volume 2918, Page 524, Official Public Records of Hays County, Texas, and that certain Notice of Applicability of Rutherford West Master Covenant [Rutherford West, Section One and Section Two], recorded in Volume ~~5219~~ 5219, Page ~~109~~ 109, Official Public Records of Hays County, Texas. The terms and provisions of the aforementioned documents also apply to the Development Area encumbered by this Development Area Declaration.

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**DEVELOPMENT AREA DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS
 RUTHERFORD WEST, SECTION ONE AND SECTION TWO**

This Development Area Declaration of Covenants, Conditions and Restrictions Rutherford West, Section One and Section Two (the "**Declaration**") is made by **WILSON FAMILY COMMUNITIES, INC.**, a Delaware corporation ("**Declarant**"), and is as follows:

RECITALS

A. Declarant is the owner of all Lots located within Rutherford West, Section One, a subdivision located in Hays County, Texas, according to the map or plat thereof recorded in Volume 12, Pages 378-379 in the Official Public Records of Hays County, Texas and all Lots located within Rutherford West, Section Two, a subdivision located in Hays County, Texas, according to the map or plat thereof recorded in Volume 14, Pages 49-53 in the Official Public Records of Hays County, Texas (collectively, the "**Development Area**").

B. Pursuant to that one certain Notice of Applicability of Rutherford West Master Covenant [Rutherford West, Section One and Section Two], recorded in Volume _____, Page ____ in the Official Public Records of Hays County, Texas, the Development Area is subject to the terms and provisions of that certain Rutherford West Master Covenant, recorded in Volume 2918, Page 524 in the Official Public Records of Hays County, Texas, as amended, (the "**Covenant**").

A Development Area is a portion of the Rutherford West development which has actually been made subject to the terms and provisions of the Covenant and a Development Area Declaration. A Development Area may correspond to one or all of the lots reflected on a recorded plat. A Development Area Declaration includes specific restrictions which apply to the Development Area. In order to determine what restrictions apply to your lot, you must consult the terms and provisions of the Covenant, the terms and provisions of any notice of applicability covering your lot, and the Development Area Declaration which includes the Development Area where your lot is located.

C. Declarant intends for this Declaration to serve as one of the Development Area Declarations permitted under the Covenant and desires that the Development Area described and identified in Recital A hereinabove will constitute one of the Development Areas which is permitted, contemplated and defined under the Covenant.

D. Declarant desires to create upon the Development Area a residential community and carry out a uniform plan for the improvement and development of the Development Area for the benefit of the present and all future owners thereof.

E. Declarant desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Development Area to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Development Area, and each owner thereof, which will be in addition to the covenants, conditions, and restrictions set forth in the Covenant.

NOW, THEREFORE, it is hereby declared: (i) that all of the Development Area will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with the Development Area and will be binding upon all parties having right, title, or interest in or to the Development Area or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the

Development Area, or any portion thereof, will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) that this Declaration will supplement and be in addition to the covenants, conditions, and restrictions of the Covenant.

ARTICLE 1 DEFINITIONS

1.01 Defined Terms. Unless the context specifies or requires otherwise, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

"Assessment" or **"Assessments"** means all assessment(s) imposed by the Association under the Covenant.

"Association" means the Rutherford West Homeowners Association, Inc., a Texas non-profit corporation.

"Association Restrictions" means the Covenant, this Declaration, any rules adopted by the Rutherford West Reviewer pursuant to *Section 6.05(b)* of the Covenant, any rules or regulations adopted by the Board pursuant to *Section 3.04(a)* of the Covenant and the Certificate and Bylaws of the Association.

"Bylaws" means the bylaws of the Association, as amended from time to time.

"Board" means and refer to the Board of Directors of the Association.

"Certificate" means the Certificate of Formation of the Association, as the same may be amended from time to time.

"Covenant" means that certain Rutherford West Master Covenant, recorded in Volume 2918, Page 524 in the Official Public Records of Hays County, Texas, as the same may be amended or supplemented from time to time.

"Declarant" means **WILSON FAMILY COMMUNITIES, INC.**, a Delaware corporation, its successors or assigns; provided that any assignment(s) of the rights of **WILSON FAMILY COMMUNITIES, INC.**, as Declarant, must be expressly set forth in writing and recorded in the Official Public Records of Hays County, Texas.

The "Declarant" is the party who causes the Development Area to be developed for actual residential use. Declarant enjoys special privileges to help protect its investment in the Development Area. These special rights are described in this Declaration. Many of these rights do not terminate until Declarant either: (i) has sold all Lots which are included in the Development Area; or (ii) voluntarily terminates these rights by a written instrument recorded in the Official Public Records of Hays County, Texas.

"Design Guidelines" means the standards for design, construction, landscaping, and exterior items placed on any Lot adopted pursuant to *Section 6.05(b)* of the Covenant, as amended.

"Improvements" means every structure and all appurtenances of every type, whether temporary or permanent, including but not limited to buildings, outbuildings, sheds, patios, tennis courts, swimming pools, sport courts, garages, driveways, storage buildings, sidewalks, gazebos, signs, fences, gates,

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

2.05 Noise. No noise or other nuisance will be permitted to exist or operate upon any portion of the Development Area so as to be offensive or detrimental to any other portion of the Development Area or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but will not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.06 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Development Area. No Owner may keep on such Owner's Lot more than four (4) cats and dogs, in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Development Area 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 Development Area, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large.

2.07 Rubbish and Debris. No rubbish or debris of any kind may be placed or permitted to accumulate upon the Development Area, and no odors will be permitted to arise therefrom so as to render the Development Area any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will be required to contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.08 Maintenance. The Owners of each Lot will be jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Rutherford West Reviewer, in its sole discretion, will determine whether a violation of the maintenance obligations set forth in this Section 2.08 has occurred. Such maintenance includes, but is not limited to the following, which must be performed in a timely manner, as determined by the Rutherford West Reviewer, in its sole discretion:

- (i) Prompt removal of all litter, trash, refuse, and wastes.
- (ii) Lawn mowing.
- (iii) Tree and shrub pruning.
- (iv) Watering.
- (v) Keeping exterior lighting and mechanical facilities in working order.
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (vii) Keeping sidewalks and driveways in good repair.

screening walls, retaining walls, stairs, decks, landscaping, landscape improvements, poles, mailboxes, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, playground equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular satellite or cable television, other utilities, or otherwise.

"Lot" or **"Lots"** means one or more of the subdivided lots within the Development Area other than Common Area, Special Common Area, and Development Common Area.

"Mortgage" or **"Mortgages"** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any portion of the Development Area given to secure the payment of a debt.

"Mortgagee" or **"Mortgagees"** means the holder or holders of any Mortgage(s).

"Owner" or **"Owners"** means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to acquisition of its fee simple interest in such Lot pursuant to foreclosure of the lien of such Mortgage.

"Rutherford West Reviewer" means, with respect to the Development Area, Declarant or its designee until Declarant no longer owns any portion of the Development Area. When Declarant no longer owns any portion of the Development Area, the rights of the Rutherford West Reviewer with respect to the Development Area will automatically be transferred to the architectural control committee appointed by the Board.

1.02. General Definitions. Unless the context specifies or requires otherwise, capitalized terms used but not defined in this Declaration are used and defined as they are used and defined in the Covenant.

ARTICLE 2 GENERAL RESTRICTIONS

All of the Development Area will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.01 Subdividing. No Lot may be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Rutherford West Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Rutherford West Reviewer.

2.02 Hazardous Activities. No activities may be conducted on the Development Area and no Improvements constructed on the Development Area, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon the Development Area, no open fires may be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes. No portion of the Development Area may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2.03 Insurance Rates. Nothing may be done or kept on the Development Area which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, Development Common Area, or the improvements located thereon, without the prior written approval of the Board.

- (viii) Complying with all government, health and police requirements.
- (ix) Repainting of Improvements.
- (x) Repair of exterior damage, and wear and tear to Improvements.

2.09 Antennae. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any solar energy system, may be erected, maintained or placed on a Lot without the prior written approval of the Rutherford West Reviewer; provided, however, that:

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- (ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
- (iii) an antenna that is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the "Permitted Antennas") will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Rutherford West Reviewer, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Development.

2.10 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and may not encroach upon any street, Common Area, Special Common Area, Development Common Area, or any other portion of the Development Area. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Development Area, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Master Architectural Committee are as follows:

- (i) Attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then
- (ii) Attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.
- (iii) On corner Lots, a Permitted Antenna must be placed at a point away from the street toward the back of the Lot at a height and screened from view as described above.

The Rutherford West Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

Satellite dishes one meter or less in diameter, e.g., DirectTV or Dish satellite dishes, are permitted, HOWEVER, you are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the Rutherford West Reviewer from time to time. Please contact the Rutherford West Reviewer for the current rules regarding installation and placement.

2.11 Signs. No sign of any kind may be displayed to the public view on any Lot without the prior written approval of the Rutherford West Reviewer, except for:

- (i) signs which are part of Declarant's overall marketing or construction plans or activities for the Development Area and/or Development;
- (ii) one (1) small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the principal residence constructed upon the Lot;
- (iii) permits as may be required by legal proceedings; and
- (iv) permits as may be required by any governmental entity.

Unless otherwise permitted pursuant to Section 2.11(i), no "For Sale", "For Rent", "For Lease", or similar sign advertising a Lot for sale or for lease may be placed on any Lot or any portion of the Property without the prior consent of the Declarant for so long as the Declarant owns all or any portion of the Property, and the Board thereafter.

An Owner will be permitted to post a "no soliciting" sign near or on the front door to the principal residence constructed upon the Lot, provided, that the sign not exceed twenty-five (25) square inches. Except for signs which are part of Declarant's overall marketing or construction plans or activities for the Development Area and/or Development, no sign may be displayed in the window of any Improvement located on a Lot.

2.12 Tanks. The Rutherford West Reviewer must approve any tank used or proposed in connection with a single-family residential structure, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No elevated tanks of any kind may be erected, placed or permitted on any Lot without the advance written approval of the Rutherford West Reviewer. All tanks must be screened so as not to be visible from any other portion of the Development Area.

2.13 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure may be placed upon the Development Area without the prior written approval of the Rutherford West Reviewer; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner will be permitted, with Rutherford West Reviewer approval, to erect one (1) outbuilding on the Owner's Lot if: (i) the surface area of the pad on which the outbuilding is placed is less than or equal to eighty (80) square feet; (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to ninety-six (96) inches; and (iii) the exterior of the outbuilding is constructed of the same or substantially similar materials as the exterior of any residence located on the Lot. The Rutherford West Reviewer will be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

2.14 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Rutherford West Reviewer will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment must be kept at all times except when in actual use, in enclosed structures or

screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash must be kept, stored, or allowed to accumulate on any portion of the Development Area except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible on any Lot or to be parked on any roadway within the Development Area.

Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than (i) in enclosed garages and (ii) behind a fence so as to not be visible from any other portion of the Development Area is prohibited; provided, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a residence.

No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Rutherford West Reviewer; provided however, a single detached garage may be utilized as a home office in lieu of being utilized as a garage if the plans and specifications therefor have been previously approved by the Rutherford West Reviewer.

2.15 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes may be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time, and no motor homes, travel trailers or recreational vehicles may be parked on or near any Lot so as to be visible from adjoining property or from public or private thoroughfares at any time.

2.16 Basketball Goals: Permanent and Portable. Permanent basketball goals are permitted between the street right-of-way and the front of the residence on a Lot provided the basketball goal is located a minimum of seventy-one feet (71') from the street curb. The basketball goal backboard must be perpendicular to the street and mounted on a black metal pole permanently installed in the ground. Portable basketball goals are only allowed between the street right-of-way and the front of the residence on a Lot and must not be placed, at any time on any street or right of way located within the Development Area. When not in use, portable basketball goals must be stored in a garage or in the rear of the Lots (i.e., out of public view). Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals, whether permanent or portable, must be approved by the Rutherford West Reviewer prior to being placed on any Lot.

2.17 Compliance with Association Restrictions. Each Owner, his or her family, occupants of a Lot, tenants, and the guests, invitees, and licensees of the preceding must comply strictly with the provisions of the Association Restrictions as the same may be amended from time to time. Failure to comply with any of the Association Restrictions will constitute a violation of the Association Restrictions may result in a fine against the Owner in accordance with *Section 5.12* of the Covenant, and will give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by Declarant, the Manager, the Board on behalf of the Association, the Rutherford West Reviewer, or by an aggrieved Owner. Without limiting any rights or powers of the Association, either board may (but will not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Association Restrictions, and the Owner whose violation has been so remedied will be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed

and chargeable against a Lot will be secured by the liens reserved in the Declaration and/or the Covenant for Assessments and may be collected by any means provided in the Declaration and/or the Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner will indemnify and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 2.17* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

If you fail to comply with Association Restrictions, including this Declaration, the Covenant, the Design Guidelines, and any rules adopted by your association, you can be fined or a claim may be pursued against you in court.

2.18 Liability of Owners for Damage to Common Area, Special Common Area and Development Common Area. No Owner may in any way alter, modify, add to or otherwise perform any work upon the Common Area, Special Common Area or Development Common Area without the prior written approval of the Board. Each Owner will be liable to the Association for any and all damages to: (i) the Common Area, Special Common Area, Development Common Area and any improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage will be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided for in *Section 5.10* of the Covenant.

2.19 Rainfall Harvesting. The utilization of rainfall harvesting techniques are encouraged for each Lot. The rainfall harvesting technique, facilities, design and location shall be approved in advance by the Rutherford West Reviewer. The maintenance and repair of all rainfall harvesting facilities located on any Lot shall be the sole responsibility of the Owner of such Lot.

2.20 Disturbance Area. A fifteen foot (15') maximum limit of disturbance area shall be maintained around all building structures.

2.21 Integrated Pest Management Plan. Owners shall comply with the Integrated Pest Management Plan ("IPM") adopted for the Development Area. The Association will have the authority to implement the IPM Plan.

2.22 Fertilizers, Pesticides and Herbicides. No fertilizers, pesticides or herbicides other than those generally available for consumer use and approved by a governmental agency, such as the Food and Drug Administration, for the purpose intended shall be placed, used or stored on any Lot. All Owners using any such materials shall strictly comply with all instructions provide with such materials and shall take proper precautions in placing, using and storing such materials so that such materials are contained at all times and do not result in the unnecessary discharge thereof into streams or water ponds on the Development Area or onto any other adjacent land, roadway or walkway.

2.23 Construction Related Erosion and Sedimentation Controls. Development plans for Lots must incorporate an erosion control plan in accordance with the temporary best management practices of the Edwards Aquifer Rules ("Texas Administrative Code, Chapter 213, Edwards Aquifer Rules") and the Technical Guidance Manual on Best Management Practices (CEQC, RG-348, July 2005).

2.24 Owner Education. All Owners of Lots located within the Development Area must follow the IPM plan, incorporate undisturbed native vegetation buffers in the landscape design, and refrain from use of non-native grasses such as St. Augustine in order to help protect the natural character of the land and water courses. The Association will implement procedures to periodically educate Owners, through periodic newsletters or the distribution of appropriate written materials about the sensitivity of the Edwards Aquifer and each Owner's potential impact on water quality.

2.25 Conservation Easements. Conservation easements may exist on or across portions of the Lots. Each Owner is advised to ascertain the location of conservation easements prior to the installation of landscaping or any other Improvement on a Lot. Any plans or specifications submitted to the Rutherford West Reviewer for the installation of landscaping or any other Improvement must reflect all conservation easements and other easements and setbacks affecting the Lot. Declarant hereby reserves the right as to any particular Lot (which right will expire as to a particular Lot on the date Declarant conveys such Lot to a third party) to establish a conservation easement over and across a Lot. If a conservation easement is established on a Lot, the portion of the Lot affected by the conservation easement must remain in its native vegetative state.

2.26 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Declaration. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE 3 USE AND CONSTRUCTION RESTRICTIONS

3.01 Design Guidelines. Any and all Improvements erected, placed, constructed, painted, altered, modified, or remodeled on any portion of the Development Area must strictly comply with the requirements of the Design Guidelines, unless a variance is obtained pursuant to the Covenant. The Design Guidelines may be supplemented, modified, amended, or restated by the Rutherford West Reviewer as authorized by the Covenant and the Design Guidelines.

If adopted by Declarant or the Rutherford West Reviewer, Design Guidelines will include additional requirements applicable to the construction of Improvements within the Development Area. Each Owner is advised to ascertain whether Design Guidelines have been adopted for their Lot.

3.02 Approval for Construction. No Improvements may be constructed upon any Lot without the prior written approval of the Rutherford West Reviewer.

3.03 Single-Family Residential Use. The Lots may be used solely for private single family residential purposes and there will not be constructed or maintained thereon more than one detached single family residence. No professional, business, or commercial activity to which the general public is invited may be conducted on any Lot, except an Owner or occupant of a residence may conduct business activities within a residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (ii) the business activity conforms to all zoning requirements for the Development Area; (iii) the business activity does not involve door-to-door solicitation of residents within the Development Area; (iv) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Development Area which is noticeably greater than that which is typical of residences in which no business activity is being conducted;

and (v) the business activity is consistent with the residential character of the Development Area and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development Area as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, will be construed to have their ordinary, generally accepted meanings and will include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a residence is not considered a business or trade within the meaning of this subsection. This subsection will not apply to any activity conducted by Declarant or an Owner engaged in the business of constructing homes for resale who acquires a Lot for the purpose of constructing a residence thereon for resale to a third party.

Until the earlier to occur of the date Declarant has recorded a written statement that all sales activity has ceased within the Development Area, or forty (40) years from the date this Declaration is recorded in the Official Public Records of Hays County, Texas:

(i) Declarant and/or its licensees may construct and maintain upon portions of the Common Area, Special Common Area, Development Common Area, and any Lot owned by Declarant, such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees have an easement over and across the Common Area, Special Common Area, Development Common Area for access and use of such facilities at no charge; and

(ii) Declarant and/or its licensees will have an access easement over and across the Common Area, Special Common Area, Development Common Area for the purpose of making, constructing and installing improvements to the Common Area, Special Common Area, Development Common Area.

3.04 Garages. All garages must be approved in advance of construction by the Rutherford West Reviewer. The Improvements on each Lot must contain a private, enclosed garage capable of housing two (2) automobiles. Each garage will incorporate a two-car garage door either as a single unit or as two separate doors. No garage doors may be located at the front of the home so as to face the front street; provided, however, that garages located behind a port cochere may include garage doors which face the front of the street. Detached garages on the rear of the home, or a single garage set back at least five feet (5') behind the leading edge of the home are permissible with the prior approval of the Rutherford West Reviewer. No carports or other open automobile storage units will be permitted. No garage may be permanently enclosed or otherwise used for habitation without replacing the existing garage with another structure on the Lot designed for the purpose of storing automobiles and approved by the Rutherford West Reviewer. The parking of vehicles in the yard of any Lot is not permitted. "Porte cochere"-type structures used to access garages or to allow for protected coverings used to access a residence are permissible with the prior approval of the Rutherford West Reviewer.

3.05 Fences; Sidewalks. No fence may be constructed on the Development Area without the prior written consent of Rutherford West Reviewer. The height and location of all fences must be approved in advance by the Rutherford West Reviewer. All fencing must be wrought iron. Black vinyl chain link may be used on the rear property line or between the useable area and the beginning of the Conservation Easement only. No other type of chain link, metal cloth, wood or agricultural fence may be installed or maintained on the lot.

3.06 Height. The maximum building height of any residence constructed on any Lot may be no more than forty-five feet (45') measured according to the following definition: the vertical distance between the top of the foundation at any point within the structure and the highest ridge, peak, or gable of a roof, excluding chimneys. In addition, the height of any eave on any structure may not exceed forty-five feet (45') above the natural grade at any point on the exterior wall of the residence.

3.07 Building Materials. All building materials must be approved in advance by the Rutherford West Reviewer, and only new building materials (except for used brick) may be used for constructing any Improvements. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways must, unless otherwise approved by the Rutherford West Reviewer, match the color of the surface from which they project. No highly reflective finishes (other than glass, which may not be mirrored) may be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

3.08 Masonry Requirements. Unless otherwise expressly approved by the Rutherford West Reviewer, the exterior walls of any residence shall consist of brick, stone, and/or stucco as follows:

(a) One Story Structures: The exposed surface of all exterior walls of one-story residences shall be constructed of seventy-five percent (75%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work.

(b) Two Story Structures. The exposed surface of all exterior walls of the first floor of each two story residence shall be constructed of seventy-five percent (75%) masonry and/or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work. Unless otherwise agreed by the Rutherford West Reviewer, the exposed surface of the front exterior wall on the second floor of each two story residence (the "front" of a residence shall be determined by the Rutherford West Reviewer) shall be constructed of one-hundred percent (100%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work.

(c) Cementitious horizontal lap siding product (i.e., "Hardi-Plank") may be used in addition to, or in place of, brick, stone or stucco only with the prior written consent of the Rutherford West Reviewer (which consent may be withheld in the sole and absolute discretion of the Rutherford West Reviewer).

(d) Notwithstanding the foregoing provisions, the Rutherford West Reviewer shall have the authority to permit the use of wood siding in specific circumstances where the Rutherford West Reviewer determines the limited use of wood siding to be appropriate and consistent with the design requirements established by the Rutherford West Reviewer.

3.09 Driveways. The design, construction materials, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, must be approved by the Rutherford West Reviewer. Driveways shall be no greater than twelve feet (12') in width through the building line setback and be limited to a maximum disturbed area of ten feet (10') on either side of the driveway. Driveways located off the building line may exceed twelve feet (12'). Driveways on corner lots abutting a cul-de-sac and another roadway shall access off the cul-de-sac. The Rutherford West Reviewer may establish design and materials requirements for all driveways and driveway culverts to insure that they are consistent in appearance throughout the Development Area. Circular Driveways are permissible if approved in accordance with the Rutherford West Reviewer.

3.10 Minimum Square Footage. The minimum square footage for each residence, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages, is 2,200 feet for a single story

residence and 2,600 feet for a two-story residence; provided, however, the first floor elevation of any two story residence shall be 1,600 square feet.

3.11 Compliance with Setbacks. The location of all Improvements must comply with the minimum setbacks shown on the Plat. For the purpose of this restriction, eaves, steps, and open and covered porches will not be considered as part of a building; however, this Section will not be construed to permit any portion of any Improvement on any Lot to encroach upon another Lot or other portion of the Development Area.

3.12 Address Markers. The location, design and materials used for address identification markers on each residence must be approved in advance of installation by the Rutherford West Reviewer.

3.13 HVAC Location. No air-conditioning apparatus may be installed on the ground in front of a residence or on the roof of any residence. No window air-conditioning apparatus or evaporative cooler may be attached to any front wall or front window of a residence or at any other location where it would be visible from any street, any other Lot or any Common Area, Special Common Area, or Development Common Area. Solar Screens are expressly permitted.

3.14 Rentals. Nothing in this Declaration may prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for terms of at least six (6) months. All leases must be in writing and are expressly subject to the Associations Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. The Owner must provide to its lessee copies of the Association Restrictions.

3.15 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement may be performed only with the prior written approval of the Rutherford West Reviewer.

3.16 Trash Containers. Trash containers and recycling bins must be stored in one of the following locations:

- (i) inside the garage of the single-family residence constructed on the Lot; or
- (ii) Behind the side yard fence on the Lot in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Lot.

The Rutherford West Reviewer will have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

3.17 Drainage. There may be no interference with the established drainage patterns over any of the Development Area, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Rutherford West Reviewer. Plans submitted to the Rutherford West Reviewer for approval must indicate thereon an erosion control plan to be instituted during the construction of any residence on the Lot. The Owner of the Lot will be obligated to maintain and keep such approved erosion controls in good condition and repair. The erosion controls must be removed when the residence constructed upon the Lot is capable of occupancy for residential purposes.

3.18 Construction Activities. This Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Development Area. Specifically, no such construction

activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Rutherford West Reviewer in its sole good faith judgment, the Rutherford West Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Development Area, then the Rutherford West Reviewer may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection therewith.

3.19 Landscaping. Prior to the occupancy of any single-family residence constructed upon any Lot: (i) the area between the front of the residence and the back of the curb of the street immediately adjacent to the front yard to a point ten feet (10') postern to the rear elevation of the residence must, exclusive of any sidewalk areas, be fully sodded and/or landscaped with Bermuda grass, Prairie Buffalo grass, or an alternative grass approved in advance by the Rutherford West Reviewer; and (ii) at a minimum, thirty (30) five (5) gallon, fifty (50) one (1) gallon shrubs, five (5) three-inch caliper trees and two (2) six-inch caliper trees must be planted in the front yard of the Lot, with the configuration and selection thereof to be approved by the Rutherford West Reviewer prior to planting. No tree larger than 4" in diameter may be cut down or otherwise removed from the Property without the prior approval of the Rutherford West Reviewer.

3.20 Sight Distance at Intersection. No fence, wall, hedge, or planting that obstructs sight lines at elevations between two feet and nine feet above the roadway may be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point thirty feet (30') from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines as extended. The same sight-line limitations will apply on any Lot within the triangular area formed by the street line, the driveway or alley line and a line connecting them at a point ten feet from the intersection of a street property line with the edge of a driveway or alley pavement. All tree foliage within such distances of intersections must be maintained to meet the sight-line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, all sight distances required by any applicable governmental authority must be complied with.

3.21 Roofing. Each roof must be constructed of clay or concrete tile, non-reflective metal, slate, architectural dimensional heavyweight fireproof composition shingles in weathered wood or similar color, or other material expressly approved by the Rutherford West Reviewer. The color and composition of all roof materials, and the pitch of each roof (not to exceed 8/12), shall be expressly approved by the Rutherford West Reviewer.

3.22 Swimming Pools. Above-ground or temporary swimming pools are expressly prohibited.

ARTICLE 4 INSURANCE AND CONDEMNATION

4.01 Insurance. Each Owner will be required to maintain insurance on the Improvements located upon such Owner's Lot, providing fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for Improvements similar in construction, location and use. Such insurance policies will be for the full insurable value of the Improvements constructed upon each Lot, will contain extended coverage and replacement costs endorsements, if reasonably available, and may also contain vandalism and malicious mischief coverage, special form endorsement, a stipulated amount clause and a determinable cash adjustment clause. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The

Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board in its discretion may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association, as the case may be. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

4.02 Restoration. In the event of any fire or other casualty, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within thirty (30) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this sentence will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot will be secured by the liens reserved in the Covenant or this Declaration for Assessments and may be collected by any means provided in the Covenant and/or Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

4.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this Article 5, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 5 MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Development Area. The provisions of this Article apply to this Declaration and the Bylaws of the Association.

5.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

(i) Any condemnation loss or any casualty loss which affects a material portion of the Development Area or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(ii) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of this Declaration relating to such Lot or the Owner or occupant which is not cured within sixty (60) days; or

(iii) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(iv) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

5.02 Examination of Books. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours.

5.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law shall relate only to the individual Lots and not to any other portion of the Development Area.

ARTICLE 6 DEVELOPMENT

6.01 Addition of Land. Declarant may, at any time and from time to time, add additional portions of the Property which are owned by Declarant to the Development Area and, upon the filing of a notice as hereinafter described, such portions of the Property will be considered part of the Development Area for purposes of this Declaration, and such portions of the Property will be subject to the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the land originally covered by this Declaration. To add land to the Development Area, Declarant will be required only to record in the Official Public Records of Hays County, Texas, a notice of addition of land (which notice may be contained within any notice of applicability filed pursuant to *Section 10.05* of the Covenant) containing the following provisions:

- (A) A reference to this Declaration, which will include the recordation information thereof;
- (B) A statement that such land will be considered Development Area for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and
- (C) A legal description of the added land.

6.02 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the Development Area and remove and exclude from the burden of this Declaration: (i) any portion of the Development Area which has not been included in a plat; (ii) any portion of the Development Area included in a plat if Declarant owns all Lots described in such plat; and (iii) any portion of the Development Area included in a plat even if Declarant does not own all Lot(s) described in such plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such plat. Upon any such withdrawal and renewal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development Area withdrawn. To withdraw lands from the Development Area hereunder, Declarant will be required only to record in the Official Public Records of Hays County, Texas, a notice of withdrawal of land containing the following provisions:

- (A) A reference to this Declaration, which will include the recordation information thereof;
- (B) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and
- (C) A legal description of the withdrawn land.

ARTICLE 7 GENERAL PROVISIONS

7.01 Duration. This Declaration and the covenants, conditions, restrictions, easements, charges, and liens set out herein will run with and bind the land, and will inure to the benefit of and be enforceable by the Association and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Public Records of Hays County, Texas, and continuing through and including January 1, 2057, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by in a resolution adopted by members of the Association, entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Hays County, Texas. Notwithstanding any provision in this *Section 6.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire (twenty one) 21 years after the death or the last survivor of the now living descendants of Elizabeth II, Queen of England.

7.02 Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Hays County, Texas, of an instrument setting forth the amendment executed and acknowledged by (i) Declarant, acting alone; or (ii) Declarant and at least seventy percent (70%) of the Owners of Lots within the Development Area with each Lot being allocated one (1) vote.

7.03 Notices. Any notice permitted or required to be given by this Declaration must be in writing and may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Saturday, Sunday, or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Secretary of the Association for the purpose of service of notices, or to the residence located on the Lot owned by such person if no address has been given to the Secretary of the

Association. Such address may be changed from time to time by notice in writing given by such person to the Secretary of the Association.

7.04 Interpretation. The provision of this Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Development Area, provided, however, that the provisions of this Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Development Area. This Declaration will be construed and governed under the laws of the State of Texas.

7.05 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

7.06 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

7.07 Enforcement and Nonwaiver.

- (a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce all of the provisions of this Declaration. The Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof.
- (b) Every act or omission whereby any provision of the Association Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association.
- (c) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Development Area is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.
- (d) The failure to enforce any provision of the Association Restrictions at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Association Restrictions.

7.08 Construction. The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective the 26th day of July, 2007.

DECLARANT:

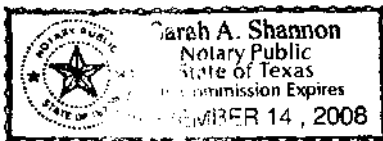
WILSON FAMILY COMMUNITIES, INC.,
a Delaware corporation

By: David Goodrum
Printed Name: DAVID GOODRUM
Title: VP of Development

THE STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on the 26th day of July, 2007, by David Goodrum, VP of Development of Wilson Family Communities, Inc., a Delaware corporation, on behalf of said corporation.

(Seal)



Sarah A. Shannon
Notary Public Signature

Filed for Record in:
Hays County
On: Jul 30, 2007 at 01:44P
Document Number: 70022294
Amount: 96.00
Receipt Number - 176002
By:
Christina Sanchez, Deputy
Linda C. Fritscher, County Clerk
Hays County

AFTER RECORDING RETURN TO:
Robert D. Burton, Esq.
Armbrust & Brown, L.L.P. | 100 Congress Ave., Suite 1300 | Austin, Texas 78701

RW RUTHERFORD WEST

DESIGN GUIDELINES SECTION ONE AND SECTION TWO

Adopted:
WILSON FAMILY COMMUNITIES, INC.,
a Delaware corporation

By: *David Goodman*
Printed Name: D. GOODMAN
Title: VP of Development

THE STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on the 26th day of July, 2007, by David Goodman, VP of Development of Wilson Family Communities, Inc., a Delaware corporation, on behalf of said corporation.



Sarah A. Shannon
Notary Public Signature

Adopted by Wilson Family Communities, Inc., a Delaware corporation, in accordance with Section 6.05(b) of Rutherford West Master Covenant [Estates and Trails], recorded in Vol. 2918, Page 524 in the Official Public Records of Hays County, Texas (the "Master Covenant"). In accordance with Section 6.05(b) of the Master Covenant, these Design Guidelines may be amended from time to time by the Rutherford West Reviewer (as defined in the Master Covenant).

Version 1.00

INTRODUCTION

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Any notice or information required to be submitted to Rutherford West Reviewer under these Design Guidelines hereunder will be submitted to the Rutherford West Reviewer, c/o Alliance Association Management, Attn: Lynda Crawford, 115 Wild Basin Rd, Suite 308, Austin, Texas, 78746.

Background

Rutherford West is a master planned community located in Hays County, Texas. The community consists of Development Areas which are subject to the terms and provisions of the Rutherford West Master Covenant, recorded in the Official Public Records of Hays County, Texas, as amended (the "**Master Covenant**"), and a Development Area Declaration for each particular Development Area (the "**Development Area Declaration**"). The Master Covenant and each Development Area Declaration includes provisions governing the construction of improvements and standards of maintenance, use and conduct for the preservation of the Rutherford West community.

Rutherford West Reviewer and Review Authority

Article VI of the Master Covenant includes procedures and criteria for the construction of improvements within Rutherford West community. Section 3.01 of the Development Area Declaration provides that any and all improvements must be erected, placed, constructed, painted, altered, modified or remodeled in strict compliance with the requirements of the Design Guidelines, and Section 6.04 of the Master Covenant and Section 3.02 of the Development Area Declaration provides that no improvements may be constructed without the prior written approval of the Rutherford West Reviewer.

The Rutherford West Reviewer consists of members who have been appointed by Wilson Family Communities, Inc., a Delaware corporation (the "**Declarant**"). As provided in Article VI of the Master Covenant, Declarant has a substantial interest in ensuring that improvements within the Rutherford West development maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the community, and as a consequence thereof, the Rutherford West Reviewer acts solely in Declarant's interest and shall owe no duty to any other owner or the Rutherford West Homeowners Association, Inc (the "**Association**").

Unless alternate Design Guidelines are adopted for additional Development Areas, these Design Guidelines will apply to each Development Areas made subject to the Master Covenant. These Design Guidelines will apply only to Lots within a Development Area which will be used for residential purposes. These Design Guidelines will not apply to any Condominium Units and the Rutherford West reviewer may adopt additional Design Guidelines applicable to Condominium Units.

GOVERNMENTAL REQUIREMENTS

Governmental ordinances and regulations are applicable to all Lots within Rutherford West. It is the responsibility of each Owner to obtain all necessary permits and inspections. Compliance with these Design Guidelines is not a substitute for compliance with the applicable ordinances and regulations. Please be advised that these Design Guidelines do not list or describe each requirement which may be applicable to a Lot within Rutherford West. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot prior to submitting plans to the Rutherford West Reviewer for approval. Furthermore, approval by the Rutherford West Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions of all

encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the Rutherford West Reviewer.

The Rutherford West Reviewer shall bear no responsibility for ensuring plans submitted to the Rutherford West Reviewer comply with any applicable building codes, zoning regulation and other government requirements. It is the responsibility of the Owner to secure any required governmental approvals prior to construction on such Owner's Lot.

INTERPRETATION

In the event of any conflict between these Design Guidelines and the Development Area Declaration, the Development Area Declaration shall control. Capitalized terms used in these Design Guidelines and not otherwise defined in this document shall have the same meaning as set forth in the Development Area Declaration.

AMENDMENTS

The Rutherford West Reviewer may amend these Design Guidelines. All amendments shall become effective upon recordation in the Official Public Records of Hays County, Texas. Amendments shall not apply retroactively so as to require modification or removal of work already approved and completed or approved and in progress. It is the responsibility of each Owner to ensure that they have the most current edition of the Design Guidelines and every amendment thereto.

ARCHITECTURAL REVIEW PROCESS

Submittals

Requests for approval of proposed construction, landscaping, or exterior modifications must be made by submitting an application in the form attached hereto as Attachment 1. In submitting any request for approval, each Owner must retain competent assistance from a licensed architect, civil engineer, landscape architect, soils engineer, and a licensed and bonded contractor.

Timing

The Rutherford West Reviewer will attempt to review all applications and submittals within thirty (30) days. Please allow at least thirty (30) days prior to installation or construction for the Rutherford West Reviewer to review the related applications.

Responsibility for Compliance

An applicant is responsible for ensuring that all of the applicant's representatives, including the applicant's architect, engineer, contractors, subcontractors, and their agents and employees, are aware of these Design Guidelines and all requirements imposed by the Rutherford West Reviewer as a condition of approval.

Inspection

Upon completion of all approved work, the Owner must notify the Rutherford West Reviewer. The Rutherford West Reviewer may inspect the work at any time to verify conformance with the approved submittals.

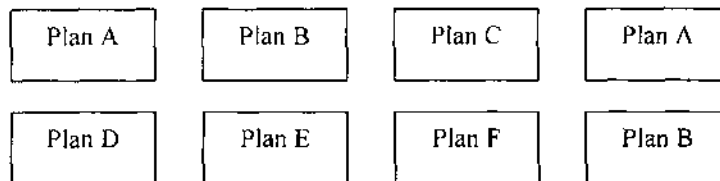
ARCHITECTURAL AND AESTHETIC STANDARDS

Plan Repetition

The Rutherford West Reviewer may, in its sole and absolute discretion, deny a plan or elevation proposed for a particular Lot if a substantially similar plan or elevation exists on a Lot in close proximity to the Lot on which the plan and/or elevation is proposed. The Rutherford West Reviewer may adopt additional requirements concerning substantially similar plans or elevations constructed in proximity to each other.

For Example:

- Plan can be repeated every third Lot (example: Plan A, Plan B, Plan C, and Plan A).



- Across the Street: Same plan cannot be placed on a Lot across the street or diagonal from any other plan (example above: Plan B).

Brick Color and Masonry Stone Repetition

The Rutherford West Reviewer may adopt requirements concerning substantially similar brick or masonry constructed in proximity to each other.

Building Materials

- All building materials must be approved in advance by the Rutherford West Reviewer, and only new building materials (except for used brick) may be used for constructing any Improvements.

Masonry Requirements

- Unless otherwise expressly approved by the Rutherford West Reviewer, the exterior walls of any residence shall consist of brick, stone, and/or stucco as follows:
 - One Story Structures: The exposed surface of all exterior walls of one-story residences shall be constructed of seventy-five percent (75%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work.
 - Two Story Structures: The exposed surface of all exterior walls of the first floor of each two story residence shall be constructed of seventy-five percent (75%) masonry and/or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work. Unless otherwise agreed by the Rutherford West Reviewer, the exposed surface of the front exterior wall on the second floor of each two story residence (the "front" of a residence shall be determined by the Rutherford West Reviewer) shall be constructed of one-hundred percent (100%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work.

- Cementitious horizontal lap siding product (i.e., “Hardi-Plank”) may be used in addition to, or in place of, brick, stone or stucco only with the prior written consent of the Rutherford West Review (which consent may be withheld in the sole and absolute discretion of the Rutherford West Reviewer).
- Any portion of the foundation visible from the exterior of the structure must be concealed by a combination of (a) extending the exterior brick, stone or stucco to within twelve inches (12”) of the finished grade, and (b) constructing terraced planter boxes, which shall be constructed of the same masonry material as the structure and designed so as to minimize the visual impact of the structure’s mass and height.

Aesthetic Appeal

The Rutherford West Reviewer may disapprove the construction or design of a home on purely aesthetic grounds. Any prior decisions of the Rutherford West Reviewer regarding matters of design or aesthetics shall not be deemed to have set a precedent if the Rutherford West Reviewer feels that the repetition of such actions would have any adverse effect on the community.

Siting/Setbacks

The location of all Improvements must comply with the minimum setbacks shown on the Plat.

The Rutherford West Reviewer reserves the right to stipulate additional building or improvement setbacks attributable to any Lot.

Temporary/Accessory Structures

No tent, shack, or other temporary building, improvement, or structure may be placed upon the Development Area without the prior written approval of the Rutherford West Reviewer; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner will be permitted, with Rutherford West Reviewer approval, to erect one (1) outbuilding on the Owner’s Lot if: (i) the surface area of the pad on which the outbuilding is placed is less than or equal to eighty (80) square feet; (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to ninety-six (96) inches; and (iii) the exterior of the outbuilding is constructed of the same or substantially similar materials as the exterior of any residence located on the Lot. The Rutherford West Reviewer will be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

Prohibited Elements

The following architectural elements are prohibited within Rutherford West unless expressly approved in writing by the Rutherford West Reviewer:

Roofs

- Excessively pitched roofs (i.e., 10/12 or 12/12).
- Mansard, gambrel or chalet roofs.
- Flat roofs.
- Roofs that are too steep or too shallow for the style of the home,
- Shed roofs except as incidental to the main roof.

Design Elements

- Unnecessarily prominent chimneys and other roof penetrations.
- Skylights (white, bubble, flat) facing the street.
- White or bubble skylights.
- Mirrored glass.

Materials and Colors

- Wood siding (wood siding accents may be permitted if approved by the Rutherford West Reviewer).
- Red or Gray brick.

Building Height

Unless otherwise approved in advance by the Rutherford West Reviewer, no building or residential structure may exceed forty five feet (45') in height as measured from the top of the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

Views are neither guaranteed, preserved, nor protected within Rutherford West.

Roofs and Chimneys

Each roof must be constructed of clay or concrete tile, non-reflective metal, slate, architectural dimensional heavyweight fireproof composition shingles in weathered wood or similar color, or other material expressly approved by the Rutherford West Reviewer. Most reflective roofs are not permitted; however, if metal roofs are included as part of a green building initiative, reflective metal roofs may be permitted with the prior approval of the Rutherford West Reviewer. The color and composition of all roof materials, and the pitch of each roof, shall be expressly approved by the Rutherford West Reviewer. No solar panels may be installed without the approval of the Rutherford West Reviewer.

Garages

No garage doors may be located at the front of the home so as to face the front street; provided, however, that garages located behind a port cochere may include garage doors which face the front of the street. Detached garages on the rear of the home, or a single garage set back at least five feet (5') behind the leading edge of the home are permissible with the prior approval of the Rutherford West Reviewer.

Mailboxes

Mailboxes are to be provided by the Owner and approved by the Rutherford West Reviewer. The bottom of the receptacle of mailbox must conform to the dimensions required by the United States Postal Service and must be constructed of materials matching those used in the construction of the residence. The structure must not exceed five feet (5') in height nor two feet (2') in depth or width.

Driveways

The design, construction materials, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, must be approved by the Rutherford West Reviewer. Driveways shall be no greater than twelve feet (12') in width through the building line setback and be limited to a maximum disturbed area of ten feet (10') on either side of the driveway. Driveways located off the building line may exceed twelve feet (12'). Driveways on corner lots abutting a cul-

de-sac and another roadway shall access off the cul-de-sac. The Rutherford West Reviewer may establish design and materials requirements for all driveways and driveway culverts to insure that they are consistent in appearance throughout the Development Area. Circular Driveways are permissible if approved in accordance with the Rutherford West Reviewer.

Exterior Lighting

Exterior lighting will be kept to a minimum, but consistent with good security practices.

No exterior light whose direct source is visible from a street or neighboring property or which produces excessive glare to pedestrian or vehicular traffic will be allowed. Exterior lighting must be approved in advance by the Rutherford West Reviewer.

Use of other than white or color corrected high intensity lamps and exterior lights will not be allowed. Holiday lighting is an exception; however, all holiday lighting must be removed within thirty (30) days after the holiday. Sodium, mercury vapor, or bare HID yard lights are not allowed.

Miscellaneous

HVAC Screening

Air conditioning compressors and pool equipment shall be enclosed by a structural or landscape screening element constructed of materials approved by the Rutherford West Reviewer. The screening elements must be consistent with materials on the primary structure and the screening will be from both the front street and from neighboring residences. Solar Screens are expressly permitted.

Barbecue Grills

Freestanding barbecue grills are permitted only if they are stored and used in the rear yard space of the Lot that is not visible from the street.

Signage

As set forth in the Development Area Declaration, except as provided in these Design Guidelines, no sign of any kind may be displayed to the public view without the prior written approval of the Rutherford West Reviewer. While the Rutherford West Reviewer expressly retains its right to review and approve or disapprove signage throughout the community, "booster club"-type signs in support of sports teams or other similarly non-offensive community activities and one sign in support of a candidate for election (provided such candidate signage is removed 5 days after the applicable candidate election is held) will generally be permitted, provided that such signs are: (i) no larger than 18" by 24" and (ii) do not remain on display for more than ninety (90) days. Banner signs are prohibited on any Lot. No signage is allowed to be posted on any fence on Lots within the community. **Signs advertising a home for lease or for rent are expressly prohibited.**

LANDSCAPE GUIDELINES

The goal of the landscape guidelines is to ensure that the developed areas of Rutherford West return to a natural setting as quickly as possible upon the completion of a new residence. Detailed landscape plans for each Lot may be submitted to the Rutherford West Reviewer for consideration after construction of the primary residence thereon has begun, so long as such submission occurs at least ninety (90) days before completion of the residence. Upon written request, however, the Rutherford West Reviewer may waive the requirement of landscape plans for any Lot if the builder uses plans previously approved by the Rutherford West Reviewer for another Lot. There shall be no

revisions made to approved plans without submission to, and approval by, the Rutherford West Reviewer of the revised plans. All introduced vegetation shall be trees, shrubs, vines, ground covers, seasonal flowers or sodded grassed which are commonly used in Central Texas for landscaping purposes and which are approved by the Rutherford West Reviewer. Landscaping in accordance with the approved plans shall be installed within ten (10) days after issuance of a certificate of occupancy with respect to the residence on a Lot. Extensions to the time limit may be granted by the Rutherford West Reviewer for up to an additional thirty (30) days on a case by case basis. The approved plans shall include permanent sodded grass or "ground cover" in all sodded areas. Prior to the occupancy of any single-family residence constructed upon any Lot: (i) the area between the front of the residence and the back of the curb of the street immediately adjacent to the front yard to a point ten feet (10') postern to the rear elevation of the residence must, exclusive of any sidewalk areas, be fully sodded and/or landscaped with Bermuda grass, Prairie Buffalo grass, or an alternative grass approved in advance by the Rutherford West Reviewer; and (ii) at a minimum, thirty (30) five (5) gallon, fifty (50) one (1) gallon shrubs, five (5) three-inch caliper trees and two (2) six-inch caliper trees must be planted in the front yard of the Lot, with the configuration and selection thereof to be approved by the Rutherford West Reviewer prior to planting. No tree larger than 4" in diameter may be cut down or otherwise removed from the Property without the prior approval of the Rutherford West Reviewer. All Owners are required to landscape front yards, side yards, and adjacent to building foundations within thirty (30) days after acquiring their Lot. Trees, shrubs, ground covers, seasonal color and sodded grass shall be used in these areas to achieve the landscape intent according to the approved plans. After installation, landscaping (including temporary landscaping) shall be properly maintained at all times. Any Owner who wishes to plant one or more gardens upon their Lot must obtain the approval of the Rutherford West Reviewer of any such garden and must follow applicable requirements as to size of the Lot, visibility of the Lot from other Lots, streets or common areas, and such other matters as the Rutherford West Reviewer may specify in any written approval.

With the prior approval of the Rutherford West Reviewer, the use of rock or crushed rock as a ground cover shall be permitted only as part of an overall landscape plan submitted to the Rutherford West Reviewer, but may not be used exclusively to cover large portions of the Lot.

Landscape plans must include vegetative screening for above ground utility connections visible from the street or adjacent properties.

The Rutherford West Reviewer reserves the right to require additional landscaping for pools, cabanas and other hardscape elements that may be constructed after completion of the residence and associated landscaping.

Hardscape elements in the landscaping must be in scale with the home and associated structures. Sculptures and fountains are subject to approval by the Rutherford West Reviewer.

Landscape structures such as arbors, porches, greenhouses and/or decks must be located in areas that highlight the features of the residence, and are subject to approval by the Rutherford West Reviewer. The height, color, materials and style used for outdoor structures must be the same or similar to the residence.

Notwithstanding any requirements to the contrary, owners shall comply with all applicable governmentally imposed water use restrictions and shall be granted appropriate relief from any specific requirement set forth in these Design Guidelines that cannot reasonably be complied with, as determined by the Rutherford West Reviewer, as a result of such water use restrictions.

Irrigation

The Rutherford West Reviewer must approve all irrigation systems prior to installation. An irrigation system is a required element of the landscape plan and must be included on each Lot. A licensed irrigation contractor must be used in conjunction with design and final implementation of the plan.

Landscape Inspection

The Rutherford West Reviewer may, upon the owner's completion of the installation of landscaping, conduct an on-site inspection of the property to ensure compliance with the approved plan.

Drainage

Responsibility for proper site drainage rests with the Owner. There shall be no interference with the established drainage patterns except by Declarant, unless adequate provision is made for proper drainage and such provision has been certified by a professional engineer and approved in advance by the Rutherford West Reviewer. Each Owner is solely responsible for correcting any change in water flow or drainage caused by the construction of Improvements on such Owner's Lot.

Fencing

The height and location of all fences must be approved in advance by the Rutherford West Reviewer. All fencing must be wrought iron. Black vinyl chain link may be used on the rear property line or between the useable area and the beginning of the Conservation Easement only. No other type of chain link, metal cloth, wood or agricultural fence may be installed on the lot.

Pool Plans

Swimming pools shall be in-ground, or a balanced cut and fill, and shall be designed to be compatible with the site and the dwelling. Adequate screening, security, and maintenance shall be provided by each Owner. Fencing around the pool shall be permitted as described above and integrated into the design of the dwelling and site. Fences must meet all governmental regulations for safety.

Playscapes and Sport Courts

Playscapes and Sport Courts are permissible at the sole discretion of the Rutherford West Reviewer. If allowed, these facilities must be properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties.

Sport Courts may be lighted; however, a lighting plan must be submitted to and approved by the Rutherford West Reviewer prior to installation. In addition, automatic controls must be installed to prevent extended use past 9:00pm during the week and 10:00pm on weekends. Tennis courts may be permitted and feature lighting under the same guidelines outlined for sport courts.

EROSION CONTROL AND CONSTRUCTION REGULATIONS

The following restrictions shall apply to all construction activities at Rutherford West. Periodic inspections by a representative of the Rutherford West Reviewer may take place in order to identify non-complying construction activities. If items identified as not complying with the regulations are not remedied in a timely manner, fines will be levied.

Erosion Control Installation and Maintenance

It is the responsibility of each owner to install erosion control measures prior to the start of construction and to maintain them throughout the entire construction process.

Silt fencing installed to all applicable standards is required to be properly installed and maintained to protect the low sides of all disturbed areas, where stormwater will flow during construction. The purpose of the silt fence is to capture the sediment from the runoff and to permit filtered, clean water to exit the site. The owner should anticipate that built-up sediment will need to be removed from the silt fence after heavy or successive rains, and that any breach in the fencing will need to be repaired or replaced immediately.

If for any reason the silt fence is to be temporarily removed, please contact a representative of the Rutherford West Reviewer prior to the removal.

Security

Neither the Rutherford West Reviewer, the Association, nor the Declarant shall be responsible for the security of job sites during construction.

Construction Hours

Unless a written waiver is obtained from the Rutherford West Reviewer, construction may take place only during the following hours: Monday through Friday from 7:00 a.m. until 7:00 p.m., and on Saturdays and Sundays from 9:00 a.m. until 6:00 p.m.

Noise, Animals, Children

The use of radios, tape and CD players must be restrained so as not to be heard on an adjoining Lot or street.

Contractors and subcontractors may not bring dogs or children under 16 years of age to construction sites.

Material and Equipment Storage

All construction materials and equipment shall be neatly stacked, properly covered and secured. Any storage of materials or equipment shall be the Owner's responsibility and at their risk. Owners may not disturb, damage or trespass on other Lots or adjacent property.

Insurance

The Rutherford West Reviewer requires an Owner to procure adequate commercial liability insurance during construction naming the Association, the Declarant and the Rutherford West Reviewer as additional insureds, in an amount to be determined, from time to time by the Rutherford West Reviewer.

Site Cleanliness

During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming an eyesore.

Owners shall provide a container for debris and shall clean up all trash and debris on the construction site on a daily basis. Trash and debris shall be removed from each construction site on a timely basis. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site.

The dumping, burying or burning of trash is not permitted anywhere in Rutherford West.

It is imperative that, when moving heavy equipment around, precautions be taken to prevent damage to pavement, curbs, and vegetation. Crawler tractors are not to be operated on paved or concrete surfaces. Mud, dirt and other construction debris that is tracked off site shall be cleaned on a daily basis.

Sanitary Facilities

A temporary sanitary facility (chemical toilet) shall be provided and maintained for the use of construction workers.

Construction Parking

Construction crews shall not park on, or otherwise use, other Lots. No construction vehicle will be permitted to leak oil or otherwise damage or deface any street located within the community.

Schedule of Fines

Periodic inspections by a representative of the Rutherford West Reviewer may take place in order to identify non-complying construction activities. Listed below is the schedule of fines which may be assessed.

Premature Clearing	\$500
Construction Without Rutherford West Reviewer Approval	\$500
Encroachment on Adjacent Properties	\$500 plus cost of repair
Violation of Rules, Restriction or Guidelines	\$50/day

Duration of Construction

A residence shall be complete and available for occupancy on or before eighteen (18) months after the start of construction.

PLAN SUBMITTALS

New residential home construction within Rutherford West will utilize a two-stage review process. No Improvements may be commenced until the Owner has received a written "Approval" from the Rutherford West Reviewer.

PLAN BOOK, MATERIAL AND LANDSCAPE REVIEW

The applicant must first submit for approval plans for the home designs to be offered in the neighborhood including the exterior elevations and landscaping associated with each plan.

The Plan Book, Material, and Landscaping Review will require the submission of the following information:

- Floorplans
- Elevations of all sides of each home indicating
 - Roof pitch
 - Roof peak height above the foundation
 - Exterior materials- walls, roof, chimney
 - Window specifications
 - Chimney cap materials/design
 - Heated/air conditioned square footage of each floor and the total heated/air conditioned square footage
- Material samples, including stone samples (colors and patterns), mortar colors, stucco colors, trim colors, roof materials and colors, and window materials and colors must be approved in advance by the Rutherford West Reviewer. The Rutherford West Reviewer reserves the right to request samples of all materials. **PLEASE BE ADVISED THAT PLAN BOOK AND MATERIAL REVIEW IS NOT FINAL APPROVAL. SPECIFICALLY, MATERIAL TO BE INCORPORATED INTO A RESIDENCE OR IMPROVEMENT IS NOT APPROVED FOR USE ON A PARTICULAR RESIDENCE OR IMPROVEMENTS UNTIL THE FINAL PLAN REVIEW FOR THE RESIDENCE AND/OR IMPROVEMENT HAS BEEN SUBMITTED TO AND APPROVED BY THE RUTHERFORD WEST REVIEWER.**
- Sample Landscaping Plan
 - General boundaries of turf areas with type of turf noted
 - General locations of all proposed plants
 - Listing of materials Plan

FINAL PLAN REVIEW

A completed Final Plan Application must be submitted for review and approval to the Rutherford West Reviewer prior to the construction of any improvements on a Lot. The Final Plan Application must also include all information required to be submitted as set forth on the application.



**ARCHITECTURAL COMMITTEE
FINAL PLAN REVIEW CHECKLIST**

ADDRESS _____ **CONTACT INFO:** _____

Application Packages should contain the following information:

Site/Construction Plan (1"=10' min)	Landscape Plan & Application or Deferral Request
Floor Plans (1/4"=1'0")	Sample Board with Exterior Colors
Roof Plan (1/4"=1'0")	Design Review and Compliance Fees
Exterior Elevations and Details (1/4"=1'0" min)	Variance Request Application and Fees if
needed Pool Plans & Application	

The following information must be included on all submissions in order to be accepted for review:

_____ Appropriate Design Review Fee	_____ Appropriate Compliance Deposit
_____ Address & Subdivision	_____ Homeowner Name
_____ Site plan at 1"=10' minimum	_____ Impervious cover calculations
_____ Site dimensions	_____ Roof pitches indicated
_____ Property Lines	_____ Building Height per restrictions
_____ Setbacks	_____ Overhangs called out
_____ Easements and Encroachments	_____ Chimney materials
_____ Utility locations and proposed trench lines	_____ Square footage and 1 st and 2 nd floor ratios
_____ Location of Propane Tanks	_____ Location of Septic System
_____ HVAC unit locations and screening	_____ Max exposed masonry to finished grade
_____ Driveway and culvert locations	_____ Silt fencing location
_____ Sidewalks, patio, covered porches	_____ Chain link fence location
_____ Accessory site development/out building	_____ Const entry of 3"-5" rock at least 10'x15'
_____ Tree survey if applicable	_____ Dumpster location
_____ Swimming pool location	_____ Materials storage location
_____ Fencing design and color	_____ Port-o-let location
_____ Building location	
_____ Written description of post development drainage patterns or grading plan	
_____ Copy of NPDES Permit	

PLEASE RETURN TO:
Lynda Crawford, CMCA

115 Wild Basin, Suite 308
Austin, TX 78746

RW RUTHERFORD WEST

LANDSCAPE DEFERMENT APPLICATION

Date: _____ Lot/Block: _____ Subdivision: _____

Owner: _____ Landscape Architect: _____

Reason for deferment:

Date of plan submittal: _____

FOR BOARD USE ONLY

DATE _____

Approved as submitted _____ Returned for more information _____

Denied _____

Comments _____

Please return the requested information to:

Lynda Crawford, CMCA
115 Wild Basin road, Suite 308
Austin, TX 78746

Filed for Record in:
Hays County
On: Jul 30, 2007 at 01:44P
Document Number: 70022295
Amount: 68.00
Receipt Number - 176002
By,
Christina Sanchez, Deputy
Linda C. Fritscher, County Clerk
Hays County

AFTER RECORDING RETURN TO:

Robert D. Burton, Esq.
Armbrust & Brown, L.L.P. | 100 Congress Ave., Suite 1300 | Austin, Texas 78701



**FIRST AMENDMENT TO
DEVELOPMENT AREA DECLARATION
SECTION ONE AND SECTION TWO**

Declarant: WILSON FAMILY COMMUNITIES, INC., a Delaware corporation

Cross reference to Rutherford West Development Area Declaration [Section One and Section Two],
recorded in Volume 3219, Page 112, Official Public Records of Hays County, Texas.

**FIRST AMENDMENT TO DEVELOPMENT AREA DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
RUTHERFORD WEST, SECTION ONE AND SECTION TWO**

This First Amendment to Development Area Declaration of Covenants, Conditions and Restrictions Rutherford West, Section One and Section Two ("Amendment") is made by **WILSON FAMILY COMMUNITIES, INC.**, a Delaware corporation ("Declarant"), and is as follows:

RECITALS:

A. Declarant previously executed and recorded that certain Rutherford West Development Area Declaration [Section One and Section Two], recorded in Volume 3219, Page 112, Official Public Records of Hays County, Texas (collectively, the "Declaration").

B. Pursuant to Section 7.02 of the Declaration, the Declaration may be amended by Declarant acting alone.

C. Declarant desires to amend the Declaration as set forth hereinbelow.

NOW THEREFORE, Declarant hereby amends and modifies the Declaration as follows:

1. **Landscaping.** Section 3.19 of the Declaration is hereby deleted in its entirety and replaced with the following:

3.19 Landscaping. Prior to the occupancy of any single-family residence constructed upon any Lot: (i) the area between the front of the residence and the back of the curb of the street immediately adjacent to the front yard to a point ten feet (10') postern to the rear elevation of the residence must, exclusive of any sidewalk areas, be fully sodded and/or landscaped with Bermuda grass, Prairie Buffalo grass, or an alternative grass approved in advance by the Rutherford West Reviewer; and (ii) at a minimum, thirty (30) five (5) gallon, fifty (50) one (1) gallon shrubs, five (5) three-inch caliper trees and two (2) six-inch caliper trees must be planted in the front yard of the Lot, with the configuration and selection thereof to be approved by the Rutherford West Reviewer prior to planting. No tree larger than 4" in diameter may be cut down or otherwise removed from the Property without the prior approval of the Rutherford West Reviewer. In accordance with *Section 6.05(d)* of the Covenant, the Rutherford West Reviewer may grant variances from compliance of the provisions set forth herein under this *Section 3.19*.

2. **Miscellaneous.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Declaration. Unless expressly amended by this Amendment, all other terms and provisions of the Declaration remain in full force and effect as written, and are hereby ratified and confirmed.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective the 12th day of September, 2007.

DECLARANT:

WILSON FAMILY COMMUNITIES, INC.,
a Delaware corporation

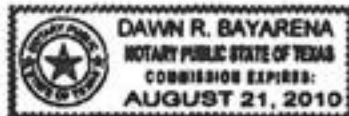
By: [Signature]
Printed Name: DAVID GOODRUM
Title: V.P. Development

THE STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on the 12th day of September, 2007, by David Goodrum, V.P. Land Development of Wilson Family Communities, Inc., a Delaware corporation, on behalf of said corporation.

(Seal)

[Signature]
Notary Public Signature



Filed for Record in:
Hays County
On: Sep 14, 2007 at 02:46P
Document Number: 70027405
Amount: 24.00
Receipt Number - 179196
By:
Christina Sanchez, Deputy
Linda C. Fritsche, County Clerk
Hays County

151744 Courtesy

70017647 Bk Vol Pg
DPR 3189 280

RUTHERFORD WEST ADOPTION OF WORKING CAPITAL ASSESSMENT

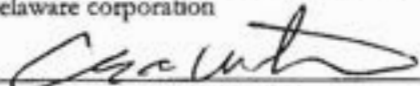
Pursuant to Section 5.13 of that one certain Rutherford West Master Covenant, recorded in Volume 2918, Page 524, Official Public Records of Hays County, Texas, as amended (the "Master Covenant"), **WILSON FAMILY COMMUNITIES, INC.**, a Delaware corporation and the "Declarant" pursuant to the Master Covenant (the "Declarant"), adopts a working capital assessment in the amount of \$400.00. The working capital assessment is payable by each Owner, other than: (i) the Declarant, (ii) an affiliate of the Declarant, (iii) a Homebuilder or (iv) a Development Owner, to the Rutherford West Homeowners Association, Inc., a Texas non-profit corporation and the "Association" pursuant to the Master Covenant, at the time a Lot is conveyed from the Declarant to each such Owner.

Capitalized terms used by not defined herein shall have the meanings ascribed to such terms in the Master Covenant.

EXECUTED TO BE EFFECTIVE on the 7th day of JUNE, 2007.

DECLARANT:

WILSON FAMILY COMMUNITIES, INC.,
a Delaware corporation

By: 

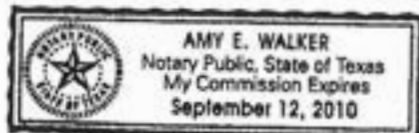
Printed Name: Clark N. Wilson

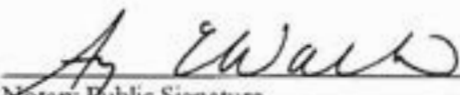
Title: President and Chief Executive Officer

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 7th day of JUNE, 2007, by CLARK WILSON, PRESIDENT AND of Wilson Family Communities, Inc., a Delaware corporation, on behalf of said corporation. CHIEF EXECUTIVE OFFICER

(Seal)




Notary Public Signature

Filed for Record in:
Hays County
On: Jun 19, 2007 at 09:16A
Document Number: 70017647
Amount: 16.00
Receipt Number - 173250
By:
Alisha Herzog, Deputy
Linda C. Fritscher, County Clerk
Hays County

AFTER RECORDING RETURN TO:

Robert D. Burton, Esq.

Armbrust & Brown, L.L.P. | 100 Congress Ave., Suite 1300 | Austin, Texas 78701



SECOND AMENDMENT TO DEVELOPMENT AREA DECLARATION SECTION ONE AND SECTION TWO

Declarant: WILSON FAMILY COMMUNITIES, INC., a Delaware corporation

Cross reference to Rutherford West Development Area Declaration [Section One and Section Two], recorded in Volume 3219, Page 112, Official Public Records of Hays County, Texas and First Amendment to Development Area Declaration Section One and Section Two recorded in Volume 3250, Page 399, Official Public Records of Hays County, Texas.

**SECOND AMENDMENT TO DEVELOPMENT AREA DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
RUTHERFORD WEST, SECTION ONE AND SECTION TWO**

This Second Amendment to Development Area Declaration of Covenants, Conditions and Restrictions Rutherford West, Section One and Section Two ("Amendment") is made by **WILSON FAMILY COMMUNITIES, INC.**, a Delaware corporation ("Declarant"), and is as follows:

RECITALS:

A. Declarant previously executed and recorded that certain Rutherford West Development Area Declaration [Section One and Section Two], recorded in Volume 3219, Page 112, Official Public Records of Hays County, Texas and First Amendment to Development Area Declaration Section One and Section Two recorded in Volume 3250, Page 399, Official Public Records of Hays County, Texas (collectively, the "**Declaration**").

B. Pursuant to Section 7.02 of the Declaration, the Declaration may be amended by Declarant acting alone.

C. Declarant desires to amend the Declaration as set forth hereinbelow.

NOW THEREFORE, Declarant hereby amends and modifies the Declaration as follows:

1. **Landscaping.** Section 3.19 of the Declaration is hereby deleted in its entirety and replaced with the following:

3.19 Landscaping. Prior to the occupancy of any single-family residence constructed upon any Lot: (i) the area between the front of the residence and the back of the curb of the street immediately adjacent to the front yard to a point ten feet (10') postern to the rear elevation of the residence must, exclusive of any sidewalk areas, be fully sodded and/or landscaped with Bermuda grass, Prairie Buffalo grass, or an alternative grass approved in advance by the Rutherford West Reviewer; and (ii) at a minimum, thirty (30) five (5) gallon, fifty (50) one (1) gallon shrubs, five (5) three-inch caliper trees and two (2) six-inch caliper trees must be planted in the front yard of the Lot, with the configuration and selection thereof to be approved by the Rutherford West Reviewer prior to planting. No tree larger than 4" in diameter may be cut down or otherwise removed from the Property without the prior approval of the Rutherford West Reviewer. In accordance with *Section 6.05(d)* of the Covenant, the Rutherford West Reviewer may grant variances from compliance of the provisions set forth herein under this *Section 3.19*.

All Owners are required to comply with the Lower Colorado River Authority Conservation Landscape Best Management Practices attached hereto and incorporated herein as Exhibit "A" to the Covenant.

2. **Exhibit "A".** The Lower Colorado River Authority Conservation Landscape Best Management Practices is hereby added to the Declaration and to this Amendment as "Exhibit A".

3. **Miscellaneous.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Declaration. Unless expressly amended by this Amendment, all other terms and

provisions of the Declaration and the First Amendment remain in full force and effect as written, and are hereby ratified and confirmed.

EXECUTED to be effective the 14th day of April, 2008.

DECLARANT:

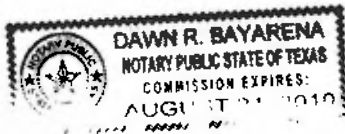
WILSON FAMILY COMMUNITIES, INC.,
a Delaware corporation

By: David Goodrum
David Goodrum, Vice President of Development

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 14th day of April, 2008, by David Goodrum, Vice President of Development of Wilson Family Communities, Inc., a Delaware corporation, on behalf of said corporation.

(Seal)



Dawn R. Bayarena
Notary Public Signature



EXHIBIT "A"

**Lower Colorado River Authority
Conservation Landscape Best Management Practices
(For Use in Ordinances or Deed Restrictions)
5/21/07**

Irrigation System Specifications:

1. Landscape irrigation systems shall not be mandatory.
2. Landscape irrigation systems shall be installed by a licensed irrigator unless the homeowner is physically installing the system.
3. Irrigation systems shall be designed with:
 - a. a master valve with shut-off;
 - b. valves and circuits separated based on water use (hydro-zoned);
 - c. sprinkler heads spaced for head-to-head coverage, or heads spaced according to manufacturer's recommendations and adjusted for prevailing winds;
 - d. a benchmark distribution uniformity percentage of 0.6 or higher; e. no run-off, with no direct over spray onto non-irrigated areas;
 - f. pop-up spray heads and rotors set back at least 6 inches from impervious surfaces;
 - g. no spray irrigation included on areas less than 6 feet in width;
 - h. an approved rain shut-off device set to shut off after 1/8" of rainfall;
 - i. pressure regulation components installed where dynamic pressure exceeds manufacturer's recommended operating range (30-60 psi); and
 - j. a controller capable of dual or multiple programming, with at least several start times for each irrigation program, a water budgeting feature and programmable to irrigate with a frequency of every one to ten days, and by day of week.
4. Installers must present the owner with a water budget that specifics:
 - a. estimated monthly water use in gallons per application;
 - b. total irrigated area in square feet;
 - c. precipitation rates for each valve circuit;
 - d. monthly irrigation schedule for the plant establishment period (first three months);
 - e. the water utility recommended watering schedule (no more than twice per week), including seasonal adjustments, in a format that can be posted by the controller box;
 - f. location of emergency irrigation system shut-off valve; and
 - g. the distribution uniformity percentage for the system.
5. Spray irrigation for each home/business shall be limited to 2.5 times the foundation footprint, with a 12,000 sq foot maximum. The footprint may include both the house and the garage, but not the driveway or patio.

Irrigation System Maintenance Specifications:

1. The developer, builder and/or homeowner associate shall make homeowners aware of the water utility recommended watering schedule.
2. Irrigation systems in common areas shall be monitored once per month, and any repairs will be made in a timely manner.
3. Watering of common areas and individual landscapes shall be limited to the recommended time of day watering schedule of the water utility unless irrigation of reclaimed water during the day is necessary to meet regulatory requirements.

Soil Specifications:

1. All irrigated and newly planted turf areas will have a minimum settled soil depth of 6 to 8 inches:
 - a. builders and owners will import soil if needed to achieve sufficient soil depth;
 - b. soil in these areas may be either native soil from the site or imported, improved soil;
 - c. improved soil will be a mix of no less than twenty percent compost blended with sand and loam (caliche shall not be considered as soil);
 - d. undisturbed, non-irrigated natural areas are exempt from these requirements.
2. In new development:
 - a. native soil shall be stockpiled and reused on site;
 - b. topsoil that is added to the site shall be incorporated in a 2 to 3 inch scarified transition layer to improve drainage.

Planting Specifications:

1. Builders shall offer homeowner a conservation landscape option such as the LCRA Hill Country landscape Option that includes only plants selected from native and adapted plant list approved by the LCRA. Turf that is used as part of this option shall have summer dormancy capabilities.
2. New developments shall have an example of a conservation landscape, including appropriate soil depth, plant choice, plant spacing and efficient irrigation system at a minimum of one model home and/or at a community/amenity center
3. Invasive plants listed in this document shall not be used.
4. No more than fifty percent of the landscape may be planted in turf.

Landscape Chemical Use Specifications:

1. Landscape companies providing maintenance on all common areas and individual landscapes must only use integrated pest management (IPM) to minimize exposure of storm water runoff to chemicals (fertilizers, herbicides and pesticides). IPM techniques shall include the following steps:
 - a. accurately identify pest or disease problem before considering treatment;
 - b. explore cultural or mechanical controls (i.e. modification of irrigation, pruning, etc);
 - c. look for biological control options (i.e. predatory insects for pest control, Bt for caterpillar control, etc);

- d. consider chemical control only if other options fail;
 - e. utilize least-toxic and targeted chemical controls;
 - f. baits are preferable to broad-spectrum chemical application;
 - g. follow instructions on chemical labels exactly; and h. perform periodic monitoring for early detection of potential problems.
2. Landscape companies providing maintenance on all common areas and individual landscapes shall use the following fertilizer practices:
- a. fertilization of turf areas shall not be required;
 - b. in turf areas that are to be fertilized, natural or certified organic fertilizers with less than 4% phosphorus shall be used;
 - c. fertilizer shall be applied at a rate of 1/2 pound of nitrogen per 1000 square feet, not to exceed a total of one pound of nitrogen per 1000 square feet per year.
3. Builders or property managers must present guidelines for IPM plans and fertilizer practices meeting the deed restriction requirements to home buyers at the time of closing. These guidelines shall also be included in HOA or POA landscape maintenance contracts.

List of Invasive Plants Not Acceptable for Use

The following list comes from the August 2004 edition of the Grow Green Guide to Native and Adapted Landscape Plants.

Trees To Avoid

Chinaberry	Melia azedarach
Chinese Parasol Tree	Firmiana simplex
Chinese Pistache	Pistacia chinensis
Chinese Tallow	Sapium sebiferum
Mimosa (non-native)	Albizia julibrissin
Paper Mulberry	Broussonetia papyrifera
Salt Cedar	Tamarisk spp.
Tree of Heaven	Ailanthus altissima
Vitex	Vitex agnus-castus
White Mulberry	Morus alba

Shrubs to Avoid

Chinese Photinia	Photinia spp.
Common Privet	Ligustrum sinense, L. vulgare
Japanese Ligustrum	Ligustrum lucidum
Nandina (berrying varieties)	Nandina domestica
Pyracantha	Pyracantha spp.
Russian Olive	Elaeagnus angustifolia
Wax Leaf Ligustrum	Ligustrum japonicum

Vines to Avoid

Cat's Claw Vine	Macfadyena unguis-cati
English Ivy	Hedera helix
Japanese Honeysuckle	Lonicera japonica
Kudzu	Pueraria lobata
Vinca	Vinca major, V. Minor
Wisteria (non-native)	Wisteria sinensis, W. floribunda

Other Plants to Avoid

Elephant Ear	Alocasia spp., Colocasia spp.
Giant Cane	Arundo donax
Holly Fern	Cyrtomium falcatum
Running Bamboo	Phyllostachys aurea

**** Electronically Filed Document ****

**Hays County Texas
Liz Q. Gonzalez
County Clerk**

Document Number: 2015-15039720

Recorded As : ELECTRONIC RECORDING

Recorded On: December 17, 2015
Recorded At: 08:10:20 am
Number of Pages: 6
Book-VI/Pg: Bk-OPR VI-5398 Pg-561
Recording Fee: \$42.00

Parties:

Direct- GREEN BUILDERS INC
Indirect- RW TRINE LLC

Receipt Number: 416385
Processed By: Renee Green

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.



I hereby certify that this instrument was filed for record in my office on the date and
time stamped hereon and was recorded on the volume and page of the named records
of Hays County, Texas

Liz Q. Gonzalez

Liz Q. Gonzalez, County Clerk

AFTER RECORDING RETURN TO:
KEVN M. FLAHIVE
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

15/ITC/1526509 -COM/GMH

ASSIGNMENT OF DECLARANT'S RIGHTS
AND THIRD AMENDMENT TO RUTHERFORD
WEST MASTER COVENANT

Hays County, Texas

Cross reference that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas; as amended by that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas; as further amended by that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas.

**ASSIGNMENT OF DECLARANT'S RIGHTS AND THIRD AMENDMENT TO
RUTHERFORD WEST MASTER COVENANT**

This Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant (this "**Assignment and Amendment**") is made by **GREEN BUILDERS, INC.**, a Texas corporation, successor-by-merger to Wilson Family Communities, Inc., a Delaware corporation ("**Assignor**"), and **RW TRINE, LLC**, a Texas limited liability company ("**Assignee**"), to be effective as of December 16, 2015 (the "**Effective Date**"), and is as follows:

RECITALS

A. Assignor is the current "**Declarant**" under that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas; as amended by that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas; as further amended by that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas (as amended, the "**Covenant**").

B. Assignor desires to transfer and assign all of its rights, title, and interest as Declarant under the Covenant to Assignee.

C. Section 10.06 of the Covenant provides that Declarant may, in writing, assign, in whole or in part, any of its privileges, exemptions, rights and duties under the Covenant to any other person and may permit the participation, in whole or in part, by any other person in any of its privileges, exemptions, rights and duties under the Covenant.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Transfer and Assignment of Declarant's Rights.** Assignor does hereby grant, sell, set over, transfer, and assign to Assignee, its successors and assigns, all of Assignor's right, title, interest, powers, privileges, benefits, and obligations as Declarant under the Covenant. Assignee shall hereinafter have all rights to act and exercise all rights, powers, privileges, benefits, and obligations as the Declarant under the Covenant. Notwithstanding the foregoing, Assignor hereby temporarily retains and reserves the rights and obligations of Declarant under Section 9.03 of the Covenant to grant and convey any easements denoted on the final plats of Rutherford West, Sections 1 and 2, recorded in Vol. 12, Pg. 378 and Vol. 14, Pg. 49, respectively, in the Plat Records of Hays County, Texas, to Greenhawe Water Control and Improvement District No. 2, Lower Colorado River Authority and/or West Travis County Public Utility Agency (collectively, the "**Utility Entities**"), to the extent required by one or more of the Utility Entities in connection with or as a condition of payment of a reimbursement owed to Assignor by one or more of the Utility Entities, all rights to which Assignor also retains (collectively, the "**Reimbursement**"). Upon Assignor's receipt of the Reimbursement, this Assignment shall be

deemed an absolute assignment of all of Assignor's right, title, interest, powers, privileges, benefits and obligations as Declarant under the Covenant.

2. **Amendment to Covenant.** Assignor, as Declarant, does hereby modify and amend the Covenant to substitute in its place, Assignee, as the "Declarant" for all intents and purposes. Assignee shall hereinafter have all rights to act and exercise all rights, powers, privileges, benefits and obligations as the Declarant under the Covenant.

3. **Assignee's Acceptance of Assignment.** Assignee accepts the assignment of Assignor's right, title, and interest as Declarant under the Covenant and expressly assumes and agrees to keep, perform, and fulfill all of the obligations of Assignor under the terms and provisions of the Covenant from and after the Effective Date.

4. **Indemnification.** Assignor shall indemnify, defend and hold Assignee harmless from and against all claims, demands, losses, damages, expenses and costs including without limitation reasonable attorneys' fees and expenses actually incurred, arising out of, related to, or in connection with Assignor's acts or omissions as Declarant prior to the Effective Date. Assignee shall indemnify, defend and hold Assignor harmless from and against all claims, demands, losses, damages, expenses and costs including without limitation reasonable attorneys' fees and expenses actually incurred, arising out of, related to, or in connection with Assignee's acts or omissions as Declarant on or after the Effective Date.

5. **Representations and Warranties.** Assignor represents, warrants and covenants to Assignee as follows: (a) Assignor has the full right, power and authority to transfer, assign and convey all of its right, title and interest as Declarant under the Covenant to Assignee; (b) Assignor has not assigned or transferred any rights or obligations of Declarant under the Covenant, in whole or part, to any other entity, party or person; and (c) to the best knowledge of Assignor, neither Assignor, nor the Association, are subject to or involved in any existing, pending or threatened litigation.

6. **No Other Changes.** Except as specifically set forth in this Assignment and Amendment, the terms and provisions of the Covenant shall remain unmodified, and the Covenant is hereby confirmed as being in full force and effect as amended herein.

7. **Defined Terms.** All defined terms delineated with initial capital letters in this Assignment and Amendment that are not defined herein shall have the meaning ascribed to them in the Covenant. Other terms have the meanings commonly ascribed to them.

8. **Survival of Provisions.** This Assignment and Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

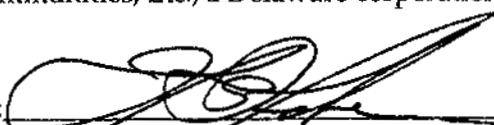
9. **Captions.** The captions of sections in this Assignment and Amendment are for convenient reference only and are not to be construed in any way as part of this Assignment and Amendment.

10. Execution. To facilitate execution, this instrument may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties be contained in any one counterpart hereof. Additionally, the parties hereto hereby covenant and agree that, for purposes of facilitating the execution of this instrument, the signature pages taken from separate individually executed counterparts of this instrument may be combined to form multiple fully executed counterparts. All executed counterparts of this instrument shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

ASSIGNOR:

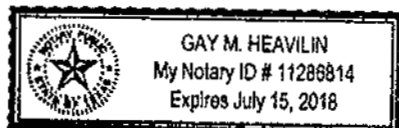
GREEN BUILDERS, INC., a Texas corporation,
successor-by-merger to Wilson Family
Communities, Inc., a Delaware corporation

By: 
William E. Weber, President & CEO

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 16 day of December, 2015, by William E. Weber, President & CEO of Green Builders, Inc., a Texas corporation, successor by merger to Wilson Family Communities, Inc., a Delaware corporation, on behalf of said corporation.

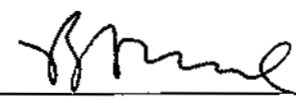
[Seal]




Notary Public Signature

ASSIGNEE:

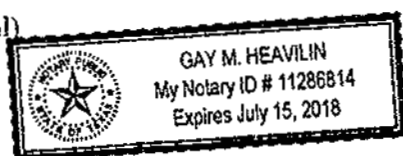
RW TRINE, LLC, a Texas limited liability company

By: 
Barrett Wood, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 16 day of December, 2015, by Barrett Wood, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said limited liability company.

(Seal)




Notary Public Signature

**** Electronically Filed Document ****

**Hays County Texas
Liz Q. Gonzalez
County Clerk**

**Document Number: 2016-16013783
Recorded As : ELECTRONIC RECORDING**

**Recorded On: May 03, 2016
Recorded At: 09:07:50 am
Number of Pages: 6**

Recording Fee: \$42.00

Parties:

**Direct- RW TRINE LLC
Indirect-**

**Receipt Number: 427808
Processed By: Barbara Rodriguez**

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.



I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

Liz Q. Gonzalez

Liz Q. Gonzalez, County Clerk

AFTER RECORDING RETURN TO:

KEVIN M. FLAHIVE
ARMBRUST & BROWN, PLLC
100 CONGRESS AVENUE, SUITE 1300
AUSTIN, TEXAS 78701



APPOINTMENT OF RUTHERFORD WEST REVIEWER

Declarant: RW TRINE, LLC, a Texas limited liability company

Cross reference that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas; as amended by that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas; as further amended by that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas; as further amended by that certain Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant, recorded in Volume 5398, Page 561, Official Public Records of Hays County, Texas.

RUTHERFORD WEST
APPOINTMENT OF RUTHERFORD WEST REVIEWER

WFCRW, LLC, a Texas limited liability company ("**Original Declarant**"), caused to be recorded that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas (the "**Original Master Covenant**"). Original Declarant subsequently caused to be recorded that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas (the "**First Amendment**"), pursuant to which Wilson Family Communities, Inc., a Delaware corporation ("**Successor Declarant**") assumed all "Declarant" rights under the Original Master Covenant, as amended by the First Amendment. Successor Declarant subsequently caused to be recorded that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas (the "**Second Amendment**"). Successor Declarant's successor-by-merger, Green Builders, Inc., a Texas corporation, subsequently caused to be recorded that certain Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant, recorded in Volume 5398, Page 561, Official Public Records of Hays County, Texas (the "**Third Amendment**"), pursuant to which RW TRINE, LLC, a Texas limited liability company ("**Declarant**"), assumed all "Declarant" rights under the Original Master Covenant, as amended by the First Amendment, Second Amendment and Third Amendment (as amended, the "**Master Covenant**"), SAVE AND EXCEPT the temporary rights retained by Green Builders, Inc. in the Third Amendment. Among the rights assigned to and assumed by Declarant, was the right, pursuant to *Section 6.02(a)* of the Master Covenant, during the Development and Sale Period, to designate one or more persons to act on its behalf in reviewing and responding to applications for the construction or installation of Improvements within the Development (i.e., the Rutherford West Reviewer). As Declarant presently owns a portion of the Property and has not previously terminated the Development and Sale Period, the Development and Sale Period is ongoing and Declarant presently possesses the right to designate one or more persons to act on its behalf as the Rutherford West Reviewer.

Pursuant to the terms and provisions of the Master Covenant, Declarant hereby appoints the following individual to act on its behalf as the Rutherford West Reviewer:

Blake Contine

All capitalized terms used but not defined in this instrument shall have the meaning subscribed to such terms in the Master Covenant. This instrument may be executed in any number of counterparts, and it will not be necessary that the signatures of all signatories be contained on any one counterpart. All executed counterparts of this instrument will be deemed to be originals, but such counterparts, when taken together, will constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

EXECUTED TO BE EFFECTIVE on the 20th day of April, 2016 (the "Effective Date").

DECLARANT:

RW TRINE, LLC,
a Texas limited liability company

By: _____

John D. Ramming, Manager

STATE OF TEXAS

§

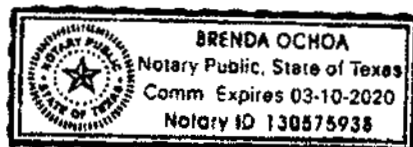
§

COUNTY OF Williamson, §

This instrument was acknowledged before me on this 27th day of April, 2016 by John D. Ramming, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said limited liability company.

[seal]

Notary Public, State of Texas



EXECUTED TO BE EFFECTIVE on the Effective Date.

DECLARANT:

RW TRINE, LLC,
a Texas limited liability company

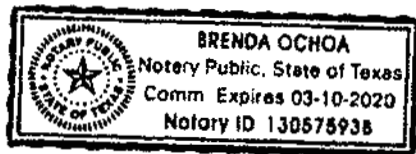
By: *Duane McGlaulin*
Duane McGlaulin, Manager

STATE OF TEXAS §
 §
COUNTY OF Williamson §

This instrument was acknowledged before me on this 21st day of April, 2016 by Duane McGlaulin, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said limited liability company.

[seal]

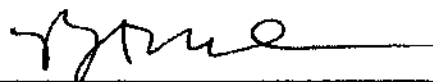
Brenda Ochoa
Notary Public, State of Texas



EXECUTED TO BE EFFECTIVE on the Effective Date.

DECLARANT:

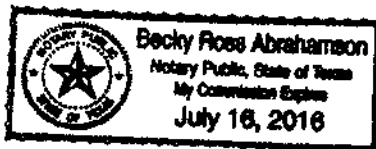
RW TRINE, LLC,
a Texas limited liability company

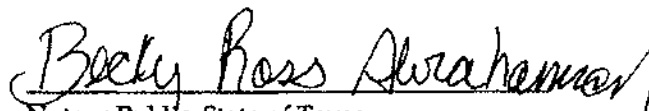
By: 
Barrett Wood, Manager

STATE OF TEXAS §
 §
COUNTY OF Williamson §

This instrument was acknowledged before me on this 25 day of April, 2016 by Barrett Wood, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said limited liability company.

[seal]




Notary Public, State of Texas

AFTER RECORDING RETURN TO:
KEVIN M. FLAHIVE
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701



NOTICE OF APPLICABILITY [SECTION FOUR]

Declarant: RW TRINE, LLC, a Texas limited liability company

Cross reference that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas; as amended by that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas; as further amended by that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas; and as further amended by that certain Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant, recorded in Volume 5398, Pages 561-566, Official Public Records of Hays County, Texas.

**NOTICE OF APPLICABILITY OF
RUTHERFORD WEST MASTER COVENANT
[SECTION FOUR]**

This Notice of Applicability of Rutherford West Master Covenant [Section Four] is made and executed by **RW TRINE, LLC**, a Texas limited liability company ("**Declarant**"), and is as follows:

1. **Applicability of Master Covenant.** This Notice of Applicability is filed with respect to all Lots located within RUTHERFORD WEST SECTION FOUR, a subdivision in Hays County, Texas, according to the map or plat thereof recorded under Document No. 17030404, Official Public Records of Hays County, Texas (the "**Development Area**"). Declarant is the owner of the Development Area. Pursuant to that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas (the "**Covenant**"), Declarant served notice that portions of the property described on Exhibit "A" to the Covenant (the "**Community**"), upon the filing of appropriate notices of applicability from time to time, may be made a part of the Development and thereby fully subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Covenant.

2. **Property Incorporated Into Development.** The provisions of the Covenant shall apply to the Development Area. The Development Area is hereby included within and made a part of the Development, and is hereby subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Covenant.

3. **Designation of Neighborhood.** Pursuant to *Section 3.02* of the Covenant, Declarant hereby assigns the Development Area to Neighborhood A, subject to all terms and provisions of the Covenant which relate to Neighborhoods so designated within the Community.

4. **Miscellaneous.** This notice constitutes a notice of applicability under *Section 10.05* of the Covenant. Any capitalized terms used and not otherwise defined in this notice shall have the meanings set forth in the Covenant.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the date this instrument has been recorded in the
Official Public Records of Hays County, Texas.

DECLARANT:

RW TRINE, LLC,
a Texas limited liability company

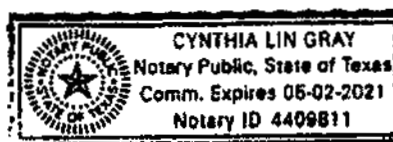
By: 
Barrett Wood, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 14th day of September, 2017 by
Barrett Wood, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said
limited liability company.

(SEAL)


Notary Public Signature

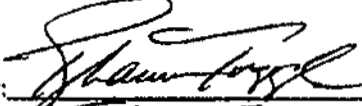


{W0715570.1}

CONSENT OF MORTGAGEE

The undersigned, being the owner and holder of liens and encumbrances against a portion of the Development Area (the "Liens"), executes this Notice of Applicability solely for the purposes of (i) evidencing its consent to this Notice of Applicability and the Covenant referenced therein, and (ii) subordinating the Liens to this Notice of Applicability and the Covenant, both on the condition that the Liens shall remain superior to the Assessment Lien provided for in the Covenant, in all events.

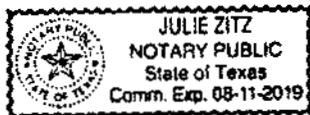
PLAINSCAPITAL BANK,
a Texas state financial institution

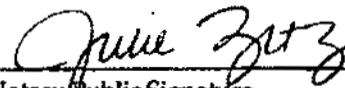
By: 
Name: T. Shaun Tuggle
Title: PRESIDENT - Round Rock
Date: 9-17-17

THE STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me this 12th day of September, 2017 by T. Shaun Tuggle PRESIDENT - Round Rock of PlainsCapital Bank, a Texas state financial institution, on behalf of said financial institution.

(SEAL)




Notary Public Signature

{W0715570.1}

RUTHERFORD WEST
NOTICE OF APPLICABILITY [SECTION FOUR]



AFTER RECORDING RETURN TO:

KEVIN M. FLAHIVE
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701



DEVELOPMENT AREA DECLARATION [SECTION FOUR]

Declarant: RW TRINE, LLC, a Texas limited liability company

Cross reference that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas; as amended by that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas; as further amended by that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas; and as further amended by that certain Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant, recorded in Volume 5398, Pages 561-566, Official Public Records of Hays County, Texas, and that certain Notice of Applicability of Rutherford West Master Covenant [Section Four], recorded under Document No. 17032576, Official Public Records of Hays County, Texas. The terms and provisions of the aforementioned documents also apply to the Development Area encumbered by this Development Area Declaration.

{W0715574.3}

RUTHERFORD WEST
DEVELOPMENT AREA DECLARATION [SECTION FOUR]

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**DEVELOPMENT AREA DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
[SECTION FOUR]**

This Development Area Declaration of Covenants, Conditions and Restrictions for Rutherford West [Section Four] (this "**Declaration**") is made by **RW TRINE, LLC**, a Texas limited liability company ("**Declarant**"), and is as follows:

RECITALS

A. Declarant is the owner of all Lots located within RUTHERFORD WEST SECTION FOUR, a subdivision in Hays County, Texas, according to the map or plat thereof recorded under Document No. 17030404, Official Public Records of Hays County, Texas (collectively, the "**Development Area**").

B. Pursuant to that one certain Notice of Applicability of Rutherford West Master Covenant [Section Four], recorded under Document No. 17032576 Official Public Records of Hays County, Texas, the Development Area is subject to the terms and provisions of that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas, as amended (the "**Covenant**").

C. Declarant intends for this Declaration to serve as one of the Development Area Declarations permitted under the Covenant and desires that the Development Area described and identified in Recital A hereinabove will constitute one of the Development Areas which is permitted, contemplated and defined under the Covenant.

D. Declarant desires to create upon the Development Area a residential community and carry out a uniform plan for the improvement and development of the Development Area for the benefit of the present and all future owners thereof.

E. Declarant desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Development Area to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Development Area, and each owner thereof, which will be in addition to the covenants, conditions, and restrictions set forth in the Covenant.

NOW, THEREFORE, it is hereby declared: (i) that all of the Development Area will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with the Development Area and will be binding upon all parties having right, title, or interest in or to the Development Area or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Development Area, or any portion thereof, will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same

are set out in full or by reference in said contract or deed; and (iii) that this Declaration will supplement and be in addition to the covenants, conditions, and restrictions of the Covenant.

ARTICLE 1 DEFINITIONS

1.01 **Defined Terms.** Unless the context specifies or requires otherwise, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

"Assessment" or **"Assessments"** means all assessment(s) imposed by the Association under the Covenant.

"Association" means the Rutherford West Homeowners Association, Inc., a Texas non-profit corporation.

"Association Restrictions" means the Covenant, this Declaration, any rules adopted by the Rutherford West Reviewer pursuant to *Section 6.05(b)* of the Covenant, any rules or regulations adopted by the Board pursuant to *Section 3.04(a)* of the Covenant and the Certificate and Bylaws of the Association.

"Bylaws" means the bylaws of the Association, as amended from time to time.

"Board" means and refer to the Board of Directors of the Association.

"Certificate" means the Certificate of Formation of the Association, as the same may be amended from time to time.

"Covenant" means that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas, as the same may be amended or supplemented from time to time.

"Declarant" means RW TRINE, LLC, a Texas limited liability company, its successors or assigns; provided that any assignment(s) of the rights of RW TRINE, LLC, a Texas limited liability company, as Declarant, must be expressly set forth in writing and recorded in the Official Public Records of Hays County, Texas.

"Design Guidelines" means the standards for design, construction, landscaping, and exterior items placed on any Lot adopted pursuant to *Section 6.05(b)* of the Covenant, as amended.

"Improvements" means every structure and all appurtenances of every type, whether temporary or permanent, including but not limited to buildings, outbuildings, sheds, patios, tennis courts, swimming pools, sport courts, garages, driveways, storage buildings, sidewalks, gazebos, signs, fences, gates, screening walls, retaining walls, stairs, decks, landscaping, landscape improvements, poles, mailboxes, signs, antennae, exterior air conditioning

equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, playground equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular satellite or cable television, other utilities, or otherwise.

"Lot" or **"Lots"** means one or more of the subdivided lots within the Development Area other than Common Area, Special Common Area, and Development Common Area.

"Mortgage" or **"Mortgages"** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any portion of the Development Area given to secure the payment of a debt.

"Mortgagee" or **"Mortgagees"** means the holder or holders of any Mortgage(s).

"Owner" or **"Owners"** means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to acquisition of its fee simple interest in such Lot pursuant to foreclosure of the lien of such Mortgage.

"Rutherford West Reviewer" means, with respect to the Development Area, Declarant or its designee until Declarant no longer owns any portion of the Development Area. When Declarant no longer owns any portion of the Development Area, the rights of the Rutherford West Reviewer with respect to the Development Area will automatically be transferred to the architectural control committee appointed by the Board.

1.02 General Definitions. Unless the context specifies or requires otherwise, capitalized terms used but not defined in this Declaration are used and defined as they are used and defined in the Covenant.

ARTICLE 2 GENERAL RESTRICTIONS

All of the Development Area will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.01 Subdividing. No Lot may be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Rutherford West Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Rutherford West Reviewer.

2.02 Hazardous Activities. No activities may be conducted on the Development Area and no Improvements constructed on the Development Area, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no

firearms or fireworks may be discharged upon the Development Area, no open fires may be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes. No portion of the Development Area may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2.03 Insurance Rates. Nothing may be done or kept on the Development Area which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, Development Common Area, or the improvements located thereon, without the prior written approval of the Board.

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

2.05 Noise. No noise or other nuisance will be permitted to exist or operate upon any portion of the Development Area so as to be offensive or detrimental to any other portion of the Development Area or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but will not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.06 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Development Area. No Owner may keep on such Owner's Lot more than four (4) cats and dogs, in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Development Area 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 Development Area, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large.

2.07 Rubbish and Debris. No rubbish or debris of any kind may be placed or permitted to accumulate upon the Development Area, and no odors will be permitted to arise therefrom so as to render the Development Area any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will be required to contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.08 Maintenance. The Owners of each Lot will be jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements

thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Rutherford West Reviewer, in its sole discretion, will determine whether a violation of the maintenance obligations set forth in this *Section 2.08* has occurred. Such maintenance includes, but is not limited to the following, which must be performed in a timely manner, as determined by the Rutherford West Reviewer, in its sole discretion:

- (a) prompt removal of all litter, trash, refuse, and wastes;
- (b) lawn mowing;
- (c) tree and shrub pruning;
- (d) watering;
- (e) keeping exterior lighting and mechanical facilities in working order;
- (f) keeping lawn and garden areas alive, free of weeds, and attractive;
- (g) keeping sidewalks and driveways in good repair;
- (h) complying with all government, health and police requirements;
- (i) repainting of Improvements; and
- (j) repair of exterior damage, and wear and tear to Improvements.

2.09 Antennae. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any Solar Energy Device, may be erected, maintained or placed on a Lot without the prior written approval of the Rutherford West Reviewer; provided, however, that:

(a) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or

(b) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(c) an antenna that is designed to receive television broadcast signals;

(collectively, (a) through (c) are referred to herein as the "**Permitted Antennas**") will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Rutherford West Reviewer, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other

apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Development.

2.10 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and may not encroach upon any street, Common Area, Special Common Area, Development Common Area, or any other portion of the Development Area. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Development Area, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Master Architectural Committee are as follows:

(a) attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

(b) attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; or

(c) on corner Lots, a Permitted Antenna must be placed at a point away from the street toward the back of the Lot at a height and screened from view as described above.

The Rutherford West Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

2.11 Signs. No sign of any kind may be displayed to the public view on any Lot without the prior written approval of the Rutherford West Reviewer, except for:

(a) Declarant Signs. Signs erected by the Declarant or erected with the advance written consent of the Declarant;

(b) Security Signs. One small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the principal residence constructed upon the Lot;

(c) Permits. Permits as may be required by applicable law;

(d) Religious Item on Door. A religious item on the entry door or door frame of a residence (which may not extend beyond the outer edge of the door frame), provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches;

(e) Sale or Rental Signs. One (1) temporary "For Sale" or "For Lease" sign per Lot, provided that the sign will be limited to: (i) a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post; (ii) an overall height of

the sign from finished grade at the spot where the sign is located may not exceed four feet (4'); and (c) the sign must be removed within two (2) business days following the sale or lease of the Lot;

(f) Political Signs. Political signs may be erected provided the sign: (i) is erected no earlier than the 90th day before the date of the election to which the sign relates; (ii) is removed no later than the 10th day after the date of the election to which the sign relates; and (iii) is ground-mounted. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited; and

(g) No Soliciting Signs. A "no soliciting" sign near or on the front door to the principal residence constructed upon the Lot, provided, that the sign may not exceed twenty-five (25) square inches.

Except for signs which are erected by the Declarant or erected with the advance written consent of the Declarant, no sign may be displayed in the window of any Improvement located on a Lot.

2.12 Flags. Owners are permitted to display certain flags on the Owner's Lot, as further set forth below.

(a) Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university ("**Permitted Flag**") and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence ("**Permitted Flagpole**"). Only two (2) permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Rutherford West Reviewer. Approval by the Rutherford West Reviewer is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot ("**Freestanding Flagpole**").

(b) Installation and Display. Unless otherwise approved in advance and in writing by the Rutherford West Reviewer, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

(i) no more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;

(ii) any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;

(iii) any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3' x 5');

(iv) with the exception of flags displayed on Common Area, Special Common Area or Development Common Area and any Lot which is being used for marketing purposes by a homebuilder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;

(v) the display of a flag, or the location and construction of the flagpole must comply with applicable law, easements and setbacks of record;

(vi) any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(vii) a flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;

(viii) any flag which is not removed by dusk shall be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and

(ix) any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

2.13 Tanks. The Rutherford West Reviewer must approve any tank used or proposed in connection with a single-family residential structure, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No above-ground or elevated tanks of any kind may be erected, placed or permitted on any Lot without the advance written approval of the Rutherford West Reviewer, in which case such tanks must be screened so as not to be visible from any other portion of the Development Area.

2.14 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure may be placed upon the Development Area without the prior written approval of the Rutherford West Reviewer; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner will be permitted, with Rutherford West Reviewer approval, to erect one (1) outbuilding on the Owner's Lot if: (i) the surface area of the pad on which the outbuilding is placed is less than or equal to one hundred twenty (120) square feet; (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to one hundred two

(102) inches; and (iii) the exterior and the roof of the outbuilding are constructed of the same or substantially similar materials as the exterior and the roof of any residence located on the Lot. The Rutherford West Reviewer will be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

2.15 Unightly Articles; Vehicles. No article deemed to be unsightly by the Rutherford West Reviewer will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment must be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash must be kept, stored, or allowed to accumulate on any portion of the Development Area except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible on any Lot or to be parked on any roadway within the Development Area.

Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than (i) in enclosed garages and (ii) behind a fence so as to not be visible from any other portion of the Development Area is prohibited; provided, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a residence.

No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Rutherford West Reviewer; provided however, a single detached garage may be utilized as a home office in lieu of being utilized as a garage if the plans and specifications therefor have been previously approved by the Rutherford West Reviewer.

2.16 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes may be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time, and no motor homes, travel trailers or recreational vehicles may be parked on or near any Lot so as to be visible from adjoining property or from public or private thoroughfares at any time.

2.17 Basketball Goals: Permanent and Portable. Permanent basketball goals are permitted between the street right-of-way and the front of the residence on a Lot provided the basketball goal is located a minimum of seventy-one feet (71') from the street curb. The basketball goal backboard must be perpendicular to the street and mounted on a black metal

pole permanently installed in the ground. Portable basketball goals are only allowed between the street right-of-way and the front of the residence on a Lot and must not be placed, at any time on any street or right of way located within the Development Area. When not in use, portable basketball goals must be stored in a garage or in the rear of the Lots (i.e., out of public view). Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals, whether permanent or portable, must be approved by the Rutherford West Reviewer prior to being placed on any Lot.

2.18 Compliance with Association Restrictions. Each Owner, his or her family, occupants of a Lot, tenants, and the guests, invitees, and licensees of the preceding must comply strictly with the provisions of the Association Restrictions as the same may be amended from time to time. Failure to comply with any of the Association Restrictions will constitute a violation of the Association Restrictions may result in a fine against the Owner in accordance with Section 5.12 of the Covenant, and will give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by Declarant, the Manager, the Board on behalf of the Association, the Rutherford West Reviewer, or by an aggrieved Owner. Without limiting any rights or powers of the Association, either board may (but will not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Association Restrictions, and the Owner whose violation has been so remedied will be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot will be secured by the liens reserved in the Declaration and/or the Covenant for Assessments and may be collected by any means provided in the Declaration and/or the Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner will indemnify and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.17 (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.19 Liability of Owners for Damage to Common Area, Special Common Area and Development Common Area. No Owner may in any way alter, modify, add to or otherwise perform any work upon the Common Area, Special Common Area or Development Common Area without the prior written approval of the Board. Each Owner will be liable to the Association for any and all damages to: (i) the Common Area, Special Common Area, Development Common Area and any improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the

Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage will be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided for in *Section 5.10* of the Covenant.

2.20 Disturbance Area. A fifteen foot (15') maximum limit of disturbance area shall be maintained around all building structures.

2.21 Integrated Pest Management Plan. Owners shall comply with the Integrated Pest Management Plan ("IPM") adopted for the Development Area. The Association will have the authority to implement the IPM Plan.

2.22 Fertilizers, Pesticides and Herbicides. No fertilizers, pesticides or herbicides other than those generally available for consumer use and approved by a governmental agency, such as the Food and Drug Administration, for the purpose intended shall be placed, used or stored on any Lot. All Owners using any such materials shall strictly comply with all instructions provide with such materials and shall take proper precautions in placing, using and storing such materials so that such materials are contained at all times and do not result in the unnecessary discharge thereof into streams or water ponds on the Development Area or onto any other adjacent land, roadway or walkway.

2.23 Construction Related Erosion and Sedimentation Controls. Development plans for Lots must incorporate an erosion control plan in accordance with the temporary best management practices of the Edwards Aquifer Rules ("Texas Administrative Code, Chapter 213, Edwards Aquifer Rules") and the Technical Guidance Manual on Best Management Practices (CEQC, RG-348, July 2005).

2.24 Owner Education. All Owners of Lots located within the Development Area must follow the IPM plan, incorporate undisturbed native vegetation buffers in the landscape design, and refrain from use of non-native grasses such as St. Augustine in order to help protect the natural character of the land and water courses. The Association will implement procedures to periodically educate Owners, through periodic newsletters or the distribution of appropriate written materials about the sensitivity of the Edwards Aquifer and each Owner's potential impact on water quality.

2.25 Conservation Easements. Conservation easements may exist on or across portions of the Lots. Each Owner is advised to ascertain the location of conservation easements prior to the installation of landscaping or any other Improvement on a Lot. Any plans or specifications submitted to the Rutherford West Reviewer for the installation of landscaping or any other Improvement must reflect all conservation easements and other easements and setbacks affecting the Lot. Declarant hereby reserves the right as to any particular Lot (which right will expire as to a particular Lot on the date Declarant conveys such Lot to a third party) to establish a conservation easement over and across a Lot. If a conservation easement is

established on a Lot, the portion of the Lot affected by the conservation easement must remain in its native vegetative state.

2.26 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Declaration. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE 3 USE AND CONSTRUCTION RESTRICTIONS

3.01 Design Guidelines. Any and all Improvements erected, placed, constructed, painted, altered, modified, or remodeled on any portion of the Development Area must strictly comply with the requirements of the Design Guidelines, unless a variance is obtained pursuant to the Covenant. The Design Guidelines may be supplemented, modified, amended, or restated by the Rutherford West Reviewer as authorized by the Covenant and the Design Guidelines.

3.02 Approval for Construction. No Improvements may be constructed upon any Lot without the prior written approval of the Rutherford West Reviewer.

3.03 Single-Family Residential Use. The Lots may be used solely for private single family residential purposes and there will not be constructed or maintained thereon more than one detached single family residence. No professional, business, or commercial activity to which the general public is invited may be conducted on any Lot, except an Owner or occupant of a residence may conduct business activities within a residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (ii) the business activity conforms to all zoning requirements for the Development Area; (iii) the business activity does not involve door-to-door solicitation of residents within the Development Area; (iv) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Development Area which is noticeably greater than that which is typical of residences in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Development Area and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development Area as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, will be construed to have their ordinary, generally accepted meanings and will include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a residence is not considered a business or trade within the meaning of this subsection. This subsection will not apply to any activity conducted by Declarant or an Owner engaged in the business of constructing homes for resale who acquires a Lot for the purpose of constructing a residence thereon for resale to a third party.

Until the earlier to occur of the date Declarant has recorded a written statement that all sales activity has ceased within the Development Area, or forty (40) years from the date this Declaration is recorded in the Official Public Records of Hays County, Texas:

(a) Declarant and/or its licensees may construct and maintain upon portions of the Common Area, Special Common Area, Development Common Area, and any Lot owned by Declarant, such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees have an easement over and across the Common Area, Special Common Area, Development Common Area for access and use of such facilities at no charge; and

(b) Declarant and/or its licensees will have an access easement over and across the Common Area, Special Common Area, Development Common Area for the purpose of making, constructing and installing improvements to the Common Area, Special Common Area, Development Common Area.

3.04 Garages. All garages must be approved in advance of construction by the Rutherford West Reviewer. The Improvements on each Lot must contain a private, enclosed garage capable of housing two (2) automobiles. Each garage must utilize only single-bay garage doors (i.e., a separate garage door, unless otherwise determined by the Rutherford West Reviewer, for each parking bay within the garage) constructed of wood or steel of a wood-like appearance and contain decorative features such as hardware or windows, as approved by the Rutherford West Reviewer. Detached garages on the rear of the home, or a single garage set back at least five feet (5') behind the leading edge of the home are permissible with the prior approval of the Rutherford West Reviewer. Garages and detached garages must conform in design and materials with the main structure. No carports or other open automobile storage units will be permitted. No garage may be permanently enclosed or otherwise used for habitation without replacing the existing garage with another structure on the Lot designed for the purpose of storing automobiles and approved by the Rutherford West Reviewer. The parking of vehicles in the yard of any Lot is not permitted. "Porte cochere"-type structures used to access garages or to allow for protected coverings used to access a residence are permissible with the prior approval of the Rutherford West Reviewer.

3.05 Fences; Sidewalks. No fence may be constructed on the Development Area without the prior written consent of Rutherford West Reviewer. The height and location of all fences must be approved in advance by the Rutherford West Reviewer. All fences must be constructed of black ornamental metal or wrought iron or such other material as the Rutherford

West Reviewer may approve. No fence may be greater than six feet (6') in height. No chain link, metal cloth, wood or agricultural fence may be installed or maintained on any Lot.

3.06 Height. The maximum building height of any residence constructed on any Lot may be no more than forty-five feet (45') measured according to the following definition: the vertical distance between the top of the foundation at any point within the structure and the highest ridge, peak, or gable of a roof, excluding chimneys. In addition, the height of any eave on any structure may not exceed forty-five feet (45') above the natural grade at any point on the exterior wall of the residence.

3.07 Building Materials. All building materials must be approved in advance by the Rutherford West Reviewer, and only new building materials (except for used brick) may be used for constructing any Improvements. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways must, unless otherwise approved by the Rutherford West Reviewer, match the color of the surface from which they project. No highly reflective finishes (other than glass, which may not be mirrored) may be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

3.08 Masonry Requirements. Unless otherwise expressly approved by the Rutherford West Reviewer, the exterior walls of any residence shall consist of brick, stone, and/or stucco as follows:

(a) **One Story Structures.** The exposed surface of all exterior walls of one-story residences shall be constructed of seventy-five percent (75%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work.

(b) **Two Story Structures.** The exposed surface of all exterior walls of the first floor of each two story residence shall be constructed of seventy-five percent (75%) masonry and/or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work. Unless otherwise agreed by the Rutherford West Reviewer, the exposed surface of the front exterior wall on the second floor of each two story residence (the "front" of a residence shall be determined by the Rutherford West Reviewer) shall be constructed of one-hundred percent (100%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work.

(c) Any portions of the elevation that are not constructed of brick, stone or stucco (exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work) shall be constructed of cementitious horizontal lap siding product (i.e., "Hardi-Plank").

(d) Notwithstanding the foregoing provisions, the Rutherford West Reviewer, in its discretion, may approve the use of decorative siding (fibre-cement or equivalent material only): (i) on front gables above plate line on a one story residence; or (ii) on up to twenty percent (20%) of the front elevation of a two story residence. As used herein, "**decorative siding**" means

vertical board and batten, shakes, scallops and other decorative siding facades as may be approved by the Rutherford West Reviewer on a case-by-case basis in the Rutherford West Reviewer's discretion.

3.09 Driveways. The design, construction materials, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, must be approved by the Rutherford West Reviewer. Driveways shall be no greater than twelve feet (12') in width through the building line setback and be limited to a maximum disturbed area of ten feet (10') on either side of the driveway. Driveways located off the building line may exceed twelve feet (12'). If the Rutherford West Reviewer deems necessary or appropriate, driveways may encroach within side building lines. Driveways on corner lots abutting a cul-de-sac and another roadway shall access off the cul-de-sac. The Rutherford West Reviewer may establish design and materials requirements for all driveways and driveway culverts to insure that they are consistent in appearance throughout the Development Area. Circular Driveways are permissible if approved in accordance with the Rutherford West Reviewer.

3.10 Minimum Square Footage. The minimum square footage for each residence, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages, is 2,200 feet for a single story residence and 2,600 feet for a two-story residence; provided, however, the first floor elevation of any two story residence shall be 1,600 square feet.

3.11 Compliance with Setbacks. The location of all Improvements must comply with the minimum setbacks shown on the Plat. For the purpose of this restriction, eaves, steps, and open and covered porches will not be considered as part of a building; however, this Section will not be construed to permit any portion of any Improvement on any Lot to encroach upon another Lot or other portion of the Development Area.

3.12 Address Markers. The location, design and materials used for address identification markers on each residence must be approved in advance of installation by the Rutherford West Reviewer.

3.13 HVAC Location. No air-conditioning apparatus may be installed on the ground in front of a residence or on the roof of any residence. No window air-conditioning apparatus or evaporative cooler may be attached to any front wall or front window of a residence or at any other location where it would be visible from any street, any other Lot or any Common Area, Special Common Area, or Development Common Area. Solar Screens are expressly permitted.

3.14 Rentals. Nothing in this Declaration may prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for terms of at least six (6) months. All leases must be in writing and are expressly subject to the Associations Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. The Owner must provide to its lessee copies of the Association Restrictions.

3.15 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement may be performed only with the prior written approval of the Rutherford West Reviewer.

3.16 Trash Containers. Trash containers and recycling bins must be stored in one of the following locations:

- (a) inside the garage of the single-family residence constructed on the Lot; or
- (b) behind the side yard fence on the Lot in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Lot.

The Rutherford West Reviewer will have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

3.17 Drainage. There may be no interference with the established drainage patterns over any of the Development Area, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Rutherford West Reviewer. Plans submitted to the Rutherford West Reviewer for approval must indicate thereon an erosion control plan to be instituted during the construction of any residence on the Lot. The Owner of the Lot will be obligated to maintain and keep such approved erosion controls in good condition and repair. The erosion controls must be removed when the residence constructed upon the Lot is capable of occupancy for residential purposes.

3.18 Construction Activities. This Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Development Area. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Rutherford West Reviewer in its sole good faith judgment, the Rutherford West Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Development Area, then the Rutherford West Reviewer may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection therewith.

3.19 Landscaping. Each Owner shall be required, at such Owner's sole cost and expense, to install landscaping upon such Owner's Lot in accordance with landscaping plans approved in advance of installation by the Rutherford West Reviewer. Notwithstanding any provision in this Declaration to the contrary, such landscaping plans must be approved by the

Rutherford West Reviewer prior to occupancy of the residence located on the Lot to which such landscaping plans relate. All landscaping shown on the landscaping plans and specifications approved by the Rutherford West Reviewer shall be installed, and all such landscaping shall be completed, on or before three (3) months after the landscaping plans have been approved by the Rutherford West Reviewer. The Rutherford West Reviewer shall be entitled to make recommendations with respect to tree disease control, whereupon the Owner or Owners to whom such recommendations are directed shall be obligated to comply with such recommendations, which may include, but not be limited to tree removal and replacement. Prior to the occupancy of any single-family residence constructed upon any Lot, and subject to an Owner's election to install Xeriscaping pursuant to *Section 3.22* below, which is strongly encouraged: (i) the area between the front of the residence and the back of the curb of the street immediately adjacent to the front yard to a point ten feet (10') postern to the rear elevation of the residence must, exclusive of any sidewalk areas, be fully sodded and/or landscaped with Bermuda grass, Prairie Buffalo grass, or an alternative grass approved in advance by the Rutherford West Reviewer; and (ii) at a minimum, thirty (30) five (5) gallon, fifty (50) one (1) gallon shrubs, five (5) three-inch caliper trees and two (2) six-inch caliper trees must be planted in the front yard of the Lot, with the configuration and selection thereof to be approved by the Rutherford West Reviewer prior to planting. No tree larger than 4" in diameter may be cut down or otherwise removed from the Property without the prior approval of the Rutherford West Reviewer.

3.20 Solar Energy Device. The installation of any system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy (a "Solar Energy Device") must be approved in advance and in writing by the Rutherford West Reviewer in accordance with the provisions set forth below. The term Solar Energy Device shall include any mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

(a) Application. To obtain Rutherford West Reviewer approval of a Solar Energy Device, the Owner shall provide the Rutherford West Reviewer with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "Solar Application"). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of *Article 6* of the Covenant.

(b) Approval Process. The Rutherford West Reviewer will review the Solar Application in accordance with the terms and provisions of *Article 6* of the Covenant. The Rutherford West Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 3.20(c)* below UNLESS the Rutherford West Reviewer makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.20(c)*, will create a condition that substantially interferes with the use and enjoyment of property within the Development Area by causing unreasonable discomfort or annoyance to

persons of ordinary sensibilities. The Rutherford West Reviewer's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Rutherford West Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the residence located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the residence, the Rutherford West Reviewer may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) percent above the energy production of the Solar Energy Device if installed in the location designated by the Rutherford West Reviewer. If the Owner desires to contest the alternate location proposed by the Rutherford West Reviewer, the Owner should submit information to the Rutherford West Reviewer which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in a fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the principal residence located on the Owner's Lot, then: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

3.21 Rainwater Harvesting Systems. Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed with the advance written approval of the Rutherford West Reviewer.

(a) Application. To obtain Rutherford West Reviewer approval of a Rainwater Harvesting System, the Owner shall provide the Rutherford West Reviewer with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions,

manufacturer, and photograph or other accurate depiction (the "Rain System Application"). A Rain System Application may only be submitted by an Owner.

(b) Approval Process. The decision of the Rutherford West Reviewer will be made in accordance with *Article 6* of the Covenant. Any proposal to install a Rainwater Harvesting System on property owned by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Rutherford West Reviewer, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

(i) The Rainwater Harvesting System must be consistent with the color scheme of the residence constructed on the Owner's Lot, as reasonably determined by the Rutherford West Reviewer.

(ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.

(iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed on the Owner's Lot and any adjoining or adjacent street.

(iv) There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the Rutherford West Reviewer.

(v) If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, Development Common Area or another Owner's Lot, the Rutherford West Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 3.21(d)* for additional guidance.

(d) Guidelines. If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, Development Common Area or another Owner's Lot, the Rutherford West Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, Common Area, Special Common Area, Development Common Area or another Owner's Lot. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, Development Common Area or another Owner's Lot, any additional requirements imposed by

the Rutherford West Reviewer to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the Rutherford West Reviewer.

3.22 Xeriscaping. As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping ("**Xeriscaping**") upon written approval by the Rutherford West Reviewer. All Owners implementing Xeriscaping shall comply with the following:

(a) **Application.** Approval by the Rutherford West Reviewer is required prior to installing Xeriscaping. To obtain the approval of the Rutherford West Reviewer for Xeriscaping, the Owner shall provide the Rutherford West Reviewer with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction; and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The Rutherford West Reviewer is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the Rutherford West Reviewer for approval; (ii) supervising installation or construction to confirm compliance with an approved Xeriscaping Application; or (iii) the compliance of an approved application with applicable law.

(b) **Approval Conditions.** Unless otherwise approved in advance and in writing by the Rutherford West Reviewer, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the Rutherford West Reviewer. For purposes of this *Section 3.22(b)(i)*, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the Rutherford West Reviewer determines that: (A) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or (B) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.

(ii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Lots, as reasonably determined by the Rutherford West Reviewer.

(c) **Process.** The decision of the Rutherford West Reviewer will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted

to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this Section 3.22 when considering any such request.

(d) Approval. Each Owner is advised that if the Xeriscaping Application is approved by the Rutherford West Reviewer, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the Rutherford West Reviewer may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of the Covenant and may subject the Owner to fines and penalties. Any requirement imposed by the Rutherford West Reviewer to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

3.23 Sight Distance at Intersection. No fence, wall, hedge, or planting that obstructs sight lines at elevations between two feet and nine feet above the roadway may be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point thirty feet (30') from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines as extended. The same sight-line limitations will apply on any Lot within the triangular area formed by the street line, the driveway or alley line and a line connecting them at a point ten feet from the intersection of a street property line with the edge of a driveway or alley pavement. All tree foliage within such distances of intersections must be maintained to meet the sight-line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, all sight distances required by any applicable governmental authority must be complied with.

3.24 Roofing. Each roof must be constructed of clay or concrete tile, non-reflective metal, slate, architectural dimensional heavyweight fireproof composition shingles in weathered wood or similar color, or other material expressly approved by the Rutherford West Reviewer. The color and composition of all roof materials, and the pitch of each roof (not to exceed 8/12), shall be expressly approved by the Rutherford West Reviewer.

3.25 Swimming Pools. Above-ground or temporary swimming pools are expressly prohibited.

ARTICLE 4 INSURANCE AND CONDEMNATION

4.01 Insurance. Each Owner will be required to maintain insurance on the Improvements located upon such Owner's Lot, providing fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for Improvements similar in construction, location and use. Such insurance policies will be for the full insurable value of the Improvements constructed upon each Lot, will contain extended coverage and replacement costs endorsements, if reasonably available, and may also contain vandalism and malicious mischief coverage, special form endorsement, a stipulated amount clause and a determinable cash adjustment clause. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board in its discretion may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association, as the case may be. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

4.02 Restoration. In the event of any fire or other casualty, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within thirty (30) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this sentence will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, then at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot will be secured by the liens reserved in the Covenant or this Declaration for Assessments and may be collected by any means provided in the Covenant and/or Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY**

ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

4.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this Article 5, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 5 MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Development Area. The provisions of this Article apply to this Declaration and the Bylaws of the Association.

5.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development Area or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of this Declaration relating to such Lot or the Owner or occupant which is not cured within sixty (60) days; or

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

5.02 Examination of Books. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours.

5.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law shall relate only to the individual Lots and not to any other portion of the Development Area.

ARTICLE 6 DEVELOPMENT

6.01 Addition of Land. Declarant may, at any time and from time to time, add additional portions of the Property which are owned by Declarant to the Development Area and, upon the filing of a notice as hereinafter described, such portions of the Property will be considered part of the Development Area for purposes of this Declaration, and such portions of the Property will be subject to the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the land originally covered by this Declaration. To add land to the Development Area, Declarant will be required only to record in the Official Public Records of Hays County, Texas, a notice of addition of land (which notice may be contained within any notice of applicability filed pursuant to *Section 10.05* of the Covenant) containing the following provisions:

- (a) a reference to this Declaration, which will include the recordation information thereof;
- (b) a statement that such land will be considered Development Area for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and
- (c) a legal description of the added land.

6.02 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the Development Area and remove and exclude from the burden of this Declaration: (i) any portion of the Development Area which has not been included in a plat; (ii) any portion of the Development Area included in a plat if Declarant owns all Lots described in such plat; and (iii) any portion of the Development Area included in a plat even if Declarant does not own all Lot(s) described in such plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such plat. Upon any such withdrawal and renewal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development Area withdrawn. To withdraw lands from the Development Area hereunder, Declarant will be required only to record in the Official Public Records of Hays County, Texas, a notice of withdrawal of land containing the following provisions:

- (a) a reference to this Declaration, which will include the recordation information thereof;
- (b) a statement that the provisions of this Declaration will no longer apply to the withdrawn land; and
- (c) a legal description of the withdrawn land.

ARTICLE 7 GENERAL PROVISIONS

7.01 Duration. This Declaration and the covenants, conditions, restrictions, easements, charges, and liens set out herein will run with and bind the land, and will inure to the benefit of and be enforceable by the Association and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Public Records of Hays County, Texas, and continuing through and including January 1, 2067, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by in a resolution adopted by members of the Association, entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Hays County, Texas. Notwithstanding any provision in this *Section 6.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire (twenty one) 21 years after the death or the last survivor of the now living descendants of Elizabeth II, Queen of England.

7.02 Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Hays County, Texas, of an instrument setting forth the amendment executed and acknowledged by (i) Declarant, acting alone; or (ii) Declarant and at least sixty-seven percent (67%) of the Owners of Lots within the Development Area with each Lot being allocated one (1) vote.

7.03 Notices. Any notice permitted or required to be given by this Declaration must be in writing and may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Saturday, Sunday, or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Secretary of the Association for the purpose of service of notices, or to the residence located on the Lot owned by such person if no address has been given to the Secretary of the Association. Such

address may be changed from time to time by notice in writing given by such person to the Secretary of the Association.

7.04 Interpretation. The provision of this Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Development Area, provided, however, that the provisions of this Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Development Area. This Declaration will be construed and governed under the laws of the State of Texas.

7.05 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

7.06 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

7.07 Enforcement and Nonwaiver.

(a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce all of the provisions of this Declaration. The Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof.

(b) Every act or omission whereby any provision of the Association Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association.

(c) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Development Area is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.

(d) The failure to enforce any provision of the Association Restrictions at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Association Restrictions.

7.08 Construction. The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All

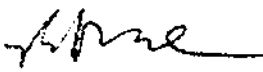
captions and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the date this instrument has been recorded in the
Official Public Records of Hays County, Texas.

DECLARANT:

RW TRINE, LLC,
a Texas limited liability company

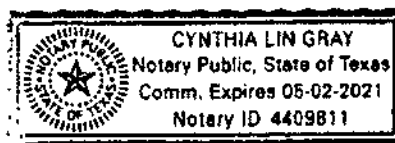
By: 
Barrett Wood, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 14th day of September, 2017 by
Barrett Wood, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said
limited liability company.

(SEAL)

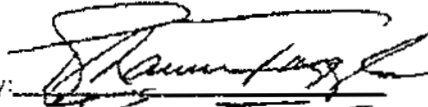

Notary Public Signature



CONSENT OF MORTGAGEE

The undersigned, being the owner and holder of liens and encumbrances against a portion of the Development Area (the "Liens"), executes this Development Area Declaration solely for the purposes of (i) evidencing its consent to this Development Area Declaration, and (ii) subordinating the Liens to this Development Area Declaration on the condition that the Liens shall remain superior to the Assessment Lien provided for in the Master Covenant, in all events.

PLAINSCAPITAL BANK,
a Texas state financial institution

By: 

Name: T. Shaun Tuggle

Title: President - Round Rock

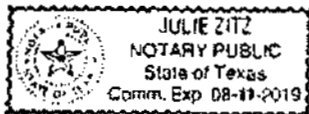
Date: 9-14-17

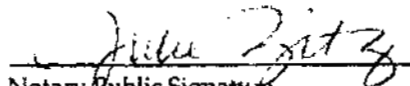
THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

This instrument was acknowledged before me this 12th day of September, 2017 by T. Shaun Tuggle President - Round Rock of PlainsCapital Bank, a Texas state financial institution, on behalf of said financial institution.

(SEAL)




Notary Public Signature

[W0715574.3]

29

RUTHERFORD WEST
DEVELOPMENT AREA DECLARATION [SECTION FOUR]



AFTER RECORDING RETURN TO:
KEVIN M. FLAHIVE
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

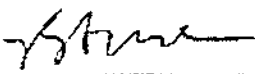
RW RUTHERFORD WEST

DESIGN GUIDELINES [SECTION FOUR]

Version 1.00

Adopted:

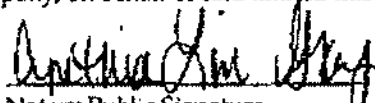
RW TRINE, LLC,
a Texas limited liability company

By: 
Barrett Wood, Manager

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

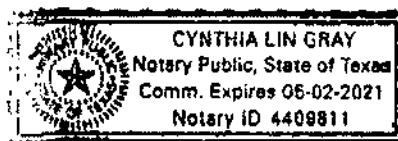
This instrument was acknowledged before me on the 14th day of September, 2017, by Barrett Wood, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said limited liability company.

(Seal)


Notary Public Signature

Adopted by RW Trine, LLC, a Texas limited liability company, in accordance with Section 6.05(b) of that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas; as amended by that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas; as further amended by that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas; and as further amended by that certain Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant, recorded in Volume 5398, Pages 561-566, Official Public Records of Hays County, Texas (collectively, the "Covenant"). In accordance with Section 6.05(b) of the Covenant, these Design Guidelines may be amended from time to time by the Rutherford West Reviewer (as defined in the Covenant).

{W0715576.4}



INTRODUCTION

Any notice or information required to be submitted to Rutherford West Reviewer under these Design Guidelines hereunder will be submitted to the Rutherford West Reviewer, c/o RW Trine, LLC, Attn: Blake Contine, 1508 South Lamar Boulevard, Austin, Texas, 78704.

Background

Rutherford West is a master planned community located in Hays County, Texas. The community consists of Development Areas which are subject to the terms and provisions of the Rutherford West Master Covenant, recorded in the Official Public Records of Hays County, Texas (as amended, the "**Covenant**"), and a Development Area Declaration for each particular Development Area (the "**Development Area Declaration**"). The Covenant and each Development Area Declaration includes provisions governing the construction of improvements and standards of maintenance, use and conduct for the preservation of the Rutherford West community.

Rutherford West Reviewer and Review Authority

Article VI of the Covenant includes procedures and criteria for the construction of improvements within Rutherford West community. Section 3.01 of the Development Area Declaration provides that any and all improvements must be erected, placed, constructed, painted, altered, modified or remodeled in strict compliance with the requirements of the Design Guidelines, and Section 6.04 of the Covenant and Section 3.02 of the Development Area Declaration provides that no improvements may be constructed without the prior written approval of the Rutherford West Reviewer.

The Rutherford West Reviewer consists of members who have been appointed by RW Trine, LLC, a Texas limited liability company ("**Declarant**"). As provided in *Article VI* of the Covenant, Declarant has a substantial interest in ensuring that improvements within the Rutherford West development maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the community, and as a consequence thereof, the Rutherford West Reviewer acts solely in Declarant's interest and shall owe no duty to any other owner or the Rutherford West Homeowners Association, Inc (the "**Association**").

Unless alternate Design Guidelines are adopted for additional Development Areas, these Design Guidelines will apply to each Development Area made subject to the Covenant from and after the date these Design Guidelines are recorded in the Official Public Records of Hays County, Texas. These Design Guidelines will apply only to Lots within a Development Area which will be used for residential purposes. These Design Guidelines will not apply to any Condominium Units and the Rutherford West Reviewer may adopt additional Design Guidelines applicable to Condominium Units.

GOVERNMENTAL REQUIREMENTS

Governmental ordinances and regulations are applicable to all Lots within Rutherford West. It is the responsibility of each Owner to obtain all necessary permits and inspections. Compliance with these Design Guidelines is not a substitute for compliance with the applicable ordinances and regulations. Please be advised that these Design Guidelines do not list or describe each requirement which may be applicable to a Lot within Rutherford West. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot prior to submitting plans to the Rutherford West Reviewer for approval. Furthermore, approval by the Rutherford West Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the Rutherford West Reviewer.

The Rutherford West Reviewer shall bear no responsibility for ensuring plans submitted to the Rutherford West Reviewer comply with any applicable building codes, zoning regulation and other government requirements. It is the responsibility of the Owner to secure any required governmental approvals prior to construction on such Owner's Lot.

INTERPRETATION

In the event of any conflict between these Design Guidelines and the Development Area Declaration, the Development Area Declaration shall control. Capitalized terms used in these Design Guidelines and not otherwise defined in this document shall have the same meaning as set forth in the Development Area Declaration.

AMENDMENTS

The Rutherford West Reviewer may amend these Design Guidelines. All amendments shall become effective upon recordation in the Official Public Records of Hays County, Texas. Amendments shall not apply retroactively so as to require modification or removal of work already approved and completed or approved and in progress. It is the responsibility of each Owner to ensure that they have the most current edition of the Design Guidelines and every amendment thereto.

ARCHITECTURAL REVIEW PROCESS

Submittals

Requests for approval of proposed construction, landscaping, or exterior modifications must be made by submitting an application in the form attached hereto as Attachment 1. In submitting any request for approval, each Owner must retain competent assistance from a licensed architect, civil engineer, landscape architect, soils engineer, and a licensed and bonded contractor.

Timing

The Rutherford West Reviewer will attempt to review all applications and submittals within thirty (30) days. Please allow at least thirty (30) days prior to installation or construction for the Rutherford West Reviewer to review the related applications.

Responsibility for Compliance

An applicant is responsible for ensuring that all of the applicant's representatives, including the applicant's architect, engineer, contractors, subcontractors, and their agents and employees, are aware of these Design Guidelines and all requirements imposed by the Rutherford West Reviewer as a condition of approval.

Inspection

Upon completion of all approved work, the Owner must notify the Rutherford West Reviewer. The Rutherford West Reviewer may inspect the work at any time to verify conformance with the approved submittals.

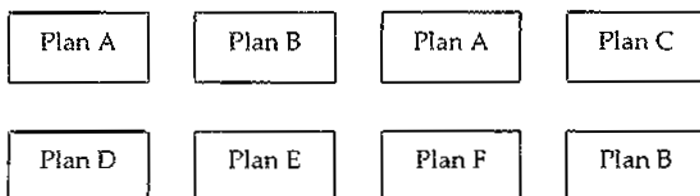
ARCHITECTURAL AND AESTHETIC STANDARDS

Plan Repetition

The Rutherford West Reviewer may, in its sole and absolute discretion, deny a plan or elevation proposed for a particular Lot if a substantially similar plan or elevation exists on a Lot in close proximity to the Lot on which the plan and/or elevation is proposed. The Rutherford West Reviewer may adopt additional requirements concerning substantially similar plans or elevations constructed in proximity to each other.

For Example:

- *Plan can be repeated every other Lot (example: Plan A, Plan B, Plan A, and Plan C).*



- *Across the Street: Same plan cannot be placed on a Lot across the street or diagonal from any other plan (example above: Plan B).*

Brick Color and Masonry Stone Repetition

The Rutherford West Reviewer may adopt requirements concerning substantially similar brick or masonry constructed in proximity to each other.

Building Materials

All building materials must be approved in advance by the Rutherford West Reviewer, and only new building materials (except for used brick) may be used for constructing any Improvements.

Masonry Requirements

- Unless otherwise expressly approved by the Rutherford West Reviewer, the exterior walls of any residence shall consist of brick, stone, and/or stucco as follows:
 - One Story Structures: The exposed surface of all exterior walls of one-story residences shall be constructed of seventy-five percent (75%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work.
 - Two Story Structures: The exposed surface of all exterior walls of the first floor of each two story residence shall be constructed of seventy-five percent (75%) masonry and/or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work. Unless otherwise agreed by the Rutherford West Reviewer, the exposed surface of the front exterior wall on the second floor of each two story residence (the "front" of a residence shall be determined by the Rutherford West Reviewer) shall be constructed of one-hundred percent (100%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work.
- Any portions of the elevation that are not constructed of brick, stone or stucco (exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work) shall be constructed of cementitious horizontal lap siding product (i.e., "Hardi-Plank").
- Notwithstanding the foregoing provisions, the Rutherford West Reviewer, in its discretion, may approve the use of decorative siding (fibre-cement or equivalent material only): (i) on front gables above plate line on a one story residence; or (ii) on up to twenty percent (20%) of the front elevation of a two story residence. As used herein, "decorative siding" means vertical board and batten, shakes, scallops and other decorative siding facades as may be approved by the Rutherford West Reviewer on a case-by-case basis in the Rutherford West Reviewer's discretion.
- Any portion of the foundation visible from the exterior of the structure must be concealed by a combination of (a) extending the exterior brick, stone or stucco to within twelve inches (12") of the finished grade of the front exterior and within twenty-four inches (24") of the finished grade of the side and rear exteriors, and (b) constructing terraced planter boxes, which shall be constructed of the same masonry material as the structure and designed so as to minimize the visual impact of the structure's mass and height.

Aesthetic Appeal

The Rutherford West Reviewer may disapprove the construction or design of a home on purely aesthetic grounds. Any prior decisions of the Rutherford West Reviewer regarding matters of design or aesthetics shall not be deemed to have set a precedent if the Rutherford West

Reviewer feels that the repetition of such actions would have any adverse effect on the community.

Siting/Setbacks

The location of all Improvements must comply with the minimum setbacks shown on the Plat.

The Rutherford West Reviewer reserves the right to stipulate additional building or improvement setbacks attributable to any Lot.

Temporary/Accessory Structures

No tent, shack, or other temporary building, improvement, or structure may be placed upon the Development Area without the prior written approval of the Rutherford West Reviewer; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner will be permitted, with Rutherford West Reviewer approval, to erect one (1) outbuilding on the Owner's Lot if: (i) the surface area of the pad on which the outbuilding is placed is less than or equal to one hundred twenty (120) square feet; (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to one hundred two (102) inches; and (iii) the exterior and the roof of the outbuilding are constructed of the same or substantially similar materials as the exterior and the roof of any residence located on the Lot. The Rutherford West Reviewer will be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

Prohibited Elements

The following architectural elements are prohibited within Rutherford West unless expressly approved in writing by the Rutherford West Reviewer:

Roofs

- Excessively pitched roofs (*i.e.*, 10/12 or 12/12).
- Mansard, gambrel or chalet roofs.
- Flat roofs.
- Roofs that are too steep or too shallow for the style of the home,
- Shed roofs except as incidental to the main roof.

Design Elements

- Unnecessarily prominent chimneys and other roof penetrations.
- Skylights (white, bubble, flat) facing the street.
- White or bubble skylights.
- Mirrored glass.

Materials and Colors

- Wood siding (wood siding accents may be permitted if approved by the Rutherford West Reviewer).
- Red or Gray brick.

Building Height

Unless otherwise approved in advance by the Rutherford West Reviewer, no building or residential structure may exceed forty five feet (45') in height as measured from the top of the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

Views are neither guaranteed, preserved, nor protected within Rutherford West.

Roofs and Chimneys

Each roof must be constructed of clay or concrete tile, non-reflective metal, slate, architectural dimensional heavyweight fireproof composition shingles in weathered wood or similar color, or other material expressly approved by the Rutherford West Reviewer. Most reflective roofs are not permitted; however, if metal roofs are included as part of a green building initiative, reflective metal roofs may be permitted with the prior approval of the Rutherford West Reviewer. The color and composition of all roof materials, and the pitch of each roof, shall be expressly approved by the Rutherford West Reviewer. No solar panels may be installed without the approval of the Rutherford West Reviewer.

Garages

All garages must be approved in advance by the Rutherford West Reviewer prior to construction, and comply with the requirements set forth in the Development Area Declaration. Side-entry garages are encouraged.

Mailboxes

Mailboxes are to be provided by the Owner and approved by the Rutherford West Reviewer. The bottom of the receptacle of mailbox must conform to the dimensions required by the United States Postal Service and must be constructed of materials matching those used in the construction of the residence. The structure must not exceed five feet (5') in height nor two feet (2') in depth or width.

Driveways

The design, construction materials, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, must be approved by the Rutherford West Reviewer. Driveways shall be no greater than twelve feet (12') in width through the building line setback and be limited to a maximum disturbed area of ten feet (10')

on either side of the driveway. Driveways located off the building line may exceed twelve feet (12'). If the Rutherford West Reviewer deems necessary or appropriate, driveways may encroach within side building lines. Driveways on corner lots abutting a cul-de-sac and another roadway shall access off the cul-de-sac. The Rutherford West Reviewer may establish design and materials requirements for all driveways and driveway culverts to insure that they are consistent in appearance throughout the Development Area. Circular Driveways are permissible if approved in accordance with the Rutherford West Reviewer.

Exterior Lighting

Exterior lighting will be kept to a minimum, but consistent with good security practices.

No exterior light whose direct source is visible from a street or neighboring property or which produces excessive glare to pedestrian or vehicular traffic will be allowed. Exterior lighting must be approved in advance by the Rutherford West Reviewer.

Use of other than white or color corrected high intensity lamps and exterior lights will not be allowed. Holiday lighting is an exception; however, all holiday lighting must be removed within thirty (30) days after the holiday. Sodium, mercury vapor, or bare HID yard lights are not allowed.

Miscellaneous

HVAC Screening

Air conditioning compressors and pool equipment shall be enclosed by a structural or landscape screening element constructed of materials approved by the Rutherford West Reviewer. The screening elements must be consistent with materials on the primary structure and the screening will be from both the front street and from neighboring residences. Solar Screens are expressly permitted.

Barbecue Grills

Freestanding barbecue grills are permitted only if they are stored and used in the rear yard space of the Lot that is not visible from the street.

Signage

Except as provided in the Development Area Declaration and these Design Guidelines, no sign of any kind may be displayed to the public view without the prior written approval of the Rutherford West Reviewer. While the Rutherford West Reviewer expressly retains its right to review and approve or disapprove signage throughout the community, "booster club"-type signs in support of sports teams will generally be permitted, provided that such signs are: (i) no larger than 18" by 24" and (ii) do not remain on display for more than ninety (90) days. Banner

signs are prohibited on any Lot. No signage is allowed to be posted on any fence on Lots within the community.

Flags

The flag requirements are set forth in the applicable Development Area Declaration.

Solar Energy Devices

The solar energy device requirements are set forth in the applicable Development Area Declaration.

Rainwater Harvesting Systems

The rainwater harvesting systems requirements are set forth in the applicable Development Area Declaration.

Propane Tanks

All propane tanks must be sub-surface. Above-ground or elevated propane tanks are prohibited, unless otherwise approved by the Rutherford West Reviewer.

LANDSCAPE GUIDELINES

The goal of the landscape guidelines is to ensure that the developed areas of Rutherford West return to a natural setting as quickly as possible upon the completion of a new residence. Detailed landscape plans for each Lot may be submitted to the Rutherford West Reviewer for consideration after construction of the primary residence thereon has begun, so long as such submission occurs at least ninety (90) days before completion of the residence. Upon written request, however, the Rutherford West Reviewer may waive the requirement of landscape plans for any Lot if the builder uses plans previously approved by the Rutherford West Reviewer for another Lot. There shall be no revisions made to approved plans without submission to, and approval by, the Rutherford West Reviewer of the revised plans. All introduced vegetation shall be trees, shrubs, vines, ground covers, seasonal flowers or sodded grassed which are commonly used in Central Texas for landscaping purposes and which are approved by the Rutherford West Reviewer. Landscaping in accordance with the approved plans shall be installed prior to occupancy of the residence on the Lot to which the plans apply. Extensions to the time limit may be granted by the Rutherford West Reviewer for up to an additional thirty (30) days on a case by case basis. The approved plans shall include permanent sodded grass or "ground cover" in all sodded areas. If an Owner does not elect to Xeriscape the Lot in accordance with the terms of the applicable Development Area Declaration and these Design Guidelines, the landscape plans for such Lot must provide for the following: (i) the area between the front of the residence and the back of the curb of the street immediately adjacent to

the front yard to a point ten feet (10') postern to the rear elevation of the residence must, exclusive of any sidewalk areas, be fully sodded and/or landscaped with Bermuda grass, Prairie Buffalo grass, or an alternative grass approved in advance by the Rutherford West Reviewer; and (ii) at a minimum, thirty (30) five (5) gallon, fifty (50) one (1) gallon shrubs, five (5) three-inch caliper trees and two (2) six-inch caliper trees must be planted in the front yard of the Lot, with the configuration and selection thereof to be approved by the Rutherford West Reviewer prior to planting. No tree larger than 4" in diameter may be cut down or otherwise removed from the Property without the prior approval of the Rutherford West Reviewer. All Owners are required to landscape front yards, side yards, and adjacent to building foundations within thirty (30) days after acquiring their Lot. Trees, shrubs, ground covers, seasonal color and sodded grass shall be used in these areas to achieve the landscape intent according to the approved plans. After installation, landscaping (including temporary landscaping) shall be properly maintained at all times. Any Owner who wishes to plant one or more gardens upon their Lot must obtain the approval of the Rutherford West Reviewer of any such garden and must follow applicable requirements as to size of the Lot, visibility of the Lot from other Lots, streets or common areas, and such other matters as the Rutherford West Reviewer may specify in any written approval.

With the prior approval of the Rutherford West Reviewer, the use of rock or crushed rock as a ground cover shall be permitted only as part of an overall landscape plan submitted to the Rutherford West Reviewer, but may not be used exclusively to cover large portions of the Lot.

Landscape plans must include vegetative screening for above ground utility connections visible from the street or adjacent properties.

The Rutherford West Reviewer reserves the right to require additional landscaping for pools, cabanas and other hardscape elements that may be constructed after completion of the residence and associated landscaping.

Hardscape elements in the landscaping must be in scale with the home and associated structures. Sculptures and fountains are subject to approval by the Rutherford West Reviewer.

Landscape structures such as arbors, porches, greenhouses and/or decks must be located in areas that highlight the features of the residence, and are subject to approval by the Rutherford West Reviewer. The height, color, materials and style used for outdoor structures must be the same or similar to the residence.

Notwithstanding any requirements to the contrary, owners shall comply with all applicable governmentally imposed water use restrictions and shall be granted appropriate relief from any specific requirement set forth in these Design Guidelines that cannot reasonably be complied with, as determined by the Rutherford West Reviewer, as a result of such water use restrictions.

Xeriscaping

{W0715576.4}

Xeriscaping refers to landscaping and gardening in ways that reduce or eliminate the need for supplemental water from irrigation. It is promoted in regions that do not have easily accessible, plentiful, or reliable supplies of fresh water. Common elements in xeriscaping are the reduction of lawn grass or sodded areas (since lawn grass is often one of the worst offenders against water conservation), and the installation of indigenous plants that are adapted to the local climate and consequently require less water.

The use of Xeriscape is strongly recommended, including low-water use landscapes (native species which are drought tolerant), subject to the requirements and procedures set forth in the Development Area Declaration. Any homeowner interested in replacing a standard sod lawn by xeriscaping with native groundcovers, plants, or mulch must submit a landscape plan before removing any sod installing any plant material. All plans will be reviewed on a case by case basis and must conform to the guidelines established in the Development Area Declaration and these Design Guidelines.

Irrigation

The Rutherford West Reviewer must approve all irrigation systems prior to installation. An irrigation system is a required element of the landscape plan and must be included on each Lot. A licensed irrigation contractor must be used in conjunction with design and final implementation of the plan.

Landscape Inspection

The Rutherford West Reviewer may, upon the owner's completion of the installation of landscaping, conduct an on-site inspection of the property to ensure compliance with the approved plan.

Drainage

Responsibility for proper site drainage rests with the Owner. There shall be no interference with the established drainage patterns except by Declarant, unless adequate provision is made for proper drainage and such provision has been certified by a professional engineer and approved in advance by the Rutherford West Reviewer. Each Owner is solely responsible for correcting any change in water flow or drainage caused by the construction of Improvements on such Owner's Lot.

Fencing

The height and location of all fences must be approved in advance by the Rutherford West Reviewer. All fencing must be constructed of black ornamental metal or wrought iron or such other material as the Rutherford West Reviewer may approve. No chain link, metal cloth, wood or agricultural fence may be installed on the lot.

Pool Plans

Swimming pools shall be in-ground, or a balanced cut and fill, and shall be designed to be compatible with the site and the dwelling. Adequate screening, security, and maintenance shall be provided by each Owner. Fencing around the pool shall be permitted as described above and integrated into the design of the dwelling and site. Fences must meet all governmental regulations for safety.

Playscapes and Sport Courts

Playscapes and Sport Courts are permissible at the sole discretion of the Rutherford West Reviewer. If allowed, these facilities must be properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties.

Sport Courts may be lighted; however, a lighting plan must be submitted to and approved by the Rutherford West Reviewer prior to installation. In addition, automatic controls must be installed to prevent extended use past 9:00pm during the week and 10:00pm on weekends. Tennis courts may be permitted and feature lighting under the same guidelines outlined for sport courts.

EROSION CONTROL AND CONSTRUCTION REGULATIONS

The following restrictions shall apply to all construction activities at Rutherford West. Periodic inspections by a representative of the Rutherford West Reviewer may take place in order to identify non-complying construction activities. If items identified as not complying with the regulations are not remedied in a timely manner, fines will be levied.

Erosion Control Installation and Maintenance

It is the responsibility of each owner to install erosion control measures prior to the start of construction and to maintain them throughout the entire construction process.

Silt fencing installed to all applicable standards is required to be properly installed and maintained to protect the low sides of all disturbed areas, where stormwater will flow during construction. The purpose of the silt fence is to capture the sediment from the runoff and to permit filtered, clean water to exit the site. The owner should anticipate that built-up sediment will need to be removed from the silt fence after heavy or successive rains, and that any breach in the fencing will need to be repaired or replaced immediately.

If for any reason the silt fence is to be temporarily removed, please contact a representative of the Rutherford West Reviewer prior to the removal.

Security

Neither the Rutherford West Reviewer, the Association, nor the Declarant shall be responsible for the security of job sites during construction.

Construction Hours

Unless a written waiver is obtained from the Rutherford West Reviewer, construction may take place only during the following hours: Monday through Friday from 7:00 a.m. until 7:00 p.m., and on Saturdays and Sundays from 9:00 a.m. until 6:00 p.m.

Noise, Animals, Children

The use of radios, tape and CD players must be restrained so as not to be heard on an adjoining Lot or street.

Contractors and subcontractors may not bring dogs or children under 16 years of age to construction sites.

Material and Equipment Storage

All construction materials and equipment shall be neatly stacked, properly covered and secured. Any storage of materials or equipment shall be the Owner's responsibility and at their risk. Owners may not disturb, damage or trespass on other Lots or adjacent property.

Insurance

The Rutherford West Reviewer requires an Owner to procure adequate commercial liability insurance during construction naming the Association, the Declarant and the Rutherford West Reviewer as additional insureds, in an amount to be determined, from time to time by the Rutherford West Reviewer.

Site Cleanliness

During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming an eyesore.

Owners shall provide a container for debris and shall clean up all trash and debris on the construction site on a daily basis. Trash and debris shall be removed from each construction site on a timely basis. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site.

The dumping, burying or burning of trash is not permitted anywhere in Rutherford West.

It is imperative that, when moving heavy equipment around, precautions be taken to prevent damage to pavement, curbs, and vegetation. Crawler tractors are not to be operated on paved or concrete surfaces. Mud, dirt and other construction debris that is tracked off site shall be cleaned on a daily basis.

Sanitary Facilities

A temporary sanitary facility (chemical toilet) shall be provided and maintained for the use of construction workers.

Construction Parking

Construction crews shall not park on, or otherwise use, other Lots. No construction vehicle will be permitted to leak oil or otherwise damage or deface any street located within the community.

Schedule of Fines

Periodic inspections by a representative of the Rutherford West Reviewer may take place in order to identify non-complying construction activities. Listed below is the schedule of fines which may be assessed.

Premature Clearing	\$500
Construction Without Rutherford West Reviewer Approval	\$500
Encroachment on Adjacent Properties	\$500 plus cost of repair
Violation of Rules, Restriction or Guidelines	\$50/day

Duration of Construction

A residence shall be complete and available for occupancy on or before eighteen (18) months after the start of construction.

PLAN SUBMITTALS

New residential home construction within Rutherford West will utilize a two-stage review process. No Improvements may be commenced until the Owner has received a written "Approval" from the Rutherford West Reviewer.

PLAN BOOK, MATERIAL AND LANDSCAPE REVIEW

The applicant must first submit for approval plans for the home designs to be offered in the neighborhood including the exterior elevations and landscaping associated with each plan.

The Plan Book, Material, and Landscaping Review will require the submission of the following information:

- Floorplans
- Elevations of all sides of each home indicating
 - Roof pitch
 - Roof peak height above the foundation
 - Exterior materials- walls, roof, chimney
 - Window specifications

- Chimney cap materials/design
 - Heated/air conditioned square footage of each floor and the total heated/air conditioned square footage
- Material samples, including stone samples (colors and patterns), mortar colors, stucco colors, trim colors, roof materials and colors, and window materials and colors must be approved in advance by the Rutherford West Reviewer. The Rutherford West Reviewer reserves the right to request samples of all materials. **PLEASE BE ADVISED THAT PLAN BOOK AND MATERIAL REVIEW IS NOT FINAL APPROVAL. SPECIFICALLY, MATERIAL TO BE INCORPORATED INTO A RESIDENCE OR IMPROVEMENT IS NOT APPROVED FOR USE ON A PARTICULAR RESIDENCE OR IMPROVEMENTS UNTIL THE FINAL PLAN REVIEW FOR THE RESIDENCE AND/OR IMPROVEMENT HAS BEEN SUBMITTED TO AND APPROVED BY THE RUTHERFORD WEST REVIEWER.**
- Sample Landscaping Plan
 - General boundaries of turf areas with type of turf noted
 - General locations of all proposed plants
 - Listing of materials Plan

FINAL PLAN REVIEW

A completed Final Plan Application must be submitted for review and approval to the Rutherford West Reviewer prior to the construction of any improvements on a Lot. The Final Plan Application must also include all information required to be submitted as set forth on the application.

ATTACHMENT 1



ARCHITECTURAL COMMITTEE
FINAL PLAN REVIEW CHECKLIST

ADDRESS _____ CONTACT INFO: _____

Application Packages should contain the following information:

Site/Construction Plan (1"=10' min)	Landscape Plan & Application or Deferral Request
Floor Plans (1/4"=1'0")	Sample Board with Exterior Colors
Roof Plan (1/4"=1'0")	Design Review and Compliance Fees
Exterior Elevations and Details (1/4"=1'0" min)	Variance Request Application and Fees if needed
Pool Plans & Application	

The following information must be included on all submissions in order to be accepted for review:

___ Appropriate Design Review Fee	___ Appropriate Compliance Deposit
___ Address & Subdivision	___ Homeowner Name
___ Site plan at 1'=10' minimum	___ Impervious cover calculations
___ Site dimensions	___ Roof pitches indicated
___ Property Lines	___ Building Height per restrictions
___ Setbacks	___ Overhangs called out
___ Easements and Encroachments	___ Chimney materials
___ Utility locations and proposed trench lines	___ Square footage and 1 st and 2 nd floor ratios
___ Location of Propane Tanks	___ Location of Septic System
___ HVAC unit locations and screening	___ Max exposed masonry to finished grade
___ Driveway and culvert locations	___ Silt fencing location
___ Sidewalks, patio, covered porches	___ Chain link fence location
___ Accessory site development/out building	___ Const entry of 3"-5" rock at least 10'x15'
___ Tree survey if applicable	___ Dumpster location
___ Swimming pool location	___ Materials storage location
___ Fencing design and color	___ Port-o-let location
___ Building location	
___ Written description of post development drainage patterns or grading plan	
___ Copy of NPDES Permit	

{W0715576.4}

PLEASE RETURN TO:



LANDSCAPE DEFERMENT APPLICATION

Date: _____ Lot/Block: _____ Subdivision: _____

Owner: _____ Landscape Architect: _____

Reason for deferment:

Date of plan submittal: _____

FOR BOARD USE ONLY

DATE _____

Approved as submitted _____ Returned for more information _____

Denied _____

Comments _____

Please return the requested information to:

{W0715576.4}

RUTHERFORD WEST
DESIGN GUIDELINES [SECTION FOUR]



AFTER RECORDING RETURN TO:
KEVIN M. FLAHIVE
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701



NOTICE OF APPLICABILITY [SECTION FIVE]

Declarant: RW TRINE, LLC, a Texas limited liability company

Cross reference that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas; as amended by that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas; as further amended by that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas; and as further amended by that certain Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant, recorded in Volume 5398, Pages 561-566, Official Public Records of Hays County, Texas.

**NOTICE OF APPLICABILITY OF
RUTHERFORD WEST MASTER COVENANT
[SECTION FIVE]**

This Notice of Applicability of Rutherford West Master Covenant [Section Five] is made and executed by **RW TRINE, LLC**, a Texas limited liability company ("**Declarant**"), and is as follows:

1. **Applicability of Master Covenant.** This Notice of Applicability is filed with respect to all Lots located within RUTHERFORD WEST SECTION FIVE, a subdivision in Hays County, Texas, according to the map or plat thereof recorded under Document No. 19036946, Official Public Records of Hays County, Texas (the "**Development Area**"). Declarant is the owner of the Development Area. Pursuant to that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas (the "**Covenant**"), Declarant served notice that portions of the property described on Exhibit "A" to the Covenant (the "**Community**"), upon the filing of appropriate notices of applicability from time to time, may be made a part of the Development and thereby fully subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Covenant.

2. **Property Incorporated Into Development.** The provisions of the Covenant shall apply to the Development Area. The Development Area is hereby included within and made a part of the Development, and is hereby subjected to the terms, covenants, conditions, restrictions, reservations, easements, servitudes, liens and charges of the Covenant.

3. **Designation of Neighborhood.** Pursuant to *Section 3.02* of the Covenant, Declarant hereby assigns the Development Area to Neighborhood A, subject to all terms and provisions of the Covenant which relate to Neighborhoods so designated within the Community.

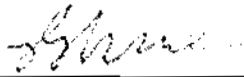
4. **Miscellaneous.** This notice constitutes a notice of applicability under *Section 10.05* of the Covenant. Any capitalized terms used and not otherwise defined in this notice shall have the meanings set forth in the Covenant.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the date this instrument has been recorded in the Official Public Records of Hays County, Texas.

DECLARANT:

RW TRINE, LLC,
a Texas limited liability company

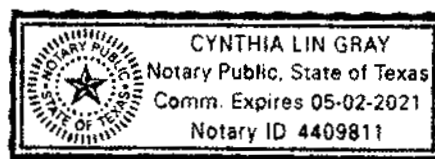
By: 
Barrett Wood, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 1TH day of OCTOBER, 2019 by Barrett Wood, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said limited liability company.

(SEAL)


Notary Public Signature



3385542-100
R.W. TRINE, LLC**CONSENT OF MORTGAGEE**

The undersigned, being the owner and holder of liens and encumbrances against a portion of the Development Area (the "Liens"), executes this Notice of Applicability solely for the purposes of (i) evidencing its consent to this Notice of Applicability and the Covenant referenced therein, and (ii) subordinating the Liens to this Notice of Applicability and the Covenant, both on the condition that the Liens shall remain superior to the Assessment Lien provided for in the Covenant, in all events.

PLAINSCAPITAL BANK,
a Texas state financial institution

By: [Signature]
Name: Tommy Ward
Title: Vice President
Date: 10-10-19

THE STATE OF TEXAS §
 §
COUNTY OF WILLAMETTE §

This instrument was acknowledged before me this 10th day of October, 2019
by Tommy Ward, Vice President of
PlainsCapital Bank, a Texas state financial institution, on behalf of said financial institution.

(SEAL)



[Signature]
Notary Public Signature

**THE STATE OF TEXAS
COUNTY OF HAYS**

I hereby certify that this instrument was FILED on the
date and the time stamped hereon by me and was duly
RECORDED in the Records of Hays County, Texas.

19040681 NOTICE
11/05/2019 01:46:53 PM Total Fees: \$38.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas



AFTER RECORDING RETURN TO:
KEVIN M. FLAHIVE
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701



DEVELOPMENT AREA DECLARATION [SECTION FIVE]

Declarant: RW TRINE, LLC, a Texas limited liability company

Cross reference that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas; as amended by that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas; as further amended by that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas; and as further amended by that certain Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant, recorded in Volume 5398, Pages 561-566, Official Public Records of Hays County, Texas, and that certain Notice of Applicability of Rutherford West Master Covenant [Section Five], recorded under Document No. 19040681, Official Public Records of Hays County, Texas. The terms and provisions of the aforementioned documents also apply to the Development Area encumbered by this Development Area Declaration.

{W0917218.1}

RUTHERFORD WEST
DEVELOPMENT AREA DECLARATION [SECTION FIVE]

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**DEVELOPMENT AREA DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
[SECTION FIVE]**

This Development Area Declaration of Covenants, Conditions and Restrictions for Rutherford West [Section Five] (this "Declaration") is made by RW TRINE, LLC, a Texas limited liability company ("Declarant"), and is as follows:

RECITALS

A. Declarant is the owner of all Lots located within RUTHERFORD WEST SECTION FIVE, a subdivision in Hays County, Texas, according to the map or plat thereof recorded under Document No. 19036946, Official Public Records of Hays County, Texas (collectively, the "Development Area").

B. Pursuant to that one certain Notice of Applicability of Rutherford West Master Covenant [Section Five], recorded under Document No. 19040681 Official Public Records of Hays County, Texas, the Development Area is subject to the terms and provisions of that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas, as amended (the "Covenant").

C. Declarant intends for this Declaration to serve as one of the Development Area Declarations permitted under the Covenant and desires that the Development Area described and identified in Recital A hereinabove will constitute one of the Development Areas which is permitted, contemplated and defined under the Covenant.

D. Declarant desires to create upon the Development Area a residential community and carry out a uniform plan for the improvement and development of the Development Area for the benefit of the present and all future owners thereof.

E. Declarant desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Development Area to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Development Area, and each owner thereof, which will be in addition to the covenants, conditions, and restrictions set forth in the Covenant.

NOW, THEREFORE, it is hereby declared: (i) that all of the Development Area will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with the Development Area and will be binding upon all parties having right, title, or interest in or to the Development Area or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Development Area, or any portion thereof, will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same

are set out in full or by reference in said contract or deed; and (iii) that this Declaration will supplement and be in addition to the covenants, conditions, and restrictions of the Covenant.

ARTICLE 1 DEFINITIONS

1.01 Defined Terms. Unless the context specifies or requires otherwise, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

"Assessment" or **"Assessments"** means all assessment(s) imposed by the Association under the Covenant.

"Association" means the Rutherford West Homeowners Association, Inc., a Texas non-profit corporation.

"Association Restrictions" means the Covenant, this Declaration, any rules adopted by the Rutherford West Reviewer pursuant to *Section 6.05(b)* of the Covenant, any rules or regulations adopted by the Board pursuant to *Section 3.04(a)* of the Covenant and the Certificate and Bylaws of the Association.

"Bylaws" means the bylaws of the Association, as amended from time to time.

"Board" means and refer to the Board of Directors of the Association.

"Certificate" means the Certificate of Formation of the Association, as the same may be amended from time to time.

"Covenant" means that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas, as the same may be amended or supplemented from time to time.

"Declarant" means RW TRINE, LLC, a Texas limited liability company, its successors or assigns; provided that any assignment(s) of the rights of RW TRINE, LLC, a Texas limited liability company, as Declarant, must be expressly set forth in writing and recorded in the Official Public Records of Hays County, Texas.

"Design Guidelines" means the standards for design, construction, landscaping, and exterior items placed on any Lot adopted pursuant to *Section 6.05(b)* of the Covenant, as amended.

"Improvements" means every structure and all appurtenances of every type, whether temporary or permanent, including but not limited to buildings, outbuildings, sheds, patios, tennis courts, swimming pools, sport courts, garages, driveways, storage buildings, sidewalks, gazebos, signs, fences, gates, screening walls, retaining walls, stairs, decks, landscaping, landscape improvements, poles, mailboxes, signs, antennae, exterior air conditioning

equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, playground equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular satellite or cable television, other utilities, or otherwise.

"Lot" or "Lots" means one or more of the subdivided lots within the Development Area other than Common Area, Special Common Area, and Development Common Area.

"Mortgage" or "Mortgages" means any mortgage(s) or deed(s) of trust securing indebtedness and covering any portion of the Development Area given to secure the payment of a debt.

"Mortgagee" or "Mortgagees" means the holder or holders of any Mortgage(s).

"Owner" or "Owners" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to acquisition of its fee simple interest in such Lot pursuant to foreclosure of the lien of such Mortgage.

"Rutherford West Reviewer" means, with respect to the Development Area, Declarant or its designee until Declarant no longer owns any portion of the Development Area. When Declarant no longer owns any portion of the Development Area, the rights of the Rutherford West Reviewer with respect to the Development Area will automatically be transferred to the architectural control committee appointed by the Board.

1.02 General Definitions. Unless the context specifies or requires otherwise, capitalized terms used but not defined in this Declaration are used and defined as they are used and defined in the Covenant.

ARTICLE 2 GENERAL RESTRICTIONS

All of the Development Area will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.01 Subdividing. No Lot may be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Rutherford West Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Rutherford West Reviewer.

2.02 Hazardous Activities. No activities may be conducted on the Development Area and no Improvements constructed on the Development Area, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no

firearms or fireworks may be discharged upon the Development Area, no open fires may be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes. No portion of the Development Area may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2.03 Insurance Rates. Nothing may be done or kept on the Development Area which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, Development Common Area, or the improvements located thereon, without the prior written approval of the Board.

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

2.05 Noise. No noise or other nuisance will be permitted to exist or operate upon any portion of the Development Area so as to be offensive or detrimental to any other portion of the Development Area or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but will not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.06 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Development Area. No Owner may keep on such Owner's Lot more than four (4) cats and dogs, in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Development Area 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 Development Area, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large.

2.07 Rubbish and Debris. No rubbish or debris of any kind may be placed or permitted to accumulate upon the Development Area, and no odors will be permitted to arise therefrom so as to render the Development Area any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will be required to contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.08 Maintenance. The Owners of each Lot will be jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements

thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Rutherford West Reviewer, in its sole discretion, will determine whether a violation of the maintenance obligations set forth in this *Section 2.08* has occurred. Such maintenance includes, but is not limited to the following, which must be performed in a timely manner, as determined by the Rutherford West Reviewer, in its sole discretion:

- (a) prompt removal of all litter, trash, refuse, and wastes;
- (b) lawn mowing;
- (c) tree and shrub pruning;
- (d) watering;
- (e) keeping exterior lighting and mechanical facilities in working order;
- (f) keeping lawn and garden areas alive, free of weeds, and attractive;
- (g) keeping sidewalks and driveways in good repair;
- (h) complying with all government, health and police requirements;
- (i) repainting of Improvements; and
- (j) repair of exterior damage, and wear and tear to Improvements.

2.09 Antennae. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any Solar Energy Device, may be erected, maintained or placed on a Lot without the prior written approval of the Rutherford West Reviewer; provided, however, that:

- (a) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- (b) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
- (c) an antenna that is designed to receive television broadcast signals;

(collectively, (a) through (c) are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Rutherford West Reviewer, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other

apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Development.

2.10 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and may not encroach upon any street, Common Area, Special Common Area, Development Common Area, or any other portion of the Development Area. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Development Area, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Master Architectural Committee are as follows:

(a) attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

(b) attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; or

(c) on corner Lots, a Permitted Antenna must be placed at a point away from the street toward the back of the Lot at a height and screened from view as described above.

The Rutherford West Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

2.11 Signs. No sign of any kind may be displayed to the public view on any Lot without the prior written approval of the Rutherford West Reviewer, except for:

(a) Declarant Signs. Signs erected by the Declarant or erected with the advance written consent of the Declarant;

(b) Security Signs. One small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the principal residence constructed upon the Lot;

(c) Permits. Permits as may be required by applicable law;

(d) Religious Item on Door. A religious item on the entry door or door frame of a residence (which may not extend beyond the outer edge of the door frame), provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches;

(e) Sale or Rental Signs. One (1) temporary "For Sale" or "For Lease" sign per Lot, provided that the sign will be limited to: (i) a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post; (ii) an overall height of

the sign from finished grade at the spot where the sign is located may not exceed four feet (4'); and (c) the sign must be removed within two (2) business days following the sale or lease of the Lot;

(f) Political Signs. Political signs may be erected provided the sign: (i) is erected no earlier than the 90th day before the date of the election to which the sign relates; (ii) is removed no later than the 10th day after the date of the election to which the sign relates; and (iii) is ground-mounted. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited; and

(g) No Soliciting Signs. A "no soliciting" sign near or on the front door to the principal residence constructed upon the Lot, provided, that the sign may not exceed twenty-five (25) square inches.

Except for signs which are erected by the Declarant or erected with the advance written consent of the Declarant, no sign may be displayed in the window of any Improvement located on a Lot.

2.12 Flags. Owners are permitted to display certain flags on the Owner's Lot, as further set forth below.

(a) Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university ("Permitted Flag") and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence ("Permitted Flagpole"). Only two (2) permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Rutherford West Reviewer. Approval by the Rutherford West Reviewer is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot ("Freestanding Flagpole").

(b) Installation and Display. Unless otherwise approved in advance and in writing by the Rutherford West Reviewer, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

- (i) no more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;
- (ii) any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;

(iii) any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3' x 5');

(iv) with the exception of flags displayed on Common Area, Special Common Area or Development Common Area and any Lot which is being used for marketing purposes by a homebuilder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;

(v) the display of a flag, or the location and construction of the flagpole must comply with applicable law, easements and setbacks of record;

(vi) any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(vii) a flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;

(viii) any flag which is not removed by dusk shall be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and

(ix) any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

2.13 Tanks. The Rutherford West Reviewer must approve any tank used or proposed in connection with a single-family residential structure, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No above-ground or elevated tanks of any kind may be erected, placed or permitted on any Lot without the advance written approval of the Rutherford West Reviewer, in which case such tanks must be screened so as not to be visible from any other portion of the Development Area.

2.14 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure may be placed upon the Development Area without the prior written approval of the Rutherford West Reviewer; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner will be permitted, with Rutherford West Reviewer approval, to erect one (1) outbuilding on the Owner's Lot if: (i) the surface area of the pad on which the outbuilding is placed is less than or equal to one hundred twenty (120) square feet; (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to one hundred two

(102) inches; and (iii) the exterior and the roof of the outbuilding are constructed of the same or substantially similar materials as the exterior and the roof of any residence located on the Lot. The Rutherford West Reviewer will be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

2.15 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Rutherford West Reviewer will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment must be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash must be kept, stored, or allowed to accumulate on any portion of the Development Area except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible on any Lot or to be parked on any roadway within the Development Area.

Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than (i) in enclosed garages and (ii) behind a fence so as to not be visible from any other portion of the Development Area is prohibited; provided, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a residence.

No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Rutherford West Reviewer; provided however, a single detached garage may be utilized as a home office in lieu of being utilized as a garage if the plans and specifications therefor have been previously approved by the Rutherford West Reviewer.

2.16 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes may be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time, and no motor homes, travel trailers or recreational vehicles may be parked on or near any Lot so as to be visible from adjoining property or from public or private thoroughfares at any time.

2.17 Basketball Goals; Permanent and Portable. Permanent basketball goals are permitted between the street right-of-way and the front of the residence on a Lot provided the basketball goal is located a minimum of seventy-one feet (71') from the street curb. The basketball goal backboard must be perpendicular to the street and mounted on a black metal

pole permanently installed in the ground. Portable basketball goals are only allowed between the street right-of-way and the front of the residence on a Lot and must not be placed, at any time on any street or right of way located within the Development Area. When not in use, portable basketball goals must be stored in a garage or in the rear of the Lots (i.e., out of public view). Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals, whether permanent or portable, must be approved by the Rutherford West Reviewer prior to being placed on any Lot.

2.18 Compliance with Association Restrictions. Each Owner, his or her family, occupants of a Lot, tenants, and the guests, invitees, and licensees of the preceding must comply strictly with the provisions of the Association Restrictions as the same may be amended from time to time. Failure to comply with any of the Association Restrictions will constitute a violation of the Association Restrictions may result in a fine against the Owner in accordance with Section 5.12 of the Covenant, and will give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by Declarant, the Manager, the Board on behalf of the Association, the Rutherford West Reviewer, or by an aggrieved Owner. Without limiting any rights or powers of the Association, either board may (but will not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Association Restrictions, and the Owner whose violation has been so remedied will be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot will be secured by the liens reserved in the Declaration and/or the Covenant for Assessments and may be collected by any means provided in the Declaration and/or the Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner will indemnify and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.17 (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

2.19 Liability of Owners for Damage to Common Area, Special Common Area and Development Common Area. No Owner may in any way alter, modify, add to or otherwise perform any work upon the Common Area, Special Common Area or Development Common Area without the prior written approval of the Board. Each Owner will be liable to the Association for any and all damages to: (i) the Common Area, Special Common Area, Development Common Area and any improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the

Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage will be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided for in *Section 5.10* of the Covenant.

2.20 Disturbance Area. A fifteen foot (15') maximum limit of disturbance area shall be maintained around all building structures.

2.21 Integrated Pest Management Plan. Owners shall comply with the Integrated Pest Management Plan ("IPM") adopted for the Development Area. The Association will have the authority to implement the IPM Plan.

2.22 Fertilizers, Pesticides and Herbicides. No fertilizers, pesticides or herbicides other than those generally available for consumer use and approved by a governmental agency, such as the Food and Drug Administration, for the purpose intended shall be placed, used or stored on any Lot. All Owners using any such materials shall strictly comply with all instructions provide with such materials and shall take proper precautions in placing, using and storing such materials so that such materials are contained at all times and do not result in the unnecessary discharge thereof into streams or water ponds on the Development Area or onto any other adjacent land, roadway or walkway.

2.23 Construction Related Erosion and Sedimentation Controls. Development plans for Lots must incorporate an erosion control plan in accordance with the temporary best management practices of the Edwards Aquifer Rules ("Texas Administrative Code, Chapter 213, Edwards Aquifer Rules") and the Technical Guidance Manual on Best Management Practices (CEQC, RG-348, July 2005).

2.24 Owner Education. All Owners of Lots located within the Development Area must follow the IPM plan, incorporate undisturbed native vegetation buffers in the landscape design, and refrain from use of non-native grasses such as St. Augustine in order to help protect the natural character of the land and water courses. The Association will implement procedures to periodically educate Owners, through periodic newsletters or the distribution of appropriate written materials about the sensitivity of the Edwards Aquifer and each Owner's potential impact on water quality.

2.25 Conservation Easements. Conservation easements may exist on or across portions of the Lots. Each Owner is advised to ascertain the location of conservation easements prior to the installation of landscaping or any other Improvement on a Lot. Any plans or specifications submitted to the Rutherford West Reviewer for the installation of landscaping or any other Improvement must reflect all conservation easements and other easements and setbacks affecting the Lot. Declarant hereby reserves the right as to any particular Lot (which right will expire as to a particular Lot on the date Declarant conveys such Lot to a third party) to establish a conservation easement over and across a Lot. If a conservation easement is

established on a Lot, the portion of the Lot affected by the conservation easement must remain in its native vegetative state.

2.26 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Declaration. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE 3 USE AND CONSTRUCTION RESTRICTIONS

3.01 Design Guidelines. Any and all Improvements erected, placed, constructed, painted, altered, modified, or remodeled on any portion of the Development Area must strictly comply with the requirements of the Design Guidelines, unless a variance is obtained pursuant to the Covenant. The Design Guidelines may be supplemented, modified, amended, or restated by the Rutherford West Reviewer as authorized by the Covenant and the Design Guidelines.

3.02 Approval for Construction. No Improvements may be constructed upon any Lot without the prior written approval of the Rutherford West Reviewer.

3.03 Single-Family Residential Use. The Lots may be used solely for private single family residential purposes and there will not be constructed or maintained thereon more than one detached single family residence. No professional, business, or commercial activity to which the general public is invited may be conducted on any Lot, except an Owner or occupant of a residence may conduct business activities within a residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (ii) the business activity conforms to all zoning requirements for the Development Area; (iii) the business activity does not involve door-to-door solicitation of residents within the Development Area; (iv) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Development Area which is noticeably greater than that which is typical of residences in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Development Area and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development Area as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, will be construed to have their ordinary, generally accepted meanings and will include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a residence is not considered a business or trade within the meaning of this subsection. This subsection will not apply to any activity conducted by Declarant or an Owner engaged in the business of constructing homes for resale who acquires a Lot for the purpose of constructing a residence thereon for resale to a third party.

Until the earlier to occur of the date Declarant has recorded a written statement that all sales activity has ceased within the Development Area, or forty (40) years from the date this Declaration is recorded in the Official Public Records of Hays County, Texas:

(a) Declarant and/or its licensees may construct and maintain upon portions of the Common Area, Special Common Area, Development Common Area, and any Lot owned by Declarant, such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees have an easement over and across the Common Area, Special Common Area, Development Common Area for access and use of such facilities at no charge; and

(b) Declarant and/or its licensees will have an access easement over and across the Common Area, Special Common Area, Development Common Area for the purpose of making, constructing and installing improvements to the Common Area, Special Common Area, Development Common Area.

3.04 Garages. All garages must be approved in advance of construction by the Rutherford West Reviewer. The Improvements on each Lot must contain a private, enclosed garage capable of housing two (2) automobiles. Each garage must utilize only single-bay garage doors (*i.e.*, a separate garage door, unless otherwise determined by the Rutherford West Reviewer, for each parking bay within the garage) constructed of wood or steel of a wood-like appearance and contain decorative features such as hardware or windows, as approved by the Rutherford West Reviewer. Detached garages on the rear of the home, or a single garage set back at least five feet (5') behind the leading edge of the home are permissible with the prior approval of the Rutherford West Reviewer. Garages and detached garages must conform in design and materials with the main structure. No carports or other open automobile storage units will be permitted. No garage may be permanently enclosed or otherwise used for habitation without replacing the existing garage with another structure on the Lot designed for the purpose of storing automobiles and approved by the Rutherford West Reviewer. The parking of vehicles in the yard of any Lot is not permitted. "Porte cochere"-type structures used to access garages or to allow for protected coverings used to access a residence are permissible with the prior approval of the Rutherford West Reviewer.

3.05 Fences; Sidewalks. No fence may be constructed on the Development Area without the prior written consent of Rutherford West Reviewer. The height and location of all fences must be approved in advance by the Rutherford West Reviewer. All fences must be constructed of black ornamental metal or wrought iron or such other material as the Rutherford

West Reviewer may approve. No fence may be greater than six feet (6') in height. No chain link, metal cloth, wood or agricultural fence may be installed or maintained on any Lot.

3.06 Height. The maximum building height of any residence constructed on any Lot may be no more than forty-five feet (45') measured according to the following definition: the vertical distance between the top of the foundation at any point within the structure and the highest ridge, peak, or gable of a roof, excluding chimneys. In addition, the height of any eave on any structure may not exceed forty-five feet (45') above the natural grade at any point on the exterior wall of the residence.

3.07 Building Materials. All building materials must be approved in advance by the Rutherford West Reviewer, and only new building materials (except for used brick) may be used for constructing any Improvements. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways must, unless otherwise approved by the Rutherford West Reviewer, match the color of the surface from which they project. No highly reflective finishes (other than glass, which may not be mirrored) may be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

3.08 Masonry Requirements. Unless otherwise expressly approved by the Rutherford West Reviewer, the exterior walls of any residence shall consist of brick, stone, and/or stucco as follows:

(a) **One Story Structures.** The exposed surface of all exterior walls of one-story residences shall be constructed of seventy-five percent (75%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work.

(b) **Two Story Structures.** The exposed surface of all exterior walls of the first floor of each two story residence shall be constructed of seventy-five percent (75%) masonry and/or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work. Unless otherwise agreed by the Rutherford West Reviewer, the exposed surface of the front exterior wall on the second floor of each two story residence (the "front" of a residence shall be determined by the Rutherford West Reviewer) shall be constructed of one-hundred percent (100%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work.

(c) Any portions of the elevation that are not constructed of brick, stone or stucco (exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work) shall be constructed of cementitious horizontal lap siding product (*i.e.*, "Hardi-Plank").

(d) Notwithstanding the foregoing provisions, the Rutherford West Reviewer, in its discretion, may approve the use of decorative siding (fibre-cement or equivalent material only): (i) on front gables above plate line on a one story residence; or (ii) on up to twenty percent (20%) of the front elevation of a two story residence. As used herein, "decorative siding" means

vertical board and batten, shakes, scallops and other decorative siding facades as may be approved by the Rutherford West Reviewer on a case-by-case basis in the Rutherford West Reviewer's discretion.

3.09 Driveways. The design, construction materials, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, must be approved by the Rutherford West Reviewer. Driveways shall be no greater than twelve feet (12') in width through the building line setback and be limited to a maximum disturbed area of ten feet (10') on either side of the driveway. Driveways located off the building line may exceed twelve feet (12'). If the Rutherford West Reviewer deems necessary or appropriate, driveways may encroach within side building lines. Driveways on corner lots abutting a cul-de-sac and another roadway shall access off the cul-de-sac. The Rutherford West Reviewer may establish design and materials requirements for all driveways and driveway culverts to insure that they are consistent in appearance throughout the Development Area. Circular Driveways are permissible if approved in accordance with the Rutherford West Reviewer.

3.10 Minimum Square Footage. The minimum square footage for each residence, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages, is 2,200 feet for a single story residence and 2,600 feet for a two-story residence; provided, however, the first floor elevation of any two story residence shall be 1,600 square feet.

3.11 Compliance with Setbacks. The location of all Improvements must comply with the minimum setbacks shown on the Plat. For the purpose of this restriction, eaves, steps, and open and covered porches will not be considered as part of a building; however, this Section will not be construed to permit any portion of any Improvement on any Lot to encroach upon another Lot or other portion of the Development Area.

3.12 Address Markers. The location, design and materials used for address identification markers on each residence must be approved in advance of installation by the Rutherford West Reviewer.

3.13 HVAC Location. No air-conditioning apparatus may be installed on the ground in front of a residence or on the roof of any residence. No window air-conditioning apparatus or evaporative cooler may be attached to any front wall or front window of a residence or at any other location where it would be visible from any street, any other Lot or any Common Area, Special Common Area, or Development Common Area. Solar Screens are expressly permitted.

3.14 Rentals. Nothing in this Declaration may prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for terms of at least six (6) months. All leases must be in writing and are expressly subject to the Associations Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. The Owner must provide to its lessee copies of the Association Restrictions.

3.15 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement may be performed only with the prior written approval of the Rutherford West Reviewer.

3.16 Trash Containers. Trash containers and recycling bins must be stored in one of the following locations:

- (a) inside the garage of the single-family residence constructed on the Lot; or
- (b) behind the side yard fence on the Lot in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Lot.

The Rutherford West Reviewer will have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

3.17 Drainage. There may be no interference with the established drainage patterns over any of the Development Area, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Rutherford West Reviewer. Plans submitted to the Rutherford West Reviewer for approval must indicate thereon an erosion control plan to be instituted during the construction of any residence on the Lot. The Owner of the Lot will be obligated to maintain and keep such approved erosion controls in good condition and repair. The erosion controls must be removed when the residence constructed upon the Lot is capable of occupancy for residential purposes.

3.18 Construction Activities. This Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Development Area. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Rutherford West Reviewer in its sole good faith judgment, the Rutherford West Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Development Area, then the Rutherford West Reviewer may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection therewith.

3.19 Landscaping. Each Owner shall be required, at such Owner's sole cost and expense, to install landscaping upon such Owner's Lot in accordance with landscaping plans approved in advance of installation by the Rutherford West Reviewer. Notwithstanding any provision in this Declaration to the contrary, such landscaping plans must be approved by the

Rutherford West Reviewer prior to occupancy of the residence located on the Lot to which such landscaping plans relate. All landscaping shown on the landscaping plans and specifications approved by the Rutherford West Reviewer shall be installed, and all such landscaping shall be completed, on or before three (3) months after the landscaping plans have been approved by the Rutherford West Reviewer. The Rutherford West Reviewer shall be entitled to make recommendations with respect to tree disease control, whereupon the Owner or Owners to whom such recommendations are directed shall be obligated to comply with such recommendations, which may include, but not be limited to tree removal and replacement. Prior to the occupancy of any single-family residence constructed upon any Lot, and subject to an Owner's election to install Xeriscaping pursuant to *Section 3.22* below, which is strongly encouraged: (i) the area between the front of the residence and the back of the curb of the street immediately adjacent to the front yard to a point ten feet (10') postern to the rear elevation of the residence must, exclusive of any sidewalk areas, be fully sodded and/or landscaped with Bermuda grass, Prairie Buffalo grass, or an alternative grass approved in advance by the Rutherford West Reviewer; and (ii) at a minimum, thirty (30) five (5) gallon, fifty (50) one (1) gallon shrubs, five (5) three-inch caliper trees and two (2) six-inch caliper trees must be planted in the front yard of the Lot, with the configuration and selection thereof to be approved by the Rutherford West Reviewer prior to planting. Ornamental trees may be used as an alternative to planted hardwoods if they meet the caliper requirement in the previous sentence and hardwoods account for more than fifty percent (50%) of the total caliper inches on the Lot. For any Lot with existing hardwood trees, credit will be given toward the foregoing tree caliper requirement under the following conditions: (i) credit will be given for existing hardwood trees that measure six inches (6") or more in diameter; (ii) credit will be given for existing hardwood trees determined by the Rutherford West Reviewer to be desirable, such as oaks and cedar elms (*e.g.*, cedar (ashe juniper) trees, Hackberry trees and the like will not be considered); and (iii) credit will be given only for existing hardwood trees located in the front yard of the Lot. If the foregoing conditions are met, then a fifty percent (50%) caliper inch credit will be given for every caliper inch of existing hardwood trees on the Lot. Tree caliper will be measured thirty-six inches (36") above existing grade for both existing and newly planted trees. No tree larger than four inches (4") in diameter may be cut down or otherwise removed from the Property without the prior approval of the Rutherford West Reviewer.

3.20 Solar Energy Device. The installation of any system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy (a "**Solar Energy Device**") must be approved in advance and in writing by the Rutherford West Reviewer in accordance with the provisions set forth below. The term Solar Energy Device shall include any mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

(a) **Application.** To obtain Rutherford West Reviewer approval of a Solar Energy Device, the Owner shall provide the Rutherford West Reviewer with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other

accurate depiction (the “**Solar Application**”). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of *Article 6* of the Covenant.

(b) Approval Process. The Rutherford West Reviewer will review the Solar Application in accordance with the terms and provisions of *Article 6* of the Covenant. The Rutherford West Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 3.20(c)* below UNLESS the Rutherford West Reviewer makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.20(c)*, will create a condition that substantially interferes with the use and enjoyment of property within the Development Area by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The Rutherford West Reviewer’s right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Rutherford West Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the residence located on the Owner’s Lot, entirely within a fenced area of the Owner’s Lot, or entirely within a fenced patio located on the Owner’s Lot. If the Solar Energy Device will be located on the roof of the residence, the Rutherford West Reviewer may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) percent above the energy production of the Solar Energy Device if installed in the location designated by the Rutherford West Reviewer. If the Owner desires to contest the alternate location proposed by the Rutherford West Reviewer, the Owner should submit information to the Rutherford West Reviewer which demonstrates that the Owner’s proposed location meets the foregoing criteria. If the Solar Energy Device will be located in a fenced area of the Owner’s Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

(ii) If the Solar Energy Device is mounted on the roof of the principal residence located on the Owner’s Lot, then: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (C)

the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

3.21 Rainwater Harvesting Systems. Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed with the advance written approval of the Rutherford West Reviewer.

(a) Application. To obtain Rutherford West Reviewer approval of a Rainwater Harvesting System, the Owner shall provide the Rutherford West Reviewer with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction (the "Rain System Application"). A Rain System Application may only be submitted by an Owner.

(b) Approval Process. The decision of the Rutherford West Reviewer will be made in accordance with *Article 6* of the Covenant. Any proposal to install a Rainwater Harvesting System on property owned by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Rutherford West Reviewer, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

(i) The Rainwater Harvesting System must be consistent with the color scheme of the residence constructed on the Owner's Lot, as reasonably determined by the Rutherford West Reviewer.

(ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.

(iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed on the Owner's Lot and any adjoining or adjacent street.

(iv) There is sufficient area on the Owner's Lot to install the Rainwater Harvesting System, as reasonably determined by the Rutherford West Reviewer.

(v) If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, Development Common Area or another Owner's Lot, the Rutherford West Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 3.21(d)* for additional guidance.

(d) Guidelines. If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, Development Common Area or another Owner's Lot, the Rutherford West Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, Common Area, Special Common Area, Development Common Area or another Owner's Lot. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, Development Common Area or another Owner's Lot, any additional requirements imposed by the Rutherford West Reviewer to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the Rutherford West Reviewer.

3.22 Xeriscaping. As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping ("Xeriscaping") upon written approval by the Rutherford West Reviewer. All Owners implementing Xeriscaping shall comply with the following:

(a) Application. Approval by the Rutherford West Reviewer is required prior to installing Xeriscaping. To obtain the approval of the Rutherford West Reviewer for Xeriscaping, the Owner shall provide the Rutherford West Reviewer with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction; and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "Xeriscaping Application"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The Rutherford West Reviewer is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the Rutherford West Reviewer for approval; (ii) supervising installation or construction to confirm compliance with an approved Xeriscaping Application; or (iii) the compliance of an approved application with applicable law.

(b) Approval Conditions. Unless otherwise approved in advance and in writing by the Rutherford West Reviewer, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the Rutherford West Reviewer. For purposes of this Section 3.22(b)(i), "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the Rutherford West Reviewer determines that: (A) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in

the overall community; and/or (B) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.

(ii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Lots, as reasonably determined by the Rutherford West Reviewer.

(c) Process. The decision of the Rutherford West Reviewer will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this Section 3.22 when considering any such request.

(d) Approval. Each Owner is advised that if the Xeriscaping Application is approved by the Rutherford West Reviewer, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the Rutherford West Reviewer may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of the Covenant and may subject the Owner to fines and penalties. Any requirement imposed by the Rutherford West Reviewer to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

3.23 Sight Distance at Intersection. No fence, wall, hedge, or planting that obstructs sight lines at elevations between two feet and nine feet above the roadway may be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point thirty feet (30') from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines as extended. The same sight-line limitations will apply on any Lot within the triangular area formed by the street line, the driveway or alley line and a line connecting them at a point ten feet from the intersection of a street property line with the edge of a driveway or alley pavement. All tree foliage within such distances of intersections must be maintained to meet the sight-line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, all sight distances required by any applicable governmental authority must be complied with.

3.24 Roofing. Each roof must be constructed of clay or concrete tile, non-reflective metal, slate, architectural dimensional heavyweight fireproof composition shingles in weathered wood or similar color, or other material expressly approved by the Rutherford West Reviewer. The color and composition of all roof materials, and the pitch of each roof (not to exceed 8/12), shall be expressly approved by the Rutherford West Reviewer.

3.25 Swimming Pools. Above-ground or temporary swimming pools are expressly prohibited.

ARTICLE 4 INSURANCE AND CONDEMNATION

4.01 Insurance. Each Owner will be required to maintain insurance on the Improvements located upon such Owner's Lot, providing fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for Improvements similar in construction, location and use. Such insurance policies will be for the full insurable value of the Improvements constructed upon each Lot, will contain extended coverage and replacement costs endorsements, if reasonably available, and may also contain vandalism and malicious mischief coverage, special form endorsement, a stipulated amount clause and a determinable cash adjustment clause. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board in its discretion may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association, as the case may be. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

4.02 Restoration. In the event of any fire or other casualty, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within thirty (30) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this sentence will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum

lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot will be secured by the liens reserved in the Covenant or this Declaration for Assessments and may be collected by any means provided in the Covenant and/or Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

4.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this *Article 5*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 5 MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Development Area. The provisions of this Article apply to this Declaration and the Bylaws of the Association.

5.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "**Eligible Mortgage Holder**"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development Area or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of this Declaration relating to such Lot or the Owner or occupant which is not cured within sixty (60) days; or

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

5.02 Examination of Books. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours.

5.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law shall relate only to the individual Lots and not to any other portion of the Development Area.

ARTICLE 6 DEVELOPMENT

6.01 Addition of Land. Declarant may, at any time and from time to time, add additional portions of the Property which are owned by Declarant to the Development Area and, upon the filing of a notice as hereinafter described, such portions of the Property will be considered part of the Development Area for purposes of this Declaration, and such portions of the Property will be subject to the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the land originally covered by this Declaration. To add land to the Development Area, Declarant will be required only to record in the Official Public Records of Hays County, Texas, a notice of addition of land (which notice may be contained within any notice of applicability filed pursuant to *Section 10.05* of the Covenant) containing the following provisions:

(a) a reference to this Declaration, which will include the recordation information thereof;

(b) a statement that such land will be considered Development Area for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and

(c) a legal description of the added land.

6.02 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the Development Area and remove and exclude from the burden of this Declaration: (i) any portion of the Development Area which has not been included in a plat; (ii)

any portion of the Development Area included in a plat if Declarant owns all Lots described in such plat; and (iii) any portion of the Development Area included in a plat even if Declarant does not own all Lot(s) described in such plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such plat. Upon any such withdrawal and renewal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development Area withdrawn. To withdraw lands from the Development Area hereunder, Declarant will be required only to record in the Official Public Records of Hays County, Texas, a notice of withdrawal of land containing the following provisions:

- (a) a reference to this Declaration, which will include the recordation information thereof;
- (b) a statement that the provisions of this Declaration will no longer apply to the withdrawn land; and
- (c) a legal description of the withdrawn land.

ARTICLE 7 GENERAL PROVISIONS

7.01 Duration. This Declaration and the covenants, conditions, restrictions, easements, charges, and liens set out herein will run with and bind the land, and will inure to the benefit of and be enforceable by the Association and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Public Records of Hays County, Texas, and continuing through and including January 1, 2069, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by in a resolution adopted by members of the Association, entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Hays County, Texas. Notwithstanding any provision in this *Section 6.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire (twenty one) 21 years after the death or the last survivor of the now living descendants of Elizabeth II, Queen of England.

7.02 Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Hays County, Texas, of an instrument setting forth the amendment executed and acknowledged by (i) Declarant, acting alone; or (ii) Declarant and at

least sixty-seven percent (67%) of the Owners of Lots within the Development Area with each Lot being allocated one (1) vote.

7.03 Notices. Any notice permitted or required to be given by this Declaration must be in writing and may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Saturday, Sunday, or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Secretary of the Association for the purpose of service of notices, or to the residence located on the Lot owned by such person if no address has been given to the Secretary of the Association. Such address may be changed from time to time by notice in writing given by such person to the Secretary of the Association.

7.04 Interpretation. The provision of this Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Development Area, provided, however, that the provisions of this Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Development Area. This Declaration will be construed and governed under the laws of the State of Texas.

7.05 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

7.06 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

7.07 Enforcement and Nonwaiver.

(a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce all of the provisions of this Declaration. The Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof.

(b) Every act or omission whereby any provision of the Association Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association.

(c) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Development Area is

hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.

(d) The failure to enforce any provision of the Association Restrictions at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Association Restrictions.

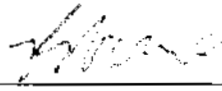
7.08 Construction. The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the date this instrument has been recorded in the Official Public Records of Hays County, Texas.

DECLARANT:

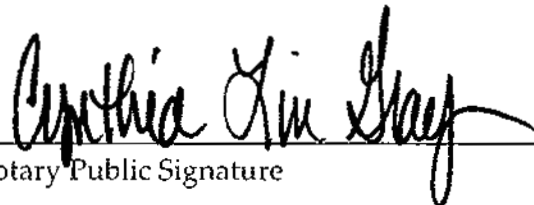
RW TRINE, LLC,
a Texas limited liability company

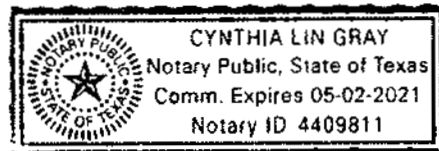
By: 
Barrett Wood, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this TH day of OCTOBER, 2019 by Barrett Wood, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said limited liability company.

(SEAL)


Notary Public Signature



3385542-100
RW TRUSE, LLCCONSENT OF MORTGAGEE

The undersigned, being the owner and holder of liens and encumbrances against a portion of the Development Area (the "Liens"), executes this Development Area Declaration solely for the purposes of (i) evidencing its consent to this Development Area Declaration, and (ii) subordinating the Liens to this Development Area Declaration on the condition that the Liens shall remain superior to the Assessment Lien provided for in the Master Covenant, in all events.

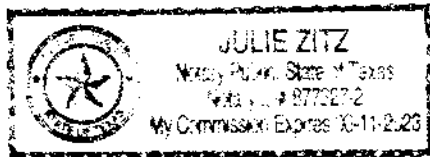
PLAINSCAPITAL BANK,
a Texas state financial institution

By: [Signature]
Name: Tommy Ward
Title: Vice President
Date: 10-10-19

THE STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me this 10th day of October, 2019
by TOMMY WARD, VICE PRESIDENT of
PlainsCapital Bank, a Texas state financial institution, on behalf of said financial institution.

(SEAL)



[Signature]
Notary Public Signature

**THE STATE OF TEXAS
COUNTY OF HAYS**

I hereby certify that this instrument was FILED on the
date and the time stamped hereon by me and was duly
RECORDED in the Records of Hays County, Texas.

19040712 DECLARATION
11/05/2019 03:08:33 PM Total Fees: \$150.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas



AFTER RECORDING RETURN TO:

KEVIN M. FLAHIVE
ARMBRUST & BROWN, PLLC
100 CONGRESS AVE., SUITE 1300
AUSTIN, TEXAS 78701

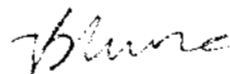
RW
RUTHERFORD
WEST

DESIGN GUIDELINES
[SECTION FIVE]

Version 1.00

Adopted:

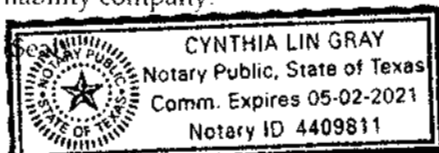
RW TRINE, LLC,
a Texas limited liability company

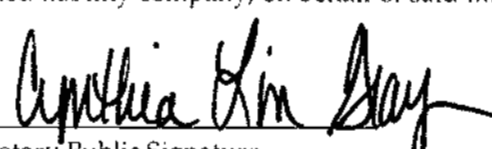
By: 

Barrett Wood, Manager

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 7TH day of OCTOBER, 2019,
by Barrett Wood, Manager of RW Trine, LLC, a Texas limited liability company, on behalf of said limited
liability company.




Notary Public Signature

Adopted by RW Trine, LLC, a Texas limited liability company, in accordance with Section 6.05(b) of that certain Rutherford West Master Covenant, recorded in Volume 2918, Pages 524-587, Official Public Records of Hays County, Texas; as amended by that certain Assignment of Declarant's Rights and First Amendment to Rutherford West Master Covenant, recorded in Volume 3149, Pages 505-509, Official Public Records of Hays County, Texas; as further amended by that certain Second Amendment to Rutherford West Master Covenant, recorded in Volume 3159, Pages 645-648, Official Public Records of Hays County, Texas; and as further amended by that certain Assignment of Declarant's Rights and Third Amendment to Rutherford West Master Covenant, recorded in Volume 5398, Pages 561-566, Official Public Records of Hays County, Texas (collectively, the "Covenant"). In accordance with Section 6.05(b) of the Covenant, these Design Guidelines may be amended from time to time by the Rutherford West Reviewer (as defined in the Covenant).

INTRODUCTION

Any notice or information required to be submitted to Rutherford West Reviewer under these Design Guidelines hereunder will be submitted to the Rutherford West Reviewer, c/o RW Trine, LLC, Attn: Blake Contine, 1508 South Lamar Boulevard, Austin, Texas, 78704.

Background

Rutherford West is a master planned community located in Hays County, Texas. The community consists of Development Areas which are subject to the terms and provisions of the Rutherford West Master Covenant, recorded in the Official Public Records of Hays County, Texas (as amended, the "Covenant"), and a Development Area Declaration for each particular Development Area (the "Development Area Declaration"). The Covenant and each Development Area Declaration includes provisions governing the construction of improvements and standards of maintenance, use and conduct for the preservation of the Rutherford West community.

Rutherford West Reviewer and Review Authority

Article VI of the Covenant includes procedures and criteria for the construction of improvements within Rutherford West community. Section 3.01 of the Development Area Declaration provides that any and all improvements must be erected, placed, constructed, painted, altered, modified or remodeled in strict compliance with the requirements of the Design Guidelines, and Section 6.04 of the Covenant and Section 3.02 of the Development Area Declaration provides that no improvements may be constructed without the prior written approval of the Rutherford West Reviewer.

The Rutherford West Reviewer consists of members who have been appointed by RW Trine, LLC, a Texas limited liability company ("Declarant"). As provided in *Article VI* of the Covenant, Declarant has a substantial interest in ensuring that improvements within the Rutherford West development maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the community, and as a consequence thereof, the Rutherford West Reviewer acts solely in Declarant's interest and shall owe no duty to any other owner or the Rutherford West Homeowners Association, Inc (the "Association").

Unless alternate Design Guidelines are adopted for additional Development Areas, these Design Guidelines will apply to each Development Area made subject to the Covenant from and after the date these Design Guidelines are recorded in the Official Public Records of Hays County, Texas. These Design Guidelines will apply only to Lots within a Development Area which will be used for residential purposes. These Design Guidelines will not apply to any Condominium Units and the Rutherford West Reviewer may adopt additional Design Guidelines applicable to Condominium Units.

GOVERNMENTAL REQUIREMENTS

Governmental ordinances and regulations are applicable to all Lots within Rutherford West. It is the responsibility of each Owner to obtain all necessary permits and inspections. Compliance with these Design Guidelines is not a substitute for compliance with the applicable ordinances and regulations. Please be advised that these Design Guidelines do not list or describe each requirement which may be applicable to a Lot within Rutherford West. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot prior to submitting plans to the Rutherford West Reviewer for approval. Furthermore, approval by the Rutherford West Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the Rutherford West Reviewer.

The Rutherford West Reviewer shall bear no responsibility for ensuring plans submitted to the Rutherford West Reviewer comply with any applicable building codes, zoning regulation and other government requirements. It is the responsibility of the Owner to secure any required governmental approvals prior to construction on such Owner's Lot.

INTERPRETATION

In the event of any conflict between these Design Guidelines and the Development Area Declaration, the Development Area Declaration shall control. Capitalized terms used in these Design Guidelines and not otherwise defined in this document shall have the same meaning as set forth in the Development Area Declaration.

AMENDMENTS

The Rutherford West Reviewer may amend these Design Guidelines. All amendments shall become effective upon recordation in the Official Public Records of Hays County, Texas. Amendments shall not apply retroactively so as to require modification or removal of work already approved and completed or approved and in progress. It is the responsibility of each Owner to ensure that they have the most current edition of the Design Guidelines and every amendment thereto.

ARCHITECTURAL REVIEW PROCESS

Submittals

Requests for approval of proposed construction, landscaping, or exterior modifications must be made by submitting an application in the form attached hereto as Attachment 1. In submitting any request for approval, each Owner must retain competent assistance from a licensed architect, civil engineer, landscape architect, soils engineer, and a licensed and bonded contractor.

Timing

The Rutherford West Reviewer will attempt to review all applications and submittals within thirty (30) days. Please allow at least thirty (30) days prior to installation or construction for the Rutherford West Reviewer to review the related applications.

Responsibility for Compliance

An applicant is responsible for ensuring that all of the applicant's representatives, including the applicant's architect, engineer, contractors, subcontractors, and their agents and employees, are aware of these Design Guidelines and all requirements imposed by the Rutherford West Reviewer as a condition of approval.

Inspection

Upon completion of all approved work, the Owner must notify the Rutherford West Reviewer. The Rutherford West Reviewer may inspect the work at any time to verify conformance with the approved submittals.

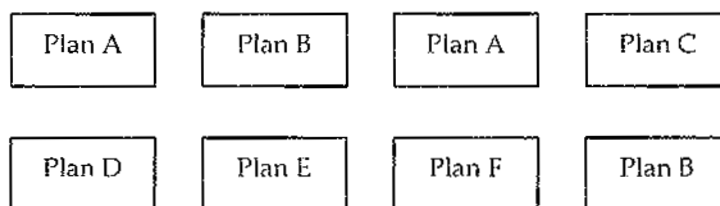
ARCHITECTURAL AND AESTHETIC STANDARDS

Plan Repetition

The Rutherford West Reviewer may, in its sole and absolute discretion, deny a plan or elevation proposed for a particular Lot if a substantially similar plan or elevation exists on a Lot in close proximity to the Lot on which the plan and/or elevation is proposed. The Rutherford West Reviewer may adopt additional requirements concerning substantially similar plans or elevations constructed in proximity to each other.

For Example:

- Plan can be repeated every other Lot (example: Plan A, Plan B, Plan A, and Plan C).



- Across the Street: Same plan cannot be placed on a Lot across the street or diagonal from any other plan (example above: Plan B).

Brick Color and Masonry Stone Repetition

The Rutherford West Reviewer may adopt requirements concerning substantially similar brick or masonry constructed in proximity to each other.

Building Materials

All building materials must be approved in advance by the Rutherford West Reviewer, and only new building materials (except for used brick) may be used for constructing any Improvements.

Masonry Requirements

- Unless otherwise expressly approved by the Rutherford West Reviewer, the exterior walls of any residence shall consist of brick, stone, and/or stucco as follows:
 - One Story Structures: The exposed surface of all exterior walls of one-story residences shall be constructed of seventy-five percent (75%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work.
 - Two Story Structures: The exposed surface of all exterior walls of the first floor of each two story residence shall be constructed of seventy-five percent (75%) masonry and/or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work. Unless otherwise agreed by the Rutherford West Reviewer, the exposed surface of the front exterior wall on the second floor of each two story residence (the “front” of a residence shall be determined by the Rutherford West Reviewer) shall be constructed of one-hundred percent (100%) brick, stone or stucco, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work.
- Any portions of the elevation that are not constructed of brick, stone or stucco (exclusive of roofs, eaves, soffits, windows, gables, doors, and trim work) shall be constructed of cementitious horizontal lap siding product (*i.e.*, “Hardi-Plank”).
- Notwithstanding the foregoing provisions, the Rutherford West Reviewer, in its discretion, may approve the use of decorative siding (fibre-cement or equivalent material only): (i) on front gables above plate line on a one story residence; or (ii) on up to twenty percent (20%) of the front elevation of a two story residence. As used herein, “decorative siding” means vertical board and batten, shakes, scallops and other decorative siding facades as may be approved by the Rutherford West Reviewer on a case-by-case basis in the Rutherford West Reviewer’s discretion.
- Any portion of the foundation visible from the exterior of the structure must be concealed by a combination of (a) extending the exterior brick, stone or stucco to within twelve inches (12”) of the finished grade of the front exterior and within twenty-four inches (24”) of the finished grade of the side and rear exteriors, and (b) constructing terraced planter boxes, which shall be constructed of the same masonry material as the structure and designed so as to minimize the visual impact of the structure’s mass and height.

Aesthetic Appeal

The Rutherford West Reviewer may disapprove the construction or design of a home on purely aesthetic grounds. Any prior decisions of the Rutherford West Reviewer regarding matters of design or aesthetics shall not be deemed to have set a precedent if the Rutherford West

Reviewer feels that the repetition of such actions would have any adverse effect on the community.

Siting/Setbacks

The location of all Improvements must comply with the minimum setbacks shown on the Plat.

The Rutherford West Reviewer reserves the right to stipulate additional building or improvement setbacks attributable to any Lot.

Temporary/Accessory Structures

No tent, shack, or other temporary building, improvement, or structure may be placed upon the Development Area without the prior written approval of the Rutherford West Reviewer; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner will be permitted, with Rutherford West Reviewer approval, to erect one (1) outbuilding on the Owner's Lot if: (i) the surface area of the pad on which the outbuilding is placed is less than or equal to one hundred twenty (120) square feet; (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to one hundred two (102) inches; and (iii) the exterior and the roof of the outbuilding are constructed of the same or substantially similar materials as the exterior and the roof of any residence located on the Lot. The Rutherford West Reviewer will be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

Prohibited Elements

The following architectural elements are prohibited within Rutherford West unless expressly approved in writing by the Rutherford West Reviewer:

Roofs

- Excessively pitched roofs (*i.e.*, 10/12 or 12/12).
- Mansard, gambrel or chalet roofs.
- Flat roofs.
- Roofs that are too steep or too shallow for the style of the home,
- Shed roofs except as incidental to the main roof.

Design Elements

- Unnecessarily prominent chimneys and other roof penetrations.
- Skylights (white, bubble, flat) facing the street.
- White or bubble skylights.
- Mirrored glass.

Materials and Colors

- Wood siding (wood siding accents may be permitted if approved by the Rutherford West Reviewer).
- Red or Gray brick.

Building Height

Unless otherwise approved in advance by the Rutherford West Reviewer, no building or residential structure may exceed forty five feet (45') in height as measured from the top of the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

Views are neither guaranteed, preserved, nor protected within Rutherford West.

Roofs and Chimneys

Each roof must be constructed of clay or concrete tile, non-reflective metal, slate, architectural dimensional heavyweight fireproof composition shingles in weathered wood or similar color, or other material expressly approved by the Rutherford West Reviewer. Most reflective roofs are not permitted; however, if metal roofs are included as part of a green building initiative, reflective metal roofs may be permitted with the prior approval of the Rutherford West Reviewer. The color and composition of all roof materials, and the pitch of each roof, shall be expressly approved by the Rutherford West Reviewer. No solar panels may be installed without the approval of the Rutherford West Reviewer.

Garages

All garages must be approved in advance by the Rutherford West Reviewer prior to construction, and comply with the requirements set forth in the Development Area Declaration. Side-entry garages are encouraged.

Mailboxes

Mailboxes are to be provided by the Owner and approved by the Rutherford West Reviewer. The bottom of the receptacle of mailbox must conform to the dimensions required by the United States Postal Service and must be constructed of materials matching those used in the construction of the residence. The structure must not exceed five feet (5') in height nor two feet (2') in depth or width.

Driveways

The design, construction materials, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, must be approved by the Rutherford West Reviewer. Driveways shall be no greater than twelve feet (12') in width through the building line setback and be limited to a maximum disturbed area of ten feet (10')

on either side of the driveway. Driveways located off the building line may exceed twelve feet (12'). If the Rutherford West Reviewer deems necessary or appropriate, driveways may encroach within side building lines. Driveways on corner lots abutting a cul-de-sac and another roadway shall access off the cul-de-sac. The Rutherford West Reviewer may establish design and materials requirements for all driveways and driveway culverts to insure that they are consistent in appearance throughout the Development Area. Circular Driveways are permissible if approved in accordance with the Rutherford West Reviewer.

Exterior Lighting

Exterior lighting will be kept to a minimum, but consistent with good security practices.

No exterior light whose direct source is visible from a street or neighboring property or which produces excessive glare to pedestrian or vehicular traffic will be allowed. Exterior lighting must be approved in advance by the Rutherford West Reviewer.

Use of other than white or color corrected high intensity lamps and exterior lights will not be allowed. Holiday lighting is an exception; however, all holiday lighting must be removed within thirty (30) days after the holiday. Sodium, mercury vapor, or bare HID yard lights are not allowed.

Miscellaneous

HVAC Screening

Air conditioning compressors and pool equipment shall be enclosed by a structural or landscape screening element constructed of materials approved by the Rutherford West Reviewer. The screening elements must be consistent with materials on the primary structure and the screening will be from both the front street and from neighboring residences. Solar Screens are expressly permitted.

Barbecue Grills

Freestanding barbecue grills are permitted only if they are stored and used in the rear yard space of the Lot that is not visible from the street.

Signage

Except as provided in the Development Area Declaration and these Design Guidelines, no sign of any kind may be displayed to the public view without the prior written approval of the Rutherford West Reviewer. While the Rutherford West Reviewer expressly retains its right to review and approve or disapprove signage throughout the community, "booster club"-type signs in support of sports teams will generally be permitted, provided that such signs are: (i) no larger than 18" by 24" and (ii) do not remain on display for more than ninety (90) days. Banner

signs are prohibited on any Lot. No signage is allowed to be posted on any fence on Lots within the community.

Flags

The flag requirements are set forth in the applicable Development Area Declaration.

Solar Energy Devices

The solar energy device requirements are set forth in the applicable Development Area Declaration.

Rainwater Harvesting Systems

The rainwater harvesting systems requirements are set forth in the applicable Development Area Declaration.

Propane Tanks

All propane tanks must be sub-surface. Above-ground or elevated propane tanks are prohibited, unless otherwise approved by the Rutherford West Reviewer.

LANDSCAPE GUIDELINES

The goal of the landscape guidelines is to ensure that the developed areas of Rutherford West return to a natural setting as quickly as possible upon the completion of a new residence. Detailed landscape plans for each Lot may be submitted to the Rutherford West Reviewer for consideration after construction of the primary residence thereon has begun, so long as such submission occurs at least ninety (90) days before completion of the residence. Upon written request, however, the Rutherford West Reviewer may waive the requirement of landscape plans for any Lot if the builder uses plans previously approved by the Rutherford West Reviewer for another Lot. There shall be no revisions made to approved plans without submission to, and approval by, the Rutherford West Reviewer of the revised plans. All introduced vegetation shall be trees, shrubs, vines, ground covers, seasonal flowers or sodded grassed which are commonly used in Central Texas for landscaping purposes and which are approved by the Rutherford West Reviewer. Landscaping in accordance with the approved plans shall be installed prior to occupancy of the residence on the Lot to which the plans apply. Extensions to the time limit may be granted by the Rutherford West Reviewer for up to an additional thirty (30) days on a case by case basis. The approved plans shall include permanent sodded grass or "ground cover" in all sodded areas. If an Owner does not elect to Xeriscape the Lot in accordance with the terms of the applicable Development Area Declaration and these Design Guidelines, the landscape plans for such Lot must provide for the following: (i) the area between the front of the residence and the back of the curb of the street immediately adjacent to

the front yard to a point ten feet (10') postern to the rear elevation of the residence must, exclusive of any sidewalk areas, be fully sodded and/or landscaped with Bermuda grass, Prairie Buffalo grass, or an alternative grass approved in advance by the Rutherford West Reviewer; and (ii) at a minimum, thirty (30) five (5) gallon, fifty (50) one (1) gallon shrubs, five (5) three-inch caliper trees and two (2) six-inch caliper trees must be planted in the front yard of the Lot, with the configuration and selection thereof to be approved by the Rutherford West Reviewer prior to planting. Ornamental trees may be used as an alternative to planted hardwoods if they meet the caliper requirement in the previous sentence and hardwoods account for more than fifty percent (50%) of the total caliper inches on the Lot. For any Lot with existing hardwood trees, credit will be given toward the foregoing tree caliper requirement under the following conditions: (i) credit will be given for existing hardwood trees that measure six inches (6") or more in diameter; (ii) credit will be given for existing hardwoods trees determined by the Rutherford West Reviewer to be desirable, such as oaks and cedar elms (e.g., cedar (ashe juniper) trees, Hackberry trees and the like will not be considered); and (iii) credit will be given only for existing hardwood trees located in the front yard of the Lot. If the foregoing conditions are met, then a fifty percent (50%) caliper inch credit will be given for every caliper inch of existing hardwood trees on the Lot. Tree caliper will be measured thirty-six inches (36") above existing grade for both existing and newly planted trees. No tree larger than four inches (4") in diameter may be cut down or otherwise removed from the Property without the prior approval of the Rutherford West Reviewer. All Owners are required to landscape front yards, side yards, and adjacent to building foundations within thirty (30) days after acquiring their Lot. Trees, shrubs, ground covers, seasonal color and sodded grass shall be used in these areas to achieve the landscape intent according to the approved plans. After installation, landscaping (including temporary landscaping) shall be properly maintained at all times. Any Owner who wishes to plant one or more gardens upon their Lot must obtain the approval of the Rutherford West Reviewer of any such garden and must follow applicable requirements as to size of the Lot, visibility of the Lot from other Lots, streets or common areas, and such other matters as the Rutherford West Reviewer may specify in any written approval.

With the prior approval of the Rutherford West Reviewer, the use of rock or crushed rock as a ground cover shall be permitted only as part of an overall landscape plan submitted to the Rutherford West Reviewer, but may not be used exclusively to cover large portions of the Lot.

Landscape plans must include vegetative screening for above ground utility connections visible from the street or adjacent properties.

The Rutherford West Reviewer reserves the right to require additional landscaping for pools, cabanas and other hardscape elements that may be constructed after completion of the residence and associated landscaping.

Hardscape elements in the landscaping must be in scale with the home and associated structures. Sculptures and fountains are subject to approval by the Rutherford West Reviewer.

Landscape structures such as arbors, porches, greenhouses and/or decks must be located in areas that highlight the features of the residence, and are subject to approval by the Rutherford West Reviewer. The height, color, materials and style used for outdoor structures must be the same or similar to the residence.

Notwithstanding any requirements to the contrary, owners shall comply with all applicable governmentally imposed water use restrictions and shall be granted appropriate relief from any specific requirement set forth in these Design Guidelines that cannot reasonably be complied with, as determined by the Rutherford West Reviewer, as a result of such water use restrictions.

Xeriscaping

Xeriscaping refers to landscaping and gardening in ways that reduce or eliminate the need for supplemental water from irrigation. It is promoted in regions that do not have easily accessible, plentiful, or reliable supplies of fresh water. Common elements in xeriscaping are the reduction of lawn grass or sodded areas (since lawn grass is often one of the worst offenders against water conservation), and the installation of indigenous plants that are adapted to the local climate and consequently require less water.

The use of Xeriscape is strongly recommended, including low-water use landscapes (native species which are drought tolerant), subject to the requirements and procedures set forth in the Development Area Declaration. Any homeowner interested in replacing a standard sod lawn by xeriscaping with native groundcovers, plants, or mulch must submit a landscape plan before removing any sod installing any plant material. All plans will be reviewed on a case by case basis and must conform to the guidelines established in the Development Area Declaration and these Design Guidelines.

Irrigation

The Rutherford West Reviewer must approve all irrigation systems prior to installation. An irrigation system is a required element of the landscape plan and must be included on each Lot. A licensed irrigation contractor must be used in conjunction with design and final implementation of the plan.

Landscape Inspection

The Rutherford West Reviewer may, upon the owner's completion of the installation of landscaping, conduct an on-site inspection of the property to ensure compliance with the approved plan.

Drainage

Responsibility for proper site drainage rests with the Owner. There shall be no interference with the established drainage patterns except by Declarant, unless adequate provision is made

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for proper drainage and such provision has been certified by a professional engineer and approved in advance by the Rutherford West Reviewer. Each Owner is solely responsible for correcting any change in water flow or drainage caused by the construction of Improvements on such Owner's Lot.

Fencing

The height and location of all fences must be approved in advance by the Rutherford West Reviewer. All fencing must be constructed of black ornamental metal or wrought iron or such other material as the Rutherford West Reviewer may approve. No chain link, metal cloth, wood or agricultural fence may be installed on the lot.

Pool Plans

Swimming pools shall be in-ground, or a balanced cut and fill, and shall be designed to be compatible with the site and the dwelling. Adequate screening, security, and maintenance shall be provided by each Owner. Fencing around the pool shall be permitted as described above and integrated into the design of the dwelling and site. Fences must meet all governmental regulations for safety.

Playscapes and Sport Courts

Playscapes and Sport Courts are permissible at the sole discretion of the Rutherford West Reviewer. If allowed, these facilities must be properly sited and screened so as to minimize the visual and audio impact of the facility on adjacent properties.

Sport Courts may be lighted; however, a lighting plan must be submitted to and approved by the Rutherford West Reviewer prior to installation. In addition, automatic controls must be installed to prevent extended use past 9:00pm during the week and 10:00pm on weekends. Tennis courts may be permitted and feature lighting under the same guidelines outlined for sport courts.

EROSION CONTROL AND CONSTRUCTION REGULATIONS

The following restrictions shall apply to all construction activities at Rutherford West. Periodic inspections by a representative of the Rutherford West Reviewer may take place in order to identify non-complying construction activities. If items identified as not complying with the regulations are not remedied in a timely manner, fines will be levied.

Erosion Control Installation and Maintenance

It is the responsibility of each owner to install erosion control measures prior to the start of construction and to maintain them throughout the entire construction process.

Silt fencing installed to all applicable standards is required to be properly installed and maintained to protect the low sides of all disturbed areas, where stormwater will flow during construction. The purpose of the silt fence is to capture the sediment from the runoff and to

permit filtered, clean water to exit the site. The owner should anticipate that built-up sediment will need to be removed from the silt fence after heavy or successive rains, and that any breach in the fencing will need to be repaired or replaced immediately.

If for any reason the silt fence is to be temporarily removed, please contact a representative of the Rutherford West Reviewer prior to the removal.

Security

Neither the Rutherford West Reviewer, the Association, nor the Declarant shall be responsible for the security of job sites during construction.

Construction Hours

Unless a written waiver is obtained from the Rutherford West Reviewer, construction may take place only during the following hours: Monday through Friday from 7:00 a.m. until 7:00 p.m., and on Saturdays and Sundays from 9:00 a.m. until 6:00 p.m.

Noise, Animals, Children

The use of radios, tape and CD players must be restrained so as not to be heard on an adjoining Lot or street.

Contractors and subcontractors may not bring dogs or children under 16 years of age to construction sites.

Material and Equipment Storage

All construction materials and equipment shall be neatly stacked, properly covered and secured. Any storage of materials or equipment shall be the Owner's responsibility and at their risk. Owners may not disturb, damage or trespass on other Lots or adjacent property.

Insurance

The Rutherford West Reviewer requires an Owner to procure adequate commercial liability insurance during construction naming the Association, the Declarant and the Rutherford West Reviewer as additional insureds, in an amount to be determined, from time to time by the Rutherford West Reviewer.

Site Cleanliness

During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming an eyesore.

Owners shall provide a container for debris and shall clean up all trash and debris on the construction site on a daily basis. Trash and debris shall be removed from each construction

site on a timely basis. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site.

The dumping, burying or burning of trash is not permitted anywhere in Rutherford West.

It is imperative that, when moving heavy equipment around, precautions be taken to prevent damage to pavement, curbs, and vegetation. Crawler tractors are not to be operated on paved or concrete surfaces. Mud, dirt and other construction debris that is tracked off site shall be cleaned on a daily basis.

Sanitary Facilities

A temporary sanitary facility (chemical toilet) shall be provided and maintained for the use of construction workers.

Construction Parking

Construction crews shall not park on, or otherwise use, other Lots. No construction vehicle will be permitted to leak oil or otherwise damage or deface any street located within the community.

Schedule of Fines

Periodic inspections by a representative of the Rutherford West Reviewer may take place in order to identify non-complying construction activities. Listed below is the schedule of fines which may be assessed.

Premature Clearing	\$500
Construction Without Rutherford West Reviewer Approval	\$500
Encroachment on Adjacent Properties	\$500 plus cost of repair
Violation of Rules, Restriction or Guidelines	\$50/day

Duration of Construction

A residence shall be complete and available for occupancy on or before eighteen (18) months after the start of construction.

PLAN SUBMITTALS

New residential home construction within Rutherford West will utilize a two-stage review process. No Improvements may be commenced until the Owner has received a written "Approval" from the Rutherford West Reviewer.

PLAN BOOK, MATERIAL AND LANDSCAPE REVIEW

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The applicant must first submit for approval plans for the home designs to be offered in the neighborhood including the exterior elevations and landscaping associated with each plan.

The Plan Book, Material, and Landscaping Review will require the submission of the following information:

- Floorplans
- Elevations of all sides of each home indicating
 - Roof pitch
 - Roof peak height above the foundation
 - Exterior materials- walls, roof, chimney
 - Window specifications
 - Chimney cap materials/design
 - Heated/air conditioned square footage of each floor and the total heated/air conditioned square footage
- Material samples, including stone samples (colors and patterns), mortar colors, stucco colors, trim colors, roof materials and colors, and window materials and colors must be approved in advance by the Rutherford West Reviewer. The Rutherford West Reviewer reserves the right to request samples of all materials. **PLEASE BE ADVISED THAT PLAN BOOK AND MATERIAL REVIEW IS NOT FINAL APPROVAL. SPECIFICALLY, MATERIAL TO BE INCORPORATED INTO A RESIDENCE OR IMPROVEMENT IS NOT APPROVED FOR USE ON A PARTICULAR RESIDENCE OR IMPROVEMENTS UNTIL THE FINAL PLAN REVIEW FOR THE RESIDENCE AND/OR IMPROVEMENT HAS BEEN SUBMITTED TO AND APPROVED BY THE RUTHERFORD WEST REVIEWER.**
- Sample Landscaping Plan
 - General boundaries of turf areas with type of turf noted
 - General locations of all proposed plants
 - Listing of materials Plan

FINAL PLAN REVIEW

A completed Final Plan Application must be submitted for review and approval to the Rutherford West Reviewer prior to the construction of any improvements on a Lot. The Final Plan Application must also include all information required to be submitted as set forth on the application.

ATTACHMENT 1



**ARCHITECTURAL COMMITTEE
FINAL PLAN REVIEW CHECKLIST**

ADDRESS_____ **CONTACT INFO:**_____

Application Packages should contain the following information:

Site/Construction Plan (1"=10' min)	Landscape Plan & Application or Deferral Request
Floor Plans (1/4"=1'0")	Sample Board with Exterior Colors
Roof Plan (1/4"=1'0")	Design Review and Compliance Fees
Exterior Elevations and Details (1/4"=1'0" min)	Variance Request Application and Fees if needed
Pool Plans & Application	

The following information must be included on all submissions in order to be accepted for review:

___ Appropriate Design Review Fee	___ Appropriate Compliance Deposit
___ Address & Subdivision	___ Homeowner Name
___ Site plan at 1"=10' minimum	___ Impervious cover calculations
___ Site dimensions	___ Roof pitches indicated
___ Property Lines	___ Building Height per restrictions
___ Setbacks	___ Overhangs called out
___ Easements and Encroachments	___ Chimney materials
___ Utility locations and proposed trench lines	___ Square footage and 1 st and 2 nd floor ratios
___ Location of Propane Tanks	___ Location of Septic System
___ HVAC unit locations and screening	___ Max exposed masonry to finished grade
___ Driveway and culvert locations	___ Silt fencing location
___ Sidewalks, patio, covered porches	___ Chain link fence location
___ Accessory site development/out building	___ Const entry of 3"-5" rock at least 10'x15'
___ Tree survey if applicable	___ Dumpster location
___ Swimming pool location	___ Materials storage location
___ Fencing design and color	___ Port-o-let location
___ Building location	
___ Written description of post development drainage patterns or grading plan	
___ Copy of NPDES Permit	

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PLEASE RETURN TO:



LANDSCAPE DEFERMENT APPLICATION

Date: _____ Lot/Block: _____ Subdivision: _____

Owner: _____ Landscape Architect: _____

Reason for deferment:

Date of plan submittal: _____

FOR BOARD USE ONLY

DATE _____

Approved as submitted _____ Returned for more information _____

Denied _____

Comments _____

Please return the requested information to:

**THE STATE OF TEXAS
COUNTY OF HAYS**

I hereby certify that this instrument was FILED on the
date and the time stamped hereon by me and was duly
RECORDED in the Records of Hays County, Texas.

19040713 NOTICE
11/05/2019 03:08:33 PM Total Fees: \$94.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas





Office of the Secretary of State

CERTIFICATE OF FILING OF

Rutherford West Homeowners Association, Inc.
File Number: 800652594

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 05/09/2006

Effective: 05/09/2006



A handwritten signature of Roger Williams in black ink.

Roger Williams
Secretary of State

MAR 09 2006

**CERTIFICATE OF FORMATION
OF**

RUTHERFORD WEST HOMEOWNERS ASSOCIATION, INC.

Corporations Section

The undersigned natural person, being of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as incorporator of a nonprofit corporation under the Texas Business Organizations Code, does hereby adopt the following Certificate of Formation for such corporation:

ARTICLE I

NAME

The name of the corporation is: Rutherford West Homeowners Association, Inc. (hereinafter called the "Association").

ARTICLE II

NONPROFIT CORPORATION

The Association is a nonprofit corporation.

ARTICLE III

DURATION

The Association shall exist perpetually.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. The Association is formed for the purpose of exercising all of the powers and privileges, and performing all of the duties and obligations, of the Association as set forth in that certain Rutherford West Master Covenant recorded in the Official Public Records of Hays County, Texas, as the same may be amended from time to time (the "Master Covenant"). Without limiting the generality of the foregoing, the Association is organized for the following general purposes:

- (a) to fix, levy, collect, and enforce payment by any lawful means all charges or assessments arising pursuant to the terms of the Master Covenant;
- (b) to pay all expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the Association's property; and
- (c) to have and to exercise any and all powers, rights, and privileges which a corporation organized under the Texas Business Organizations Code may now, or later, have or exercise.

The above statement of purposes shall be construed as a statement of both purposes and powers. The purposes and powers stated in each of the clauses above shall not be limited or restricted by reference to, or inference from, the terms and provisions of any other such clause, but shall be broadly construed as independent purposes and powers.

**ARTICLE V
REGISTERED OFFICE; REGISTERED AGENT**

The street address of the initial registered office of the Association is 2700 Via Fortuna, #400, Austin, Texas 78746. The name of its initial registered agent at such address is Jostin Lindenmuth.

**ARTICLE VI
MEMBERSHIP**

Membership in the Association shall be dependent upon ownership of a qualifying property interest as defined and set forth in the Master Covenant. Any person or entity acquiring such a qualifying property interest shall automatically become a member of the Association, and such membership shall be appurtenant to, and shall run with, the property interest. The foregoing shall not be deemed or construed to include persons or entities holding an interest merely as security for performance of an obligation. Membership may not be severed from or in any way transferred, pledged, mortgaged, or alienated except together with the title to the qualifying property interest, and then only to the transferee of title to said property interest. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation shall be void.

**ARTICLE VII
VOTING RIGHTS**

Voting rights of the members of the Association shall be determined as set forth in the Master Covenant. No owner, other than the Declarant under the Master Covenant, shall be entitled to vote at any meeting of the Association until such owner has presented to the Association evidence of ownership of a qualifying property interest in the Property. The vote of each owner may be cast by such owner or by proxy given to such owner's duly authorized representative.

**ARTICLE VIII
INCORPORATOR**

The name and street address of the incorporator is:

NAME

Robert D. Burton

ADDRESS

100 Congress Avenue, Suite 1300
Austin, Texas 78701

**ARTICLE IX
BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals, who need not be members of the Association. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors of nonprofit corporations pursuant to the Texas Business Organizations Code. The number of Directors of the Association may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Bob Antle	2700 Via Fortuna, #400 Austin, Texas 78746
Dennis Ciani	2700 Via Fortuna, #400 Austin, Texas 78746
Jostin Lindenmuth	2700 Via Fortuna, #400 Austin, Texas 78746

All of the powers and prerogatives of the Association shall be exercised by the initial Board of Directors named above until the first annual meeting of the Association.

**ARTICLE X
LIMITATION OF DIRECTOR LIABILITY**

A director of the Association shall not be personally liable to the Association for monetary damages for any act or omission in his capacity as a director, except to the extent otherwise expressly provided by a statute of the State of Texas. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a director of the Association existing at the time of the repeal or modification.

**ARTICLE XI
INDEMNIFICATION**

Each person who acts as a director or officer of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him in connection with any civil or criminal action, suit or proceeding in which he may be named as a party defendant or in which he may be a witness by reason of his being or having been such director or officer or by reason of any action alleged to have been taken or omitted by him in either such capacity. Such indemnification shall be provided in the manner and under the terms, conditions and limitations set forth in the Bylaws of the Association.

**ARTICLE XII
DISSOLUTION**

The Association may be dissolved with the written and signed assent of not less than ninety percent (90%) of the total number of votes of the Association, as determined under the Master Covenant. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

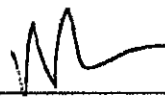
**ARTICLE XIII
ACTION WITHOUT MEETING**

Any action required by law to be taken at any annual or special meeting of the members of the Association, or any action that may be taken at any annual or special meeting of the members of the Association, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the number of members having the total number of votes of the Association necessary to enact the action taken, as determined under the Master Covenant or this Certificate of Formation.

**ARTICLE XIV
AMENDMENT**

Amendment of this Certificate of Formation shall be by proposal submitted to the membership of the Association. Any such proposed amendment shall be adopted only upon an affirmative vote by the holders of a minimum of ninety percent (90%) of the total number of votes of the Association, as determined under the Master Covenant. In the case of any conflict between the Master Covenant and this Certificate of Formation, the Master Covenant shall control; and in the case of any conflict between this Certificate of Formation and the Bylaws of the Association, this Certificate of Formation shall control.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, this 9th day of May, 2006.



Robert D. Burton, Incorporator



**BYLAWS OF RUTHERFORD WEST HOMEOWNERS
ASSOCIATION, INC.**

(a Texas non-profit corporation)

**BYLAWS
OF
RUTHERFORD WEST HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I

INTRODUCTION

The name of the corporation is Rutherford West Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located in Hays County, Texas, but meetings of Members and Directors may be held at such places within the State of Texas, County of Hays, as may be designated by the Board of Directors.

The Association is organized to be a nonprofit corporation.

Notwithstanding anything to the contrary in these Bylaws, a number of provisions are modified by the Declarant's reservations in that certain Rutherford West Master Covenant, recorded in the Official Public Records of Hays County, Texas, including the number, qualification, appointment, removal, and replacement of Directors.

ARTICLE II

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in these Bylaws shall have the meanings hereinafter specified:

Section 2.1. Assessment. "Assessment" or "Assessments" shall mean assessment(s) levied by the Association under the terms and provisions of the Master Covenant.

Section 2.2. Association. "Association" shall mean and refer to Rutherford West Homeowners Association, Inc.

Section 2.3. Association Property. "Association Property" shall mean all real or personal property now or hereafter owned by the Association, including without limitation, all easement estates, licenses, leasehold estates and other interests of any kind in and to real or personal property which are now are hereafter owned or held by the Association.

Section 2.4. Association Restrictions. "Association Restrictions" shall mean the Master Covenant as the same may be amended from time to time, together with the Certificate, Bylaws, and Association Rules from time to time in effect.

Section 2.5. Association Rules. "Association Rules" shall mean the rules and regulations adopted by the Board pursuant to the Master Covenant, as the same may be amended from time to time.

Section 2.6. Board. "Board" shall mean the Board of Directors of the Association.

Section 2.7. Bylaws. "Bylaws" shall mean the Bylaws of the Association which may be adopted by the Board and as from time to time amended.

Section 2.8. Certificate. "Certificate" shall mean the Certificate of Formation of Rutherford West Homeowners Association, Inc., filed in the office of the Secretary of State of the State of Texas, as the same may from time to time be amended.

Section 2.9. Declarant. "Declarant" shall mean **WILSON FAMILY COMMUNITIES, INC.**, a Delaware corporation, and its duly authorized representatives or their 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.

Section 2.10. Development. "Development" shall mean and refer to the property subject to the terms and provisions of the Master Covenant.

Section 2.11. Manager. "Manager" shall mean the person, firm, or corporation, if any, employed by the Association pursuant to the Master Covenant and delegated the duties, powers, or functions of the Association.

Section 2.12. Master Covenant. "Master Covenant" shall mean the "Rutherford West Master Covenant", recorded in the Official Public Records of Hays County, Texas, as the same may be amended from time to time.

Section 2.13. Member. "Member" or "Members" shall mean any person(s), entity or entities holding membership privileges in the Association as provided in the Master Covenant.

Section 2.14. Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage(s) or deed(s) of trust covering any portion of the Property given to secure the payment of a debt.

Section 2.15. Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any lien or liens upon any portion of the Property.

Section 2.16. Neighborhood Delegate. "Neighborhood Delegate" or "Neighborhood Delegates" shall mean the representative elected by the Owners of Lots and Condominium Units in each Neighborhood to cast the votes of all Lots and Condominium Units in the Neighborhood on matters requiring a vote of the membership, except where this Master Covenant specifically requires a vote of the Owners.

Section 2.17. Owner. "Owner" or "Owners" shall mean the person(s), entity or entities, including Declarant, holding a fee simple interest in any Lot, but shall not include the Mortgagee of a Mortgage.

ARTICLE III

MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

Section 3.01. Membership. Each Owner of a Unit is a mandatory Member of the Association, as more fully set forth in the Master Covenant.

Section 3.02. Place of Meetings. Meetings of the Association shall be held where designated by the Board, either within the Development or as convenient as possible and practical.

Section 3.03. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Meetings shall be of the Neighborhood Delegates. The Board shall set subsequent regular annual meetings so as to occur during the third quarter of the Association's fiscal year on a date and at a time the Board sets.

Section 3.04. Special Meetings. Special meetings of Members or Neighborhood Delegates may be called in accordance with Section 22.155 of the Texas Business Organizations Code or any successor statute.

Section 3.05. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members or Neighborhood Delegates shall be delivered, either personally or by mail, to each Member or Neighborhood Delegates entitled to vote at such meeting or by publication in a newspaper of general circulation, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President, the Secretary, or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member or Neighborhood Delegates at his address as it appears on the records of the Association, with postage prepaid.

Section 3.06. Waiver of Notice. Waiver of notice of a meeting of the Members or Neighborhood Delegates shall be deemed the equivalent of proper notice. Any Member or Neighborhood Delegate may, in writing, waive notice of any meeting of the Members or Neighborhood Delegates, either before or after such meeting. Attendance at a meeting by a Member or Neighborhood Delegate shall be deemed waiver by such Member or Neighborhood Delegate of notice of the time, date, and place thereof, unless such Member or Neighborhood Delegate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting by a Member or Neighborhood Delegate shall be deemed waiver of notice of all business transacted at such meeting unless an objection by a Member or Neighborhood Delegate on the basis of lack of proper notice is raised before the business is put to a vote.

Section 3.07. Adjournment of Meetings. If any Association meeting cannot be held because a quorum is not present, a majority of the Members or Neighborhood Delegates, as the case may be, who are present at such meeting may adjourn the meeting to a time not less than 5 or more than 60 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members or Neighborhood Delegates in the manner prescribed for regular meetings. The Members or Neighborhood Delegates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members or Neighborhood Delegates to leave less than a quorum, provided that Members or Neighborhood Delegates representing at least 20% of the total votes in the Association remain in attendance, and provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

Section 3.08. Voting. The voting rights of the Members shall be as set forth in the Master Covenant, and such voting rights provisions are specifically incorporated by reference. The voting rights of the Neighborhood Delegates shall be as set forth in the Master Covenant, and such voting rights are specifically incorporated herein by reference.

Section 3.09. Proxies. Neighborhood Delegates may not vote by proxy but only in person or through their designated alternates. On any matter as to which a Member is entitled personally to cast the vote for his Lot or Condominium Unit, such vote may be cast in person or by proxy, subject to the limitations of Texas law relating to use of general proxies and subject to any specific provision to the contrary in the Master Covenant or these By-Laws. No proxy shall be valid unless signed by the Member for which it is given or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Proxies shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall a proxy be valid more than 90 days after the

date of the original meeting for which it was given. Every proxy shall be revocable and shall automatically cease upon conveyance of the Unit for which it was given.

Section 3.10. Majority. As used in these By-Laws, the term "majority" shall mean more than 50% of the total eligible votes in the Association.

Section 3.11. Quorum. Except as provided in these By-Laws or in the Master Covenant, the presence of the Members or Neighborhood Delegates representing 25% of the total votes in the Association shall constitute a quorum at all Association meetings.

Section 3.12. Conduct of Meetings. The President or any other person appointed by the Board shall preside over all Association meetings, and the Secretary, or the Secretary's designee, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 3.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members or Neighborhood Delegates may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by Members or Neighborhood Delegates holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members or Neighborhood Delegates entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members or Neighborhood Delegates at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members or Neighborhood Delegates entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.1. Authority; Number of Directors.

(a) The affairs of the Association shall be governed by a Board of Directors. The number of Directors shall be fixed by the Board of Directors from time to time. The initial Directors shall be three (3) in number and shall be those Directors named in the Certificate. The initial Directors shall serve until their successors are elected and qualified. Except as is provided in the Master Covenant and in Sections 4.1(b) and 4.1(c) below, Declarant shall have the absolute right to appoint and remove members of the Board of Directors.

(b) At such time as Declarant no longer has the right to appoint and remove all members of the Board of Directors as provided in Section 3.05(c) of the Master Covenant, the Board of Directors will be increased to five (5) members. The President of the Association will thereupon call a meeting of the Members of the Association where the Neighborhood Delegates will elect one (1) Director for a three (3) year term, two (2) Directors for a two (2) year term, and two (2) Directors for a one (1) year term. Upon expiration of the term of a Director elected by the Neighborhood Delegates pursuant to this Section 4.1(b), his or her successor will be elected for a term of two (2) years. A Director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

(c) Each Director, other than Directors appointed by Declarant, shall be a Member and resident, or in the case of corporate or partnership ownership of a Lot or Condominium Unit, a duly authorized agent or representative of the corporate or partnership Owner. The corporate, or partnership Owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors.

Section 4.2. Compensation. The Directors shall serve without compensation for such service.

Section 4.3. Nominations to Board of Directors. Members may be nominated for election to the Board of Directors in either of the following ways:

(a) A Member who is not a Director and who desires to run for election to that position shall be deemed to have been nominated for election upon his filing with the Board of Directors a written petition of nomination; or

(b) A Director who is eligible to be re-elected shall be deemed to have been nominated for re-election to the position he holds by signifying his intention to seek reelection in a writing addressed to the Board of Directors.

Section 4.4. Removal of Directors for Cause. If a Director breaches such Director's duties hereunder or violates the terms of the Master Covenant, the Certificate, the Rules and Regulations or these Bylaws, such Director may be removed by Declarant unless Declarant no longer has the right to appoint and remove Directors in accordance with Section 4.1 of these Bylaws, and then by a majority vote of the remaining Directors after Declarant's right to appoint and remove Directors has expired. No Director shall have any voting rights nor may such Director participate in any meeting of the Board of Directors at any time that such Director is delinquent in the payment of any Assessments or other charges owed to the Association. Any Director that is ninety (90) days delinquent in the payment of Assessments or other charges more than three (3) consecutive times shall be removed as a Director.

Section 4.5. Vacancies on Board of Directors. At such time as Declarant's right to appoint and remove Directors has expired or been terminated, if the office of any elected Director shall become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining Directors, at a special meeting duly called for this purpose, shall choose a successor who shall fill the unexpired term of the directorship being vacated. If there is a deadlock in the voting for a successor by the remaining Directors, the one Director with the longest continuous term on the Board shall select the successor. At the expiration of the term of his position on the Board of Directors, the successor Director shall be re-elected or his successor shall be elected in accordance with these Bylaws.

Section 4.6. Removal of Directors by Neighborhood Delegates. Subject to the right of Declarant to nominate and appoint Directors as set forth in Section 4.1 of these Bylaws, an elected Director may be removed, with or without cause, by the vote of Neighborhood Delegates holding a majority of the votes entitled to be cast in the Association.

Section 4.7. Consent in Writing. Any action by the Board of Directors, including any action involving a vote on a fine, damage assessment, appeal from a denial or architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue, may be taken without a meeting if all of the Directors shall unanimously consent in writing to the action. Such written consent shall be filed in the Minute Book. Any action taken by such written consent shall have the same force and effect as a unanimous vote of the Directors.

ARTICLE V

MEETINGS OF DIRECTORS

Section 5.1. Regular Meetings. Regular meetings of the Board shall be held annually or such other frequency as determined by the Board, without notice, at such place and hour as may be fixed from time to time by resolution of the Board.

Section 5.2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director.

Section 5.3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.

Section 5.4. Telephone Meetings. Members of the Board or any committee of the Association may participate in and hold meetings of the Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.6. Action without a Meeting. Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting, if all Directors individually or collectively consent in writing to such action. The written consent must be filed with the minutes of Board meetings. Action by written consent has the same force and effect as a unanimous vote.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD

Section 6.1. Powers. The Board shall have power and duty to undertake any of the following actions, in addition to those actions to which the Association is authorized to take in accordance with the Master Covenant:

(a) adopt and publish the Association Rules, including regulations governing the use of the Association Property and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights of a Member and right of a Member to use of the Association Property during any period in which such Member shall be in default in the payment of any Assessment levied by the Association, or after notice and hearing, for any period during which an infraction of the Association Rules by such Member exists;

(c) exercise for the Association all powers, duties and authority vested in or related to the Association and not reserved to the membership by other provisions of the Association Restrictions;

(d) to enter into any contract or agreement with a municipal agency or utility company to provide electric utility service to all or any portion of the Property;

(e) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;

(f) employ such employees as they deem necessary, and to prescribe their duties;

(g) as more fully provided in the Master Covenant, to:

(1) fix the amount of the Assessments against each Lot in advance of each annual assessment period and any other assessments provided by the Master Covenant; and

(2) foreclose the lien against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;

(h) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid and to levy a reasonable charge for the issuance of these certificates (it being understood that if a certificate states that an Assessment has been paid, such certificate shall be conclusive evidence of such payment);

(i) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(j) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(k) exercise such other and further powers or duties as provided in the Master Covenant or by law.

Section 6.2. Duties. It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Neighborhood Delegates at the annual meeting of the Association, or at any special meeting when such statement is requested in writing by Members who are entitled to cast fifty-one percent (51%) of all outstanding votes; and

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.

ARTICLE VII

OFFICERS AND THEIR DUTIES

Section 7.1. Enumeration of Offices. The officers of the Association shall be a President and a Vice-President, who shall at all times be members of the Board, a Secretary and a Treasurer, and such other officers as the Board may from time to time create by resolution.

Section 7.2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 7.3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he resigns sooner, or shall be removed or otherwise disqualified to serve.

Section 7.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 7.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.6. Vacancies. A vacancy in any office may be filled through appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 7.4.

Section 7.8. Duties. The duties of the officers are as follows:

(a) **President.** The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) **Vice President.** The Vice President, if any, shall generally assist the President and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him by the President or the Board.

(c) **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.

(d) **Assistant Secretaries.** Each Assistant Secretary shall generally assist the Secretary and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him or her by the Secretary, the President, the Board or any committee established by the Board.

(e) **Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account in appropriate form such that they could be audited by a public accountant whenever ordered by the Board or the membership; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular meeting, and deliver a copy of each to the Members.

ARTICLE VIII

OTHER COMMITTEES OF THE BOARD OF DIRECTORS

The Board may, by resolution adopted by affirmative vote of a majority of the number of Directors fixed by these Bylaws, designate two or more Directors (with such alternates, if any, as may be deemed desirable) to constitute another committee or committees for any purpose; provided, that any such other committee or committees shall have and may exercise only the power of recommending action to the Board

of Directors and of carrying out and implementing any instructions or any policies, plans, programs and rules theretofore approved, authorized and adopted by the Board.

ARTICLE IX

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Association Restrictions shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE X

ASSESSMENTS

As more fully provided in the Master Covenant, each Member is obligated to pay to the Association Assessments which are secured by a continuing lien upon the property against which the Assessments are made. Assessments shall be due and payable in accordance with the Master Covenant.

ARTICLE XI

CORPORATE SEAL

The Association may, but shall have no obligation to, have a seal in a form adopted by the Board.

ARTICLE XII

DECLARANT PROVISIONS

Section 12.1. Conflict. The provisions of this Article control over any provision to the contrary elsewhere in these Bylaws.

Section 12.2. Board of Directors. As provided in Section 3.05(c) of the Master Covenant, Declarant is entitled to appoint and remove all members of the Board of Directors until Declarant no longer owns any portion of the Property (as defined in the Master Covenant). Until Declarant's right to appoint all members of the Board of Directors terminates, the Directors appointed by Declarant need not be Owners or residents and may not be removed by the Owners. In addition, Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

ARTICLE XIII

AMENDMENTS

Section 13.1. These Bylaws may be amended by: (i) a majority vote of the Board of Directors or (ii) at a regular or special meeting of the Members, by a vote of all the Members of the Association provided that such amendment has been approved by Members of the Association entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association.

Section 13.2. In the case of any conflict between the Certificate and these Bylaws, the Certificate shall control; and in the case of any conflict between the Master Covenant and these Bylaws, the Master Covenant shall control.

ARTICLE XIV

INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify every Director and Officer of the Association against, and reimburse and advance to every Director and Officer for, all liabilities, costs and expenses' incurred in connection with such directorship or office and any actions taken or omitted in such capacity to the greatest extent permitted under the of the Texas Business Organizations Code and all other applicable laws at the time of such indemnification, reimbursement or advance payment; provided, however, no Director or Officer shall be indemnified for: (a) a breach of duty of loyalty to the Association or its Members; (b) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (c) a transaction from which such Director or Officer received an improper benefit, whether or not the benefit resulted from an action taken within the scope of directorship or office; or (d) an act or omission for which the liability of such Director or Officer is expressly provided for by statute.

ARTICLE XV

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

RECEIVED
MAR 21 2013

RESOLUTIONS OF THE BOARD OF DIRECTORS
ADOPTING RULES FOR RUTHERFORD WEST HOMEOWNERS ASSOCIATION, INC.

Bk Vol Ps
13011503 OPR 4603 847

BY:

I, William E. Weber, President of Rutherford West Homeowners Association, Inc. a not for profit corporation duly organized and existing under the laws of the State of Texas, (the "Association") do hereby certify that the records and minutes of the proceedings of the Board of Directors of said Corporation, and that on the 11th day of March, 2013 there was duly and legally held meeting of said Board of Directors at which a quorum of the Directors was present and acting throughout, and at said meeting the following resolutions were unanimously adopted:

All restrictions of the declaration and bylaws are by reference incorporated into the rules. In addition to the declaration and bylaws, the Board adopts the following rules:

- 1) "Nonassessment items first. All monies received from an owner will be applied first to nonassessment obligations of the Owner, such as fines, late charges, returned check charges, attorney's fees, user fees, damages, etc., regardless of notations on checks and transmittal letters."
- 2) Standard Violation Process:
1st Violation - Warning
2nd Violation with Fine - Notification of Fining
3rd Violation with Fine - \$25.00
4th Violation with Fine - \$50.00
5th Violation with Fine - \$100.00
Continuous Violations thereafter - \$100.00
- 3) The Board reserves the right to alter the standard violation process (including the right to reduce or increase the fines) if, in its sole discretion, alternate action is warranted.

RECEIVED
APR 18 2013

BY:

Approved this 11th day of March, 2013.

Rutherford West Homeowners Association, Inc.

By: _____

Title: President

FURTHER RESOLVED, that these rules shall be effective upon execution.

IN WITNESS WHEREOF, I have hereunto set my hand as President of said Corporation, this 11th day of March 2013.

ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on CED/President
by William E. Weber, in the capacity stated above.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11th day of
March 2013.



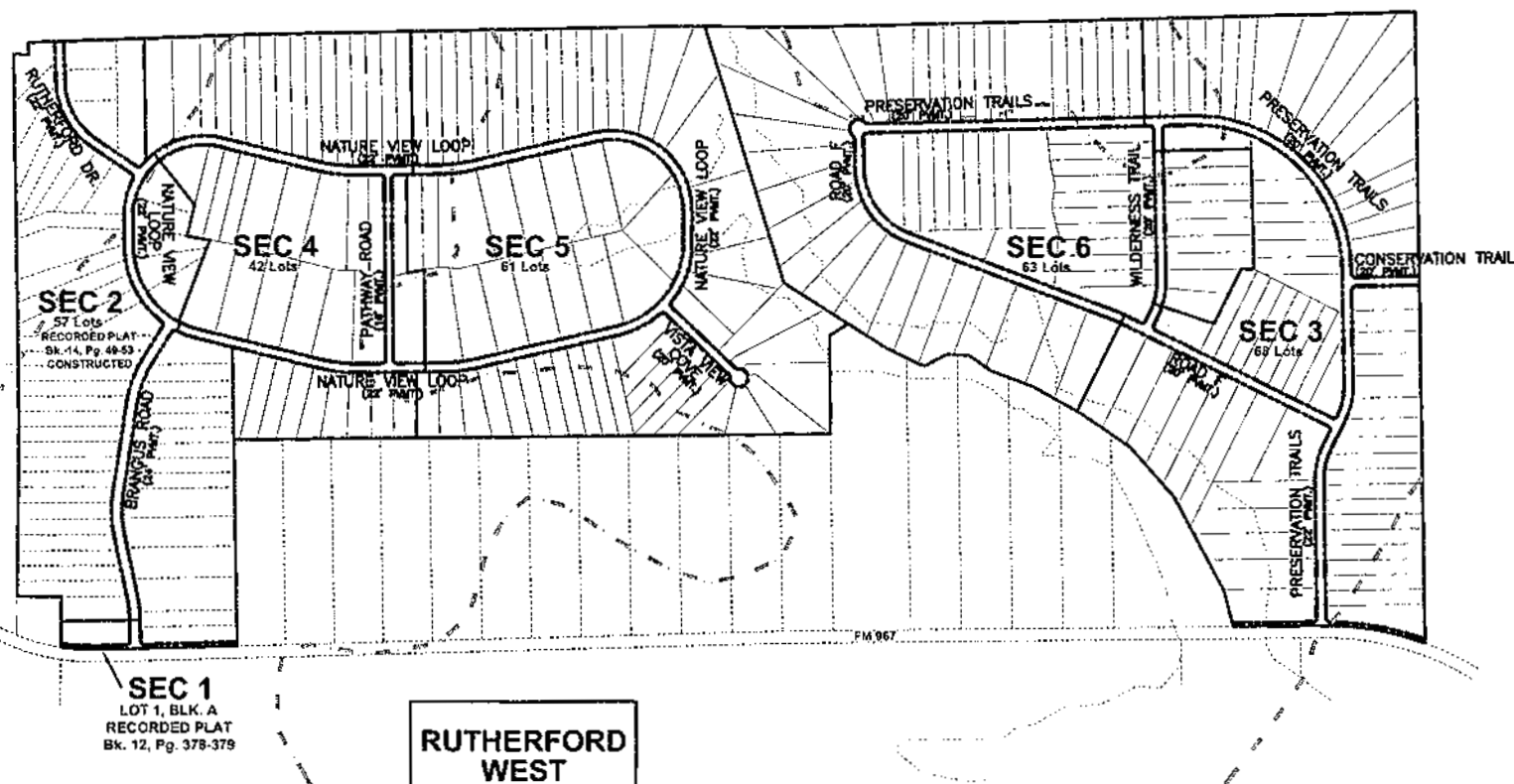
Alex Burnett-Hayes
Notary Public



200 0 200 400 600
GRAPHIC SCALE IN FEET: 1"=400'

LEGEND

- PROPERTY BOUNDARY
- LOT/BLK
- RIGHT OF WAY LINE
- WATER LINE
- EXCHANGE ROW
- FEMA-FLOODPLAIN



RUTHERFORD WEST
650.45 ACRES
291 Lots
Density = 2.07 ac./Lot

DEVELOPMENT ACTIVITY RUTHERFORD WEST			
1"=400' Scale of Plot Area from Survey & Plat Map, 1/2"=100' Scale of Plot Area			
JOB NO. 011153	SCALE 1"=400'	SHEET 1 OF 1	
DESIGNED BY: HMM			
DRAWN BY: GP			
FILE: 101153-101153-011			DATE: 4/10/11

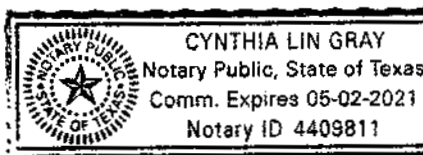
RUTHERFORD WEST, SECTION 4STATE OF TEXAS)
COUNTY OF HAYS)

KNOW ALL MEN BY THESE PRESENTS:

KNOW ALL MEN BY THESE PRESENTS, THAT RW TRINE, LLC., A TEXAS LIMITED LIABILITY COMPANY, WITH ITS HOME ADDRESS AT 1508 S. LAMAR BLVD AUSTIN, TEXAS 78704, OWNER OF APPROXIMATELY 68.2594 ACRES OF LAND OUT OF THE GREGORIO ESPARZA SURVEY FILE No. D-762, APPROXIMATELY 25.0403 ACRES OUT OF THE C. WILHELM SURVEY FILE No. P-492, AND 0.0330 ACRE OUT OF THE JUAN ARMENDARIS SURVEY FILE No. S-1173, HAYS COUNTY, TEXAS, AS CONVEYED TO RW TRINE LLC. BY DEED RECORDED IN VOLUME 5364, PAGE 44 (Doc. No. 2015-15034873), OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, DO HEREBY SUBDIVIDE 93.3327 ACRES OF LAND OUT OF THE GREGORIO ESPARZA SURVEY FILE No. D-762, THE C. WILHELM SURVEY FILE No. P-492 AND THE JUAN ARMENDARIS SURVEY FILE No. S-1173, TO BE KNOWN AS "RUTHERFORD WEST, SECTION 4" SUBDIVISION, IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON.

WITNESS MY HAND THIS THE TH DAY OF AUGUST, 2017.RW TRINE, LLC
BY: [Signature]
BARRETT WOOD, MANAGERRW TRINE, LLC
ATTN: BARRETT WOOD
1508 S. LAMAR BLVD.
AUSTIN, TEXAS 78704STATE OF TEXAS)
COUNTY OF HAYS)

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED BARRETT WOOD, KNOWN BY ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT AS MANAGER OF RW TRINE LLC, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN SUCH CAPACITY AS THE ACT AND DEED OF SAID CORPORATION FOR THE PURPOSES AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE TH DAY OF AUGUST, 2017. A.D.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

THIS IS TO CERTIFY THAT I AM CERTIFIED TO PRACTICE THE PROFESSION OF ENGINEERING IN THE STATE OF TEXAS: THAT I PREPARED THE PLAN SUBMITTED HERewith, AND THAT ALL INFORMATION SHOWN THEREON IS ACCURATE AND CORRECT TO THE BEST OF MY KNOWLEDGE AS RELATED TO THE ENGINEERING PORTIONS THEREOF AND THAT SAID PLAN COMPLIES WITH ORDINANCE No. 1230.1, 1230.2 AND 1230.3 SETTING FORTH REQUIREMENTS AND OBLIGATIONS FOR SUBDIVISIONS IN THE CITY OF DRIPPING SPRINGS AND EXTRATERRITORIAL JURISDICTION, AND THE SUBDIVISION AND DEVELOPMENT REGULATIONS OF HAYS COUNTY, TEXAS.

WITNESS MY HAND THIS THE TH DAY OF AUGUST, 2017.

Tricia S. Tichenor - Altamirano
TRICIA S. TICHENOR ALTAMIRANO
REGISTERED PROFESSIONAL ENGINEER No. 62688
TRICIA ALTAMIRANO CONSULTING ENGINEERING INC.
1101 CAPITAL OF TEXAS HWY. SOUTH
BUILDING D, SUITE 210
AUSTIN, TEXAS 78746

**SUBDIVISION PLAT NOTES:**

SEWAGE DISPOSAL/INDIVIDUAL WATER SUPPLY CERTIFICATION, TO-WIT:

1. NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL STATE-APPROVED COMMUNITY WATER SYSTEM. DUE TO DECLINING WATER SUPPLIES AND DIMINISHING WATER QUALITY, PROSPECTIVE PROPERTY OWNERS ARE CAUTIONED BY HAYS COUNTY TO QUESTION THE SELLER CONCERNING GROUND WATER AVAILABILITY. RAIN WATER COLLECTION IS ENCOURAGED AND IN SOME AREAS, MAY OFFER THE BEST RENEWABLE WATER RESOURCE.

2. NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO PUBLIC SEWER SYSTEM OR TO AN ON-SITE WASTEWATER SYSTEM WHICH HAS BEEN APPROVED AND PERMITTED BY HAYS COUNTY DEVELOPMENT SERVICES.

3. NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL HAYS COUNTY DEVELOPMENT PERMIT REQUIREMENTS HAVE BEEN MET.

[Signature]
JAMES "CLINT" GARZA,
DIRECTOR,
HAYS COUNTY DEVELOPMENT
AND COMMUNITY SERVICES

8-15-17

Tom Pope

8-15-2017

TOM POPE, C.F.M., R.S.
FLOODPLAIN ADMINISTRATOR
HAYS COUNTY DEVELOPMENT SERVICES**WATER QUALITY NOTES****Water Quality Easements on Single Family Residential Lots**

All water quality easements on single family residential lots are to remain undisturbed except for the following:

- Installation of driveways in a near perpendicular crossing of the easement, sidewalks, fences that do not obstruct flow, utilities, water meters, electric boxes, and any other utility designed to serve the residential lot.
- Terracing to reduce slope
- If not left in a natural and undisturbed state, landscaping shall meet the Mandatory Water Conservation and Landscaping requirements of the Restrictive Covenants.

Greenbelt Area within Single Family Residential Lots

All greenbelt areas are to remain undisturbed, except those in roadway right-of-way areas, utility construction, and construction of water quality and detention controls. The following activities are prohibited on all greenbelts:

- Parking of any vehicles
- Access to single family lots through water quality easement areas by any vehicle
- Storage of boats, trailers, or non-passenger vehicles
- Trash container storage
- Materials or construction accessories storage
- Clearing in any manner without written approval from the Architectural Control Committee
- Altering drainage
- Gathering native rock or harvesting native and indigenous plants

U.S.F.W.S. Setback Restrictions

All indicated stream buffers shall generally remain free of construction, development, or other alterations. The following alterations are allowed within the buffer:

- Stormwater treatment systems are allowed if the natural drainage to the site is less than 128 acres.
- Roadway, driveway, and utility crossings at near perpendicular.
- Fences that do not obstruct flow, and low-impact parks and open space limited to trails, picnic facilities, and similar construction that does not significantly alter the existing vegetation.

GENERAL NOTES:

- THIS SUBDIVISION IS LOCATED WITHIN THE CITY OF DRIPPING SPRINGS EXTRATERRITORIAL JURISDICTION.
- THIS SUBDIVISION IS WITHIN THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT.
- A PORTION OF THIS SUBDIVISION IS LOCATED WITHIN THE EDWARDS ACQUIFER RECHARGE ZONE. A PORTION OF THIS SUBDIVISION IS ALSO WITHIN THE EDWARDS ACQUIFER CONTRIBUTING ZONE.
- WASTEWATER WILL BE PROVIDED BY INDIVIDUAL ADVANCED ON-SITE SEWAGE FACILITIES.
- ORDINANCE No. 52B, SECTION 8B, ALLOWS 25% IMPERVIOUS COVER WITHIN THE WATER QUALITY BUFFER ZONE.
- CONSERVATION/GREENBELT/DRAINAGE EASEMENTS SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION AS RECORDED IN VOLUME 2918, PAGE 524 AND VOLUME 3159, PAGE 645 IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY.
- THIS FINAL PLAT SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 6.11, 12 AND 14 OF ORDINANCE No. 1230.1, 1230.2 AND 1230.3, THE CITY OF DRIPPING SPRINGS, TEXAS SUBDIVISION ORDINANCE.
- IN ORDER TO PROMOTE SAFE USE OF ROADWAYS AND PRESERVE THE CONDITIONS OF PUBLIC ROADWAYS, NO DRIVEWAY CONSTRUCTED ON ANY LOT WITHIN THIS SUBDIVISION SHALL BE PERMITTED ACCESS ONTO A PUBLICLY DEDICATED ROADWAY UNLESS (a) DRIVEWAY PERMIT HAS BEEN ISSUED BY THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY AND (b) THE DRIVEWAY SATISFIES CHAPTER 721 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS.
- TOTAL ACREAGE OF DEVELOPMENT: 93.3327 TOTAL ACREAGE OF LOTS: 87.1771
TOTAL NUMBER OF LOTS: 42 AVERAGE SIZE OF LOTS: 2.0756
NUMBER OF LOTS: Greater than 10 acres 0 Larger than 5, less than 10 0
Between 2 & 5 acres 18 Between 1 & 2 acres 24
Less than an acre 0
DEDICATED R.O.W. = 4.7087 ACRES, NATURE VIEW LOOP, A MINOR COLLECTOR (3,420 LINEAR FEET)
DEDICATED R.O.W. = 1.4469 ACRES, PASSION FLOWER LANE, A COUNTRY LANE (1,286 LINEAR FEET)
- ALL STREETS IN THIS SUBDIVISION SHALL BE PUBLIC, MAINTAINED BY HAYS COUNTY. IT IS UNDERSTOOD THAT HAYS COUNTY SHALL NOT BE RESPONSIBLE FOR THE MAINTENANCE OF THE STREETS UNTIL SAME HAVE BEEN INSPECTED AND APPROVED BY THE COUNTY TRANSPORTATION DEPARTMENT AND ACCEPTED BY THE COMMISSIONERS COURT.
- WHEN REQUIRED, LOTS SHALL HAVE A MINIMUM DRIVEWAY CULVERT SIZE OF 18 INCHES.
- WHILE THE WATER AVAILABILITY RULES ARE INTENDED TO PRESERVE AND PROTECT THE WATER RESOURCES OF HAYS COUNTY, THE COMMISSIONERS COURT OF HAYS COUNTY DOES NOT MAKE ANY WARRANTY - EXPRESSED, IMPLIED, OR OTHERWISE - THAT SUBDIVISIONS THAT COMPLY WITH THESE RULES WILL BE ABLE TO MEET THE WATER NEEDS OF THOSE PURCHASING LOTS WITHIN THE SUBDIVISION.
- ALL LOTS WITHIN THIS SUBDIVISION ARE RESTRICTED FROM DRILLING INDIVIDUAL WATER WELLS.
- NO OBJECTS, INCLUDING BUILDINGS, FENCES OR LANDSCAPING SHALL BE ALLOWED IN THE GREENBELT AND DRAINAGE AREA. OWNERSHIP, MAINTENANCE AND RESTRICTIONS FOR THIS AREA ARE LOCATED IN A DOCUMENT RECORDED IN VOLUME 2918, PAGE 588 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.
- RUTHERFORD WEST PRELIMINARY WAS APPROVED BY DRIPPING SPRINGS CITY COUNCIL ON OCTOBER 14, 2003.
- THERE ARE NO SLOPES GREATER THAN 35%.

UTILITY NOTES:

- WATER SERVICE TO BE PROVIDED BY WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY OR STATE APPROVED WATER SYSTEM.
- ELECTRIC UTILITY SERVICE WILL BE PROVIDED BY PEDERNALES ELECTRIC COOPERATIVE, INC.
- TELEPHONE UTILITY SERVICE WILL BE PROVIDED BY VERIZON COMMUNICATIONS.
- ALL LOTS WITHIN THIS SUBDIVISION ARE LIMITED TO THE USE OF ADVANCED ON-SITE SEWAGE FACILITIES.

THIS FINAL PLAT WAS APPROVED ON THE 29 DAY OF August, 2017, AT THE CITY OF DRIPPING SPRINGS CITY COUNCIL.MAYOR: [Signature]
TODD PURCELLATTEST: [Signature]
KERRI CRAIG, CITY SECRETARY
Andrea Cunningham

IN APPROVING THIS PLAT BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, IT IS UNDERSTOOD THAT THE BUILDING OF ALL STREETS, ROADS, AND OTHER PUBLIC THOROUGHFARES DELINEATED AND SHOWN ON THIS PLAT, AND ALL BRIDGES OR CULVERTS NECESSARY TO BE CONSTRUCTED OR PLACED IN SUCH STREETS, ROADS, OR OTHER PUBLIC THOROUGHFARES, OR IN CONNECTION THEREWITH, SHALL BE THE RESPONSIBILITY OF THE OWNER AND/OR DEVELOPER OF THE TRACT OF LAND COVERED BY THIS PLAT, IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PRESCRIBED BY THE COMMISSIONERS COURT OF HAYS COUNTY, AND THE COUNTY ASSUMES NO OBLIGATIONS TO BUILD STREET, ROADS OR OTHER THOROUGHFARES SHOWN ON THIS PLAT, OR OF CONSTRUCTING ANY BRIDGES OR CULVERTS IN CONNECTION THEREWITH.

STATE OF TEXAS)
COUNTY OF HAYS)

I, LIZ GONZALEZ, COUNTY CLERK OF HAYS COUNTY, TEXAS DO HEREBY CERTIFY THAT ON THE 15 DAY OF August, 2017, A.D., THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS PASSED AN ORDER AUTHORIZING THE FILING FOR RECORD OF THIS PLAT, AND SAID ORDER HAS BEEN DULY ENTERED INTO THE MINUTES OF SAID COURT IN BOOK 37140 PAGE 288.

WITNESS MY HAND THIS THE 29 DAY OF August, 2017.

[Signature]
BERT COBB, M.D.
COUNTY JUDGE
HAYS COUNTY, TEXAS



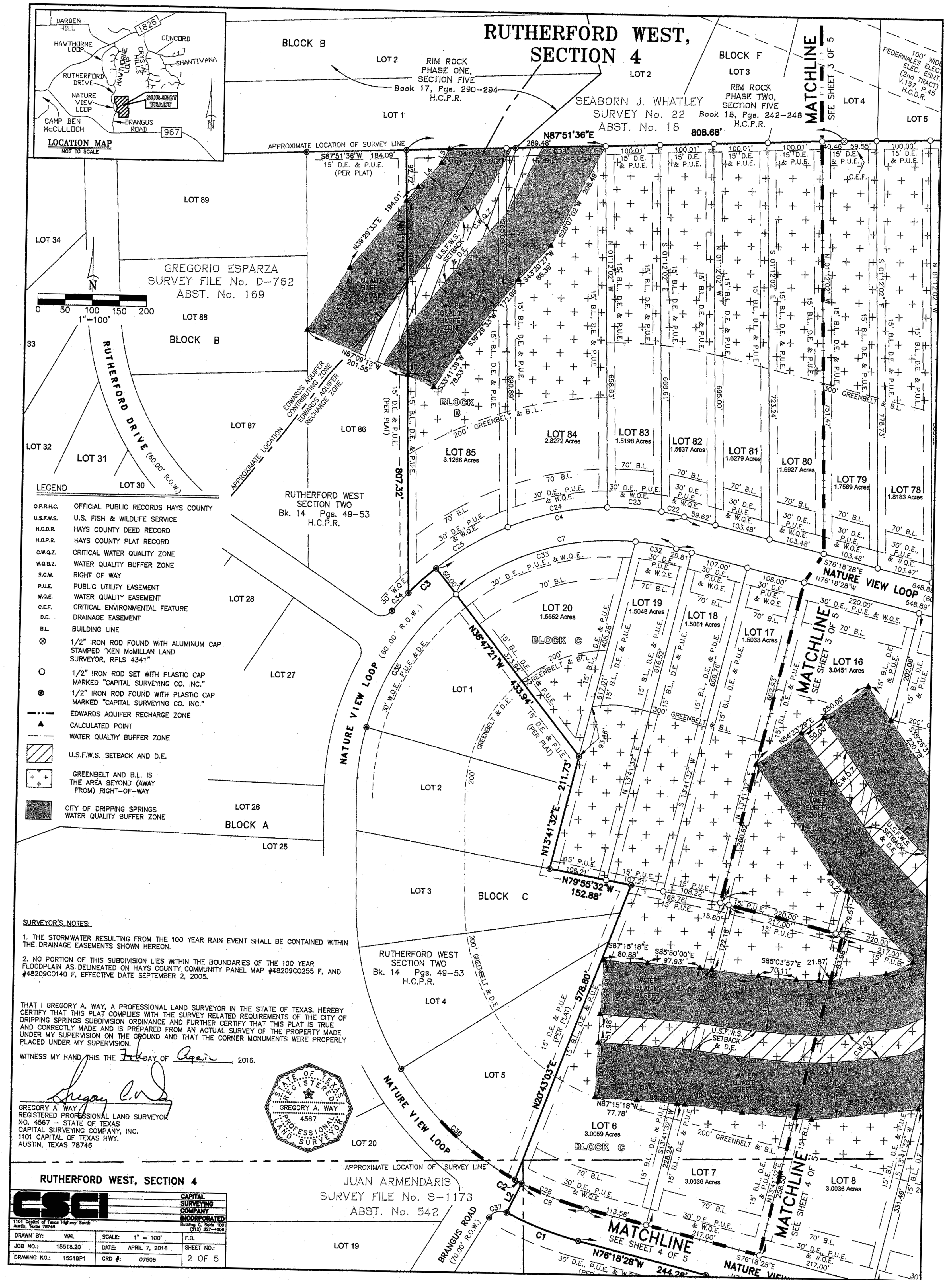
[Signature]
LIZ GONZALEZ, CLERK OF
COMMISSIONERS COURT
HAYS COUNTY, TEXAS

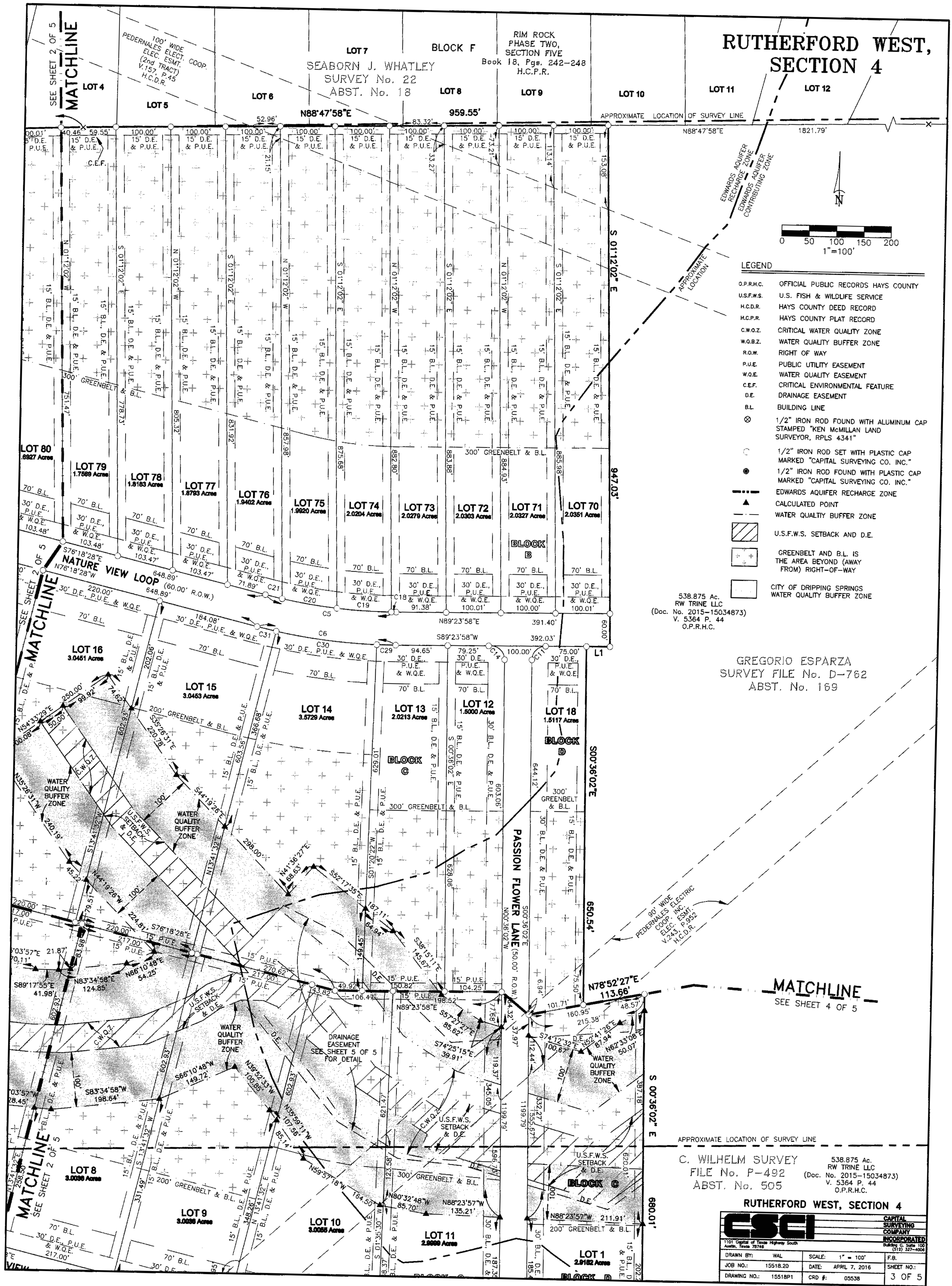
STATE OF TEXAS)
COUNTY OF HAYS)

I, LIZ GONZALEZ, CLERK OF HAYS COUNTY, TEXAS, HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE 29 DAY OF August, 2017, AT 1:30 O'CLOCK P.M., AND DULY RECORDED ON THE 29 DAY OF August, 2017, AT 1:30 O'CLOCK P.M. IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS, IN BOOK 37140 PAGE 288.

**RUTHERFORD WEST, SECTION 4**

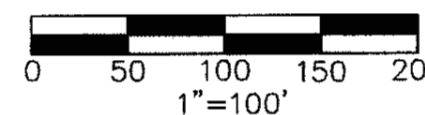
ESCI			CAPITAL SURVEYING COMPANY INCORPORATED
1101 Capital of Texas Highway South Austin, Texas 78748			Building G, Suite 100 (512) 327-4008
DRAWN BY:	WAL	SCALE:	N/A F.B.
JOB NO.:	15518.20	DATE:	APRIL 7, 2016
DRAWING NO.:	15518P1	CRD #:	07508
			SHEET NO.: 1 OF 5





RUTHERFORD WEST, SECTION 4

SEE SHEET 3 OF 5
MATCHLINE



APPROXIMATE LOCATION OF SURVEY LINE
C. WILHELM SURVEY
FILE No. P-492
ABST. No. 505

LEGEND

- O.P.R.H.C. OFFICIAL PUBLIC RECORDS HAYS COUNTY
- U.S.F.W.S. U.S. FISH & WILDLIFE SERVICE
- H.C.D.R. HAYS COUNTY DEED RECORD
- H.C.P.R. HAYS COUNTY PLAT RECORD
- C.W.Q.Z. CRITICAL WATER QUALITY ZONE
- W.Q.B.Z. WATER QUALITY BUFFER ZONE
- R.O.W. RIGHT OF WAY
- P.U.E. PUBLIC UTILITY EASEMENT
- W.Q.E. WATER QUALITY EASEMENT
- C.E.F. CRITICAL ENVIRONMENTAL FEATURE
- D.E. DRAINAGE EASEMENT
- B.L. BUILDING LINE
- ⊗ 1/2" IRON ROD FOUND WITH ALUMINUM CAP
STAMPED "KEN MCILLAN LAND
SURVEYOR, RPLS 4341"
- 1/2" IRON ROD SET WITH PLASTIC CAP
MARKED "CAPITAL SURVEYING CO. INC."
- 1/2" IRON ROD FOUND WITH PLASTIC CAP
MARKED "CAPITAL SURVEYING CO. INC."
- EDWARDS AQUIFER RECHARGE ZONE
- ▲ CALCULATED POINT
- - - WATER QUALITY BUFFER ZONE
- ▨ U.S.F.W.S. SETBACK AND D.E.
- + + GREENBELT AND B.L. IS
THE AREA BEYOND (AWAY
FROM) RIGHT-OF-WAY
- CITY OF DRIPPING SPRINGS
WATER QUALITY BUFFER ZONE

DEED LINE
20.112 Ac. (TRACTS 18-19)
PAUL KRISTYNIK &
MARY KRISTYNIK
VOL. 2575, PG. 114
H.C.D.R. TRACT 18 TRACT 19

RUTHERFORD WEST, SECTION 4

CSCI			CAPITAL SURVEYING COMPANY INCORPORATED	
1101 Capital of Texas Highway South Austin, Texas 78746			Building C, Suite 100 (512) 327-4009	
DRAWN BY:	WAL	SCALE:	1" = 100'	F.B.
JOB NO.:	15518.20	DATE:	APRIL 7, 2016	SHEET NO.:
DRAWING NO.:	15518P1	CRD #:	07508	4 OF 5

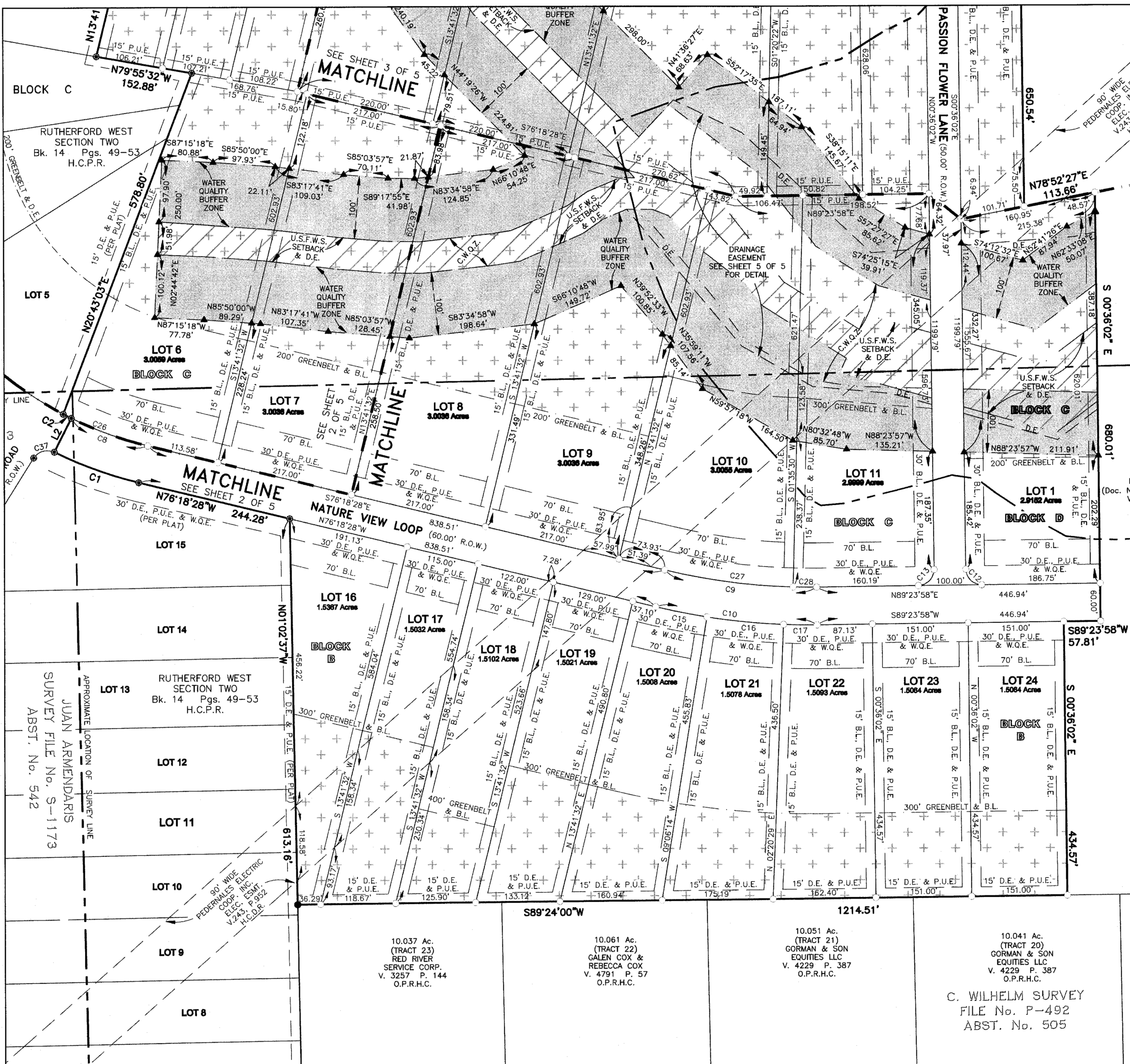
C. WILHELM SURVEY
FILE No. P-492
ABST. No. 505

10.037 Ac.
(TRACT 23)
RED RIVER
SERVICE CORP.
V. 3257 P. 144
O.P.R.H.C.

10.061 Ac.
(TRACT 22)
GALEN COX &
REBECCA COX
V. 4791 P. 57
O.P.R.H.C.

10.051 Ac.
(TRACT 21)
GORMAN & SON
EQUITIES LLC
V. 4229 P. 387
O.P.R.H.C.

10.041 Ac.
(TRACT 20)
GORMAN & SON
EQUITIES LLC
V. 4229 P. 387
O.P.R.H.C.



RUTHERFORD WEST, SECTION 4

CURVE No.	DELTA	RADIUS	ARC	CHORD	Ch. BEARING
C1	12°56'48"	630.00	142.36	142.05	N69°50'04"W
C2	1°25'12"	570.00	14.13	14.13	N62°39'03"W
C3	7°20'19"	530.00	67.88	67.84	S47°32'30"W
C4	52°28'53"	530.00	485.47	468.67	N77°27'06"E
C5	14°17'34"	970.00	241.97	241.35	S83°27'15"E
C6	14°17'34"	1030.00	256.94	256.28	N83°27'15"W
C7	52°28'53"	470.00	430.51	415.62	S77°27'06"W
C8	12°56'48"	570.00	128.80	128.53	S69°50'04"E
C9	14°17'34"	970.00	241.97	241.35	S83°27'15"E
C10	14°17'34"	1030.00	256.94	256.28	N83°27'15"W
C11	90°00'00"	25.00	39.27	35.36	S44°23'58"W
C12	90°00'00"	25.00	39.27	35.36	S45°36'02"E
C13	90°00'00"	25.00	39.27	35.36	N44°23'58"E
C14	90°00'00"	25.00	39.27	35.36	N45°36'02"W
C15	4°35'19"	1030.00	82.49	82.47	S78°36'07"E
C16	6°45'44"	1030.00	121.56	121.49	S84°16'39"E
C17	2°56'31"	1030.00	52.89	52.88	S89°07'46"E
C18	0°30'34"	970.00	8.62	8.62	S89°39'14"W
C19	5°55'28"	970.00	100.30	100.25	N87°07'45"W
C20	6°00'05"	970.00	101.60	101.55	N81°09'59"W
C21	1°51'29"	970.00	31.45	31.45	N77°14'12"W
C22	4°41'44"	530.00	43.43	43.42	N78°39'19"W
C23	10°51'51"	530.00	100.50	100.35	N86°26'07"W
C24	20°22'02"	530.00	188.40	187.41	S77°56'56"W
C25	23°53'35"	530.00	221.02	219.42	S55°49'08"W
C26	14°22'01"	570.00	142.93	142.55	N69°07'27"W
C27	12°06'02"	970.00	204.86	204.48	N82°21'29"W
C28	2°11'32"	970.00	37.11	37.11	N89°30'16"W
C29	1°56'24"	1030.00	34.88	34.87	S89°37'50"E
C30	10°21'16"	1030.00	186.14	185.89	S83°29'00"E
C31	1°59'54"	1030.00	35.93	35.92	S77°18'25"E
C32	9°19'46"	470.00	76.53	76.45	S80°58'21"E
C33	43°09'07"	470.00	353.98	345.67	N72°47'13"E
C34	04°47'41"	530.00	44.35	44.34	S41°28'29"W
C35	36°14'06"	470.00	297.24	292.31	S33°05'36"W
C36	29°41'10"	570.00	295.33	292.04	N47°05'52"W
C37	84°44'39"	25.00	36.98	33.70	S74°16'01"W

Block B - 25 Lots	
Lot	Acres
16	1.5367
17	1.5032
18	1.5102
19	1.5021
20	1.5008
21	1.5078
22	1.5093
23	1.5064
24	1.5064
70	2.0351
71	2.0327
72	2.0303
73	2.0279
74	2.0204
75	1.9921
76	1.9402
77	1.8793
78	1.8183
79	1.7569
80	1.6927
81	1.6279
82	1.5637
83	1.5198
84	2.8272
85	3.1267
TOTAL	45.4741

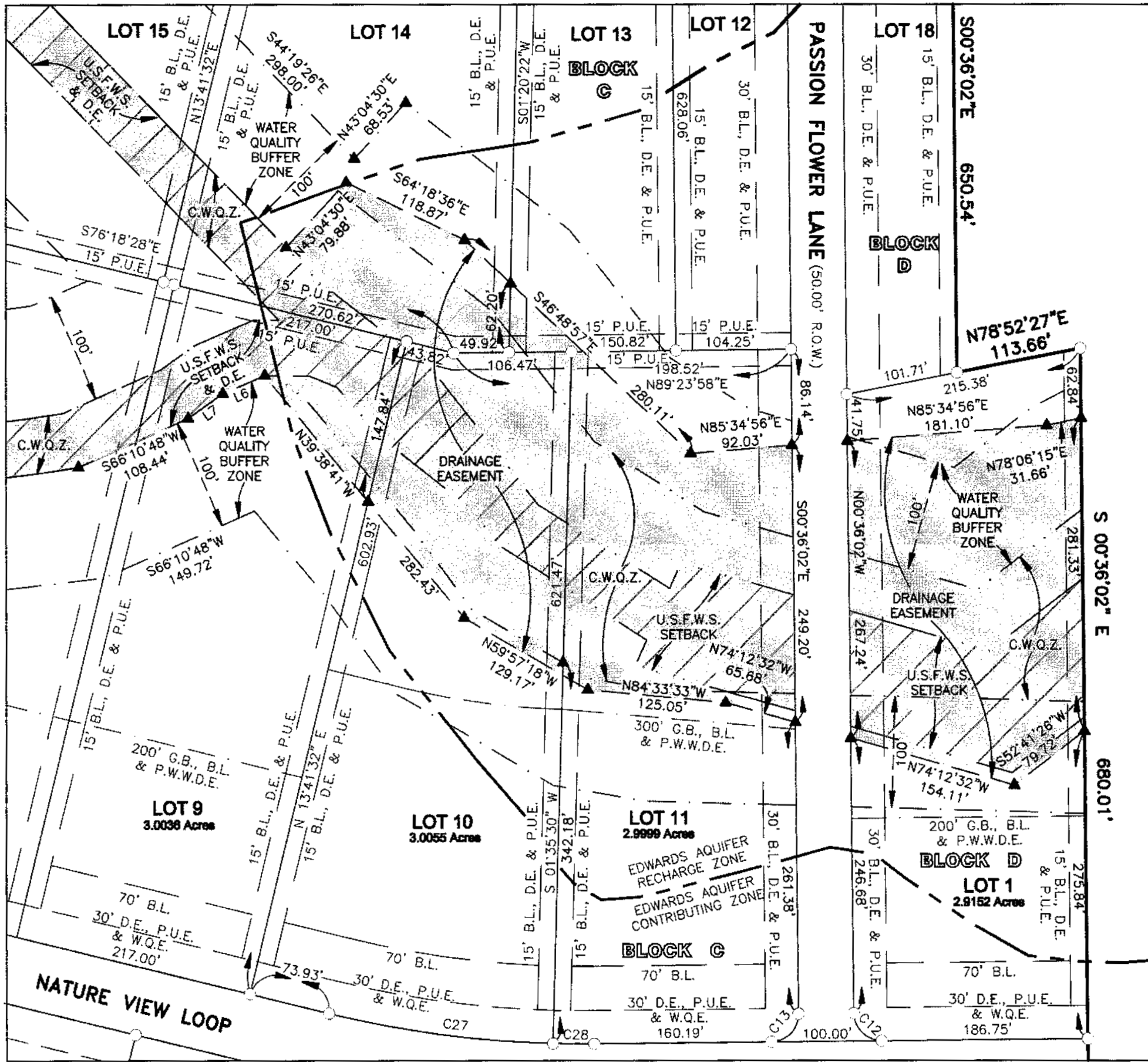
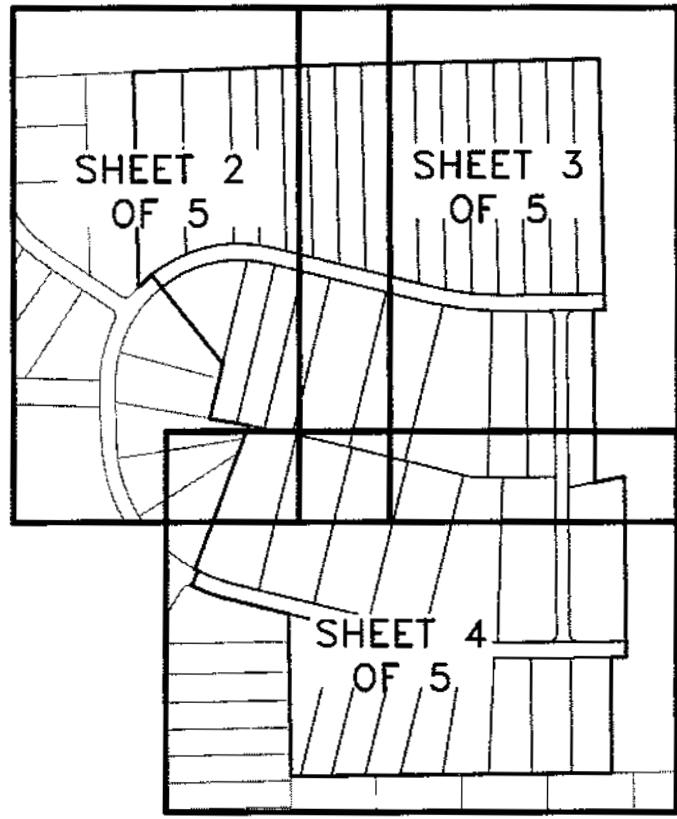
Block C - 15 Lots	
Lot	Acres
6	3.0059
7	3.0036
8	3.0036
9	3.0036
10	3.0055
11	2.9999
12	1.5000
13	2.0213
14	3.5729
15	3.0453
16	3.0451
17	1.5033
18	1.5061
19	1.5048
20	1.5552
TOTAL	37.2761

Block D - 2 Lots	
Lot	Acres
1	2.9152
18	1.5117
TOTAL	4.4269

Street Name	Linear Ft.	Acres
NATURE VIEW LOOP	3,420	4.7087 Ac.
PASSION FLOWER LANE	1,286	1.4469 Ac.
Total	4,706	6.1556 Ac.

Total Streets	6.1556 Ac.
BLOCK "B" 25 Single Family Lots	45.4741 Ac.
BLOCK "C" 15 Single Family Lots	37.2761 Ac.
BLOCK "D" 2 Single Family Lots	4.4269 Ac.
Total Acreage of Subdivision	93.3327 Ac.

LINE No.	BEARING	DISTANCE
L1	S89°23'58"W	43.13'
L2	N26°38'21"E	60.00'
L3	N40°40'34"E	32.27'
L4	N43°20'27"E	61.12'
L5	N28°07'02"E	29.24'
L6	S67°05'26"W	41.50'
L7	S54°41'54"W	38.32'
L8	N65°53'36"W	52.78'



LEGEND

O.P.R.H.C.	OFFICIAL PUBLIC RECORDS HAYS COUNTY
U.S.F.W.S.	U.S. FISH & WILDLIFE SERVICE
H.C.D.R.	HAYS COUNTY DEED RECORD
H.C.P.R.	HAYS COUNTY PLAT RECORD
C.W.Q.Z.	CRITICAL WATER QUALITY ZONE
W.Q.B.Z.	WATER QUALITY BUFFER ZONE
R.O.W.	RIGHT OF WAY
P.U.E.	PUBLIC UTILITY EASEMENT
W.Q.E.	WATER QUALITY EASEMENT
C.E.F.	CRITICAL ENVIRONMENTAL FEATURE
D.E.	DRAINAGE EASEMENT
B.L.	BUILDING LINE
⊗	1/2" IRON ROD FOUND WITH ALUMINUM CAP STAMPED "KEN McMILLAN LAND SURVEYOR, RPLS 4341"
○	1/2" IRON ROD SET WITH PLASTIC CAP MARKED "CAPITAL SURVEYING CO. INC."
⊙	1/2" IRON ROD FOUND WITH PLASTIC CAP MARKED "CAPITAL SURVEYING CO. INC."
---	EDWARDS AQUIFER RECHARGE ZONE
▲	CALCULATED POINT
---	WATER QUALITY BUFFER ZONE
▨	U.S.F.W.S. SETBACK AND D.E.
□	GREENBELT AND B.L. IS THE AREA BEYOND (AWAY FROM) RIGHT-OF-WAY
▨	CITY OF DRIPPING SPRINGS WATER QUALITY BUFFER ZONE

RUTHERFORD WEST, SECTION 4

ESCI		CAPITAL SURVEYING COMPANY INCORPORATED	
1101 Capital of Texas Highway South Austin, Texas 78746		Building G, Suite 100 (512) 327-4006	
DRAWN BY:	WAL	SCALE:	N/A
JOB NO.:	15518.20	DATE:	APRIL 7, 2016
DRAWING NO.:	15518P1	CRD #:	07508
			SHEET NO.: 5 OF 5

