

DECLARATIONS OF COVENANTS
CONDITIONS AND RESTRICTIONS

9:13 AM 2020

41.00 INDX
2 3 04/08/92

This Declaration, made on the date and year below written, by Tom Wykoff, hereinafter referred to as the "Declarant".

9:13 AM 2020

3.00 RECH
2 3 04/08/92
28.49-CHK#
920317.16-DOC#

RECITALS

1. The Declarant is the owner of that certain real property described in Section 1.10 hereof.

2. The Property is located in the watershed of Lake Austin and as such is environmentally sensitive. Lake Austin and its watershed, its geology, ground and surface waters, soils and other natural features result in diversity in the intrinsic suitability of the development to accommodate building. Locations exist where the natural environment is hazardous, fragile or already performing useful services and should not be disturbed, while other locations would be tolerant and suitable for the construction of single family residential structures.

3. The purpose of this Declaration is to preserve so far as possible the natural beauty of the Property; to avoid harsh contrasts between structures and landscape; to guard against the erection of poorly designed or proportioned structures or use of unsuitable materials; to encourage and secure the erection of attractive improvements which are harmonious with their sites; to encourage freedom of individual expression in the development of the land and the buildings, limited only to these protections which seem to be mutually advantageous; and in general; to enhance the environmental quality and economic value of the Property.

Now, Therefore, Declarant hereby declares that the Property described above shall be held, sold, used, developed, occupied, leased and conveyed subject to the following reservations, easements, restrictions, covenants and conditions and which shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

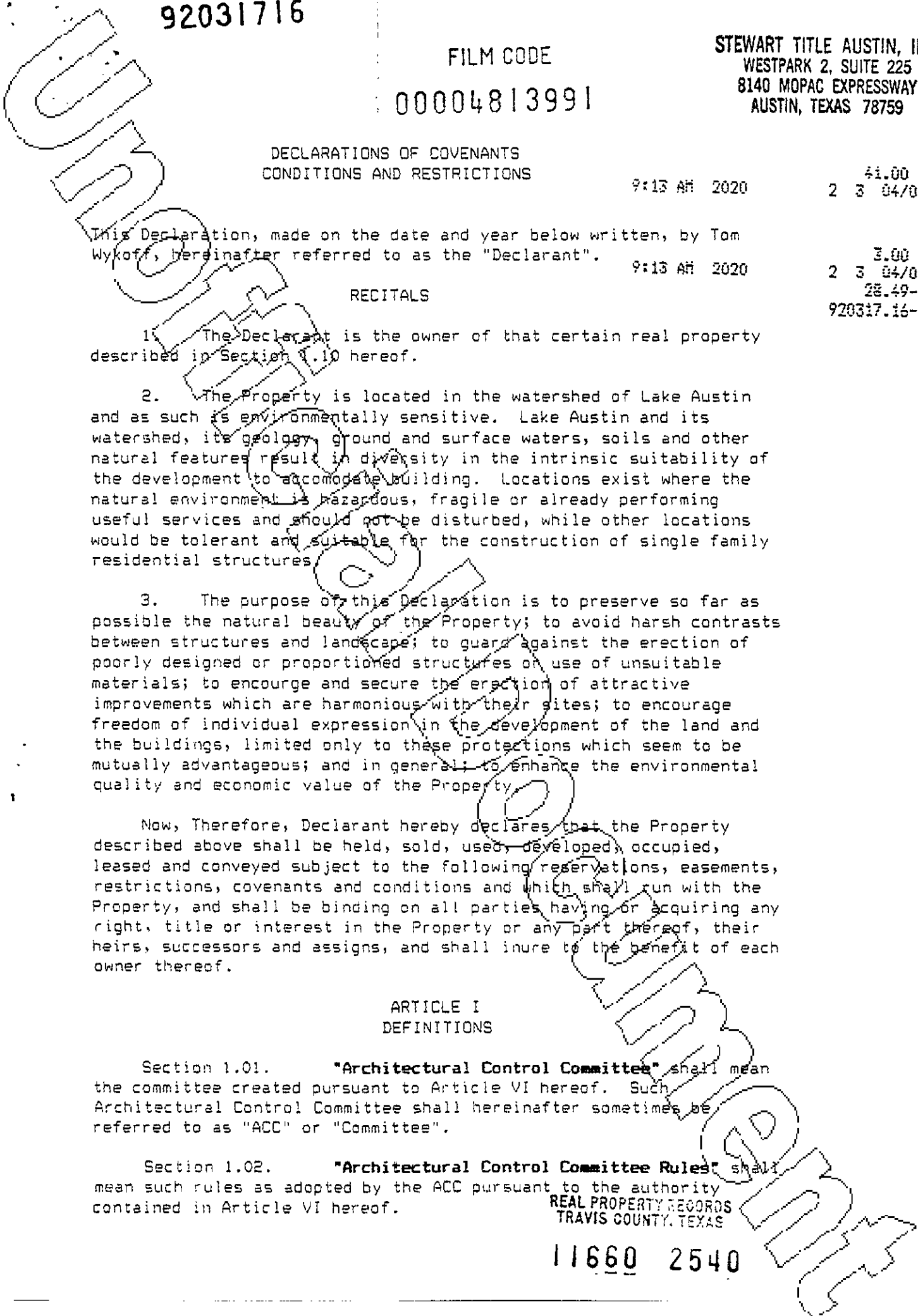
ARTICLE I
DEFINITIONS

Section 1.01. "Architectural Control Committee" shall mean the committee created pursuant to Article VI hereof. Such Architectural Control Committee shall hereinafter sometimes be referred to as "ACC" or "Committee".

Section 1.02. "Architectural Control Committee Rules" shall mean such rules as adopted by the ACC pursuant to the authority contained in Article VI hereof.

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Section 1.03. **"Association or Homeowner Association"** shall mean the Jester Homeowner Association.

Section 1.04. **"Conservation Easement"** shall be the areas designated on the Plat as Conservation Easement.

Section 1.05. **"Declarant"** shall mean Tom Wykoff.

Section 1.06. **"Drainage Easement"** shall be the areas designed on the Plat as Drainage Easement and shall include any creeks, streams, sedimentation basins or bar ditches therein designated or constructed.

Section 1.07. **"Improvements" or "Improvement"** shall mean the buildings, garages, carports, streets, roads, antennas, driveways, parking areas, walls, hedges, planting, planted trees and shrubs, lighting and all other structures or landscaping improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across or from the land.

Section 1.08. **"Lot"** shall mean each parcel of land shown as a lot on the recorded Final Plat Map of the Property and designated on said map as a separate number, or any subsequent subdivision thereof.

Section 1.09. **"Owner(s)"** shall be mean and refer to the record Owner, whether one or more persons, associations or entities, of legal equitable or beneficial title of or to any Lot. Owner shall include purchaser of a Lot under an executory contract of sale or real property. The foregoing does not include persons or entities who hold interest in any Lot merely for the security for the performance of any obligation. Any reference herein to Owner shall include Owners as defined herein and as defined or included in any Supplemental Declaration. If any Lot is leased, the term Owner(s) shall include the Lessees.

Section 1.10. **"Property" or "Land"** shall mean and refer to that certain real property described in Section 1.10 hereof, including the aerial and subsurface rights appurtenant thereto, and such additions thereto as may hereafter be annexed.

Section 1.11. **"Development"** shall mean all of The Overlook at Jester, being 7.905 acres as recorded, in Volume 89, Page 242 and 243 of the Plat Records of Travis County, Texas.

Section 1.12. **"Single Family Residential Use"** shall mean the occupation or use of a structure as a residence or dwelling unit by a single person or a family in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other State, County, or Municipal Laws, rules, regulations, codes or ordinances.

Section 1.13. "Structure" shall mean anything erected, constructed, placed laid or installed in, on, or over said real property, the use of which requires a location on or in the ground but not including vegetation, trees, shrubs or plantings.

Section 1.14. "Supplemental Declaration" shall mean any Supplemental Declaration of Covenants, Conditions and Restrictions bringing or adding additional property within the scheme of this Declaration under the authority in Article II hereof. References herein, whether specific or general, to provisions set forth in "any Supplemental Declaration" shall be deemed to relate to all property covered by this or any Supplemental Declaration.

ARTICLE II
PROPERTY SUBJECT TO RESTRICTION

Section 2.01. **General Declaration.** Declarant hereby declares that the Property within the Subdivision is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all the Property for all purposes and shall be binding upon and inure to the benefit of the Declarant, all Owners and their successors in interest.

Section 2.02. **Description of Property.** The Property subject to this Declaration is all property described in Section 1.10 hereof, together with any and all Property added or annexed by Supplemental Declaration at a subsequent time.

ARTICLE III
LAND USE

Section 3.01. **Single Family Residential Use.** All property shall be used, improved and devoted exclusively to Single Family Residential Use and no business or commercial activity to which the general public is invited shall be conducted within the Subdivision. Nothing contained herein shall be deemed to prevent the leasing of all of a Lot to a single person or family from time to time by the Owner thereof, subject to all the provisions of this Declaration.

Section 3.02. **Development Plan.** Each Owner shall be required to submit a detailed Development Plan, pursuant to the Rules of the ACC, and such plan must be approved in writing prior to the commencement of construction of any improvements.

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Section 3.03. Time for Construction.

a) Construction of a Structure or Improvements shall be continuous and proceed in an orderly fashion without interruption and any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed six (6) months from the Commencement of construction.

b) The foundation for any Structure or Improvement shall be completed as soon as is practically possible after the commencement of construction.

c) Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, clearing of trees, excavating, or site preparation for the purpose of foundation.

ARTICLE IV
RESIDENTIAL STRUCTURES

Section 4.01. Requirements. All Single Family Residential Structures shall be subject to the following requirements, and each enumerated item must be included in the Development Plan submitted and approved in writing by the ACC prior to the commencement of construction. Once approved, no Structure or Improvement may vary from the Development Plan without further approval of the ACC.

a) Set Backs: All city and county setback requirements will be observed. The ACC shall have the right to impose additional setback requirements from all Lot lines in order to preserve lines of sight, and views of neighboring properties.

b) Minimum Floor Areas: All Single Family Residential Structures shall have a floor area of not less than 2,200 square feet single story, 2,500 square feet for two story, exclusive of open and closed porches, patios, garages, carports, balconies or decks. Minimums may be adjusted by written approval from the ACC to conform with impervious cover restrictions as imposed by the City of Austin.

c) Exterior Color Schemes: The ACC shall have the right to impose limitations on the exterior color and materials to be used in all Single Family Residential Structures.

d) Roofing Materials: No reflective roofing materials are permitted on any Improvement. 240 composition shingle minimum.

e) Driveway: The ACC shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways in the Subdivision using City of Austin guidelines.

f) **Exterior Lighting:** The ACC shall have the right to approve the location, number, size and design of all proposed exterior lighting which is detached from the main structure or dwelling.

g) **Sidewalks:** Each homeowner is responsible to provide sidewalks as per City of Austin standards. All sidewalks within the Property shall be of the same finish.

Section 4.02. Trees, Shrubs and Landscaping. The ACC shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping.

Section 4.03. Fences, Walls and Hedges. Any fence, wall, hedge or other similar structure or Improvement must be included in the Development Plan with respect to location, height, and type of material and must be approved in writing by the ACC. No barbed wire or chain link shall be allowed in the construction of any fence on the Property.

Section 4.04. Towers and Antennas. No visible antenna or other service for the transmission or reception of television signals, radio signals or any other form of electromagnetic radiation shall be erected, used or maintained on any Lot, whether attached to a building or Structure or otherwise, without prior approval of the ACC. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television or radio signal on any other Lot.

Section 4.05. Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any property within the Subdivision unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings to other Structures as approved in writing to the ACC; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or Structures which have been previously approved in writing by the ACC. The installation method, including, but not limited to, location, type of installation equipment, trenching method and other aspects of installation, for both temporary and permanent utilities shall be included in the Development Plan and approved in writing by the ACC.

Section 4.06. Temporary Structures—Occupancy During Construction. No trailer, basement of any incomplete building, tent, shack, garage or barn and no temporary building of any kind shall be used at any time for a residence on the Property within the Subdivision, either on a temporary or a permanent basis.

Section 4.07. Out-Buildings. Any proposed out-buildings must be included in the Development Plan and approved in writing by the ACC. All out-buildings must be of same design and materials as main structure and must meet same requirements as main structure.

Section 4.08. **Signs.** No sign, billboard, including, but not limited to, commercial and similar signs, which are visible from neighboring property or from streets or access roads shall be erected or maintained on any Lot or parcel of property within the Subdivision, except the following types of signs, each of which must be approved in writing by the ACC:

- a) signs which may be required by legal proceedings;
- b) not more than two (2) residential identification signs (street number and/or name of Owners) for a maximum combined total face area of 144 square inches;
- c) during the time of construction of any building or other improvement, one job identification sign not larger than three (3) feet by four (4) feet having a face area of not larger than twelve (12) square feet;
- d) signs, the nature, number and location of which has been approved in advance by the ACC;
- e) signs, as the number and type and size of which has been approved in advance by the Declarant or the ACC for the developers or builders; and
- f) one "for sale" sign to advertise that the Lot or Property of the Owner is being offered for sale is permitted, but such sign shall not exceed a total of five (5) square feet and must be removed when the listing expires.

Section 4.09. **Improvements and Alterations.** No Structures, improvements, alterations, repairs, excluding routine repairs, excavations or other work which in any way alters the exterior appearance of any Structure within the Subdivision or the appearance of any of the improvement located thereon from its natural or improved state existing on the date such Property was first conveyed in fee to the current Owner, Purchaser, or annexed by Declarant, whichever is later, shall be made or done without the prior written approval of the ACC.

Section 4.10. **Solar Equipment.** Request for approval of installation of any type of solar equipment shall be included in the Development Plan and approved by the ACC.

Section 4.11. **Garages.** Each Single Family Residential Structure shall have sufficient enclosed garage space, as approved by the ACC, to house all vehicles authorized by this Declaration.

ARTICLE V RESTRICTIONS

Section 5.01. **Animals - Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses,

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cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or become a nuisance, and no domestic pets, except cats, will be allowed on the Property other than the Lot of its Owner, unless confined to a leash or under voice control. Upon written request of any Owner, the ACC shall conclusively determine at its sole discretion, in accordance with its rules, whether an animal is a domestic household pet, whether an animal is making an unreasonable amount of noise, whether an animal is being allowed to run at large or whether an animal is a nuisance. The decision of the ACC in such matters is final and conclusive and shall be enforced as other restrictions contained herein. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operations will be allowed.

Section 5.02. Hunting/Trapping/Firearms. Hunting, trapping and discharge of firearms are expressly prohibited within the Subdivision.

Section 5.03. Dumping. Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive materials is expressly prohibited within the Subdivision.

Section 5.04. Waste. The commission of waste is expressly prohibited within the Subdivision.

Section 5.05. Mineral Exploration. No mining, quarrying, tunneling, excavation or drilling for exploration or removal of any minerals including, oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted within the Subdivision.

Section 5.06. Business Activities. No business or commercial activity to which the general public is invited shall be conducted within the Subdivision.

Section 5.07. Obnoxious Activities. No nuisance, obnoxious or offensive activities shall be carried on any Lot, nor shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Property within the Subdivision, and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property which are audible from neighboring Property.

Section 5.08. Garbage. No garbage or trash shall be placed or kept on any Lot except in covered containers of a standard type.

In no event shall such containers be maintained so as to be visible from neighboring property. All rubbish, trash, garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No incinerator shall be kept or maintained on any Lot. No garbage shall be permitted to be buried on any Lot at any time.

Section 5.09. Vehicles and Equipment. No bus, truck larger than 3/4 ton pickup, semi-trailer, tractor, machinery or equipment shall be kept, placed, maintained, constructed, reconstructed, or repaired on the Property, (except during the course of making deliveries for the purpose of loading, or unloading). No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired on the Property in such manner as will be visible from neighboring property. Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles of any sort or type which are intended to be kept on the Property by the Owner must be placed in such a manner that they will not be visible from neighboring property or from streets or access roads. No motorized vehicle of any kind may be operated in any manner which is dangerous, noisy or which creates a nuisance.

Section 5.10. No Overnight Parking. No vehicle of any kind shall be allowed to park overnight on any street within the Subdivision.

Section 5.11. Emergency or Temporary Maintenance Vehicles. The provisions of this Declaration shall not prevent any emergency vehicle repairs or operation of an emergency vehicle, ambulance, etc., within the Subdivision. The provisions of this Declaration shall also not prevent the operation of temporary use of construction trailers, vans, or other trucks, machinery/equipment, construction shelters or facilities maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the ACC.

Section 5.12. Motorcycles. The use of motorcycles and motorized vehicles shall be limited to those which have been approved and are legal for street use. Such use shall be limited to the public streets. No off-road use of any motorcycles or motorized vehicles shall be permitted and all motorcycles operated within the Subdivision shall have mufflers installed in good condition, which limits the exhaust noise to no more than 30 decibels, ten (10) feet from the end of the exhaust pipe.

Section 5.13. Continuing Adequacy of Repair or Maintenance. No building or Structure upon the Property within the Subdivision shall be permitted to fall into disrepair, and each such building and Structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any exterior Structure and finish which were included in the Development Plan approved by the ACC.

ARTICLE VI
ARCHITECTURAL CONTROL COMMITTEE

Section 6.01. Establishment and Composition. There is hereby established an Architectural Control Committee (ACC), which shall consist of three (3) regular members.

The following persons are hereby designed as the initial members:

<u>Position</u>	<u>Name</u>	<u>Address</u>
Office No. 1	Thomas D. Wykoff	816 Tirado St., Austin, TX 78752
Office No. 2	R.W. Spencer	HCD4, Box 36B, Dripping Springs, TX 78620
Office No. 3	Jeanne Hines	9390 Research Blvd., #310 Austin, TX 78759

Members of the ACC shall serve without salary or pay and none of the members shall be required to be an architect or to meet any other particular qualifications for membership.

Section 6.02. Voting and Status of Alternate Members. Except as otherwise provided herein, a vote or written consent of a majority of the regular members of the ACC at a meeting or otherwise shall constitute the act of the Committee. Except as hereinafter provided, alternate members shall not be entitled to vote. In the event of absence or the disability of one (1) or more regular members, the remaining member or members, even though less than a quorum, may designate an alternate member to act or substitute for the absent or disabled regular member for the duration of such absence or disability. The alternate member so designated shall be entitled to vote in place of the regular member for whom he so substitutes. Notwithstanding the foregoing provisions, the ACC is not authorized to act unless at least one (1) regular member is present, or in the event action is taken without a meeting, unless at least one (1) regular member consents in writing thereto.

Section 6.03. Terms of Office. Unless the initial members of the ACC have resigned or been removed, their terms of office shall be for the periods of times indicated below, and until appointment of their respective successors:

a) The term of office of Positions 1, 2, and 3 shall expire on December 31, 1992. Thereafter, the terms of each ACC member appointed shall be for a period of two (2) years and thereafter until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or whose terms have expired may be reappointed. At such time as the composition of the ACC is added to or altered, a writing referring to and identifying this Declaration by recording data shall be recorded in the Real Property Records of Travis County, Texas, setting forth the name and address of each member of the Committee as it is constituted.

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Section 6.04. **Appointment and Removal.** Except as provided below, the right to appoint and remove all regular members and alternate members of the ACC at any time, with or without cause, shall be, and hereby is, vested solely in Declarant. At such time that Declarant records a waiver of the right herein retained, whichever event occurs first, then the Homeowner Association shall appoint all regular and alternate members of the ACC in accordance with the Bylaws of the Association.

Section 6.05. **Resignations.** Any regular member or alternate member of the ACC may resign at any time from the Committee by giving written notice thereof to the Declarant or the Association as the situation requires.

Section 6.06. **Vacancy.** Vacancies on the ACC, however caused, shall be, except as provided in Section 6.04. of this Article, filled by the Declarant. A vacancy shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

Section 6.07. **Transfer of Authority to the Association.** Upon issuance of the Certificate of Occupancy, the ACC will notify the Association of issuance and transfer duties, rights, powers and authority to the Association.

Section 6.08. **Address.** The address of the ACC shall be 816 Tirado Street, Austin, Texas, 78752 or such other place as may from time to time be designated by the ACC by written instrument recorded in the real estate records of Travis County, Texas; and the last instrument so recorded shall be deemed the Committee's proper address.

Section 6.09. **Duties.**

a) General: It shall be the duty of the ACC to receive, consider and act upon all proposals, plans, complaints, requests for determination, Development Plans or other matters submitted pursuant to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration.

b) Consultant: The ACC, may, but need not, hire consultants and incur expenses up to \$100.00, to aid it in reviewing plans and related items. The cost of such consultants shall be considered to be a cost of the Development Plan of the Lot Owner and payment of such costs shall be considered as a filing requirement of the Development Plan and such Plan will not be considered unless and until such costs are paid.

Section 6.10. Meetings. The ACC shall meet from time to time as necessary to perform its duties hereunder. Subject to provisions of Section 6.02. above, and except as otherwise provided herein, the vote or written consent of a majority of the regular members at a meeting or otherwise, shall constitute the act of the Committee. The Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

Section 6.11. Action Without Formal Meeting. The ACC, in accordance with Section 6.02. and 6.10. hereof, may take action without formal meeting by unanimously consenting in writing on any matter which they might consider at a formal meeting. Such unanimous written consent shall constitute the act of Committee. For the purpose hereof, unanimous written consent shall mean a writing by the three (3) regular members of the ACC except as the provisions of Section 6.02. may apply.

Section 6.12. Procedure for Submission and Approval of Development Plan.

a) Submission and Approval of a Development Plan shall be in accordance with the rules promulgated by the ACC, as authorized by Section 6.14. hereof.

b) If the ACC fails to approve or disapprove any material or Development Plan submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt or to give notice of its actions as above required, it shall be conclusively presumed that the Committee has approved such materials as submitted. If the Committee requests additional or amended materials or an amended Development Plan during the initial thirty (30) day period, or approves the Plan on the condition that certain additional or amended materials be submitted, such thirty (30) day period shall automatically be extended fifteen (15) days following the day upon which such additional or amended materials are required to be delivered to and received by and receipted for by the Committee. Additional fifteen (15) day extensions shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received by the ACC on or before the required date, then the Development Plan shall be automatically disapproved.

Section 6.13. Waiver and Estoppel. The approval of the ACC of any Development Plan, specifications or drawings of any materials accompanying it for matters requiring approval of the ACC shall not be deemed to, constitute a waiver of, or create any right of estoppel against the Committee's right to withhold approval of any similar Development Plan, drawing, specifications or matter subsequently submitted for approval.

Section 6.14. ACC Rules.

a) The ACC shall have the authority to adopt, amend, add to, replace and rescind, from time to time, procedural or substantive rules to make more definite and certain, and to carry out the purpose of and intent of the provisions of this Declaration. Any conflict between such rules and any provision of this Declaration shall be resolved in favor of the provision of this Declaration. A copy of such rules, as in effect from time to time, shall be provided to any Owner requesting the same in writing. All interpretations of rules shall be consistent with the intent of this Declaration.

b) Unless and until a political subdivision of the State of Texas regulates such matters by law in the Property, the rules promulgated by the ACC may include building codes governing all types of construction on the Property, a fire code, a housing code, and other similar codes as the ACC deems necessary and desirable. To the extent possible, these codes shall (i) be performance based, (ii) encourage the use of new technologies, techniques and materials, and (iii) be compatible with the codes of the City of Austin or the Uniform Building Code to the extent that is consistent with (i) and (ii) of this section. The adoption of a nationally recognized model code shall be deemed to comply with these criteria when adopted.

Section 6.15. Decisions Conclusive. All decisions of the ACC shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the ACC, or any member thereof, for its or such member's approval or refusal to approve all or any portion of a Development Plan or of any materials submitted therewith, or for any other decision rendered under the authority of this Declaration as long as such decision is made in good faith as set out in Section 6.16.

Section 6.16. Liability. Neither the ACC nor any member thereof shall be liable to any Owner, or any other person, association, or entity, for any damage, loss or prejudice suffered or claimed on the account of: (i) the approval or disapproval of any Development Plan or any materials submitted therewith, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to an approved Development Plan or any materials submitted therewith; (iii) the development of the Property; (iv) the structural capacity or safety features of the proposed Improvement or Structure; (v) whether or not the location of the proposed Improvement or Structure on the building site is free from possible hazards from flooding, or from any other possible hazards whether caused by conditions occurring either upon or off the Property; (vi) soil erosion causing sliding conditions; (vii) compliance with governmental laws, ordinances and regulations; (viii) any decision made or action taken omitted to be taken under the authority of this Declaration; or (ix) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; as long as such member has acted in

good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the ACC, or any member thereof, may, but is not required, to consult with or determine the view of any other Owner with respect to any Development Plan, or any materials submitted to the ACC.

Section 6.17. Modifications and Waivers. The ACC, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures, as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of Article IV of this Declaration, or from the ACC rules, applicable to any Improvement of use of, in, on or abutting Lot. Such applications shall contain such information as the Committee may prescribe, and shall affirmatively show that the application of such requirements, under the circumstances, creates an unnecessary and undue hardship, and that its modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to the Owner of any other Lot. The Committee may decide the matter upon the application and any materials or written statements accompanying it, or may allow oral presentations in support of, or in opposition to the application prior to the decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision. The ACC shall forward one copy of its decision to the applicant, and retain one copy in its records. The provisions of Section 6.15. and Section 6.16. of this Article shall apply to the actions and the decisions of the Committee and its members under this Section.

Section 6.18. Governmental Agency Approval. Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any Owner from also securing such approval(s), certificate(s), or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any Improvement, and the Committee may require that a copy of such approval(s), certificate(s), or permit(s) be provided to the Committee as a final condition to approval of a Development Plan, or as additional insurance to the Committee that the Improvements and uses of an approved Development Plan meet governmental requirements, or for both such purposes.

Section 6.19. Fees. The ACC shall have the right to require a separate submission fee for each proposed Development Plan.

ARTICLE VII
GENERAL PROVISIONS

Section 7.01. **Cost of Performance.** The cost and expense of performing any obligation or responsibility in this Declaration shall be borne by the person, association, or entity charged with such performance or responsibility and shall be subject to the provisions of Section 7.16.

Section 7.02. **Extension of Time for Performance.** If the performance of any act or obligation by this Declaration is prevented or hindered by an act of God, war, labor disputes or other cause or causes beyond the control of the person, association or entity responsible for such performance, then the time for performance of such act or obligation will be extended for the period that such performance was prevented or delayed by such cause; provided, however, this provision shall not apply to the payment of any fees or assessments.

Section 7.03. **Breach not Ground for Rescission.** No breach or continuing breach of the restrictions, covenants, conditions, duties or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision thereof.

Section 7.04. **Notice Before Enforcement.** Except where damage or injury to persons or Property is imminent as a result of the performance, or a failure to perform, or the defective performance of any obligation imposed or restricted by this Declaration or where animals are involved, no proceeding for the enforcement of the restrictions, covenants, conditions, rights and duties imposed, allowed or granted by this Declaration shall be commenced until ten (10) days after written notice of wrongful performance, defective performance or failure of performance, is given to the person, association, or entity responsible for such performance and such wrongful or defective performance, or failure to perform has not been cured within such time. Such notice shall be deemed to be given in the U.S. Mail, mailed postage prepaid, certified, return receipt requested and said ten (10) days shall commence with the date of posting thereof.

Section 7.05. **Enforcement.** Declarant, ACC, Association or any Owner shall have the right to enforce, by proceeding, at law in equity, for damages or for injunction or both, all restrictions, covenants, conditions, rights and duties imposed, allowed or granted by the provisions of this Declaration. In any such proceeding, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees, and such costs and expenses shall be subject to the provisions of Section 7.16. Failure by Declarant, ACC, association or Owner to enforce any restriction, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective right to do so at a later time.

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Section 7.06. Attachment of Covenant on Resale or Remodel. This Declaration shall attach following the lease or resale of the Property or any Lot, and any remodeling or other alteration of any Improvement must be approved by the ACC through the Development Plan process.

Section 7.07. Deviation from Approved Plan. All Development Plans approved in writing by the ACC must be complied with and any deviation, change or alteration not in compliance with said Plan must be further approved in writing by the ACC. Any violation hereof shall be subject to enforcement in accordance with the provisions of this Declaration.

Section 7.08. Covenants to Run With the Land. The restrictions, easements, covenants, conditions, rights and duties of this Declaration shall run and bind with the land within the Property as defined herein, and shall inure to the benefit of the Owner of any Lot therein, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded in the real property records of Travis County, Texas, after which time such restrictions, easements, covenants, conditions, rights and duties shall automatically be extended for successive periods of ten (10) years.

Section 7.09. Modification or Repeal During Initial Term. Any of the provisions of this Declaration may be amended or repealed during the initial twenty (20) year term by a recorded written instrument, executed and acknowledged by the Declarant and the Owners of not less than 51% of the Lots.

Section 7.10. Modification or Repeal During Extension Terms. Any of the provisions of this Declaration may be amended or repealed during any extension term (ten years) by recorded written instrument executed and acknowledged by the Declarant and the Owners of not less than 51% of the Lots.

Section 7.11. Severability. Invalidation of any of the provisions hereof by a final judgement or decree of any court shall in no way affect or impair the validity of any other provision hereof.

Section 7.12. Joint and Several Obligations. The terms of this Declaration in effect on the date of any lease or recording of a sheriff's deed, trustee's deed, deed in lieu of foreclosure, other deed, other order or decree declaring, settling or confirming title, pursuant to which one or more persons, associations or entities becomes a Lessee or an Owner as hereinbefore defined, shall be binding upon such Lessee or new Owner, and such Lessee or new Owner shall be jointly and severally liable with his Lessor or the immediate prior Owner for any continuing performance, failure of performance of any act or obligation restricted or imposed hereunder.

Section 7.13. No Dedication. Nothing contained in this Declaration shall be deemed or interpreted to intend a gift or dedication of any portion of the Property to the general public or for any public purpose whatsoever, such intent being hereby expressly disavowed.

Section 7.14. Successors. Deeds of conveyance of any Lot may contain the provisions, restrictions, covenants and conditions contained herein by reference to this Declaration; however, whether or not such reference is made in any or all said deeds, upon becoming an Owner as herein defined of any of the Property, each such Owner, for himself or itself, his or its heirs, personal representatives, successors, transferees and assigns, binds himself or itself, and such heirs, personal representatives, successors, transferees and assigns, to all the provisions, restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof.

Section 7.15. Assignment of Rights and Obligations of Declarant. The rights of Declarant hereunder are fully assignable to any person, association or entity and any and all obligations and duties of Declarant are fully delegable and assignable to any persons, association or entity.

Section 7.16. Enforcement by Lien. There is, to the full extent permitted by law, hereby created a lien, with power of sale, on each and every Lot within the Subdivision to secure payment of any and all monies charged or levied against any Lot Owner for failure to comply with the restrictions, covenants, conditions, rights and duties imposed, allowed, or granted by the provisions of this Declaration. Such lien shall arise upon the failure of the Lot Owner to pay any monies charged or levied pursuant to this Declaration within thirty (30) days of the date on which the Lot Owner receives written notice of the charge. Each default or violation shall constitute a separate basis for a demand or claim of lien or a lien, but any number of such defaults may be included within a single demand or claim of lien. The Declarant, the ACC or the Association may elect to file such a claim or lien on behalf of the Declarant, the ACC or the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by an officer of Declarant, regular member of the ACC or officer of the Association, and shall contain substantially the following information:

- a) The name of the delinquent Owner;
- b) The legal description and street address of the Lot against which the claim of lien is made; and
- c) The total amounts claimed to be due and owing for the unpaid amount, interest thereon, collection cost and reasonable attorney's fees.

UPON RECORDATION OF A DULY EXECUTED ORIGINAL OR COPY OF SUCH CLAIM OF LIEN AND MAILING OF A COPY THEREOF TO SAID OWNER, THE LIEN CLAIMED THEREIN SHALL IMMEDIATELY ATTACH AND BECOME EFFECTIVE IN FAVOR OF THE DECLARANT, THE ACC OR THE ASSOCIATION AS A LIEN UPON THE LOT AGAINST WHICH THE CHARGE WAS LEVIED. SUCH A LIEN SHALL HAVE PRIORITY OVER ALL LIENS OR CLAIMS CREATED SUBSEQUENT TO THE RECORDATION OF THE CLAIM OF LIEN THEREOF, EXCEPT ONLY TAX LIENS FOR REAL PROPERTY TAXES ON ANY LOT, ASSESSMENTS ON ANY LOT IN FAVOR OF ANY MUNICIPAL OR GOVERNMENTAL ASSESSING UNIT, AND THE LIENS WHICH ARE SPECIFICALLY DESCRIBED IN SECTION 7.17. HEREAFTER. ANY SUCH LIEN MAY BE ENFORCED AND FORECLOSED BY APPROPRIATE ACTION IN A COURT OR IN A MANNER PROVIDED BY LAW FOR FORECLOSURE OF A MORTGAGE OR DEED OF TRUST AS SET FORTH BY THE LAWS OF THE STATE OF TEXAS, AS THE SAME MAY BE CHANGED OR AMENDED FROM TIME TO TIME, INCLUDING FORECLOSURE SALE AND DEFICIENCY DECREE. THE LIEN PROVIDED FOR HEREIN SHALL BE IN FAVOR OF THE DECLARANT AND/OR THE ACC OR THE ASSOCIATION AND SHALL BE FOR THE BENEFIT OF ALL OTHER LOT OWNERS. THE DECLARANT AND/OR THE ACC OR THE ASSOCIATION SHALL HAVE THE POWER TO BID IN AT ANY FORECLOSURE SALE AND TO PURCHASE, ACQUIRE, HOLD, LEASE, MORTGAGE AND CONVEY ANY LOT. IN THE EVENT SUCH FORECLOSURE IS BY ACTION IN A COURT, REASONABLE ATTORNEY'S FEES, COURT COSTS, TITLE SEARCH FEES, INTEREST AND ALL OTHER COSTS AND EXPENSES SHALL BE ALLOWED TO THE EXTENT PERMITTED BY LAW. EACH OWNER, BY BECOMING AN OWNER OF A LOT IN THE SUBDIVISION, HEREBY EXPRESSLY WAIVES ANY OBJECTION TO THE ENFORCEMENT AND FORECLOSURE OF THIS LIEN IN THIS MANNER.

Section 7.17. Subordination of Lien to Mortgages. The lien as provided for in Section 7.16. above, shall subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect said lien; however, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien as to payments which become due prior to such sale or transfer; provided, however, that such foreclosure or proceeding in lieu thereof shall not extinguish or in any way affect the personal liability of the then Owner of record of any such Lot. No sale or transfer shall relieve such lot from liability for any charges thereafter becoming due or from the lien thereof.

Section 7.18. Word Meanings. The words such as "herein", "hereafter", "hereof", "hereunder" and "hereinafter" refer to this Declaration as a whole and not merely to a section or paragraph or article in which such words appear unless the context otherwise requires. The singular shall include the plural, and the masculine gender shall include the feminine and neuter and vice versa unless the context otherwise requires.

Section 7.19. Captions and Section Headings. The captions and headings of various articles, sections, paragraphs or sub-paragraphs of this Declaration are for convenience only, and are not to be considered as defining or limiting in any way the intent of the provisions hereof or thereof.

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TRAVIS COUNTY, TEXAS

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Section 7.20. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection and maintenance by Declarant of Structures, Improvements or signs necessary or convenient to the development, sale, operation or other disposition of the Property within the Subdivision.

Section 7.21. **Rentals.** No portion of a Lot, other than the entire Lot together with the Improvements thereon, may be rented or leased, and then only for Single Family Residential Use.

Section 7.22. **Resubdividing.** No Lot within the Subdivision shall be further subdivided or separated into smaller Lots or parcels by any Owner without the written consent of the Association or the Declarant in case the Association is not yet created. No portion of any such Lot, or any easement or any other interest, other than a security interest or a rental ease therein, shall be conveyed or transferred by any Owner. Declarant reserves the right to change Lot lines and resubdivide the Property owned by Declarant at any time and from time to time; provided, that the number of Lots will not increase.

Section 7.23. **Combining of Lots.** An Owner of two or more contiguous Lots may, with prior written approval of the ACC, combine said Lots into one Lot. Such combination shall be at a sole expense of said Owner. After combination, the resulting Lot shall be treated as one Lot for all purposes of this Declaration, including voting rights within the Association and resubdivision.

Section 7.24. **Covenant to Pay Assessment and Conditions Creating Lien.** Each Owner of any Lot, his heirs, executors, successors, administrators and assigns, by acceptance of a deed therefore, or by entering into a contract of purchase therefore, whether or not it shall be expressed in such deed, contract of purchase, or other conveyance hereby covenants and agrees:

At Closing to Homeowner:

1. That he will pay to the Association the assessment and charges, if applicable, assessed by the Association in each year and there will be no annual dues for the current year if closing is beyond September 1st.
2. That the assessment, together with the continuing obligation to pay all future assessments, assessed in all future years, shall be and remain a charge against and a continuing lien upon the Property.

Section 7.25. **Owner's Liability for Payment of Assessments.** In addition to taking subject to the charge and lien imposed by Section 7.16. hereof, each Owner of each Lot by the acceptance of a deed therefore or by entering into a contract for purchase therefore, whether or not it shall be so expressed in such deed or contract for purchase as part of the consideration of said deed, shall be deemed to have covenanted, bargained and agreed to be personally liable for the payment of each assessment, which is assessed by the Association during any year in which Owner holds

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title to said Lot, all in accordance with the rules of the Association.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed this 8th day of April, 1992.

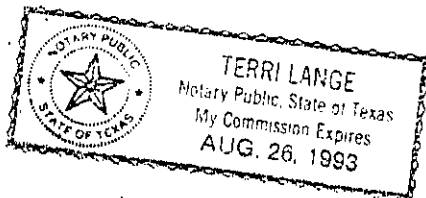
DECLARANT:

Thomas D. Wykoff
Thomas D. Wykoff

STATE OF TEXAS)
COUNTY OF TRAVIS)

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this personally appeared Thomas D. Wykoff, Declarant, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 8 day of April, 1992.



Terri Lange
Notary Public, State of Texas

Return: Tom Wykoff
816 Tirado St.
Austin, TX. 78752

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TRAVIS COUNTY, TEXAS

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Unofficial Document

FILED

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DANA DE BEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me; and
was duly RECORDED, in the Volume and Page of the
said RECORDS of Travis County, Texas, on

APR 8 1992



Dana De Beauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

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RECORDED
APR 8 1992

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TRAVIS COUNTY, TEXAS

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