

THE PRESERVE

COVENANTS CONDITIONS AND RESTRICTIONS

The Declaration of Covenants, Conditions and Restrictions for The Preserve was made on May 6, 1985 by Rockcliff 'Joint Venture, a Texas joint venture, hereinafter referred to as the "Declarant". That Declaration (recorded in Vol. 9189, P. 442-462 of the Real Property Records of Travis County) was amended on July 18, 1986 (recorded in Vol. 9833, P. 309) and amended a second time on June. 22, 1988 (recorded in Vol. 10721, P. 1363 - 1367).

THIS DOCUMENT CONTAINS ALL OF THE ORIGINAL AND AMENDED SECTIONS OF THE COVENANTS, CONDITIONS AND, RESTRICTIONS THAT ARE PRESENTLY IN EFFECT, being a compilation of the original Declaration and the First and Second Amendments. Sections that have been deleted or changed by subsequent Amendment have been omitted.

1. The Declarant is the owner of that certain real property described in Section 1.13 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 Preserve Subdivision 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.

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ARTICLE I:

DEFINITIONS

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

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

1.03. "Association" or "Homeowner Association" shall mean The Preserve Homeowner Association, Inc., a Texas non-profit corporation, which Declarant shall cause to be incorporated.

1.04. "Conservation Easement" shall be the areas designated on The Plat as "Drainage and Conservation Easement" and shall include any creeks, streams, sedimentation basins or bar ditches therein designated or constructed. Any reference in this Declaration to "Drainage Easement" shall have the same meaning as "Conservation Easement", as defined herein, and shall refer to those areas designated on the Plat of The Preserve subdivision as "Drainage and Conservation Easement."

1.05. "Declarant" shall mean Rockcliff Joint venture, a Texas joint venture.

1.06. "Declaration" shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as the same may be from time to time amended.

1.07. "Development Plan" shall mean the plan for development of a Lot which is required to be submitted to the ACC pursuant to Section 6.12 hereof.

1.08. "Greenbelt Easement" shall be the areas shown on the plat across lots B-9, B-10, B-11, B-12, B-13, B-14, and B-15 and described on the plat of The Preserve Subdivision as "Drainage, Conservation and Greenbelt Easement."

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

1.10. a) "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 by a separate number, or any subsequent subdivision thereof.

b) "Bluff 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 Lot B-9, B-10, B-11, B-12, B-13, B-14, B-15 and B-16.

1.11. a) "Owner(s)" shall 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 of real property. The foregoing does not include persons or entities who hold interest in any Lot merely for the security for the performance of an obligation. Any reference herein to Owners shall include Owners as defined herein and as defined or included in any Supplemental declaration.

b) "Bluff Lot Owner(s)" Shall mean and refer to the record owner, whether one or more-persons, association or entities, of Lots B-9, B-10, B-11, B-12, B-13, B-14, B-15 and B-16. A Bluff Lot Owner shall have all the rights, duties, privileges and obligations of an Owner, as defined in Subsection (a) above, in addition to those rights, duties, privileges and obligations of a Bluff Lot Owner as described in Articles VIII and IX of thisDeclaration, as amended.

1.12. "Private Waste Disposal Systems" shall mean any septic tank, tank ,septic system, evapotranspiration (ET) or other system for the disposal of sewage or waste from a residential structure including all pipes, fittings, lines and other related equipment or attachments thereto.

1.13. "Property" shall mean and refer to that certain real property described in section 1.14 hereof, including the aerial and subsurface rights appurtenant thereto, and such additions thereto as may hereafter be annexed.

1.14. "The Preserve subdivision" or "Subdivision" shall mean all of 1 & 2 Block A and Lots 1 -29, Block B of The Preserve subdivision, as recorded in Plat Book 85 at Page 152C, Plat Records of Travis County, Texas.

1.15. "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.

1.16. "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.

1.17. "Subdivision Map or Subdivision Plat" or "Plat Map's or "Plat" shall mean a recorded map or plat covering any or all of the Property referred to in this Declaration, or annexed hereto.

1.18. "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.

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

ARTICLE II: PROPERTY SUBJECT TO RESTRICTION

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 every part thereof. All of this Declaration shall run with all of 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.

2.02. Description of Property. The Property subject to this Declaration is all Property described in Section 1.13 hereof, together with any and all Property added or annexed by Supplemental Declaration at a subsequent time.

ARTICLE III: LAND USE

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.

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 Improvement. The Development Plan shall include, but is not limited to:

a) a topographic survey

b) a site plan with grades at 21 intervals showing location of the home, fences, driveways, septic systems and all other Improvements to the Lot as well as all trees 4" or larger in diameter within 301 of all planned improvements, unless steep topography renders it impractical.

c) a set of house plans by a registered architect who has been approved by the ACC in writing that include a demonstration that the house described by the plans is designed for the specific Lot in addition to: floor plans, foundation plans, building section, landscape plan with external lighting, all elevations, specifications including detailed descriptions and color samples of all exterior materials and finishes.

d) a stakeout an the Lot of the homesite, driveway, septic area and all Improvements to the Lot.

3.03. Time for Construction.

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

b) Commencement of construction shall mean the first onsite work for construction, including, but not by way of limitation, clearing of trees, excavation or site preparation for the purpose of foundation.

c) Materials and equipment necessary for construction, and all debris resulting from clearing or construction shall be confined to the Lot, and shall not be left on any other Lots, Common Areas, or roadway.

ARTICLE IV: RESIDENTIAL STRUCTURES

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. Additionally, all front setbacks will be fifty feet and side setbacks will be forty feet in total with no less than fifteen feet on any one side. 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 3,000 square feet, exclusive of open and closed porches, patios, garages carports, balconies or decks. The ACC may grant a variance for homes which are smaller than 3,000 sq. ft. if the owner can demonstrate an extraordinarily high standard of quality design and construction.

(c) Height Limitations: No structure shall exceed 35 feet in height. The ACC shall have the right to impose limitations on the height of any Single Family- residential Structure or Improvement to preserve lines of sight and views enjoyed by neighboring Lots.

(d) 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.

(e) Private Waste Disposal Systems: Private waste disposal systems shall be constructed or allowed to remain or to be used on any Lot only when approved as to design, capacity, location and construction by all appropriate public health agencies including the Austin-Travis County Health Department.

(f) Roofing Materials: The roofing materials of any Improvement must be of a color which will blend with the environment. The material must be concrete, clay or slate tile. **[scanner's note: the original also adds: factory finished metal, copper or wood shake. It was scratched out in the copy i have]**. No asphalt shingle or reflective material will be allowed. The ACC shall have the right to impose other limitations on roofing materials.

(g) 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. Driveways shall be concrete pavers, or asphalt with concrete or paver curbs. No gravel or other loose material shall be allowed.

(h) Tanks: The ACC shall have the right to approve the location or -any tank used or proposed in connection with a Single Family Residential Structure, including swimming pool filter tanks. All tanks shall be screened so as not to be Visible From Neighboring Property. All tanks shall be for LPG or water only. Storage tanks for any other fuels or fluids shall not be allowed.

(i) Exterior Lighting: One ACC approved light may be placed at or near the base of a permanent mailbox facility. The ACC shall have the right to approve the location, number, size and design of all proposed lighting which is detached from the main structure or dwelling.

j) Windows: All windows shall be wood frame construction and of a quality comparable to Pella, Andersen or Marvin. No aluminum frame windows shall be permitted.

k) Exposed Slabs and open Spaces: No slab may be exposed more than two feet open space under decks must be minimized to six feet.

l) Exterior Materials: No plywood or masonite siding may be used as an exterior sheathing material except-as soffits.

m) Cuts, Fill and Debris: All cuts must be no more than six feet and all exposed cuts must be covered with landscaping, rockwork or some appropriate screen. No debris, fill or brush may be left on the construction site, in particular, along either edge of the Conservation Easement. This applies during construction as well as after completion of construction.

n) Stacks, Gutters, Service/Storage Areas: All roof stacks and gutters must be painted a color that is in harmony with the roof. All service and storage areas must be screened so that they are not Visible From Neighboring Property.

o) Utility Service Hook-ups. All utility service hookups shall be located such that they are not visible from the roadway. This includes the location of HVAC equipment.

p) Erosion and Trash Control: Erosion and trash control barriers must be erected to prevent debris, brush or fill from spilling onto adjoining property, the roadway, or into the Conservation Easement. Debris will be removed during construction at the direction of the ACC.

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. No railroad ties may be used for landscaping. All landscaping must be maintained to be consistent with the Preserve-like environment.

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. The design of any wood fence must receive prior approval of the ACC. Each Owner shall be required to erect and maintain a fenced enclosure, or other ACC approved method, for the keeping and maintaining of the domestic pets allowed excepting cats pursuant to Section 5.01 hereof. Said enclosure shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof and shall be screened so that it is not Visible From Neighboring Property.

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.

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 or other Structures as approved in writing by the ACC; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or 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.

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 permanent basis.

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.

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 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 not larger than twelve (12) square feet;
- d) signs, the nature, number and location of which have 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 developers or builders; and
- f) one "for sale" sign to advertise that the Lot of 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,

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 other Improvement located thereon from its natural or improved state existing on the date such Property was first conveyed in fee to the current owner, Purchaser or annexed by Declarant, whichever is later, shall be made or done without the prior written approval of the ACC.

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

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. Lot Owners shall not keep more than two vehicles in such a manner as to be Visible From Neighboring Property for a period of more than Seventy-two (72) hours. The doors to any garage on any Lot shall be screened so as to not be Visible From Neighboring Property or from any street.

ARTICLE V: RESTRICTIONS

5.01. Animals, Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to 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 Declarant or the Homeowner Association 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 Declarant or the Homeowner Association is final, 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 operation will be allowed.

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

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

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

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.

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

5.07. Obnoxious Activities. No nuisance, obnoxious or offensive activities shall be carried on 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.

5.08. Garbage. No garbage or trash shall be placed or kept on any Lot except in covered containers of standard type. In no event shall such containers be maintained so as to be Visible From Neighboring Property. All rubbish, trash, and 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 or trash shall be permitted to be buried on any Lot at any time.

5.09. Vehicles and Equipment. No bus, truck larger than 3/4 ton pickup, semitrailer, 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 and unloading) . No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired on the Property in such a 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.

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

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 or 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.

5.12. Motorcycles. The use of motorcycles and any motorized vehicles shall be limited to those which have been approved and are legal for street use. Such use shall be limited to the public streets and the use of motorcycles and any motorized vehicle on the Conservation Easement is expressly prohibited. 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 80 decibels, ten (10) feet from the end of the exhaust pipe.

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 Structures and finish which was included in the Development Plan approved by the ACC.

5.14. Service Yards and Storage Yards. Any service yard, wood pile or storage pile shall be located so as not to be Visible From Neighboring Property or streets or access roads. Any Structure of a permanent nature is to be built with regard to these items and must be included in the Development Plan and approved in writing by the ACC.

5.15. Maintenance of Lawns and Plantings. Each owner shall keep all shrubs, trees, grass and plantings of every kind on his Lot including setback areas, utility easements, drainage easements, rights-of-way or other Property, public or private, on which such- Owner's Property abuts properly cultivated, pruned, free of trash and other unsightly material. Declarant, the Association and the ACC shall have the right at any reasonable time to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, at cost to Owner.

5.16. Clothes Drying Facilities. Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Lot unless they are concealed in such a manner so as not to be Visible From Neighboring Property or from streets or from access roads.

ARTICLE VI: ARCHITECTURAL CONTROL COMMITTEE

6.01. Establishment and Composition. There is hereby established an ARCHITECTURAL CONTROL COMMITTEE (ACC), which shall consist of three (3) regular members and two (2) alternative members.

The following persons are hereby designated as the initial members:

Name	Type	Address
Allan Nutt, AIA	Regular	905 Yaupon Valley Austin, Texas 78746
Alston Boyd	Regular	4412 Spicewood Springs Rd. Suite 200 Austin, Texas 78759
Deborah Kobelan	Regular	4412 Spicewood Springs Rd. Suite 200 Austin, Texas 78759
Emily Little, AIA	Alternative	702 San Antonio Austin, Texas 78701

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.

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 disability of one (1) or more regular members, the remaining 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 regular member is present, or in the event action is taken without a meeting, unless at least one

regular member consents in writing thereto.

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 time indicated below, and until appointment of their respective successors:

a) The term of office of Positions 1, 2 and 3 shall expire on the death, resignation or removal of that designated member.

b) The term of office of Positions 4 and 5 shall expire June 30, 1995. Thereafter, the term of each ACC member appointed shall be for a period of four (4) 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 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.

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 the Declarant. At such time as Declarant no longer owns any portion of the Property or 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.

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.

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.

6.07. Transfer of Authority to the Association. The duties, rights, powers and authority of the ACC constituted hereby may be assigned at any time, at the sole election of a majority of the regular members of the ACC, to the Homeowner Association, and from and after the date of such assignment, and the acceptance thereof by the Association, the Association shall have full right, authority and powers, and shall be obligated to perform the functions of the ACC as provided herein (and in the Bylaws of the Association).

6.08. Address- The address of the ACC shall be 4412 Spicewood Springs Rd., Suite 200, Austin,. Texas 78759, or such other place as may from time to time be designated by the ACC by written instrument recorded in real estate records of Travis County, Texas; and the last instrument so recorded shall be deemed the Committee's proper address.

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 specialized consultants and incur expenses up to \$250.00, to aid it in reviewing plans and their incidents. The cost of such specialized consultants and expenses 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.

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 records of all actions taken by it at such meetings or otherwise.

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 the 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.

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 on condition that certain additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date upon which such additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date 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 on or before the required date, then the Development plan shall be automatically disapproved.

6.13. Waiver and Estoppel. The approval of the ACC of any Plan, Development specifications or drawings or 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, specification or matter subsequently submitted for approval.

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 rule 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.

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.

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.

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 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 or 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; provided, however, that with respect to the liability of a member, 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.

6.17. Modifications and Waivers. The ACC, upon such terms and conditions, upon 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 of the ACC rules, applicable to any Improvement or use of, in, on or abutting any 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 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, at its discretion. The Committee shall render a decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision and shall forward one copy to the applicant, and retain one copy in its records. Without limiting the general applications of such section, the provisions of Section 6.15 and 6.16 of this Article shall apply to the actions and the decisions of the Committee and its members under this 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.

6.19. Fees. The ACC shall have the right to require a submission fee for each proposed Development Plan. The initial submission fee shall be \$200.

ARTICLE VII: THE PRESERVE HOMEOWNER ASSOCIATION

7.01. The Association. The Declarant shall cause the formation and incorporation of the Association as a non-profit corporation organized and existing under the Texas Non-Profit Corporation Act, charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, and this Declaration. Neither the Articles of Incorporation nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

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

7.03. Voting. All Owners of Lots shall be entitled to one (1) vote for each Lot owned. if more than one person holds an interest in any Lot, all such persons shall be members of the Association. The vote for such multiply-owned Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

7.04. Quorum for Membership Action. With respect to any annual or special "general" membership meeting of the Association, at the first call of such meeting, the presence at the meeting in person or by proxy of 66% of the total votes of the membership shall constitute a

quorum. If the required quorum is not forthcoming, at such meetings, the meeting may be adjourned to a new date not more than seven (7) days from the current date and the required quorum at such meeting shall be one-half (1/2) the required quorum at such meeting immediately preceding. This procedure shall be continued until a quorum has been obtained; provided, however, that such reduced quorum shall not be applicable at a subsequent meeting held more than sixty (60) days following the originally scheduled meeting.

7.05. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws, as the same may be amended from time to time.

7.06. Powers and Duties of the Association. The Association shall have such rights, powers and duties as set forth in the Articles of Incorporation and Bylaws, as the same may be amended from time to time.

7.07. Personal Liability. No member of the Board of Directors or any Committee of the Association, or any of the officers of the Association, shall be personally liable to any owner, or any other party including the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board of Directors or any other representative or employees of the Association; provided, however, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

7.08. Assessments. The Association shall have the right to make assessments in accordance with this Declaration and subject to the provisions of Section 7.09 (limitation) hereof.

a) The assessments levied by the Association shall be limited to those expenses reasonably necessary for the performance of the duties and functions of the Association and the Association shall have no right to assess for, nor to create, any recreational activities, Improvements or Structures, including, but not limited to, swimming pools, tennis courts, golf courses, country clubs, and other similar recreational facilities. This shall not preclude the maintenance of the Conservation Easement or Greenbelt Easement.

b) The primary duties of the Association, for which the Association is authorized to make assessments shall be as follows: (i) care and maintenance of erosion control measures; (ii) removal of restrictions or obstructions to flow in drainage easements; (iii) lighting, landscaping and maintenance of the entryway; (iv) maintenance of the Conservation Easement and Greenbelt Easement; and (v) enforcement of the use-restrictions within the Conservation Easement and Greenbelt Easement.

c) The Association shall be authorized to make assessments on the Bluff Lot Owners for the maintenance of the Greenbelt, in accordance with Section 9.03 below.

7.09. Limitation on Annual Assessment. Until changed by the Association in accordance with the Bylaws in this Section, the maximum annual assessment on each Lot shall be \$750.00 per Lot; provided, however, the Association may approve a separate and higher maximum annual assessment on each Bluff Lot, as defined in Section 1.10 (b), from that assessment levied on each lot not defined as a Bluff Lot.

a) On January 2nd of each year, or at such other time as the Board of Directors deems appropriate, the Board of Directors may set the annual assessment for the calendar year at whatever level they deem appropriate within the \$750.00 limitation set forth above.

b) Until such time as the Board of Directors sets the annual assessment for each Lot, the annual assessment shall be Four Hundred Dollars (\$400.00) per Lot.

c) Once the annual assessment has reached the \$750.00 maximum level, the Board of Directors may increase the annual assessment by a maximum of twenty percent (20%) of the then current assessment in any given year. Further, such percentage increases are not cumulative and may be prospective only.

d) Any increase in assessment not provided for *in this* Section on any Lot within the subdivision must be made by the Association as a whole, in the same manner as an amendment to the Articles of Incorporation of the Association. Any increase in assessment not provided for in this section on Bluff Lot Owners in the same manner as an amendment to the Articles of Incorporation of the Association.

7.10 Collection of Assessments. The annual assessments referred to above shall be due within thirty (30) days from the date the amount of such annual assessment is set by the Board of Directors. Said assessment shall be subject to the provisions of Section 8.16 and the other enforcement provisions hereof.

7.11. Succession in Interest. At such time as the regular members of the ACC ME the Declarant shall elect, in accordance with the provisions of Section 6.07 hereof, the Association shall, when applicable, assume administration of the ACC in accordance with the Articles of Incorporation and the Bylaws of the Association.

ARTICLE VIII: GENERAL PROVISIONS

8.01 Cost of Performance. Cost and expense in 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 8.16.

8.02. Extension of Time for Performance. If the performance of any act or obligation by this Declaration is prevented or hindered by 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.

8.03. 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.

8.04. 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 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 if deposited 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.

8.05. Enforcement. Declarant, ACC, Association or any owner shall have the right to enforce, by proceeding, at law or 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 parties shall be entitled to recover cost and expenses shall be subject to the provisions of Section 8.16. 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.

8.06. 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.

8.07. 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, violation hereof shall be subject to enforcement in accordance with the provisions of this Declaration.

8.08. Covenants to Run With the Land. The restrictions, easements, covenants, conditions, rights, and duties of this Declaration shall run with and bind 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.

8.09. 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 66% of the Lots.

8.10. Modification 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.

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

8.12. 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 hereinafter 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 immediately prior owner for any continuing performance, failure of performance or defective performance of any act or obligation restricted or imposed hereunder.

8.13. 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.

8.14. 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, by 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.

8.15. 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 person, association or entity.

8.16. Enforcement by Lien. There is, to the full extent permitted by law, hereby created a claim of 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 such 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 of 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 (with any proper offset allowed).

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 8.17 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 trust deed 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.

8.17. Subordination of Lien to mortgages. The lien as provided for in Section 8.16 above, shall be subordinate to the lien of 16 any first mortgage. Sale or transfer of any Lot shall not effect 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 of such assessment 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 effect the personal liability of the then record Owner 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.

8.18. Word Meaning. The words such as "herein", "hereinafter", "hereof", "hereunder", and "hereinabove" 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. Singular shall include the plural, and the masculine gender shall include the feminine and neuter and vice versa unless the context otherwise requires.

8.19. Captions and Section Headings. The captions and headings of various articles, sections, paragraphs or subparagraphs 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.

8.20. Declarant's Exemption. Nothing contained in this Declarant 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.

8.21. Rentals. No portion of a Lot, other than the entire Lot together with the Improvements thereon, may be rented or leased, and then only to a Single Family.

8.22. Resubdivision. 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 Lot, or any easement, or any other interest, other than a security interest or a rental or lease, therein, shall be conveyed or transferred by any Owner. Declarant reserves the right to change Lot lines and resubdivide the Property at any time and from time to time; provided, that the total number of Lots will not increase. Each Owner hereby makes, constitutes and appoints the Association or the Declarant, as the situation requires, with full power of substitution, as his or its lawful attorney-in-fact, with power to execute, acknowledge, file and record with any governmental authority any appropriate documents for the purpose of effecting the resubdivision of any Lot or portion thereof, in accordance with the terms of this Declaration. The foregoing power (i) is coupled with an interest, (ii) is irrevocable (iii) shall survive the dissolution of or resignation of Declarant, (iv) may be exercised for each Owner individually or by listing all of the Owners and executing any instrument with a single signature as attorney-in-fact for all of them, and (v) shall be binding upon all assignees and successors of each owner.

8.23. 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 the sole expense of the 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.

8.24. Certificate of Compliance of a Structure or an Improvement. upon completion of a Structure or improvement approved by the ACC and upon written request by the Owner of the Lot, the ACC shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Structure or Improvement, the use or Uses to be conducted thereon, and the plans and specifications on file with the ACC, pursuant to which the Structure was erected or Improvement was made and, shall specify that the Structure or Improvement complies with the approved plans and specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of the Structure or Improvement or of the workmanship or materials thereof. The Owner is hereby notified and shall again be notified upon issuance of the Certificate, that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the ACC of the construction, workmanship, materials or equipment of the Structure or Improvement. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the improved Lot.

8.25. Covenant to Pay Assessment and Conditions Creating Lien Each Owner of 'Thy Lot, his heirs, -executors , successors , administrators and assigns, by acceptance af a deed thereof, or by entering into a contract of purchase therefor, whether or not it shall be expressed in any such deed, contract of purchase, or other conveyance, hereby covenants and agrees;

a) That he will pay to the Association the assessment and charges, if applicable, assessed by the Association in each year; and

b) That the assessment together with the contributing obligation to pay all future assessments, assessed in all future years, shall be and remain a charge against and a continuing lien upon the assessable Property.

8.26. Owner's Liability for Payment of Assessments. In addition to taking subject to the charge and lien imposed by Section 8.16 hereof, each owner of each Lot by the acceptance of a deed thereof or by entering into a contract of purchase therefor, 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 title to said Lot.

ARTICLE IX: EASEMENTS

9.01. Existing Easements. The Subdivision Plat will dedicate for use as such, subject to the limitations set forth therein, and herein, certain streets, rights-of-way and easements shown thereon, and such Subdivision Plat will establish dedications, limitations, reservations and restrictions applicable to the Property. Furthermore, Declarant and Declarant's predecessors in title may, prior to the Property becoming subject to this Declaration, grant, create and dedicate by recorded instrument (s) certain other easements, restrictions, right-of-way and related rights affecting the Property. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements, right-of-way and restrictions, related rights, made by Declarant or Declarant's predecessors in title, prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property.

9.02. Changes and Additions. Declarant reserves the right to make changes In and additions to the above easements and rightsof-way for the purpose Of most efficiently and economically installing the improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements forpublic utility purposes, including, without limitations, gas, water, electricity, telephone and drainage, in favor of any person or entity, along and on either or both sides of any Lot line, which such easement shall have a maximum width of 7.5 feet an each side of such Lot line.

9.03. Greenbelt Easement.

a) The Greenbelt Easement shall be left in its natural state to the greatest extent possible. Except for the construction and maintenance of any accessways (including any stairways or elevators from the top of the bluff down to the boat dock area across any Bluff Lot) and for construction of the boat docks themselves and as provided in subsection "b" below, there shall be no Improvements, Structures or clearing of any kind, temporary or permanent in any Greenbelt Easement unless and until approved in writing by a two-thirds (2/3rd) majority of the Bluff Lot Owner members of the Association. "Clearing" includes, but is not limited to, cutting, trimming, pruning and mowing of trees, shrubs, undergrowth and native annuals and perennials. The Association's Bluff Lot Owners, in considering whether to allow or permit any Improvement or Structure which might adversely affect to any extent the environmental integrity of the Greenbelt Easement, shall not permit such Improvement, Structure or clearing unless it would clearly serve the beneficial interest of all the Bluff Lot Owners.

b) Notwithstanding the foregoing provisions of Section 9.03(a), the ACC may approve limited cutting and trimming of trees within the Greenbelt Easement for the purpose of opening up limited lake views. Such approval may only be granted by the ACC upon written application by a Bluff Lot Owner requesting permission to cut or trim trees individually marked and numbered on the ground. The ACC shall make an on-the-ground inspection of the marked trees for which application to cut or trim is being made and thereafter approve only so much tree trimming and cutting within the Greenbelt Easement as is required in their judgment to open limited dramatic views of Lake Austin as would be in Keeping with the natural sylvan beauty of The Preserve Subdivision.

c) Each Bluff Lot Owner covenants to provide easements for access to the boat docks located within the Greenbelt Easement and for the installation, use and maintenance of any and all electric, water and drainage facilities and lagoon embankment facilities necessary for the use, enjoyment, operation and maintenance of said boat docks and the control of water quality and water depth in the lagoon providing naval access to said boat docks.

d) The Association shall keep a separate record of its costs and expenses in maintaining the Greenbelt Easement; vehicle access within the Greenbelt Easement; water, electric and drainage facilities within the Greenbelt Easement; and lagoon pumping, dredging and embankment shoring expenses for the benefit of the Bluff Lot Owners within said Greenbelt Easement. The Association shall have the right to levy assessments for the expenses reasonably necessary to maintain the Greenbelt exclusively on the Bluff Lot owners. No assessments for the separately expensed Greenbelt Easement maintenance shall ever be levied on any owner not defined herein as a "Bluff Lot Owner."

9.04. installation and Maintenance. There is hereby created an easement upon, across, over and under all of the. Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, water, gas, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Structure. Notwithstanding anything contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approval by Declarant or the ACC. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Subdivision Plat, and to trim overhanging trees and shrubs located on portions of the Properties abutting such easements.

9.05. Drainage Easement. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Declarant's Improvements, and Improvements approved by the ACC thereon, require. Each owner further covenants not to disturb or displace any trees or other vegetation within drainage easements as defined in this declaration and shown on the Plat. There shall be no development, Improvements or Structures, temporary or permanent, in any drainage easement, except as approved in writing by the ACC or the Association, as the. situation requires..

9.06. Easements for Access by Declarant or ACC. The Declarant, the ACC and the Association

shall -have the right and permanent easement to enter upon any and all Lots in the Subdivision for maintenance, repair, removal of drainage obstructions and for inspections as to compliance of these covenants. The Declarant, the ACC and the Association shall have the right to enter any Lot for the purpose of correcting any violation of any covenant herein.

9.07. Surface Areas. The surface of easement areas for underground utility services may be used for planting or shrubbery, trees, lawn or flowers. However, neither the Declarant nor any supplier of any utility service using the easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity. relating to the construction, maintenance, operation or repair of any facility in any such easement area.

THIRD AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR THE PRESERVE SUBDIVISION

WHEREAS, ROCKCLIFF JOINT VENTURE ("Declarant"), as owner of that certain real property hereinafter referred to as the "Property," known as the THE PRESERVE SUBDIVISION, a plat of record in Plat Book 85, Page 152-C, Plat Records of Travis County, Texas, on May 6, 1985, adopted a Declaration of Covenants, Conditions and Restrictions (the "Declaration") for the benefit of the Property and recorded same in Volume 9189, Pages 442-462, Real Property Records of Travis County, Texas; and

WHEREAS, on July 18, 1986, Declarant amended said Declaration of Covenants, Conditions and Restrictions for The Preserve Subdivision *by* adding certain specific exceptions to Section 9.03, Conservation Easement, which Amendment was recorded in Volume 9833, Page Real Property Records of Travis County, Texas; and

WHEREAS, on June 22, 1988, Declarant further amended said Declaration of Covenants, Conditions and Restrictions on the Property to provide for access to and maintenance of boat docks, water, electric and drainage facilities for said boat docks; channel dredging; and shoreline maintenance and channel circulation for the benefit of Bluff Lot Owners, which Amendment was recorded at Volume 10721, Page 1362-1367, Real Property Records of Travis County, Texas; and

WHEREAS, Declarant desires to further amend the Declaration of Covenants, Conditions, and Restrictions on the Property to increase the minimum floor area of Single Family Residential Structures, subject to discretionary variances by the Architectural Control Committee; to establish a timetable and escrow fund for completion of certain improvements on lots; to delete authority to change existing lot lines; to exclude construction of Single Family Residential Structures not intended for immediate sale; to revise restrictions on exterior construction materials; to revise the composition and selection of the Architectural Control Committee; and to revise the procedures for subsequent amendments to this Declaration.

NOW, THEREFORE, Declarant, joined in *by* owners of not less than sixty-six percent (66%) of the lots in The Preserve Subdivision, in accordance with Section 8.09 of the Declaration, HEREBY AMENDS said Declaration of May 6, 1985, as amended on July 18, 1986

and June 22, 1988, by this Third Amendment to Declaration of Covenants, Conditions and Restrictions for The Preserve Subdivision, to hereinafter read as follows:

3.02. Development Plan. Each Owner shall be required to submit a detail 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 Improvement. The Development Plan shall include, but is not limited to:

(a) a topographic survey

(b) a site plan with grades at 2' intervals showing location of the home, fences, driveways, septic systems and all other Improvements to the Lot as well as all trees 4" or larger in diameter within 30' of all planned improvements, unless steep topography renders it impractical.

(c) a set of house plans by a registered architect who has been approved by the ACC in writing that include a demonstration that the house described by the plans is designed for the specific Lot

in addition to: floor, foundation plans, building section, all elevations. a no all specific including detailed descriptions and color samples of all exterior materials and finishes.

(d) a stakeout on the Lot of the homesite, driveway, septic area and all Improvements to the Lot.

(e) a landscape plan, showing type and location of all external lighting, and the location, size and type of all vegetation to be preserved or added to the landscape, and all other proposed landscape Improvements, including, but not limited to, pools, spas, walls, berms, and outbuildings.

3.03. Time for Construction and Escrow for Landscaping Improvements.

(a) Construction of Structure or Improvement shall be continuous and proceed in an orderly fashion without interruption and any Structure or Improvement on a Lot shall be completed 14 a reasonable time, not to exceed eighteen (18) months from the commencement of construction,

(b) Construction of landscape Improvements shall be completed within eighteen (18) months from the commencement of construction of a Structure, or within six (6) months from the completion of construction of a Structure, whichever comes first.

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

(d) Materials and equipment necessary for construction, and all debris resulting from clearing or construction shall be confined to the Lot, and shall not be left on any other Lots, Common Areas, or roadway.

(e) Upon commencement of construction, Owner shall deposit or cause to be deposited with Owner's title insurance company or lender a sum of money (herein called "the Deposit") determined by the ACC to be sufficient to complete or ensure completion of landscape Improvements between the street or streets bordering the Lot and the Structure, (herein called

"Streetside Landscape Improvements") as contained in Owner's landscape plan approved by the ACC. The Deposit shall be held in trust by the title insurance company or lender, for the benefit of the Association and the Owner, and shall be withdrawn in whole or in part solely for payments for labor and materials to complete Streetside Landscape Improvements. Upon substantial completion of the Streetside Landscape Improvements, and payment therefor, the remainder, if any, of the Deposit shall be refunded to the Owner upon the written approval of the Chairperson of the ACC.

4.01.

(b) Minimum Floor Areas. All Single Family Residential Structures constructed on a Bluff Lot, on or after December 1, 1990, shall have a floor area of not less than 4,000 square feet, exclusive of open and closed porches, patios, garages, carports, balconies or decks. All Single Family Residential Structures constructed on a Lot, other than a Bluff Lot, on or after December 1, 1990, shall have a floor area of not less than 3,500 square feet, exclusive of open and closed porches, patios, garages, carports, balconies or decks. The ACC may grant a variance for homes that are smaller than the minimum floor areas stated herein, if the Owner can demonstrate an extraordinarily high standard of quality design and construction, or in the event of compelling unique or special circumstances unique to that Lot or Bluff Lot.

4.01.

(1) Exterior Materials. The exterior walls of any Single Family Residential Structure shall consist of at least eighty percent (80%) masonry construction. No plywood, masonite or aluminum siding may be used as an exterior sheathing material, except as soffits.

5.17. Model Homes. No Single Family Residential Structure shall be constructed in the Preserve Subdivision other than for occupancy by an Owner or tenant, or for immediate sale by a builder. No Single Family Residential Structure shall be constructed or used as a "model home" by an owner or builder.

6.01. Establishment and Composition. There is hereby established an Architectural Control Committee (ACC) which shall consist of six (6) members, including a Chairperson. All members of the ACC shall be owners. 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.

6.02. Voting. 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 ACC. In the event the ACC is deadlocked or tied on a vote of the Committee, the matter shall be presented as soon as possible to a vote of the Board of Directors.

6.03. Election and Terms of Office. Members of the ACC and the Chairperson of the ACC shall be elected by majority vote of the Board of Directors, at the first regular meeting of the Board of Directors following the annual meeting of Members of the Association. The term of office for each member of the ACC, and the Chairperson, shall be for one (1) year, or until their successors have been elected and qualified. At such time as the composition of the ACC is added 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 ACC as it is constituted.

6.04. Removal and Appointment. Any member, including the Chairperson of the ACC, may be removed by a majority vote of the Board of Directors, with or without cause, Vacancies on the ACC, however caused, shall be filled by majority vote of the Board of Directors of any regular or special meeting, or by unanimous written consent.

6.05. Resignations. Any member of the ACC may resign at any time from the ACC by giving written notice to the Board of Directors.

6.06. Deleted

6.07. Deleted

6.08. Address. The address of the ACC shall be 4226 Hidden Canyon Cove, Austin, Texas 78746, or any such other place as may from time to time be designated by the ACC by written instrument recorded in the real property records of Travis County, Texas; and the last instrument so recorded shall be deemed the ACC's proper address.

8.09. 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 owners of not less than 661 of the Lots. Provided, however, that for the purposes of this Article 8.09, in the event that two or more Lots are owned by the same individual or entity, those Lots shall be deemed to constitute one Lot, and the total number of Lots in the Subdivision shall be deemed to equal the number of separately owned Lots in the Subdivision.

8.10. 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 Owners of not less than 51% of the Lots. provided, however, that for the purposes of this Article 8.10, in the event that two or more Lots are owned by the Same individual or entity, those Lots shall be deemed to constitute one Lot, and the total number of Lots in the Subdivision shall be deemed to equal the number of separately owned Lots in the Subdivision.

8.22. Resubdivision. 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. No portion of any Lot, or any easement, or any other interest, other than a security interest or a rental or lease, therein, shall be conveyed or transferred by any Owner. Each Owner hereby makes, constitutes, and appoints the Association, with full power of substitution, as his or its lawful attorney-in-fact, with power to execute, acknowledge, file and record with any governmental authority any appropriate documents for the purpose of effecting the resubdivision of any Lot or portion thereof, in accordance with the terms of this Declaration. The foregoing power (i) is coupled with an interest, (ii) is irrevocable, (iii) shall survive the dissolution of or resignation of the Declarant, (iv) may be exercised for each owner individually or by listing all of the Owners and executing any instrument with a single signature as attorney-in-fact for all of them, and (v) shall be binding upon all assignees and successors of each Owner.

IN WITNESS HEREOF, the undersigned, being the Declarant herein and the Owner of at least sixty-six percent (66%) of the Lots, have set their hands and seal to be effective this day of December, 1990.

ROCKCLIFF JOINT VENTURE, a Texas joint venture

By:

BOYD & ASSOCIATES, a Texas general partnership

BY:

ALSTON BOYD, General Partner

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the day of December , 1990 by Alston Boyd,
General Partner of Boyd & Associates, a Texas general partnership.

NOTARY PUBLIC, STATE OF TEXAS

TYPED OR PRINTED NAME-OF NOTARY

MY COMMISSION EXPIRES- 5/12/94

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