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FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COMMONS AT CROSS VALLEY RUN

THE STATE OF TEXAS §

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COUNTY OF TRAVIS §

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THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE COMMONS AT CROSS VALLEY RUN (this "First Amendment") is executed to be effective as of the 15th day of March, 1994 by Sutton Northwest Triad, Ltd., a Texas Limited Partnership.

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THAT, WHEREAS SUTTON - NORTHWEST TRIAD, LTD., a Texas Limited Partnership, (the "Declarant"), is the owner of certain real property located in Travis County, Texas (the "Property"), as defined in Article I, Section 1.20 below, which Declarant proposes to develop and subdivide for residential purposes; and

WHEREAS Sutton - Northwest Triad, Ltd., a Texas Limited Partnership, (the "Original Declarant") executed a Declaration of Covenants, Conditions, and Restrictions for The Commons at Cross Valley Run (the "Declaration") dated May 7, 1993, and recorded in Volume 11931, Page 20 of the Real Property Records of Travis County, Texas; and

WHEREAS As of the date hereof, Sutton - Northwest Triad, Ltd., as Original Declarant, owns 100% of the acreage of the Property. Thus, in accordance with Section 9.02 of the Declaration, the consent of no party other than Sutton - Northwest Triad, Ltd. is necessary for this First Amendment to be effective; and

WHEREAS The Commons at Cross Valley Run Residential Owners Association, Inc., has been incorporated under the laws of the State of Texas as a non-profit corporation, and have been granted powers of administering and enforcing said covenants, restrictions, charges and liens and disbursing the assessments and charges created in this Declaration; and

WHEREAS, the Declarant desires to convey the Property subject to certain protective covenants, conditions, restrictions, liens and charges set forth below; and

WHEREAS, Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property.

NOW, THEREFORE, KNOWN ALL MEN BY THESE PRESENTS: that it is hereby declared (i) that all of the Property shall be held, sold conveyed and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding

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on all parties having any right, title, or interest in or to the Property or any part thereof their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions regardless of whether or not the same are set out or referred to in said contract or deed. **These covenants, conditions and restrictions are in addition to those certain Restrictive Covenants heretofore filed in the Real Property Records of Travis County, Texas, Book 8824, Page 632, which covenants are incorporated herein as set forth verbatim.**

ARTICLE I DEFINITIONS

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

1.01 Architectural Committee. "Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property.

1.02 Architectural Committee Rules. "Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as the same may be amended from time to time.

1.03 Articles. "Articles" shall mean the Articles of Incorporation of The Commons at Cross Valley Run Residential Owners Association, Inc., which shall be filed in the office of the Secretary of State of the State of Texas, as from time to time amended.

1.04 Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

1.05 Association. "Association" shall mean The Commons at Cross Valley Run Residential Owners Association, Inc., a Texas non-profit corporation.

1.06 Board. "Board" shall mean the Board of Directors of the Association.

1.07 Bylaws. "Bylaws" shall mean the Bylaws of the Association adopted by the Board, and as from time to time amended.

1.08 Common Area. "Common Area" shall mean all real property, including Lot 15 containing 1.826 acres, along with any improvements thereto, operated and managed by the Association. The Common Area shall be owned in 1/14th undivided interests by the Owners, and shall be operated and managed by the Association for the common use and enjoyment of the

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Owners.

1.09 Declarant. "Declarant" shall mean Sutton - Northwest Triad, Ltd., its duly authorized representatives or their respective successors or assigns; provided, however, that any assignment of the rights of Sutton - Northwest Triad, Ltd. as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.10 Declaration. "Declaration" shall mean this instrument, and as it may be amended from time to time.

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

1.12 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on a Plat of a Subdivision out of the Property, together with all the Improvements located thereon.

1.13 Member. "Member" or "Members" shall mean any person, persons, entity or entities holding membership rights in the Association.

1.14 Mortgage. "Mortgage" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.

1.15 Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.16 Owner. "Owner" or "Owners" shall mean a person or persons, entity or entities, including Declarant, holding a fee simple interest in any portion of the Property, but shall not include a Mortgagee.

1.17 Person. "Person" or "Persons" shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.

1.18 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement including but not limited to, those indicating location, size, shape, configuration, materials, site

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plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services and all other documentation or information relevant to such improvement.

1.19 Plat. "Plat" shall mean a subdivision plat of any portion of the Property.

1.20 Property. "Property" shall mean that real property which is subject to the terms of this Declaration, as described on Exhibit "A", together with any land which is added to the terms hereof as provided in Section 2.02 below.

1.21 The Commons at Cross Valley Run Restrictions. "The Commons at Cross Valley Run Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with The Commons at Cross Valley Run Rules, Committee Rules and the Articles and Bylaws of the Association from time to time in effect, as the same may be amended from time to time.

1.22 The Commons at Cross Valley Run Rules. "The Commons at Cross Valley Run Rules" shall mean the rules and regulations adopted by the Board, as the same may be amended from time to time.

1.23 Subdivision. "Subdivision" shall mean a portion of the Property which is subdivided for residential purposes as shown on a map or plat of record in the Plat Records of Travis County, Texas.

ARTICLE II DEVELOPMENT OF THE PROPERTY

2.01 Development by Declarant. It is contemplated that the Property will be developed pursuant to a master concept plan for a quality subdivision, which may, from time to time, be amended or modified, in which the development of and restrictions upon each portion thereof will benefit each other portion and the whole thereof. The overall development shall be in accordance with the approved final plat.

2.02 Addition of Land. It is contemplated that Declarant will develop certain real property now owned or hereafter acquired by Declarant for residential purposes. Declarant may, at any time and from time to time, add additional lands to the Property and, upon the filing of a notice of addition of land as hereinafter described, this Declaration and the covenants, conditions, restrictions and obligations set forth herein, shall apply to the added lands, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Real Property Records of Travis County, Texas, a notice of addition of land (which notice may be

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contained within any Supplemental Declaration affecting such land) containing the following provisions:

- (A) A reference to this Declaration, which reference shall state the book and page numbers of the Travis County Real Property Records wherein this Declaration is recorded;
- (B) A statement that all of the provisions of this Declaration shall apply to the added land;
- (C) A legal description of the added land; and
- (D) A legal description of all Common Area to be owned by the Association within the added land.

ARTICLE III GENERAL RESTRICTIONS

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

3.01 Antennae. No exterior radio or television antenna, or aerial or satellite dish receiver, or other devices designed to receive telecommunication signals, including, but not limited to, radio, television or microwave signals which are intended for cable television, network television reception or entertainment purposes shall be erected or maintained for any purpose without the prior written approval of the Architectural Committee.

3.02 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located on the Property without the prior written approval of the Board.

3.03 Subdividing. No lot shall be further divided or subdivided nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that the Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee. All further divisions or subdivisions of any Lot, as referenced above, shall comply with all pertinent City of Austin ordinances and regulations, including minimum lot sizes, to the extent those ordinances and regulations are binding and applicable, if any. Nothing herein shall prevent an Owner from building across Lot lines so long as such construction does not interfere with any easements along Lot lines.

3.04 Signs. No signs of any character shall be allowed on any Lot except one professional

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sign for Lot identification purposes; provided, however, that the Declarant and any other person or entity engaged in the construction and/or sale of residences within the Subdivision shall have the right, during the period of development, construction, and sale of houses in the Subdivision, to construct and maintain such facilities as may be reasonably necessary or convenient for such construction and sale, including, but not limited to, signs, sales offices, storage areas, and model units. Each lot may have one "for sale by owner" sign of less than four square feet in size. Notwithstanding the foregoing, the appearance and location of all signs must be acceptable to the Architectural Committee.

3.05 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view.

3.06 Noise. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

3.07 Construction Improvements. No Improvements shall hereafter be constructed upon any of the Property without the prior written approval of the Architectural Committee.

3.08 Repair of Buildings. All Improvements upon any of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof.

3.09 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement or the removal of any Improvement shall be performed only with the prior written approval of the Architectural Committee.

3.10 Roofing Materials. All roofing shall be metal, masonry or composition shingles of not less than a twenty-five year life.

3.11 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 portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Improvements as approved in writing by the Architectural Committee; provided, however, that no

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provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements which have been previously approved in writing by the Architectural Committee. The installation method, including, but not limited to, location, type of installation for both temporary and permanent utilities shall be subject to review and approval by the Architectural Committee.

3.12 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Committee. All drainage structures under private driveways shall have a net drainage opening area of sufficient size to permit the free flow of water without backwater. All drainage structures shall be subject to the approval of the Architectural Committee.

3.13 Creek and Tributary Obstructions. No obstructions of any type, including, but not limited to, fences, dams, and concrete walkways, shall be placed in, on, or across the bed of any creek adjoining or running through any Lot in the Subdivision. "Creekbed" as used herein in relation to obstructions, means that portion of the creek where water would flow in times of normal rainfall.

3.14 Filling, Cutting, and Slope Control. The Architectural Committee shall carefully review all proposed Improvements which will be placed on Lots with slopes exceeding twenty percent (20%), and all filling and cutting of the terrain on such Lots shall be kept at a minimum.

3.15 Solar Equipment. All usage of solar equipment must be approved in writing by the Architectural Committee.

3.16 Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property and no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces or in contained barbecue units while attended and in use for cooking purposes.

3.17 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon the Property, without the prior written approval of the Architectural Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen during actual construction, may be maintained with the proper approval of Declarant, approval to include the nature, size, duration and location of such structure.

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

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3.19 Unsightly Articles: Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have garage space sufficient to house at least two (2) vehicles. Lot Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. No automobiles or other vehicles may be parked overnight on any roadway within the Property. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse, trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.

3.20 Mobile Homes, Travel Trailers, Horse or Cattle Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers, horse or cattle trailers, or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more that seventy (72) hours.

3.21 Fences. No fence, of any sort, shall be constructed on any Lot without the Architectural Control Committee's prior written approval. In order to obtain such approval, complete plans and specifications for any proposed fence must be submitted to, and approved in writing, by the Architectural Control Committee. Fences shall not be located nearer to the front street than twenty-five feet (25') behind a plane even with the front of the dwelling. The Architectural Committee may, in its discretion, prohibit the construction of any fence, or specify the materials of which any fence must be constructed, or require that any other proposed fence be screened by vegetation or otherwise so as not to be visible from other portions of the Property.

3.22 Animals - Household Pets. No animals, including pigs, 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 will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, cared for, kept or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary and reasonable free of refuse, insects and waste at all time. Such enclosed area shall be constructed in accordance with plans approved by the Architectural Committee, shall be a reasonable design and construction to adequately contain such

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animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

3.23 Landscaping. No fence, wall, hedge, shrub, or tree planting which obstructs sight lines at elevations between three (3) and six (6) feet above the surface of any street or roadway shall be planted or permitted to remain on any corner Lot within the triangular area formed by the curblines of such intersecting streets and a line connecting such curblines at points twenty-five (25) feet from their intersection, or, in the case of a rounded corner, from the intersection of the curblines as extended. The same sight line limitations shall apply on any Lot within ten (10) feet of the intersection of a street curbline and the edge of a driveway or alley. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than six (6) feet above ground level. Anything herein to the contrary notwithstanding, the Committee may allow a ten (10) foot setback from a side street and a ten (10) foot front setback from a side street if the Committee, in its sole discretion, so elects.

3.24 Maintenance of Lawns, Plantings and Improvements.

- (A) In the event the Owner of any Lot shall fail to maintain such Lot and the Improvements situated thereon in a neat and orderly manner, the Association, acting through the Committee, its agents and employees, shall have the right to enter upon said Lot and to repair, maintain, and restore the Lot and exterior of any and all buildings and other Improvements erected thereon, all at the expenses of Owner.
- (B) The Owner of the Lot adjoining a creekbed shall maintain the creekbed and banks free of debris and, if the Owner shall fail to do so, the Association shall have said area maintained at the expense of the Owner. "Creekbed," as used in this paragraph, shall mean that property lying between the centerline of a creek to the far line of the drainage easement, if any, on the Lot, or if no drainage easement exist, then that property lying between the center line of the creek to the top of the creekbed. Anything to the contrary contained in this paragraph notwithstanding, all creekbed maintenance performed by an Owner, or by the Association, shall be performed in accordance with all applicable regulations and the ordinances of the City Austin.
- (C) All non-native plants, shrubs, trees, grass, and landscaping on a Lot shall be maintained in a trimmed and neat condition at all times. In the event the Owner of a Lot fails to properly maintain such landscaping, the Association shall be entitled to do so, all at the Owner's expense.
- (D) The Committee shall have the sole authority to make a determination as to the acceptability of the maintenance and appearance of any Lot, and the

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Committee shall have the absolute discretion and authority to determine the necessity for required maintenance of Lots within the Subdivision. No unsightly Lots shall be permitted at any time.

3.25 Dwelling Size. Unless such requirement is expressly waived in writing by the Committee, any single family dwelling constructed on a Lot must have a floor area of not less than 2000 square feet, exclusive of open and closed porches, terraces, patios, balconies, driveways, and garages. This requirement will only be waived by the Committee in unusual circumstances where the property or other characteristics of a Lot do not reasonably enable compliance with this requirement.

3.26 Masonry Requirements. Residences located on all Lots shall have a minimum of five percent (5%) of their exterior walls of stone or masonry construction. In computing these percentages (1) all gables shall be excluded from the total area of exterior walls; (2) all windows and door openings shall be excluded from the total area of the exterior walls; and (3) stone and masonry used on fireplaces, chimneys and walls of an attached garage may be included in the computation as stone or masonry used.

3.27 Construction in Place. All dwellings constructed on the Property shall be built in place on the Lot and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Committee. Prefabricated trusses shall be allowed without written approval of the Architectural Committee.

3.28 Unfinished Structures. No structure shall remain unfinished for more than one (1) year after the same has been commenced.

3.29 Setback Requirements. All setback requirements shall comply with the City of Austin zoning ordinance relating to setback requirements. Additionally, no building shall be located on any of the Lots nearer to the front lot line or nearer to the side street line than the minimum setback lines shown on the recorded subdivision plat of the Commons at Cross Valley Run.

3.30 Construction Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, or posting of signs or similar activities; provided, however, that such construction is to be pursued to completion with reasonable diligence and conform to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provisions may be granted by the Architectural Committee; provided, however, such waiver shall be only for the reasonable period of such construction.

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

3.32 Identification of Lots. The house number for each single family residence shall be located on the home.

3.33 Fuel Tanks. No butane or fuel tank (other than small tank used for outdoor cooking) or other structure or facility for the storage of combustible fuels shall be placed or maintained on any Lot unless expressly authorized in writing by the Committee.

3.34 Prohibited Activities. No business, professional, commercial, or trade venture or activity shall be conducted on any of the Lots; provided, however, that model homes and/or sales office may be constructed and maintained by the Declarant, its successors and assigns, in connection with the development of and the construction and sale of houses and Lots in the Subdivision. Subject to the prior written consent of the Committee, which consent is and shall be expressly required, home offices to which the general public is invited, incidental to an owner's business, may be maintained within such owner's residence, so long as activities conducted in connection with such home offices do not become an annoyance or nuisance to the neighborhood, in the sole and absolute discretion of the committee.

3.35 Garages and Driveways. All garages shall comply with all other restrictions, covenants, conditions and limitations on usage herein provided for other Improvements in the Subdivision. All garages shall be suitable for not less than two automobiles. All garages shall consist of enclosed structures and no carports shall be permitted on any Lot. Driveways on corner Lots facing both a cul-de-sac and a main thoroughfare shall be located on the cul-de-sac; provided, however, that the Committee shall have the authority to approve circular drives on any Lot. All driveways shall be constructed of asphalt or concrete and be of a minimum width of ten (10) feet, twelve (12) feet at the curb, per city requirements.

3.36 Window Materials. All windows on all Improvements in the subdivision shall utilize only clear or lightly tinted, nonreflective glass.

ARTICLE IV USE RESTRICTIONS

4.01 General. The Property shall be improved and used solely for a single-family residential use or for Common Area. Common Area may, subject to the approval of Declarant, be

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improved and used for landscaping, active and passive recreational purposes for the primary benefit of Owners and occupants of portions of the Property.

4.02 Common Area. No land within any Common Area shall be improved, used or occupied, except in such manner as shall have been approved by Declarant, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and Improvement. Improvements to, and use and occupancy of, Common Area, as referenced in this Section 4.02, shall comply with all pertinent City of Austin ordinances and regulations, to the extent those ordinances are binding and applicable, if any. Declarant may, by written instrument, delegate its right to grant such approval to persons currently paying assessments, fees and other charges, or otherwise conditioned or restricted, or made available to non-Owners, all on such terms and conditions as Declarant may determine, in its sole discretion.

4.03 Recreational Improvements. Any proposed construction of recreation Improvements within a Common Area shall be subject to approval by the Architectural Committee.

ARTICLE V
THE COMMONS AT CROSS VALLEY RUN
RESIDENTIAL OWNERS ASSOCIATION, INC.

5.01 Organization. The Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Association. The Association shall be a non-profit corporation created for the purposes, charged with the duties and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration

5.02 Membership. Any Person, upon becoming an Owner, shall automatically become a Member of this Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be served from, or in any way transferred, pledged, mortgaged or alienated, except together with the title to the said property interest.

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

(A) The Owner of each Lot within the Property shall have one vote for each Lot so

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owned. The votes cast pursuant to this subsection (A) are referred to as Class A Votes.

- (B) In addition to the votes to which it is entitled by reason of subparagraph (A) of this section, for every one (1) vote to which Declarant is entitled due to its ownership of Lots, Declarant shall have an additional two (2) votes for each Lot owned until the earlier of (i) December 31, 2020 or (ii) the number of total votes in Class A equals the number of total votes in Class B. Thereafter, Declarant shall have only the votes, if any, to which it is entitled under subparagraph (A) of this section.

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

- (A) The Commons at Cross Valley Run Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Commons at Cross Valley Run Rules and Bylaws not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.
- (B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.
- (C) Records. To keep books and records of the Association's affairs.
- (D) Assessments. To levy assessments as provided in Article VII below. An assessment is defined as that sum which must be levied in the manner and against the property set forth in Article VII hereof in order to raise the total amount for which the levy in question is being made.
- (E) Right of Entry and Enforcement. To enter at any time in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot for the purpose of enforcing The Commons at Cross Valley Run Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to The Commons at Cross Valley Run Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and Improvements thereon, and

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shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by a mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of The Commons at Cross Valley Run settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce The Commons at Cross Valley Run Restrictions.

- (F) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (G) Conveyances. To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way or mortgages out of, in, on, over, or under any Association property for the purpose of constructing, erecting, operating or maintaining the following:
 - (a) Parks, parkways or other recreational facilities or structures;
 - (b) Roads, streets, street lights, walks, driveways, trails and paths;
 - (c) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
 - (d) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
 - (e) Any similar public, quasi-public or private improvements or facilities.

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

- (H) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so

delegated.

- (I) Property Services. To pay for water, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association; to maintain and repair easements, roads, roadways, rights-of-way, parks, median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Property, as appropriate; and to own and operate any and all types of facilities for both active and passive recreation.
- (J) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration or the Articles or Bylaws of the Association.
- (K) Construction on Association Property. To construct new Improvements or additions to Association properties, subject to the approval of the Architectural Committee as in this Declaration required.
- (L) Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service or perform any function on behalf of Declarant or any other person.
- (M) Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

5.05 Maintenance. The Association shall (i) maintain, repair and replace as necessary all landscaping, irrigation systems, streets and roadways, entrance signs and other Improvements within any right-of-way which is within or adjacent to the Property; and (ii) maintain all Common Area dedicated to the Association for maintenance, by or with the consent of Declaration.

5.06 Street Lighting. The Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain any street lights which have not been accepted by any governmental unity for operation and maintenance and which are located within any right-of-way within or adjacent to the Property.

5.07 Common Area.

- (A) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:
 - (1) To operate and maintain all Common Area, together with all Improvements of whatever kind and for whatever purpose which

may be located in said areas; and to operate and maintain all other property, real and personal, conveyed or leased to the Association by Declarant and to maintain in good repair and condition all lands, Improvements and other Association property owned by or leased to the Association. Such maintenance shall include, but not be limited to, mowing and removal of rubbish or debris of any kind.

- (2) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property operated or managed by the Association to the extent that such taxes and assessments are not levied directly upon the members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (3) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment in the Common Area. Such insurance shall be in an amount as the Board shall deem appropriate.

5.08 Indemnification. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

ARTICLE VI ARCHITECTURAL COMMITTEE

6.01 Membership of Architectural Committee. The Architectural committee shall consist of not less than one (1) and not more than three (3) voting members ("Voting Members") and

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such additional nonvoting members serving in an advisory capacity ("Advisory Members") as Declarant, its successors or assigns deems appropriate. The initial voting members of the Architectural Committee shall be Sylvia Spertus, H. M. Pike, Jr., and Stephen S. Baumgardner.

6.02 Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by majority vote of the Voting Members. The Architectural Control Committee's approval shall not be unreasonably withhold or delayed. If the Committee fails to respond in writing to a request for approval specifying its objections within ten (10) business days, such approval shall be deemed to have been given.

6.03 Advisory Members. The Voting Members may from time to time designate Advisory Members.

6.04 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed as provided herein.

6.05 Declarant's Rights of Appointment. Declarant, its successors or assigns shall have the right to appoint and remove all members of the Architectural Committee. Declarant may delegate this right to the Board by written instrument. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee.

6.06 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including, but not limited to, a building code, a fire code, a housing code and other similar codes as it may deem necessary and desirable. Each Owner shall comply with said rules as the same may be amended from time to time, and failure to comply with said rules shall constitute a default of this Declaration, and any Owner, including Declarant, at its sole expense and/or the Board may seek any of the remedies set forth herein for default of this Declaration.

6.07 Review of Proposed Construction. Whenever in this Declaration the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question. Except as otherwise specifically provided herein, prior to the clearing of any Lot or the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefore shall be submitted to the Architectural Committee and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration, or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Committee. The Architectural Committee may review Plans and

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Specifications submitted for its review and such other information as it deems proper. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the property or is otherwise not acceptable to the Architectural Control Committee. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence, and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for reviewing any proposed Improvement nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness or conformance with building or other codes.

6.08 Variance. The Architectural Committee may grant variances from compliance with any of the provisions of this Declaration when, in the opinion of the Architectural Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property and such variance is justified due to unusual or aesthetic considerations, topographic or septic considerations, or other similar circumstances. All variances must be evidenced by a written instrument, in recordable form, and must be signed by an authorized representative of the Architectural Committee. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof. Notwithstanding any provision herein to the contrary, no variance shall be granted to (i) permit a residence of less than two thousand square feet, as calculated pursuant to Section 3.25, to be constructed on any Lot, or (ii) permit a residence to have less than seventy-five percent (75%) of its exterior walls of masonry construction, as calculated pursuant to Section 3.26 above.

6.09 Actions of the Architectural Committee. The Architectural Committee may, by resolution, unanimously adopted in writing, designate one (1) or two (2) of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation the vote of a majority of all of the members of the Architectural Committee taken without a meeting shall constitute an act of the Architectural Committee.

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

6.11 Work in Progress. The Architectural Committee, at its option, may inspect all work

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in progress to insure compliances with approved Plans and Specifications.

6.12 Nonliability of Architectural Committee Members. Neither the Architectural Committee nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its member of the Board or its member, as the case may be. Neither the Architectural Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

6.13 Address. Plans and Specifications shall be submitted to the Architectural Committee at 3321 Bee Caves Road, Suite 300, Austin, Texas 78746, or such other address as may be designated by Declarant, its successors and assigns, from time to time.

6.14 Fees. The Architectural Committee shall have the right to require a reasonable submission fee of not more than \$25.00 for each set of Plans and Specifications submitted for its review.

6.15 Certificate of Compliance. Upon completion of any Improvement approved by the Architectural Committee and upon written request by the Owner of a Lot, the Architectural Committee shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, the Plans and Specifications on file with the Architectural Committee pursuant to which the Improvements were made, and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the Architectural Committee of the actual construction of the Improvements or of the workmanship or materials thereof. The Owner is hereby notified that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the Architectural Committee of the construction, workmanship, materials or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the improved Lot.

ARTICLE VII FUNDS AND ASSESSMENTS

7.01 Assessments.

- (A) Assessments established by the Board pursuant to the provisions of this Article VII shall be levied on a uniform basis against each Lot within the Property. The amount of the Assessment shall be determined by dividing the total amount determined by the Board to be necessary pursuant to Section 7.03 and/or 7.04 hereof by the total number of Lots within the Property at the time the Assessment

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is levied, as determined by reference to each Plat of a portion of the Property which is of record at the time the Assessment is levied.

- (B) Each unpaid Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, is the personal obligation of the Owner of the Property against which the Assessment is due, and is secured by a lien against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

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

7.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under The Commons at Cross Valley Run Restrictions, including, but not limited to, the cost of all maintenance, the cost of maintaining Common Areas, streets and roadways, the cost of enforcing The Commons at Cross Valley Run Restrictions and a reasonable provision for contingencies and appropriate replacement reserved less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. Regular Assessments shall not be more than \$200.00 in 1994 and 1995.

7.04 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy Special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under the The Commons at Cross Valley Run Restrictions. The amount of any Special Assessments shall be at the reasonable discretion of the Board. Special Assessments shall not be more than \$100.00 in 1994 and 1995.

7.05 Owner's Personal Obligation for Payment of Assessments. The regular and Special Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the Payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in

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effect on the amount of the Assessments from the due date thereof (of if there is no such highest rate, then at the rate of 2% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

7.06 Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with interest as provided in Section 7.05 hereof and the cost of collection, including attorney's fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisee, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust lien of record, securing in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordinate may be signed by an officer of the Association. To evidence the aforesaid Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Travis County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessments lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or nonjudicial, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

ARTICLE VIII EASEMENTS

8.01 Reserved Easements. All dedications, limitations, restrictions and reservations shown on the Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Property becoming subject to 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. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner

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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 for public utility purposes (including, without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of 10.0 feet on each side of such Lot line.

8.02 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 Improvement. Notwithstanding any provision contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Committee. The owner of the property must also consent in writing if such easement extends more than seven and one half (7.5) feet into the lot. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the plat and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

8.03 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as approved in writing by the Architectural Committee.

8.04 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility service using any 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.

8.05 Common Area. Each Owner shall own an undivided 1/14th interest in and to all Common Area which shall be appurtenant to and shall pass with title to such Owner's Lot, subject to the following provisions:

- (A) The right of the Association to suspend the Owner's voting rights and right to use the Common Area for any period during which any Assessment against which Owner's Lot remains unpaid, and for any period during which the Owner is in

violation of the rules and regulations of the Association;

- (B) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a majority vote of the Members;
- (C) The right of the Association to borrow money for the purpose of improving the Common Area and in furtherance thereof, mortgage the Common Area, all in accordance with the Articles and Bylaws;
- (D) The right of the Association to make reasonable rules and regulations regarding the use of the Common Area and any facilities thereon; and
- (E) The right of the Association to contract for services with third parties on such terms as the Association may determine.

ARTICLE IX MISCELLANEOUS

9.01 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until December 31, 2020, unless amended as herein provided. After December 31, 2020, this Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots within the Property then subject to this Declaration.

9.02 Amendment.

- A. By Declarant. This Declaration may be amended by the Declarant acting alone until such time as Declarant has sold ninety-five percent (95%) of the Lots; thereafter Declarant shall be entitled to amend this Declaration only with the written approval of a majority of the Class A Votes, described in Section 5.03 (A) above. No amendment by Declarant shall be effective until there has been recorded in the Real Property Records of Travis County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment. An amendment made by Declarant pursuant to this Section 9.02 (A) shall not adversely affect the value of the lots and shall maintain the quality of the Subdivision. No amendment may place additional restrictions on a Lot already sold or remove variances previously granted without the express written consent of the Owner of the affected Lot.
- B. By Owners. In addition to the method in Section 9.02 (A), this Declaration may

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be amended by recording in the Travis County Real Property Records an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least eighty percent (80%) of the number of votes entitled to be cast pursuant the Section 5.03 hereof.

Amendments to this Declaration shall not be construed as affecting or amending any City ordinances which affect the Property.

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

9.04 Interpretation. The provisions of this Declaration shall be literally construed to effectuate the purpose of creating a uniform plan for the development and operation of the property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

9.05 Assignment by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

9.06 Enforcement and Nonwaiver.

- (A) Right of Enforcement. Except as otherwise provided herein, any Owner at their own expense, Declarant, and/or the Board shall have the right to enforce all of the provisions of The Commons at Cross Valley Run Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.
- (B) Nonwaiver. The failure to enforce any provision of The Commons at Cross Valley Run Restrictions at any time shall not constitute a vivre of the right thereafter to enforce any such provision or any other provision of said restrictions.
- (C) Liens. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order

to enforce any right or effect compliance with this Declaration.

9.08 Construction.

- (A) Restrictions Severable. The provisions of The Commons at Cross Valley Run Restrictions shall be deemed independent and severable, and invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.
- (B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- (C) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this the 15th day of March, 1994.

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DECLARANT:

SUTTON - NORTHWEST TRIAD, LTD.,
A TEXAS LIMITED PARTNERSHIP

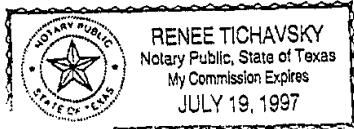
By: SUTCO, INC, dba THE SUTTON COMPANY,
GENERAL PARTNER

By: [Signature]
H. M. Pike, Jr., President

By: Stephen S. Baumgardner
Stephen S. Baumgardner, Chairman

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 15th day of March, 1994, by H. M. Pike, Jr., President and Stephen S. Baumgardner, Chairman, of The Sutton Company, a Texas Corporation.



Renee Tichavsky
Notary Public, State of Texas

Name Printed: Renee Tichavsky

Commission Expires: July 19, 1997

Return: The Sutton Company
Attn: Renee Tichavsky
3321 Bee Caves Rd. #300
Austin, TX 78746

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58.5

FILED

MAR 28 2 54 PM 1994

**DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS**

[Faint, illegible text from the instrument body]

[Faint signatures and lines]

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
named RECORDS of Travis County, Texas, on

MAR 28 1994



Dana Debeauvoir
**COUNTY CLERK
TRAVIS COUNTY, TEXAS**

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**REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS**

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