

**DECLARATION OF EASEMENT AND RESTRICTIVE COVENANTS
REGARDING THE MAINTENANCE OF A WATER QUALITY POND**

This Declaration of Easements and Restrictive Covenants Regarding the Maintenance of a Water Quality Pond for the benefit of Vista Ridge PUD (the "Declaration") is executed this 16th day of November, 2000

1

RECITALS:

WHEREAS, Declarant is the owner Lot 2, Replat of Continuum Office Park, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Document #200000220, Official Public Records of Travis County, Texas, (the "Lot") and the owner of the Vista Ridge PUD Phases I, II, III, and IV as such plats are recorded in the Public Records of Travis County, Texas, hereinafter collectively referred to as the "Subdivisions or Subdivision", and

WHEREAS, a Water Quality Pond has been constructed on the Lot in order to comply with the City of Austin Land Development Code requirements applicable to the construction of the Subdivision and improvements therein, and

WHEREAS, Declarant shall be responsible for the maintenance and operation of the Water Quality Pond (the "Pond"), and

WHEREAS, all of the lots within the Subdivision will rely on the proper maintenance and operation of the Pond, and

WHEREAS, the Declarant, as the current owner of the Lot, agrees that restrictive covenants regarding the maintenance of the Pond should be imposed on the Lot and the Subdivision, and

WHEREAS, such restrictions shall inure to the benefit of and bind the owner of the Subdivision and the Lot, and their successors and assigns, as mutual equitable servitudes and easements in favor of the Subdivision and the Lot, and this Declaration shall run with the land, encumbering the Lot and the Subdivision and each and every part thereof,

NOW, THEREFORE, for and in consideration of the above promises and covenants set forth herein, the City of Austin and Declarant agree as follows

1 Water Quality Pond The Pond located within the Lot, which locations and areas are described in the attached Exhibit "A," shall be maintained in a functioning condition by the Declarant. The area described by Exhibit "A" shall not be used for any purpose inconsistent with or detrimental to the proper operation of the Pond

2 Easement to the City of Austin Declarant grants and conveys and by these presents does GRANT AND CONVEY unto the City of Austin, whose address is Post Office Box 1088, Austin, Texas 78767-1088, Attn: Real Estate Division, a non-exclusive easement (the "Pond Easement") for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair of a water quality

pond in, upon and across the Lot. In the event the City, or its agents and employees, in exercising the easement rights granted by this paragraph, negligently disturbs or otherwise damages any portion of the Lot or improvements, the City shall within a reasonable time period restore and repair such damages, including without limitation landscaping, grasses, curbs, asphalt and concrete paving.

TO HAVE AND TO HOLD the Pond Easement perpetually to the City of Austin and its successors and assigns, together with the privilege at any and all times to enter said premises, or any part thereof, for the purpose of operating, inspecting, monitoring, maintaining, replacing, upgrading and repairing the Pond (the "Access Easement"). This Pond Easement and Access Easement are made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting said premises.

3 Owner. The terms "Owner" means, individually, and the term "Owners" means, collectively, Declarant (as defined above) and all future owners of the fee interest of the Subdivision or any part thereof or of the Lot (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and the successors and assigns of such parties as to the fee interest in the Lot.

4 Maintenance of The Pond. Following completion of the Pond within the area described in Exhibit "A" and its acceptance by the City of Austin, the Declarant shall maintain The Pond in accordance with the requirements of the City of Austin and in a good and clean condition and repair at Owner's joint cost. Each Owner, whether one or more, as of the date hereof or in the future, shall be jointly and severally liable for the maintenance of The Pond.

5 The City shall give the then current owner of record of the Subdivision or any part thereof or of the Lot thirty (30) days' prior written notice of the City's intent to enter any of the above described easement areas for the purpose of operating, maintaining, replacing, upgrading or repairing any of the Pond facilities, provided, however, that in the event of an emergency, the City shall be required to give prior notice within a reasonable period of time. Reasonableness shall be determined in accordance with the nature and circumstances of the emergency. The City shall have the right to enter any of the above described easement area without prior written notification for the purposes of monitoring and inspection only.

6 Waiver and Remedies Circulative. No waiver by the Declarant of any default under this Declaration shall be effective or binding on the Declarant unless made in writing, and no such waiver shall be implied from any omission by the Declarant to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default, or period of time, or both specified in such express waiver. No waiver by the Declarant shall be deemed a waiver by its Mortgagee or shall be binding upon any subsequent owner of the Lot at a foreclosure or trustee's sale under such Mortgagee's security instrument that evidences the same. One or more written waivers of any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Declaration. All of the remedies permitted or available to the Declarant and Mortgagees under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

7 Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Declaration shall entitle the Declarant or any subsequent owner to cancel, rescind or otherwise terminate this Declaration, but such limitations shall not affect in any manner any

other rights or remedies which the Declarant may have hereunder by reason of any breach of this Declaration

8 Excusable Delays Whenever performance is required of the Declarant hereunder, the Declarant shall use all due diligence to perform and take all necessary measures in good faith to perform, provided, however, that if completion of performance shall be delayed at any time by reasons of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or material, damage to work in progress by reason of fire or other casualty or any other cause beyond the reasonable control of the Declarant (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused

9 Existing Encumbrances The easements and other rights granted or created by this Declaration are subject to any and all matters of record affecting the Subdivision or the Lot and any and all matters apparent from the inspection of the Subdivision and the Lot as of the date hereof

10 General Provisions

A Inurement This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Declarant, and its successors and assigns, provided, however, that if the Declarant conveys all or any portion of the Lot, the Declarant shall thereupon be released and discharged from any and all further obligations under this declaration that it had in connection with the property conveyed by it from and after the date of recording of such conveyance, but no such sale shall release the Declarant from any liabilities, actual or contingent, existing as of the time of such conveyance

B Duration Unless cancelled pursuant to Paragraph 10 (C), this Declaration shall remain in full force and effect in perpetuity

C Modification or Cancellation Except as set forth in Paragraph 10 (M), this Declaration may not be modified in any respect or cancelled, in whole or in part, except with the consent of all of the Declarant and the City and then only by written instrument duly executed and acknowledged by such parties and recorded in the Real Property Records of Travis County, Texas. Nothing herein contained shall give any Occupant or User (other than Persons who are the Owners from time to time) any right to object to any such modification or cancellation

D Non-Merger This Declaration shall not be subject to the doctrine of merger, even though the underlying fee ownership to the Lot, or any parts thereof, is vested in one party or entity

E Severability Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person and the same shall remain in full force and effect, unless enforcement of this Declaration as so invalidated would be unreasonable or grossly inequitable under the circumstances or would frustrate the purposes of this Declaration

F Entire Agreement This Declaration and the Exhibits hereto contain all the representations and the entire agreement between the parties to this Declaration with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and the Exhibits hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner

G Captions The captions preceding the text of each Section and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and

interpretation of this Declaration

H Governing Law Place of Performance This Declaration and all rights and obligations created hereby shall be governed by the laws of the State of Texas This Declaration is performable only in the county in Texas wherein the Lot is located

I Notices Any notice to the Declarant of the City shall be in writing and given by delivering the same to such party in person, by expedited, private carrier service (such as Federal Express) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address All notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected or if mailed, on the delivery date or attempted delivery date shown on the return receipt

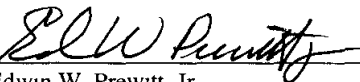
J Negation of Partnership None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Declarant, Mortgagees, the City, Occupants, Users or other Persons in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise This Declaration is not intended nor shall it be construed to create any third party beneficiary rights in any Person who is not an owner or Mortgagee except as expressly otherwise provided

K If any person, persons, corporation, or entity of any other character shall violate or attempt to violate this Declaration, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate such covenant and to prevent said person or entity from violating or attempting to violate such covenant

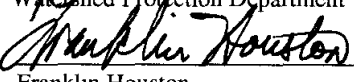
L The failure at any time to enforce Paragraph 1 of 4 of this Declaration by the City of Austin, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so

M This Declaration may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Real Property Records of Travis County, Texas executed, acknowledged and approved by both (a) the Director of the Watershed Protection Department of the City of Austin, and (b) by the Owners of the Lot at the time of such modification, amendment or termination (provided, however, if the proposed amendment relates only to restrictions imposed upon the Lot, the owner or owners of any other lot within the Subdivision shall not be required to execute, acknowledge or approve said proposed amendment)

PR99 002, Ltd , a Texas limited partnership
By PR99 002 of Texas, Inc , Its General Partner

By 
Edwin W Prewitt, Jr
Its Co-CEO

ACCEPTED

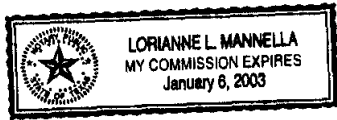
CITY OF AUSTIN
Watershed Protection Department

Franklin Houston
Title SUPERVISING ENGINEER

APPROVED AS TO FORM
CITY OF AUSTIN

By Mitzi Cotton
Mitzi Cotton
Assistant City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 16th day of November, 2000, by Edwin W Prewitt, Jr, of PR99-002 of Texas, Inc, general partner to PR99-002, Ltd on behalf of said limited partnership



Lorianne L. Mannella
NOTARY PUBLIC, STATE OF TEXAS

Declaration of Easement 11 13 00 doc

City of Austin
P.O. Box 1088
Glenn Rhoades
DRID

RECORDERS MEMORANDUM-At the time of recordation this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photocopy, discolored paper etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

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DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS
