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Austin, Texas 78701

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AVALON
DEVELOPMENT AREA DECLARATION

[PHASE 4]

Travis County, Texas

Declarant: KM AVALON, LTD., a Texas limited partnership

Cross reference Avalon Master Covenant, recorded as Document No. 2006064285 in the Official Public Records of Travis County, Texas, and that certain Notice of Applicability Avalon [Phase 4], recorded as Document No. 2008201104, Official Public Records of County, Texas. The terms and provisions of the afore-mentioned documents also apply to the Development Area encumbered by this Development Area Declaration.

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AVALON

DEVELOPMENT AREA DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

[PHASE 4]

This Development Area Declaration of Covenants, Conditions and Restrictions – [Phase 4] (the "**Declaration**") is made by **KM AVALON, LTD.**, a Texas limited partnership ("**Declarant**"), and is as follows:

RECITALS

A. Declarant is the owner of Lots 1-18, Block C, Lots 1-28, Block D, Lots 1-14, Block E, Lots 16 and 17, Block F, Lot 1, Block H, Lot 15, Block I, Lots 12-21, Block S, Lots 1-15, Block T, located in Avalon, Phase 4, a subdivision of record in Travis County, Texas, according to the map or plat thereof recorded as Document No. 200800303, Official Public Records of Travis County, Texas (the "**Development Area**").

B. Pursuant to that certain Notice of Applicability for Avalon [Phase 4], recorded as Document No. 2008211164 in the Official Public Records of Travis County, Texas, the Development Area is subject to the terms and provisions of that certain Avalon Master Covenant, recorded as Document No. 2006064285 in the Official Public Records of Travis County, Texas (the "**Master Covenant**").

C. The Master Covenant permits Declarant to file Development Area Declarations applicable to specific Development Areas, as those terms are used and defined in the Master Covenant, which shall be in addition to the covenants, conditions, and restrictions of the Master Covenant.

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

D. Declarant intends for this Development Area Declaration to serve as one of the Development Area Declarations permitted under the Master Covenant and desires that the

Development Area described and identified in Recital A hereinabove shall constitute one of the Development Areas which is permitted, contemplated and defined under the Master Covenant.

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

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

NOW, THEREFORE, it is hereby declared: (i) that all of the Development Area shall be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which shall run with the Development Area and shall be binding upon all parties having right, title, or interest in or to the Development Area or any part thereof, their heirs, successors, and assigns and 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 Development Area, 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 in full or by reference in said contract or deed; and (iii) that this Declaration shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Covenant. In the event of a conflict between the terms and provision of this Development Area Declaration and the Master Covenant, the terms of the Master Covenant will control.

ARTICLE 1
DEFINITIONS

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

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

"**Association**" means the Avalon Master Community, Inc., a Texas non-profit corporation.

"**Avalon Reviewer**" means the person or entity having authority pursuant to the Article 4 of the Master Covenant to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot.

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

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

"**Declarant**" means KM Avalon, Ltd., a Texas limited partnership, its successors or assigns; provided that any assignment(s) of the rights of KM Avalon, Ltd., a Texas limited partnership, as Declarant, must be expressly set forth in writing and recorded in the Official Public Records of Travis County, Texas.

The "Declarant" is the party who causes the Property to be developed for actual residential and commercial use. Declarant enjoys special privileges to help protect its investment in the Development and the Property. These special rights are described in the Master Covenant and this Declaration. Many of these rights do not terminate until either Declarant: (i) no longer owns any portion of the Property; or (ii) voluntarily terminates these rights by a written instrument recorded in the Official Public Records of Travis County, Texas.

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

"**Development Area Declaration**" means this instrument as it may be amended from time to time.

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

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

"**Master Community Facilities**" means property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Lot. The Master Community Facilities also include any property that the Association holds possessory rights under a lease, license or any easement in favor of the Association. Some Master Community Facilities will be for the common use and enjoyment of the Development's residents, e.g., subdivision swimming pools or internal pocket parks, while some portion of the Master Community Facilities may also be for the use and enjoyment of the public. Open space, parks, and recreational facilities dedicated to the public may be classified as Master Community

Facilities under the Master Covenant to permit the Association to provide maintenance services to such facilities. Declarant, from time to time and at any time, may designate Master Community Facilities.

"**Master Covenant**" means that certain Avalon Master Covenant, recorded as Document No. 2006064285 in the Official Public Records of Travis County, Texas, as the same may be amended from time to time.

"**Master Restrictions**" means the restrictions, covenants, and conditions contained in the Master Covenant, any Development Area Declaration, the Design Guidelines, Bylaws, or in any rules and regulations promulgated by the Association pursuant to the Master Covenant or any Development Area Declaration, as adopted and amended from time to time.

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

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

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

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

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

ARTICLE 2
GENERAL RESTRICTIONS

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

2.01 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 Avalon Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Avalon Reviewer.

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

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

2.04 Mining and Drilling. No portion of the Development Area may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Development Area. Furthermore, this provision will not be interpreted to prevent the drilling of water wells approved in advance by the Avalon Reviewer which are required to provide water to all or any portion of the Property or the Development. All water wells must also be approved in advance by any applicable regulatory authority.

2.05 Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Development Area so as to be offensive or detrimental to any other portion of the Development Area or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot or the Association may (but

shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.06 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Development Area. No Owner may keep on such Owner's Lot more than four (4) cats and dogs, in the aggregate. No animal will be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed within the Development Area other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration within the Development Area, and no kennels or breeding operation will be allowed. No animal will be allowed to run at large, and all animals will be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. All pet waste will be removed and appropriately disposed of by the Owner of the pet. All pets must be registered, licensed and inoculated as required by law.

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

2.08 Maintenance. The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their entire Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. An Owner's "entire Lot" shall include, without limitation, any portion of such Lot upon which a subdivision perimeter fence has been constructed, or any portion of such Lot between such subdivision perimeter fence and any boundary line of such Lot. Declarant has reserved the right under the Master Covenant to designate a portion of any Lot as a "Service Area". A Service Area designation may provide that the Association will assume responsibility for certain maintenance tasks otherwise allocated to an Owner (e.g., yard maintenance). Nothing in this *Section 2.08* will be construed to limit the Declarant's or the Association's ability to designate Service Areas or provide the maintenance services which would be the responsibility of an Owner. The Avalon Reviewer, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this *Section 2.08* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Avalon Reviewer, in its sole discretion:

(i) Prompt removal of all litter, trash, refuse, and wastes.

(ii) Lawn mowing.

(iii) Tree and shrub pruning.

(iv) Watering.

(v) Keeping exterior lighting and mechanical facilities in working order.

(vi) Keeping lawn and garden areas alive, free of weeds, and attractive.

(vii) Keeping planting beds free from turf grass.

(viii) Keeping sidewalks and driveways in good repair.

(ix) Complying with all government, health and police requirements.

(x) Repainting of Improvements.

(xi) Repair of exterior damage, and wear and tear to Improvements.

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

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

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

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

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

2.10 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Master Community Facilities,

Special Common Area, or any other portion of the Development Area. A Permitted Antenna shall be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Development Area, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Avalon Reviewer are as follows:

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

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

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

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

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

(i) signs which are permitted pursuant to the Design Guidelines and other rules adopted by the Avalon Reviewer;

(ii) signs which are part of Declarant's overall marketing or construction plans or activities for the Development;

(iii) permits as may be required by legal proceedings; and

(iv) permits as may be required by any governmental entity.

An Owner or resident will be permitted to post a "no soliciting" sign near or on the front door to their residence, provided, that the sign may not exceed twenty-five (25) square inches.

Signs advertising a residence for lease or for rent are expressly prohibited.

2.12 Tanks. The Avalon Reviewer must approve any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No elevated tanks of any kind may be erected, placed or permitted on any Lot without the advance written approval of the Avalon

Reviewer. All permitted tanks must be screened from view in accordance with a screening plan approved in advance by the Avalon Reviewer. This provision will not apply to a tank used to operate a standard residential gas grill. Underground storage tanks are expressly prohibited.

2.13 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Development Area without the prior written approval of the Avalon Reviewer; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Except as permitted pursuant to the Design Guidelines, no shed, outbuilding, or other storage building may be erected on any Lot without the advance written approval of the Avalon Reviewer, which approval may include requirements regarding placement, design, screening, and construction materials.

2.14 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Avalon Reviewer shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all terrain vehicles and garden maintenance equipment 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 Development Area shall have sufficient garage space, as approved by the Avalon Reviewer, to house all vehicles to be kept on the Lot. Notwithstanding the forgoing provision all terrain vehicles, motor scooters, and motorized mini-bikes may not be used on the Development Area or on any road or street within the Development Area. Lot Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Development Area for any period in excess of seventy-two (72) hours. 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, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Development Area except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any roadway within the Development Area.

Unless a written waiver is obtained from the Board, recreational vehicles (i.e., motor homes) may only be temporarily parked within the Development Area for immediate loading and unloading. In no event may a recreational vehicle be stored within the Development Area.

No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Avalon Reviewer.

2.15 On Street Parking. No Owner or resident may park a vehicle on any road or street within the Development Area unless in the event of an emergency or as otherwise approved in writing by the Board. Guests and/or visitors may not park a vehicle on any road or street within the Development Area for more than twenty-four (24) consecutive hours unless in the event of an emergency or as otherwise approved in writing by the Board. "Emergency" for purpose of this *Section 2.15* means an event which jeopardizes life or property. "Parked" as used herein shall be defined as a vehicle left unattended for more than thirty (30) consecutive minutes.

2.16 Mobile Homes, Manufactured Homes, Travel Trailers and Recreational Vehicles. No mobile home (with or without wheels, temporarily or permanently affixed), manufactured home, travel trailer, or recreational vehicle may be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time. In the event of any dispute regarding the effect or application of this *Section 2.16*, the interpretation of the Avalon Reviewer will be final.

2.17 Basketball Goals. Permanent basketball goals are permitted on a Lot provided the basketball goal location and all materials are approved in advance and in writing by the Avalon Reviewer. The basketball goal backboard must be constructed of a clear material, must be perpendicular to, and set back twenty-five feet (25') from, the street, and mounted on a metal pole permanently installed in the ground. Portable basketball goals are permitted provided the basketball goal location is approved by the Avalon Reviewer and, if approved, is stored out-of-site when not in use. All basketball goals must be properly maintained and painted, with the net in good repair. Portable basketball goals are permitted on a Lot, provided that the base of the goal is: (i) permanently set in-ground with concrete and (ii) screened from view by appropriate landscaping subject to approval by the Avalon Reviewer.

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

collected by any means provided in the Master Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association and their officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 2.18* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

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

2.19 **Liability of Owners for Damage to Master Community Facilities and Special Common Area**. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Master Community Facilities, Special Common Area without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to: (i) the Master Community Facilities, Special Common Area and any improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided for in *Section 5.12* of the Master Covenant.

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

2.21 **Recreational Courts and Playscapes.** No recreational, e.g., "sport courts", shall be constructed on any Lot unless expressly approved by the Avalon Reviewer. The Avalon Reviewer may prohibit the installation of a recreational court on any Lot. Playscapes or any similar recreational facilities may not be constructed on any Lot without the advance written approval of the Avalon Reviewer. The Avalon Reviewer may prohibit the installation of recreational courts, playscapes, trampolines, playhouses or similar recreational facilities on any Lot. Tennis courts may not be constructed on any Lot.

2.22 Release and Indemnity. **EACH OWNER HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION AND DECLARANT AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF SUCH OWNER'S USE OF ANY MASTER COMMUNITY FACILITIES. EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND DECLARANT AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF AN OWNER, OR SUCH OWNER'S GUESTS, TENANTS, LICENSEES, EMPLOYEES, SUBCONTRACTORS, USE OF ANY MASTER COMMUNITY FACILITIES (INCLUDING ANY COST, FEES, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S OR DECLARANT'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION OR DECLARANTS GROSS NEGLIGENCE OR WILFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

Neither the Association nor Declarant shall assume any responsibility or liability for any personal injury or property damage which is occasioned by use of any Master Community Facilities, and in no circumstance shall words or actions by the Association or Declarant constitute an implied or express representation or warranty regarding the fitness or condition of any Master Community Facilities.

ARTICLE 3
USE AND CONSTRUCTION RESTRICTIONS

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

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

3.02 Approval for Construction. No Improvements shall be constructed upon any Lot without the prior written approval of the Avalon Reviewer.

3.03 **Single-Family Residential Use**. The Lots shall be used solely for private single family residential purposes and there shall not be constructed or maintained thereon more than one detached single family residence.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot, except an Owner or occupant of a residence may conduct business activities within a residence so long as: (i) such activity complies with all the applicable zoning ordinances (if any); (ii) the business activity is conducted without the employment of persons other than the residents of the home constructed in the Lot; (iii) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business on any Lot, sound, or smell from outside the residence; (iv) the business activity conforms to all zoning requirements (if any) for the Development Area; (v) the business activity does not involve door-to-door solicitation of residents within the Development Area; (vi) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Development Area which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vii) the business activity is consistent with the residential character of the Development Area and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development Area as may be determined in the sole discretion of the Board; and (viii) the business does not require the installation of any machinery other than that customary to normal household operations. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity in intended to or does generate a profit; or (z) a license is required.

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

Notwithstanding any provision in this Declaration to the contrary, until the earlier to occur of the date Declarant has recorded a written statement that all new home sales activity has ceased within the Development Area, or forty (40) years from the date this Declaration is recorded in the Official Public Records of Travis County, Texas:

(i) Declarant and/or its licensees may construct and maintain upon portions of the Master Community Facilities, Special Common Area, and any Lot owned by Declarant such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required. convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes,

sales offices and sales/construction trailers. Declarant and/or its licensees shall have an easement over and across the Master Community Facilities and Special Common Area for access and use of such facilities at no charge; and

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

3.04 Garages. All garages shall be approved in advance of construction by the Avalon Reviewer. The Improvements on each Lot must contain a private, enclosed garage capable at all times of housing at least two (2), but no more than three (3) standard size automobiles. Each garage shall have a minimum width, as measure from inside walls, of nine feet (9') per car and a minimum depth for each car of twenty-one feet (21'). No carports or other open automobile storage units will be permitted. Except with respect to detached garages, interior walls of all garages must be finished (*i.e.*, taped, bedded and painted, at a minimum). All garages must have garage doors built or faced with metal siding of a quality and color harmonious with the exterior of the primary dwelling structure. Each garage shall have garage doors that are wired so as to be operated by electric door openers. All garage doors shall remain closed at all times, save and except for the temporary opening of same in connection with the ingress and egress of vehicles and the loading or placement and unloading or removal of other items customarily kept or stored therein, when a person is in the garage or engaged in yard work, or there is another activity occurring on the Lot which is reasonably facilitated by an open garage door. No garage may be permanently enclosed or otherwise used for habitation. The orientation of the opening into a garage (i.e., side-entry or front-entry) must be approved in advance by the Avalon Reviewer. The parking of vehicles in the yard of any Lot is not permitted.

3.05 Fences. All Lots shall be fenced unless otherwise approved by the Avalon Reviewer. Except as expressly states in this Section or otherwise approved by the Avalon Reviewer, fences shall be of wood, wrought iron or decorative metal construction (any wrought iron or decorative metal shall be of a color and style specified by the Avalon Reviewer), or a combination thereof approved by the Avalon Reviewer, and shall be six feet (6') in height. All Lots shall be fenced so that the slats of any portion of a wood fence which faces any existing or proposed road, street or other public right-of-way shall be capped and stained in a color specified by the Avalon Reviewer. All other wood fencing shall be "good neighbor fencing" (*i.e.*, fencing with the slats alternating by section of the fence, where a "section" is a portion of the fence between support poles, with the slats in one section facing into the Lot and the slats in the next section facing outward from the Lot). Fences in side yards shall be located (i) so as to screen all air conditioning or other exterior equipment from view; (ii) at least ten feet (10') back from the front of the residence and (iii) no farther from the front of the residence than the mid-point of such residence. Fences along the side yard of corner Lots shall not be placed closer to the public right-of-way than eight feet (8') feet from such right-of-way or eighteen feet (18') from the back of curb.

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

3.07 Masonry Requirements; Foundation Shielding. The outside wall area of the first story of any residence shall have a minimum of seventy-five percent (75%) masonry construction consisting of brick, ledge stone, field stone, stucco or any other native type of stone veneer. For primary residences of more than one story, the exterior of each such residence shall be of at least fifty percent (50%) masonry construction overall consisting of brick, ledge stone, field stone, stucco or any other native type of stone veneer. Notwithstanding the foregoing: in no event may any residence be constructed of more than thirty percent (30%) stucco. Exposed portions of the foundation on each front elevation, and side elevation visible from any street, must be concealed by extending the exterior stone or brick to within at least twenty-four inches (24") of the finished grade. If the exterior of the elevation adjacent to the exposed foundation is constructed of stucco, the Avalon Reviewer will have the authority to require the use of stone, in a color approved in advance by the Avalon Reviewer, to conceal the exposed portion of the foundation.

3.08 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for terms of at least twelve (12) months. All leases shall be in writing. The Owner must provide to its lessee copies of the Master Restrictions. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. The Owner must provide to its lessee copies of the Master Restrictions.

3.09 Driveways. The design, construction materials, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, shall be approved by the Avalon Reviewer. Each driveway must be wide enough to accommodate two automobiles parked side-by-side. The Avalon Reviewer may establish design and materials requirements for all driveways and driveway culverts to insure that they are consistent in appearance throughout the Development Area.

3.10 Compliance with Setbacks. Unless otherwise approved in advance by the Avalon Reviewer, no residence may be constructed within twenty-five feet (25') of the front boundary line of a Lot, within twenty feet (20') of the rear boundary line of a Lot or within five feet (5') of any side boundary line of a Lot. In the event of any disagreement regarding the location of the front, rear, or side boundary lines of a Lot, the decision of the Avalon Reviewer will be final. For the purpose of this restriction, eaves, steps, and open porches will not be

considered as part of a residence; however, this Section will not be construed to permit any portion of any Improvement on any Lot to encroach upon another Lot or other portion of the Development Area. No permitted accessory building may exceed eight feet (8') in height.

3.11 **HVAC Location.** No air-conditioning apparatus may be installed on the ground in front of a residence or on the roof of any residence. No window air-conditioning apparatus or evaporative cooler may be attached to any front wall or front window of a residence or at any other location where it would be visible from any street, any other Lot or any Master Community Facilities or Special Common Area. All HVAC units must be screened with either structural screening to match the exterior of the residence or fencing, as approved by the Avalon Reviewer.

3.12 **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 Avalon Reviewer.

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

(i) inside the garage of the single-family residence constructed on the Lot; or

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

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

3.14 **Drainage**. There shall be no interference with the established drainage patterns over any of the Development Area, including the Lots, except by Declarant, unless adequate provision is made for proper drainage and such provision has been certified by a professional engineer and approved in advance by the Avalon Reviewer. Specifically, and not by way of limitation, no Improvement, including landscaping, may be installed which impedes the proper drainage of water between Lots.

3.15 **Construction Activities**. This Declaration will not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon or within the Development. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Avalon Reviewer in its sole and reasonable judgment, the Avalon Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the

course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Development, then the Avalon Reviewer may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all reasonable expenses incurred in connection therewith.

3.16 Landscaping. Each Owner shall be required to install landscaping upon such Owner's Lot in accordance with landscaping plans approved in advance of installation by the Avalon Reviewer. Notwithstanding any provision in this Declaration to the contrary, such landscaping plans must be approved by the Avalon Reviewer prior to occupancy of the single family residential structure located on the Lot to which such landscaping plans relate. All landscaping shown on the landscaping plans and specifications approved by the Avalon Reviewer shall be installed, and all such landscaping shall be completed, on or before three (3) months after the landscaping plans have been approved by the Avalon Reviewer, unless approved in advance by the Avalon Reviewer. The Avalon Reviewer or its assigns shall be entitled to make recommendations with respect to tree disease control, whereupon the Owner or Owners to whom such recommendations are directed shall be obligated to comply with such recommendations, which may include, but not be limited to tree removal and replacement. Each Lot shall be landscaped, at a minimum, with (a) full sodded front and side yards (in front of fences), (b) the following number of hardwood shade trees: two (2) per Lot on all Lots other than corner Lots and four (4) per corner Lot (with two (2) in the front portion of the Lot, and two (2) on the side of the Lot which faces the street), and (c) ten shrubs sized five gallons or more. The hardwood shade trees required by this Section shall be no smaller in size than 3" in caliper. All Owners are required to landscape front yards, side yards and adjacent to building foundations. Trees, shrubs, ground covers, seasonal color and sodded grass shall be used in these areas to achieve the landscape intent according to the approved landscaping plans.

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

3.18 Roofing. Roofing materials shall be limited to thirty (30) year dimensional fiberglass shingles in a "weathered wood" color, and shall be expressly approved by the Avalon Reviewer.

3.19 **Swimming Pools.** Any swimming pool constructed on a Lot must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies all applicable governmental requirements. No swimming pool shall be located in the front or side yard on any Lot. No swimming pool foundation may be exposed more than twenty-four inches (24") above final grade. If more than twenty-four inches (24") of a foundation otherwise would be exposed, the foundation shall be built to include a finished wall matching the exterior wall of the residence, which will extend to within twenty-four inches (24") of final grade. Nothing in this *Section 3.20* is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable governmental regulations concerning swimming pool enclosure requirements. Above-ground or temporary swimming pools are prohibited.

3.20 **Retaining Walls.** Each Owner who acquires a Lot with the intent of constructing a residence thereon for sale to a third-party (i.e., a homebuilder) shall be obligated, at its sole cost and expense, to construct any retaining wall which may be required by the Avalon Reviewer to be constructed on such Owner's Lot. Any retaining wall proposed to be constructed within the Development Area shall be constructed in accordance with specifications set forth by the Avalon Reviewer, and shall in any case be approved in advance by the Avalon Reviewer. Without limiting any other requirements or remedies set forth in the Master Restrictions, each Owner is solely responsible for correcting any change in water flow or drainage caused by a retaining wall constructed on such Owner's Lot.

3.21 **Square Footage.** The square footage for each residence, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages, shall be no less than one-thousand four hundred (1,400) square feet.

3.22 **Building Height**. No Improvement greater than thirty-five feet (35') in height may be constructed on any Lot without the prior written approval of the Avalon Reviewer. For purposes of this Section, height shall be measured from the top of the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

3.23 **Greenbelt/Open Space Lots.** Lots adjacent to greenbelt, drainage or open space areas must comply with all of the following: (i) the boundary between the Lot and the greenbelt, drainage or open space area must be fenced, and the fence must be six feet (6') in height, have no gate, and be built of wrought iron or other decorative metal of a color and style specified by the Avalon Reviewer; and (ii) back yards must be fully sodded with at least two (2) 3" caliper hardwood trees installed by the Owner. All "caliper" measurements referenced in this Declaration refer to measurements made between three inches (3") and six inches (6") above grade. No sheds or outbuildings shall be permitted on such Lots.

3.24 **Protection of Existing Trees**. Existing trees shall be deemed to be trees of 19" caliper and above. During construction, existing trees shall be preserved and protected to the extent reasonable for the intended development, as determined in the sole and absolute discretion of the Avalon Reviewer. Building or paving operations occurring adjacent to existing

trees to be saved shall be in accordance with the Master Restrictions. Demolition of existing trees shall mean any operation, including transplanting, which removes, uproots or renders the tree incapable of sustaining a healthy and thriving condition. The Avalon Reviewer, in its sole and absolute discretion, may require that any tree which it deems to have been unnecessarily demolished shall be replaced with one or more trees of a type and size approved by the Avalon Reviewer. Unless the Avalon Reviewer otherwise approves, an existing tree shall be replaced with trees aggregating at least the same number of caliper inches as the existing tree.

3.25 **Sidewalks**. To the extent sidewalks may be required by a plat, each Owner of a Lot shown on that plat must build or cause to be built on such Owner's Lot, in a location designated by the Avalon Reviewer, a concrete sidewalk complying with the specifications set forth in the plat and the Master Restrictions in conjunction with and at the time of construction of the residence constructed on such Lot. Sidewalks shall extend from Lot line to Lot line and shall follow the pattern of the incoming sidewalks (as proposed or built) on adjacent Lots. Placement of sidewalks in public rights-of-way around the terminus of cul-de-sac shall follow the pattern of the incoming sidewalk (as proposed or built) on adjacent Lots and shall be placed four feet (4') from the curb line so as to insure a continuous walk around the terminus. Owners of corner Lots shall install such sidewalks parallel to the front Lot line and the side street Lot line. If not otherwise provided, Owners of corner Lots shall extend the sidewalks to a terminus at and with the street curb in accordance with all applicable governmental regulations respecting sidewalk construction and/or specifications. Any public utility easements provided along front and side Lot lines may be used for the construction of sidewalks with the prior written approval of the Avalon Reviewer and of any utility companies furnishing utility service through such easements. Each Owner shall be responsible for the maintenance and repair of the sidewalk adjacent to such Owner's Lot after construction, and shall maintain such portion of the sidewalk in a good condition of repair.

3.26 **Underground Utility Lines**. Subject to the provisions of the Telecommunications Act of 1996 (as the same may be amended from time to time), 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 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 pipes, conduit or cables installed and maintained underground or concealed in, under, or on buildings or other Improvements. This Section shall not prohibit the erection of above-ground temporary utility facilities in support of the initial construction of the residence on a Lot. The installation of utility facilities, including but not limited to the location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities, shall be shown in the plans and specifications submitted to the Avalon Reviewer and shall conform to all requirements of governmental authorities or the applicable utility provider.

ARTICLE 4
INSURANCE AND CONDEMNATION

4.01 Insurance. Each Owner shall be required to maintain insurance on the Improvements located upon such Owner's Lot, providing fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for Improvements similar in construction, location and use. Such insurance policies shall be for the full insurable value of the Improvements constructed upon each Lot, shall contain extended coverage and replacement costs endorsements, if reasonably available, and may also contain vandalism and malicious mischief coverage, special form endorsement, a stipulated amount clause and a determinable cash adjustment clause. The shall not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, cause to be obtained such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board in its discretion may deem necessary. Insurance premiums for such policies shall be a common expense to be included in the assessments levied by the Association, as the case may be. The acquisition of insurance by the Association shall be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

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

CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

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

ARTICLE 5
MORTGAGEE PROVISIONS

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

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

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

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

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

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

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

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

ARTICLE 6
DEVELOPMENT

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

(A) A reference to this Declaration, which will include the recordation information thereof;

(B) A statement that such land shall be considered Development Area for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration shall apply to the added land; and

(C) A legal description of the added land.

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

(A) A reference to this Declaration, which will include the recordation information thereof;

(B) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and

(C) A legal description of the withdrawn land.

ARTICLE 7
GENERAL PROVISIONS

7.01 Duration. This Declaration and the covenants, conditions, restrictions, easements, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Public Records of Travis County, Texas, and continuing through and including January 1, 2051, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by in a resolution adopted by members of the Association, entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that such change shall be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Travis County, Texas. Notwithstanding any provision in this *Section 7.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision shall expire (twenty one) 21 years after the death or the last survivor of the now living descendants of Elizabeth II, Queen of England.

7.02 Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Travis County, Texas, of an instrument setting forth the amendment executed and acknowledged by (i) Declarant, acting alone; or (ii) Declarant and at least seventy percent (70%) of the Owners of Lots within the Development Area with each Lot being allocated one (1) vote. Specifically, and not by way of limitation, Declarant may unilaterally amend this Development Area Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

7.03 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 Saturday, Sunday,

or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Secretary of the Association for the purpose of service of notices, or to the residence located on the Lot owned by such person if no address has been given to the Secretary of the Association. Such address may be changed from time to time by notice in writing given by such person to the Secretary of the Association.

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

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

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

7.07 **Enforcement and Nonwaiver.**

(a) Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant and the Association shall have the right to enforce all of the provisions of this Declaration. The Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement shall include both damages for and injunctive relief against the breach of any provision hereof.

(b) Every act or omission whereby any provision of the Master Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association.

(c) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Development Area is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.

(d) The failure to enforce any provision of the Master Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Master Restrictions.

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

[SIGNATURE PAGE AND ACKNOWLEDGEMENTS FOLLOW]

EXECUTED to be effective the 6th day of November, 2008.

DECLARANT:

KM AVALON, LTD., a Texas limited partnership

By: KM Avalon GP, Inc., a Texas corporation,
its General Partner

By: _____
Blake Magee, President

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 6th day of November 2008, by Blake Magee, President of KM Avalon GP, Inc., a Texas corporation, General Partner of KM Avalon, Ltd., a Texas limited partnership, on behalf of such corporation and limited partnership.

[seal]

SEAL

_____
Notary Public, State of Texas

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

2008 Nov 13 03:04 PM 2008185709

BENAVIDESV $140.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2008 Dec 18 02:36 PM 2008201105

BENAVIDESV $132.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS