



**BLACKHAWK**

PARK • LAKESIDE • RETREAT

**Declaration of  
Covenants, Conditions, and Restrictions  
for Blackhawk Commercial Areas**

## RECITALS

WHEREAS, Robert M. Tiemann and Rowe Lane Development, Ltd. (collectively "Declarant") are the owners of certain real property located in Travis County, Texas, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property");

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

WHEREAS, Declarant has or proposes to develop and subdivide the Property for commercial purposes as part of a master-planned, mixed-use development generally known as Lakeside at Blackhawk;

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; and

WHEREAS, Declarant desires, from time to time and at its discretion, to include additional lands within the scheme of this Declaration.

NOW, THEREFORE, KNOW 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 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; (ii) that Declarant hereby adopts and establishes the following declarations, reservations, restrictions, covenants, conditions and easements to apply uniformly to the use, improvement, occupancy, and conveyance of all of the Property, including the roads, avenues, streets, alleys and waterways thereon; and (iii) that each contract or deed which may be hereafter 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 declarations, reservations, restrictions, covenants, conditions and easements, regardless of whether or not the same are set out in full or by reference in said contract or deed.

## **ARTICLE I**

### DEFINITIONS

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

"Architectural Review Committee" shall mean the committee created pursuant to this Declaration and having the authority to review and approve proposed Improvements within the Property.

"Articles" shall mean the articles of incorporation of the Lakeside at Blackhawk Commercial Owners Association, Inc., which will be filed in the office of the Secretary of State of the State of Texas, as the same are from time to time amended.

"Assessment" shall mean assessments) levied by the Association and includes both regular and special assessments.

"Association" shall mean and refer to the Lakeside at Blackhawk Commercial Owners Association, Inc., a Texas non-profit corporation created or to be created pursuant to the Articles.

"Association Property" shall mean all real or personal property owned by or leased to the Association.

"Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust.

"The Lakeside at Blackhawk Commercial Restrictions" shall mean this Declaration together with any and all Supplemental Declarations as the same may be amended from time to time, together with the Articles, Bylaws, and the Lakeside at Blackhawk Commercial Rules and the Guidelines.

"The Lakeside at Blackhawk Commercial Rules" shall mean the rules adopted by the Board pursuant to the powers granted herein, as amended from time to time.

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

"Bylaws" shall mean the Bylaws of the Association that may be adopted by the Board, as the same are from time to time amended.

"Committee" shall mean the Architectural Review Committee.

"Common Area" shall mean those areas within the Property that have been or may in the future be conveyed to, or leased by, or maintained by, the Association, or held for the benefit of Owners, including, without limitation, all private streets and easements for landscape, drainage, irrigation, fence, or related purposes. The Common Area may be owned by

the Association but held for the use and enjoyment of the Owners. The Common Area to be owned by the Association may include (i) any regional or other detention facilities located upon the Property constructed by Declarant, and (ii) any land or Improvements conveyed to the Association by or maintained by Declarant. "Common Area" is sometimes referred to herein as the "Association Property."

"Declarant" shall mean Robert M. Tiemann or Rowe Lane Development, Ltd. and their duly authorized representatives or their successors or assigns, provided that any assignment of the rights of 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.

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

"Guidelines" shall mean and refer to the guidelines promulgated by the Architectural Review Committee as provided in Section 7.12.

"Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to, buildings, outbuildings, storage sheds, patios, lakes, ponds, tennis courts, swimming pools, garages, surface parking areas, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning equipment, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities, but shall exclude improvements on the interior of an existing building or other structure.

"Manager" shall mean the person, firm, or corporation, if any, employed by the Association pursuant to this Declaration and delegated the duties, powers, or functions of the Association.

"Member" shall mean any person(s), entity or entities holding membership rights in the Association.

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

"Owner" shall mean the person(s), entity or entities, including Declarant, holding a fee simple interest in all or any portion of the Property, but shall not include a Beneficiary until such owner acquires a fee simple interest in all or any portion of the Property.

"Person" shall mean any individual(s), entity or entities having the legal right to hold title to real property.

"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 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, parking area and driveway plan, screening, including size, location, and method, utility connections, exterior illumination, including location and method, fire protection systems, signs, including size, shape, color, location and materials, and any other documentation or information relevant to such Improvement.

"Property" shall mean (i) that certain real property situated in Travis County, Texas, as more particularly described on Exhibit A attached hereto and incorporated herein by reference or any portion thereof and (ji) any land added to the Property pursuant to Section 2.02 of this Declaration.

"Subassociation" shall mean any Texas non-profit corporation or unincorporated association organized and established by Declarant pursuant to or in connection with a Supplemental Declaration.

"Supplemental Declaration" shall mean any declaration of covenants, conditions, and restrictions that may be hereafter executed and recorded by Declarant and all other owners, if any, whose property is encumbered by the Supplemental Declaration, in order (i) to add land to the Property, (ii) to subject any area of the Property to amended or further covenants, conditions or restrictions, or (iii) to withdraw land from the Property.

## **ARTICLE II**

### **DEVELOPMENT. ANNEXATION AND WITHDRAWAL OF LAND**

2.01 Development by Declarant. Declarant may divide or subdivide Declarant's Property into several areas, sell some of the Declarant's Property free of these restrictions, develop some of the Declarant's Property and, at Declarant's option, dedicate some of Declarant's Property as Common Area for the benefit of the developed areas, in accordance with Declarant's development plans for the Property It is contemplated that the Property will be developed pursuant to a master concept plan, which may, from time to time, be amended or modified. The development of the Property and restrictions placed upon each portion thereof in accordance with this Declaration will touch, concern, and benefit each other portion and the entire Property. As each area of Declarant's Property is developed or dedicated, Declarant may record one or more Supplemental Declarations and designate the use, classification, and such additional covenants, conditions, and restrictions as Declarant may deem appropriate for that area. Any Supplemental Declaration may, but need not, provide for the establishment of a Subassociation to be comprised of Owners within the area subject thereto. Any Supplemental Declaration may provide its own procedure for the amendment of any provisions thereof, as for example, by a specified vote of only the Owners of some of the Property within the area subject

thereto. All Property, Improvements and uses in each area so developed shall be subject to both this Declaration and the Supplemental Declaration, if any, for that area.

2.02 Annexation. Declarant, and other Persons with Declarant's written consent, may at any time, and from time to time, add additional land to the Property. Upon the recording of a notice of addition of land containing the provisions set forth below in this Section 2.02 (which notice may be contained within any Supplemental Declaration affecting such land), the covenants, conditions and restrictions contained in this Declaration shall apply to the added land, 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 Property originally covered by this Declaration. The notice of addition of land referred to hereinabove shall contain the following provisions.

- (a) A reference to this Declaration, which reference shall state the date of Recordation hereof and the book and page numbers wherein this Declaration is Recorded,
- (b) A statement that the provisions of this Declaration shall apply to the added land as set forth herein;
- (c) A legal description of the added land, and
- (d) Declarant's written agreement with a third-party landowner if the land being added is not owned by Declarant. As part of such written agreement, Declarant may covenant with the Person who owns such land as to the terms and conditions upon which Declarant will exercise its rights and duties, as Declarant under this Declaration, with respect to such added lands. Such terms and conditions may provide for joint exercise by Declarant and the owner of such lands, as to such added lands, of Declarant's rights and duties.

2.03 Withdrawal of Land. Declarant, and other Persons with Declarant's written consent, may, at any time, and from time to time, reduce or withdraw land from the Property. If lands are withdrawn from the lands now shown on Exhibit "A", this Declaration shall no longer apply to those lands withdrawn. The procedure for withdrawal of land shall be substantially the same as set forth above in Section 2.02 for the addition of land except that the instrument shall be designated as a notice of withdrawal of land and the provisions of such notice shall be modified as necessary to provide for the withdrawal of land rather than the addition of land. Declarant expressly reserves the right to sell, transfer or assign all or any part of the Declarant's Property to a third party free and clear of the covenants, conditions and obligations contained in this Declaration or any Supplemental Declaration.

## 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 Landscaping. All Plans and Specifications shall include plans for appropriate landscaping ("Landscaping"). The Landscaping shall be installed on or before thirty (30) days after completion of the commercial structure included in the Plans and Specifications. If no commercial structure is included in the Plans and Specifications, the Landscaping shall be installed on or before ninety (90) days after the Plans and Specifications are approved by the Architectural Review Committee. Unless otherwise approved by the Committee, an underground landscape irrigation system shall be provided and maintained by the Owner. Areas used for parking shall be landscaped, bermed, or attractively fenced in such a manner as to screen said areas from view from adjacent streets and freeways. If the Landscaping is not maintained in a sightly and well-kept condition, the Association shall be entitled to the remedies set forth in Section 3.14 along with any other remedies authorized under applicable law.

3.02 Undeveloped Property. Prior to the commencement of construction of Improvements, the Property shall be maintained by the Owner thereof at the Owner's sole expense. Such maintenance shall include mowing of weeds and grass, and the removal of trash and debris, as necessary, as determined by the Association, in its sole discretion. The Association shall have the right, at any reasonable time, to enter upon the Owner's Property to perform the obligations of the Owner pursuant to Section 3.02 and shall have the right to charge the cost thereof to the Owner of such Property. In the event the Association incurs expenses due to the enforcement of Section 3.02 and the Owner responsible for the payment of such expenses does not pay the same, then the amount of such expenses shall be a lien upon such Owner's Property as provided for in Section 8.06.

3.03 Parking Areas, Sidewalks. Parking will not be permitted at any place other than in designated parking areas that are curbed, guttered, and paved. Parking areas shall not be provided in front of any minimum setback lines. Parking areas shall be adequately screened by use of berms, trees, Landscaping, or other means acceptable to the Architectural Review Committee. Each Owner shall designate a portion of its Property as parking area. The portion of the Property designated as parking area shall be sufficient to accommodate the parking needs of the Owner, its employees, and visitors. No on-street parking shall be permitted; provided, however, that nothing herein shall be deemed to prohibit temporary stopping for the purpose of loading and/or unloading the passengers of public transportation vehicles. As to any portion of the Property adjacent to and abutting an existing public thoroughfare, the Owner shall, prior to occupancy of any Improvement located on such portion of the Property, construct sidewalks on the Property adjacent to the public thoroughfare. Sidewalks constructed pursuant to Section 3.03 shall be built in accordance with plans approved in advance by the Architectural Review Committee.

3.04 Storage and Loading Areas. Unless approved in writing by the Architectural Review Committee, no materials, supplies or equipment, including trucks or other motor vehicles, shall be stored upon any portion of the Property except inside a closed building or behind a visual barrier screening such materials, supplies, or vehicles so as not to be visible from neighboring property and streets. Any storage areas screened by visual barriers shall be located on the rear portion of any Owner's Property, unless otherwise approved in writing by the Architectural Review Committee.

3.05 Refuse Collection. Refuse collection areas must be effectively designed to contain all refuse generated on-site and deposited between collections. Deposited refuse must not be visible from outside the refuse enclosure. All exterior refuse and/or recycling containers must be screened from view from adjacent property and from public roads through the use of permanent masonry enclosures which shall be of a design, construction and location approved by the Architectural Review Committee.

3.06 Utility Lines and Antennae. No sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals, including telephone, television, microwave, or radio signals, shall be constructed, placed, or maintained anywhere in or upon any portion of the Property other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed, or maintained underground or concealed in or under buildings or other structures. No antenna for the transmission or reception of telephone, television, microwave, radio, or digital signals shall, unless screened from view from Common Area, parking lots and streets, be placed on any building or other Improvement within the Property without the written approval of the Architectural Review Committee.

3.07 Exterior Illumination. All exterior illumination for the Property (including parking lot lighting) must be directed downward and designed, constructed, and maintained to shield neighboring property from direct lighting or glare and in any event shall be subject to the approval of the Architectural Review Committee. Illumination shall be required on all common areas, walkways between buildings, and parking areas, unless otherwise waived or modified in writing by the Architectural Review Committee.

3.08 Subdivision. No lot or portion of the Property that has been finally platted shall be further divided or subdivided, nor any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Review Committee; provided, however, Declarant may divide and subdivide any portion of the Property owned by Declarant and convey any easement or other interest less than the whole out of such Property, all without the approval of the Architectural Review Committee, and each Owner, does, by the purchase of any portion of the Property, constitute and appoint Declarant as such Owner's true and lawful attorney, for such Owner and in such Owner's name, place, and stead to subdivide or re-subdivide and to grant consent for the subdivision or re-subdivision of any portion of the Property owned by the Declarant. Nothing herein shall be deemed to require the approval of the Architectural Review Committee for the



transfer or sale of any lot or portion of the Property, including the Improvements thereon, to more than one person to be held by them as tenants in common or joint tenants or for the grant of any Mortgage.

3.09 Signs. Any and all signs are subject to the prior written approval of the Architectural Review Committee with respect to the location, design, style, size and color of such signage, and no signs other than those expressly permitted herein shall be placed on the property, except with the prior written approval of the Architectural Review Committee. The Architectural Review Committee may permit signs that advertise a portion of the Property for sale or lease. All signs shall be designed to preserve the quality and atmosphere of the Property. The Association or the Declarant shall have the right of entry onto any portion of the Property to remove, at the Owner's expense, any sign erected without the written approval of the Architectural Review Committee.

3.10 Rubbish and Debris. No rubbish or debris of any kind (including weeds, brush, or material of any nature deemed to be rubbish or debris by the Architectural Review Committee) 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. The Architectural Review Committee shall determine what constitutes rubbish, debris, or odors and what conditions render any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Notwithstanding the foregoing, this paragraph shall not be construed to prevent the normal construction of Improvements upon any portion of the Property.

3.11 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 without the prior written approval of the Architectural Review Committee. 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 property or to its occupants.

3.12 Repair of Buildings and Maintenance.

(a) All Improvements hereafter constructed upon any portion of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof.

(b) Owners and occupants, including lessees, of any portion of the Property shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that portion of the Property so owned or occupied, including buildings, Improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times; provided, however that an occupant of any portion of the Property (other than multi-family tenants), shall be jointly and severally liable for the maintenance as set forth hereinbelow, solely of that portion of the Property, so occupied, or portions of the Property used by such occupant in connection with its occupancy. The Architectural Review Committee, it

its sole discretion shall determine whether a violation of the maintenance obligations set forth in Section 3.12 has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Architectural Review Committee, 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 parking areas, driveways, and private roads in good repair;
- (viii) Complying with all government, health, and police requirements;
- (ix) Striping of parking areas and repainting of Improvements;
- (x) Repair of exterior damage, and wear and tear to Improvements.

In addition, any Owner of a portion of the Property abutting or adjacent to (i) Rowe Lane, (ii) any other public thoroughfare, and/or (iii) any single-family residential property shall keep such property landscaped and in a clean and attractive condition.

**3.13 Alteration or Removal of Improvements.** Any construction, other than normal maintenance, that in any way materially 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 Review Committee.

**3.14 Violation of Restrictions.** The violation of the Lakeside at Blackhawk Commercial Restrictions by an Owner, his lessees, invitees, or licensees shall authorize the Declarant and/or Board to avail itself of any one or more of the following remedies:

- (a) The suspension of an Owner's right to use any Association Property for a period not to exceed thirty (30) days per violation, or
- (b) The right to cure or abate such violation and to charge the expense thereof, if any, to such Owner, or
- (c) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection

therewith, including, but not limited to attorneys' fees and court costs. Each day a violation continues shall be deemed a separate violation.

3.15 Hazardous Activities. No activities shall be conducted on any portion of the Property, and no Improvements constructed on any portion of 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 any portion of the Property, and no open fires shall be lighted or permitted on any portion of the Property, without the prior written approval of the Architectural Review Committee.

3.16 Temporary Structures. No tent, shack, or other temporary building, Improvement, or structure shall be placed upon any portion of the Property, except that temporary structures necessary for storage of tools and equipment and for office space for architects, builders, and foremen during the actual construction of Improvements may be maintained with the prior written approval of the Architectural Review Committee. All temporary structures shall be removed from the Property within thirty (30) days after the completion of Improvements. The Architectural Review Committee will determine, in its sole discretion, the date of such completion.

3.17 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.

3.18 Animals. No kennels or other facilities for selling or boarding dogs or other animals for commercial purposes shall be allowed on any portion of the Property, unless prior written approval of the Architectural Review Committee is obtained; provided, however, that no outdoor boarding facilities shall ever be permitted.

3.19 Unightly Articles, Vehicles. No article deemed to be unsightly by the Architectural Review Committee shall be permitted to remain on any portion of the Property so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks in excess of one ton in weight, buses and 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 or pick-up truck (other than minor emergency repairs), except in enclosed garages or other structures.

3.20 Mobile Homes, Travel Trailers, and Recreational Vehicles. Unless otherwise permitted pursuant to Section 3.16, no mobile homes shall be parked or placed on any portion of the Property at any time, and no travel trailers, recreational vehicles, or boats shall be parked on or near any portion of the Property so as to be visible from adjoining property or public or private thoroughfares. The prohibitions set forth in Section 3.20 may be waived (with or without conditions) by the Architectural Review Committee. This provision is not intended to prohibit the incidental, short-term parking of travel trailers, recreational vehicles, or boats by visitors or guests to restaurants or other businesses located on the Property.

3.21 Fences. No fence shall be constructed on the Property without the prior written approval of the Architectural Review Committee. The Architectural Review Committee may, in its sole discretion, prohibit or require (during the review of the Plans and Specifications) the construction of any fence, or specify the construction materials, size or location of any fence. The Owner of any portion of the Property that adjoins land planned for residential single-family use must construct a fence along the common property lines.

3.22 Screening. Exterior components of plumbing, processing and ventilating systems (including but not limited to piping stacks, collectors and ventilating equipment, blowers, ductwork, louvers, meters, compressors, motors, ovens, etc.), storage areas, air conditioning and heating equipment, incinerators, storage tanks, trucks, roof objects (including fans, vents, cooling towers, and all roof-mounted equipment that rises above the roof line), trash containers, and maintenance facilities, shall either be housed in closed buildings, or otherwise completely screened from view of adjoining streets, buildings, arrival zones and adjacent property. No lumber, metals, bulk materials, or scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures, or appropriately screened from public view. Liquid propane, gas, oil, and other exterior tanks shall be kept within enclosed structures, or permanently screened from public view. The construction, materials, location, and size of such screening shall require the prior written approval of the Architectural Review Committee.

3.23 Use Restrictions. The Property shall be restricted to the uses described in Section 3.23, including any customary or incidental uses related thereto. Any use not specifically described in Section 3.23 shall not be permitted without the prior written approval of the Architectural Review Committee. The use of a portion of the Property for one permitted use shall in no event preclude use of any other portion of the Property for any other permitted use.

**(a) Permitted uses of Lot 22, Block A, Lakeside at Blackhawk II, Phase 1A shall be limited to the following uses only:**

- (i) Office uses; and**
- (ii) Day care or preschool service.**

**(b) Permitted uses of the Property, other than Lot 22, Block A, Lakeside at Blackhawk II, Phase 1A, include:**

- (i) General retail sales;**
- (ii) Office and/or financial related activities;**
- (iii) Multifamily residential uses, including apartments, townhomes, and condominiums.**
- (iv) Day care or preschool service;**

- (v) Commercial retirement housing;
- (vi) Commercial assisted living housing;
- (vii) Health related facilities that do not operate an emergency room serviced by ambulances or other emergency medical vehicles;
- (viii) Clean manufacturing facilities; provided, however, that all operations shall be within a fully enclosed building or behind privacy fencing which results in the activity being removed from the view, sound, and senses of other adjacent property owners, and all activities shall be conducted in such a way as to comply with all applicable municipal, county, state, and federal ordinances, rules, statutes, and laws;
- (ix) Restaurants or bakeries, provided that the business must be wholly contained within the permanent building on the respective lot or subdivided portion of the Property; and
- (x) Other non-noxious uses that are compatible with the neighboring residential community and are approved in writing by the Architectural Review Committee.

(c) Notwithstanding the foregoing provisions of this Section 3.23, the following uses are prohibited on the Property except with the prior written consent and approval of the Architectural Review Committee, which consent, if granted, may be subject to conditions imposed by the Architectural Review Committee, including, without limitation, that all operations shall be within a fully-enclosed building or behind privacy fencing which results in the activity being removed from the view, sound, and senses of other adjacent property owners, and all activities shall be conducted in such a way as to comply with all applicable municipal, county, state, and federal ordinances, rules, statutes, and laws:

- (i) Kennels; and
- (ii) Dry cleaning facilities.

(d) Notwithstanding the foregoing provisions of this Section 3.23, the following uses are expressly and strictly prohibited on the Property:

- (i) Bars and cocktail lounges;
- (ii) Stockyards or stables;
- (iii) Sexually oriented or "adult" businesses;

- (iv) Pawn shops;
- (v) Sales of used automobiles or sales of other used vehicles;
- (vi) Automobile or vehicle dismantling, salvage, or storage;
- (vii) Automobile or vehicle repair facilities;
- (viii) Automobile or vehicle oil change and/or lubrication facilities;
- (ix) Single-family residential dwellings (except for any structure that has been used a single-family residential dwelling prior to the filing of this Declaration);
- (x) Car washing facilities;
- (xi) Recycling or collection facilities, resource extraction, scrap, or salvage operations;
- (xii) Storage, self-storage, or warehousing facilities; and
- (xiii) Any use which would create any dangerous, injurious, noxious or otherwise objectionable noise, glare, smoke, dust or other form of air pollution, liquid or solid refuse or waste or similar substance so as to materially, adversely affect any use within or in the vicinity of the Property (nothing contained in this sub-paragraph, however, shall be deemed to prohibit emissions from any portions of the Property that are approved by applicable regulatory agencies).

For purposes hereof, this restriction against bars and cocktail lounges does not prohibit a restaurant with liquor sales for on-premises consumption, provided that such restaurant receives at least one-half of its gross revenue from food sales.

3.24 Setback Provisions. Setbacks shall be maintained according to the recorded plat of any subdivision of the Property. Unless specified otherwise in a recorded plat, all buildings constructed on the Property shall be set back at least: (i) twenty-five feet (25') from the right-of-way of any other public road, street, or highway, and (i) twenty-five feet (25') from any interior side or rear lot line.

3.25 Building Orientation. All buildings constructed on the Property shall be oriented as approved by the Architectural Review Committee.

## **ARTICLE IV**

### **CONSTRUCTION**

4.01 Construction of Improvements. No Improvements shall be constructed or expanded upon any portion of the Property without the prior written approval of the Architectural Review Committee. All remodeling which affects the exterior of any Improvement

shall be subject to the prior written approval of the Architectural Review Committee. The location of all Improvements upon any portion of the Property is subject to the prior written approval of Architectural Review Committee.

4.02 Construction Materials. All exterior building materials shall be subject to the prior written approval of the Architectural Review Committee. At least seventy-five percent (75%) of the exterior of all buildings (exclusive of roofs, eaves, soffits, windows, doors, gables, and trim work) shall be of masonry construction. For purposes hereof, "masonry construction" means stucco, brick, or stone. The use of wooden roof shingles is specifically prohibited. Exposed metal roof decks that reflect light in a glaring manner, such as galvanized steel sheets, are specifically prohibited.

4.03 Construction Standards.

(a) All building sites shall be subject to the prior written approval of the Architectural Review Committee. Windows shall not be glazed or reglazed with mirrored or reflective glass with a reflectivity of greater than twenty percent (20%) without prior written approval of the Architectural Review Committee. No highly reflective or mirrored building materials are permitted for roofs or exterior walls.

(b) Construction must conform to the Plans and Specifications approved in writing by the Architectural Review Committee.

(c) No buildings or other Improvements on the Property may exceed three (3) stories in height.

(d) Each restaurant shall have a trash compactor on the premises adequate to handle the trash and waste items generated or acquired thereon by such restaurant. The sorting, handling, moving, storing, removing, and disposing of all waste materials on any portion of the Property must be housed or screened in a manner approved in writing by the Architectural Review Committee. All facilities and plans for the disposal of wastes other than by public sewage methods (such as shredding, compaction, incineration, reclamation, or chemical dissolution) must be approved in writing by the Architectural Review Committee.

(e) No excavation shall be made except in conjunction with the construction or repair of an Improvement unless approved in writing by the Architectural Review Committee. When such Improvement is completed, all exposed openings shall be backfilled, graded, and landscaped as required by the Architectural Review Committee.

(f) Once commenced, construction shall be diligently pursued to its completion.

(g) Any and all debris due to construction, including but not limited to, dirt or trash, which is deposited on any public or common roadway, shall be removed daily. No construction equipment or vehicles shall be parked on any public or common roadway

within the Property without the prior written approval of the Architectural Review Committee.

(h) All temporary utilities, equipment, and materials on any portion of the Property during the construction of Improvements thereon shall be contained in areas approved in writing by the Architectural Review Committee. Construction debris shall be removed promptly and on a regular basis. Burning of debris shall not be permitted. Upon completion of construction upon any portion of the Property, all trash, debris, surplus materials, temporary screening barriers, and equipment shall be promptly removed and properly disposed of.

4.04 Construction Activities. This Declaration and the Guidelines shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by any Owner upon any portion of the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration or the Guidelines 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, is in compliance with the provisions of this Declaration and the Guidelines, and conforms to usual construction practices in the area. In the event of any dispute concerning any provision of this Declaration during the construction of Improvements, a temporary waiver of the applicable provision may be granted by the Architectural Review Committee, provided that such waiver shall be only for the period of construction of the Improvements.

## **ARTICLE V**

### THE ASSOCIATION

5.01 Organization. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and invested 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. Nothing in this Declaration shall prevent the creation of Sub-Associations to own, develop, assess, regulate, operate, maintain, or manage any portion of the Property. The Declarant may, at any time, cause the creation of the Association. Declarant holds the sole and exclusive right to create the Association under this Declaration.

5.02 Membership. Declarant and all Owners shall automatically be Members of the Association; provided, however, that no Owner shall be a Member by reason of ownership of any portion of the Property used for governmental or quasi-governmental purposes, or by reason of Ownership of any park, public land, fire station, police station, mass transit facilities, road, easement, right-of-way, mineral interest, or mortgage. Membership in the Association shall be appurtenant to and shall run with the Property. Membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated from title to the Property. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation shall be void.



5.03 Voting Rights.

(a) Entitlement. Each Owner shall be entitled to one vote for each One Thousand Dollars and no/100 Dollars (\$1,000.00) assessed value of that portion of the Property (land and Improvements) owned by such owner as assessed by the Travis Central Appraisal District ("TCAD") or the Williamson Central Appraisal District ("WCAD") for ad valorem tax purposes for the preceding year. During the first fifteen (15) calendar years after the effective date of this Declaration, regardless of whether Declarant is an Owner, Declarant shall have five (5) votes for every one vote outstanding in favor of any Owner. Thereafter, for every one vote outstanding in favor of any other Owner, Declarant shall have five (5) votes so long as Declarant owns either (G) a portion of the Property with a value of at least ten percent (10%) of the entire value of the Property based on the most current WCAD or TCAD assessed values, or (ii) one (1) acre out of the Property. If Declarant loses its votes under this Section 5.03(a), it may thereafter regain them by the addition of land to the Property as provided in Section 2.02.

(b) Joint or Common Ownership. Any property interest, entitling the Owner thereof to vote as herein provided, held jointly or in common by more than one person shall require that the Owner thereof designate, in writing, the individual person or owner who shall be entitled to cast such vote and no other person shall be authorized to vote on behalf of such property interest. A copy of such written designation shall be filed with the Board before any such vote may be cast, and upon the failure of the owner thereof to file such designation, such votes shall neither be cast nor counted for any purpose whatsoever.

5.04 Duties of the Association. Subject to and in accordance with these restrictions the Association acting through the Board shall have and perform each of the following duties:

(a) Common Area.

(i) Ownership and Control. To accept, own, operate and maintain all Common Area which may be conveyed or leased to it be Declarant or any other party, together with all Improvements of whatever kind and whatever purpose which may be located thereon, and to accept, own, operate and maintain all other property, real and personal, conveyed or leased to the Association by Declarant or any other party. The Board is specifically authorized from time to time to recommend, adopt, implement, and enforce rules, regulations, mechanisms and procedures governing use of all Common Area.

(ii) Repair and Maintenance of Common Areas. To maintain in good repair and condition all Common Areas, perimeter fencing, and landscaping within the Property.

(iii) Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any Common Areas or Association

property, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

- (b) Insurance. To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount to carry out the Association's functions.
- (c) Records. To keep books and records of the Association's affairs.
- (d) Other. To carry out and enforce all duties of the Association set forth in the Lakeside at Blackhawk Commercial Restrictions.

5.05 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the 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 shall have the power and authority at all times to:

- (a) Assessments. To levy assessments as provided in Article VIII. An assessment is defined as that sum which must be levied in the manner and against any portion of the Property in order to raise the total amount for which the levy in question is being made.
- (b) Right of Entry and Enforcement. To enter at any time in an emergency, or in a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner, upon any portion of the Property or into any Improvement thereon, or into any Common Area for the purpose of enforcing the Lakeside at Blackhawk Commercial Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Declaration or Guidelines. Any action taken by the Association pursuant to Section 5.05(b) shall be at the sole cost and expense of the Owner of the applicable portion of the Property. 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 mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of the Lakeside at Blackhawk Commercial Restrictions. The Association shall have no obligation to commence and maintain such suits either in its own name, or in the name of and on behalf of any Owner.
- (c) Rules and Bylaws. To make, establish, and promulgate, and in its discretion to amend or repeal and re-enact, Association bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions, including the use and occupancy of Association Property and the Common Areas.

(d) Conveyance. 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 thereon, therein or thereunder:

- (i) Roads, streets, walks, driveways, trails, and paths;
- (ii) Lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- (iii) Sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; and
- (iv) Any similar public or quasi-public Improvements or facilities.

Additionally, any property that has been dedicated to or acquired by the Association without expending funds of the Association, may be released, or conveyed by the Board back to the original grantor, or the grantor's heirs, executors, assigns, or successors, without receiving compensation for such release or conveyance.

Section 5.05(d) shall not be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed thereon by other provisions of this Declaration.

(e) Manager. To retain and pay for the services of a Manager to manage and operate the Association, including any portion of the Property owned by the Association, 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 other duties, powers, and functions to the Manager. The Owners hereby release the Association, the members of its Board as well as its officers and employees from liability for any omission or improper exercise by the Manager of any such duty, power, or function so delegated.

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association, the operation and management of the Common Areas or Association Property, the enforcement of the Lakeside at Blackhawk Commercial Restrictions, or the performance of any other duty, right, power or authority of the Association.

(g) Association Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance required to be paid by the Association hereunder or incurred in connection with the Common Area or the Association Property.

(h) Other Areas. To maintain and repair as appropriate all easements, roads, roadways, rights-of-way, parkways, median strips, sidewalks, paths, trails, ponds, lakes,

other areas within the Property, and all areas required to be maintained by the Association hereunder.

(i) Other Services and Property. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Board deems necessary.

(j) Construction on Association Property. To construct new Improvements or additions to the Common Area or Association Property.

(k) Contracts. To enter into any contracts with any party, including Declarant, on such terms and provisions as the Board may determine.

(l) Permits and Licenses. To obtain and hold any and all types of permits and licenses.

(m) Own Property. To acquire, own and to dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise.

#### 5.06 Indemnification.

(a) Determination by Board. 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, judgments, fines, and amounts paid in settlement) actually and 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 (i) 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 (ii) 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 that 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.

(b) Insurance. 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**

### COMMON AREA

6.01 Common Area. Each Owner and each lessee of any portion of the Property shall be entitled to use the Common Area subject to:

- (a) The provisions of the Lakeside at Blackhawk Commercial Restrictions, and each person who uses any Common Area, in using the same, shall be deemed to have agreed to comply therewith;
- (b) The right of the Association to suspend the rights of any Owner and his respective lessees, invitees, licensees, or employees to the use of any portion of the Property owned and operated by the Association for any period during which any assessment against the Owner's Property remains past due and unpaid;
- (c) Such rights to use Common Area as may have been granted by the Association or prior owners of property of the Association to others; and
- (d) Such covenants, conditions and restrictions as may have been imposed by the Association or prior owners on property of the Association.

6.02 Damages. Each Owner shall be liable to the Association for any damage to property of the Association that may be sustained by reason of the negligent or intentional misconduct of such person or of his invitees, licensees, or employees. If the Property, the ownership or leasing of which entitles the owner thereof to use Common Area, is owned or leased jointly or in common, the liability of all such joint or common owners or lessees shall be joint and several. The amount of such damage may be assessed against such person's real and personal property on or within the Property, including the leasehold estate of any lessee or the lessor of such lessee, and may be collected as provided in Article VIII for the collection of assessments.

6.03 Damage and Destruction. In case of destruction or damage to any Common Area by fire or other casualty, the available insurance proceeds shall pay to the Association, which shall contract to repair or rebuild the Common Area so damaged. Should the insurance proceeds be insufficient to pay all of the costs of repairing or rebuilding the damage, the Association may levy a special assessment to make good any deficiency. If the Board determines not to rebuild any Common Area so destroyed or damaged, or to build facilities substantially different from those that were destroyed or damaged, it shall call a special meeting of the Members to consider such decision. If the Members, by three-fourths (3/4) of the votes cast at such meeting, elect to ratify such decision, the Board shall act accordingly, but if the Members do not by such percentage elect to ratify such decision, the Board shall proceed to repair or rebuild the damaged or destroyed facility with payment therefor to be made as set forth in Section 6.03. Notwithstanding any provision hereof to the contrary, however, the Association shall be required to repair or rebuild any damaged or destroyed water detention or filtration facilities, right-of-way Improvements, lighting facilities, or entry facilities that it is required to maintain under the terms and provisions hereof.

## ARTICLE VII

### ARCHITECTURAL REVIEW COMMITTEE

7.01 Membership of Committee. The Architectural Review Committee shall consist of at least one (1) and a maximum of three (3) voting members ("Voting Members") appointed by Declarant. The following person is hereby designated as the initial Voting Member of the Architectural Review Committee: Robert M. Tiemann.

7.02 Action by Committee. The Architectural Review 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 Review Committee. In the absence of such designation, the vote of a majority of all of the members of the Architectural Review Committee, taken without a meeting, shall constitute an act of the Architectural Review Committee.

7.03 Term. Each member of the Architectural Review Committee shall hold office until such time as he has resigned or has been removed or his successor has been appointed by Declarant, as provided herein.

7.04 Declarant's Right of Appointment. Declarant, its legal representatives, successors or assigns, shall have the right to appoint and remove any and all members of the Architectural Review Committee, as Declarant determines appropriate in its sole discretion. The Declarant's right to appoint members of the Architectural Review Committee shall be retained by Declarant until such right is expressly assigned, by written instrument, to another party.

7.05 Adoption of Rules. The Architectural Review 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.

7.06 Review of Proposed Construction. Whenever approval of the Architectural Review Committee is required pursuant to this Declaration or any Supplemental Declaration, the Architectural Review Committee shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, it deems relevant. Conceptual site plans, preliminary plans, and final construction plans must all be submitted as soon as each set of plans are completed. Prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the final Plans and Specifications therefor shall be submitted to the Architectural Review Committee, and construction thereof may not commence unless and until the Architectural Review Committee has approved such Plans and Specifications in writing. The 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 Committee. The Architectural Review Committee shall review Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the Architectural Review Committee of any information or documents deemed necessary by the Architectural Review Committee, it may postpone review of any Plans and Specifications submitted for approval. Upon receipt of all information or documentation deemed required for its review, the Architectural Review Committee shall have sixty (60) days to complete its review and grant or deny written approval of the Plans and Specifications. In the event the Architectural Review Committee falls to either grant or deny approval within such sixty (60) day period, the Plans and Specifications shall be deemed approved. No Improvement shall be allowed on any portion of the Property which is of 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 development of the Property or surrounding area. The Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth herein, and the decision of the Committee shall be final and binding so long as it is made in good faith. Neither the Committee shall be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed to approve the structural safety, engineering soundness, or conformance with building or other codes. The documents that shall be submitted to the Architectural Review Committee for review shall include, but not be limited to:

- (a) Detailed Plans and Specifications;
- (b) A detailed site plan;
- (c) A detailed landscape plan, including a sprinkler system plan, which specifies the species, size, and number of all vegetation to be utilized in performing the landscaping;
- (d) A detailed description, including exterior finish colors and roof materials, of all building materials to be utilized in the construction; and
- (e) Elevations showing all sides of the proposed Improvement.

7.07 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of all of the members of the Committee taken without a meeting, shall constitute an act of the Committee.

7.08 No Waiver of Future Approvals. The approval or consent of the 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 Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

7.09 Work in Progress. The Committee, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications.

7.10 Nonliability of Committee Members. Neither the Committee, nor any member thereof, nor the Board or 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 Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Committee or its member, or the Board or its member as the case may be. Neither the Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvements within the Property or the creation thereby of an obstruction to the view from such Owner's Property.

7.11 Variances. The Committee may grant variances from compliance with any of the provisions of this Declaration or any Supplemental Declaration or the Guidelines, including but not limited to height, bulk, size, shape, floor areas, land area, placement of structures, setbacks, building envelopes, colors, materials, or land use when in the opinion of the Committee, in its sole and absolute discretion, such variance will not be adverse to the overall development plan of the Property. Such variances must be evidenced by written instrument and must be signed by at least a majority of the Voting Members of the Committee or by the person or person designated in Section 7.02. If a variance is so granted, no violation of the covenants, conditions or restrictions contained in this Declaration, any Supplemental Declaration, or any of the provisions of the Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive or amend any of the terms or provisions of this Declaration, any applicable Supplemental Declaration, or the Guidelines for any purpose except as to the portion of the Property covered by the variance.

7.12 Architectural Guidelines. The Architectural Review Committee may promulgate a set of Architectural guidelines (the "Guidelines") not in conflict with this Declaration or any Supplemental Declaration for building and developing the Property. Each owner shall comply with the Guidelines, as amended, and failure to comply with the Guidelines shall constitute a violation of the provisions of this Declaration.

7.13 Address for Submittals. Plans and Specifications and other information shall be submitted to the Architectural Review Committee at:

Lakeside Commercial Area Architectural Review Committee  
c/o Tiemann Land and Cattle Development, Inc.  
4421 Rowe Lane  
Pflugerville, Texas 78660  
Attn: Robert M. Tiemann

or such other address as may be designated by the Committee.

7.14 Delegation of Appointment Powers. Declarant shall have the right to delegate to the Owners the right to appoint and remove members of the Architectural Review Committee. In the event of such delegation of authority, the selection of Voting Members to serve on the



Committee shall be by election in which the Owners shall have the same voting power as provided in Section 5.03.

7.15 Certificate of Compliance. Upon completion of any Improvements approved by the Architectural Review Committee and upon written request by the Owner of any portion of the Property, the Architectural Review Committee shall issue a certificate of compliance in a form suitable for recordation. The certificate shall identify the Property and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the Architectural Review 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 Review Committee of the actual construction of the Improvements or of the workmanship or materials thereof. Owner is hereby notified that the certificate in no way warrants, except as set forth above, the sufficiency, acceptability, or approval by the Architectural Review 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 Property.

## **ARTICLE VIII**

### FUNDS AND ASSESSMENTS

#### 8.01 Assessments.

(a) The Association may levy from time to time an Assessment against each Owner for each One Hundred and no/100 Dollars (\$100.00) of assessed value of that portion of the Property (land and Improvements) owned by such Owner as assessed by the Travis Central Appraisal District or the Williamson Central Appraisal District, or their successors for ad valorem tax purposes for the preceding year.

(b) Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

(c) Each unpaid Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Property against which the Assessment fell due. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

8.02 Maintenance Fund. The Board shall establish a fund (the "Maintenance Fund") into which shall be deposited any 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.

8.03 Regular Annual Assessments, Annual Budget. Prior to the beginning of each fiscal year, the Board shall establish an annual budget that will provide the basis of establishing the Regular Assessment. In establishing the annual budget, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Lakeside at Blackhawk Commercial Restrictions, including but not limited to the costs of maintaining all Common Areas and Association Property pursuant to the terms of this Declaration as well as a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Except in the case of special charges or assessments, uniform, and equal 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 during the fiscal year in equal monthly installments on or before the first day of each month, or in such other periodic installments or manner as the Board may designate in its sole and absolute discretion.

8.04 Special Assessments. In addition to the regular annual Assessments provided for in Section 8.03, the Board may levy Special Assessments whenever, in the Board's sole and absolute discretion, such Special Assessments are necessary to carry out the functions of the Association under the Lakeside at Blackhawk Commercial Restrictions. Special Assessments shall be levied only for emergency or other non-routine one-time expenses that are not contemplated when the applicable annual budget is approved. The amount of any Special Assessments shall be at the reasonable discretion of the Board.

8.05 Late Charges. If any Assessment, whether Regular or Special, is not paid within five (5) days after it is due, the owner may be required by the Board to pay a late charge at such rate as the Board may designate from time to time not to exceed five percent (5%) of the delinquent Assessment plus interest at the highest rate allowed by applicable usury laws then in effect (but not exceeding 18% per annum) on the amount of the Assessment from the due date thereof for each month the Assessment is delinquent; provided, however, such late charge and interest shall never exceed the maximum charge permitted under applicable law.

8.06 Assessment Lien and Foreclosure. All sums assessed in the manner provided in Article VIII but unpaid (as well as unpaid expenses incurred by the Association pursuant to Section 3.02) shall together with interest as provided in Section 8.05 and the cost of collection, including attorneys' fees as herein provided, thereupon become a continuing lien and charge on the Property covered by such Assessment, which shall bind such Property in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors, or assigns. The aforesaid lien shall be superior to all other liens and charges against said Property, except only for tax liens

and all sums unpaid on a first mortgage lien of record. 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 subordination must be signed by a duly authorized 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 Property covered by such lien and a description of the Property. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Real Property Records of Travis County or Williamson County, Texas. Such lien for payment of the Assessment shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting Owner's Property by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessment 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 not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred by the Association. 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.

8.07 Exemptions. Notwithstanding any provision herein to the contrary, all Common Areas shall be exempt from the payment of any Assessments levied by the Association, Regular or Special, and no Assessment, Regular or Special, shall be levied against the Property owned by Declarant without the prior written consent of Declarant.

8.08 **Assessment Prior to Creation of the Association.** Prior to the creation of the Association by Declarant, the Owner of Lot 22, Block A, Lakeside at Blackhawk II, Phase 1A shall pay a monthly maintenance fee to the Park at Blackhawk and Lakeside Homeowners Association, Inc. in the amount of five (5) times the amount of monthly dues and assessments that are paid to the Park at Blackhawk and Lakeside Homeowners Association, Inc. by the owner of a residential lot that is subject to the Park at Blackhawk and Lakeside at Blackhawk Master Declaration of Covenants, Conditions, and Restrictions.

## ARTICLE IX

### MISCELLANEOUS

9.01 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until April 1, 2038, unless amended as herein provided. After April 1, 2038, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or terminated by a written instrument executed by Owners of at least three-fourths (3/4) of the assessed value of the Property then subject to this Declaration, as assessed by TCAD or WCAD for ad valorem tax purposes during the preceding year.

9.02 Amendment. Declarant may amend this Declaration at any time during the initial term, which ends April 1, 2038. No amendment by Declarant shall be effective until there has been

recorded in the real property records of each county in which the Property is located, an instrument executed and acknowledged by Declarant, setting forth the amendment. Declarant shall have the right to add additional land to the Property.

9.03 Utility Easements. The Declarant reserves the right, without the necessity of the joinder of any other Owner or the approval of the Architectural Review Committee to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on any portion of the Property owned by Declarant, conveyed to the Association, or reserved as Common Areas, sewer and other pipelines, conduits, wires, and any public or private utility and/or cable function beneath or above the surface of the ground, with the right of access to the same at any time for the purposes of repair and maintenance.

9.04 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by certified mail, return receipt requested, or personally delivered and a written receipt received, therefore. If delivery is made by certified mail, it shall be deemed to have been delivered the date on which it was received by the person to whom such notice was addressed. Such address may be changed from time to time by notice in writing given by such person to the Association.

9.05 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes 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.

9.06 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 and may permit the participation, in whole or in part, by any other person in any of its privileges, exemptions, rights and duties hereunder.

9.07 Enforcement and Nonwaiver.

(a) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant and/or the Board shall have the right to enforce all of the provisions of the Lakeside at Blackhawk Commercial Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

(b) Violation of the Lakeside at Blackhawk Commercial Restrictions. Every act or omission whereby any provision of the Lakeside at Blackhawk Commercial Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner (at his own expense), Declarant, or the Board.

(c) Nonwaiver. The failure to enforce any provision of the Lakeside at Blackhawk Commercial Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said Restrictions.

9.08 Errors and Amendments. Notwithstanding any provision herein to the contrary, Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed of record for any purpose including but not limited to, correcting any typographical or grammatical error, ambiguity, or inconsistency appearing herein.

9.09 Construction of this Declaration.

(a) Restrictions Severable. The provisions of the Lakeside at Blackhawk Commercial Restrictions shall be deemed independent and severable, and the 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 to be effective on the 31st day of March 2008.

Declarant:

Rowe Lane Development, Ltd.

By: Tiemann Land and Cattle Development, Inc.

By: Robert M. Tiemann, President