



Amendment No. 3
to
Contract No. NS170000021
for
Rutherford Lane Campus ("RLC") Association Dues
between
Walnut Creek Improvement Association
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be January 1, 2020 through December 31, 2020. One option will remain.
- 2.0 The total contract amount is increased by \$26,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 01/01/2017 – 12/31/2017	\$19,464.00	\$19,464.00
Amendment No. 1: Option 1 – Extension 01/01/2018 – 12/31/2018	\$21,410.00	\$40,874.00
Amendment No. 2: Option 2 – Extension 01/01/2019 – 12/31/2019	\$23,551.00	\$64,425.00
Amendment No. 3: Option 3 – Extension 01/01/2020 – 12/31/2020	\$26,000.00	\$90,425.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment, the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Printed Name: W. M. Faust PRES
Authorized Representative

Walnut Creek Improvement Association
~~3607 Lone Mountain Road~~
~~Wimberley, Texas 78676~~
(512) 923-2523
bfaust@outlook.com

427 CONVOY CIRCLE W.
LOCKHART, TX 78644

Sign/Date:

Cindy Reyes
Contract Management Specialist III

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

December 11, 2019



Amendment No. 2
to
Contract No. NS170000021
for
Rutherford Lane Campus ("RLC") Association Dues
between
Walnut Creek Improvement Association
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be January 1, 2019 through December 31, 2019. Two options will remain.
- 2.0 The total contract amount is increased by \$23,551.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 01/01/2017 – 12/31/2017	\$19,464.00	\$19,464.00
Amendment No. 1: Option 1 – Extension 01/01/2018 – 12/31/2018	\$21,410.00	\$40,874.00
Amendment No. 2: Option 2 – Extension 01/01/2019 – 12/31/2019	\$23,551.00	\$64,425.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

Handwritten signature of W. M. Faust.

Printed Name: W. M. FAUST
Authorized Representative

PRESIDENT

Walnut Creek Improvement Association
3607 Lone Man Mountain Road
Wimberley, Texas 78676
(512) 923-2523
bfaust@outlook.com

Sign/Date:

6 DECEMBER 2018

Mike Zambrano, Jr.
Contract Management Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

Mike Zambrano
12-06-2018



Amendment No. 1
to
Contract No. NS170000021
for
Rutherford Lane Campus ("RLC") Association Dues
between
Walnut Creek Improvement Association
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be January 1, 2018 through December 31, 2018. Three options will remain.
- 2.0 The total contract amount is increased by \$21,410.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 01/01/2017 – 12/31/2017	\$19,464.00	\$19,464.00
Amendment No. 1: Option 1 – Extension 01/01/2018 – 12/31/2018	\$21,410.00	\$40,874.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: [Signature] PRES-

Sign/Date: [Signature] 12-5-2017

Printed Name: W. M. FAUST PRESIDENT
Authorized Representative

Mike Zambrano, Jr.
Contract Management Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

Walnut Creek Improvement Association
3607 Lone Man Mountain Road
Wimberley, Texas 78676
(512) 923-2523
bfaust@outlook.com

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
WALNUT CREEK IMPROVEMENT ASSOCIATION ("Contractor")
FOR
RUTHERFORD LANE CAMPUS ("RLC") ASSOCIATION DUES
MA 7500 NS170000021**

The City accepts the Contractor's Offer (as referenced in Section 1.1.4 below) for the above requirement and enters into the following Contract.

This Contract is between Walnut Creek Improvement Association having offices at 427 Connolly Circle West, Lockhart, TX 78644 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of January 1, 2017 ("Effective Date").

1.1 This Contract is composed of the following documents:

- 1.1.1 Exhibit A, The Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Walnut Creek Business Park executed August 24, 1987.
- 1.1.2 This document
- 1.1.3 Exhibit B, Walnut Creek Improvement Association's Annual Fee for 2017, dated December 5, 2016, including subsequent clarifications
- 1.1.4 Exhibit C, The City Ordinance No. 20051006-030, dated November 23, 2005 and authorized by Austin City Council on October 6, 2005, Item #30. of including all subsequent revisions

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 Exhibit A as referenced in Section 1.1.1
- 1.2.2 This document
- 1.2.3 Exhibit B as referenced in Section 1.1.3
- 1.2.4 Exhibit C as referenced in Section 1.1.4

1.3 Term of Contract. The Contract will be in effect for a term of twelve (12) months and may be extended thereafter for up to four (4) twelve (12) month extension options, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$19,464 for the initial term and an amount as authorized annually by the Walnut Creek Improvement Association Board that shall not exceed the City Manager's Authority limit (Currently set at \$58,000 per year) without taking the requested amount to City Council for approval for the subsequent extension options. *Payment shall be made upon receipt of regular invoices.*

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be

altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**WALNUT CREEK IMPROVEMENT
ASSOCIATION**

Signature

Printed Name of Authorized Person

Title

Date

CITY OF AUSTIN

Signature

Printed Name of Authorized Person

Title

Date

9300

4 27 3229

2:59 PM 1781

93.00 INC

2 2 08/28/8

.99-DOC

99.02-CHK

SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR WALNUT CREEK BUSINESS PARK

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SECOND AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WALNUT CREEK BUSINESS PARK

THE STATE OF TEXAS)
) KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS)

WHEREAS, a certain Declaration of Covenants, Conditions and Restrictions for Walnut Creek Business Park ("Original Declaration") was recorded in Volume 7327, Page 93 of the Real Property Records of Travis County, Texas, and pertains to certain real property located in Travis County, Texas, as more fully described in the Original Declaration; and

WHEREAS, a certain Restrictive Covenant ("City Restrictions") was recorded in Volume 7188, Page 1326 of the Real Property Records of Travis County, Texas and pertain to 112.243 acres of real property located in Travis County, Texas, which 112.243 acre tract is also a part of the real property to which the Original Declaration pertains; and

WHEREAS, a certain Amended Declaration of Covenants, Conditions and Restrictions for Walnut Creek Business Park (the "First Amended Declaration") was recorded in Volume 8447, Page 546 of the Real Property Records of Travis County, Texas, which amended and superseded the Original Declaration and any and all amendments thereto which had been approved prior to the date of the First Amended Declaration; and

WHEREAS, the First Amended Declaration was itself further amended by certain amendments recorded in Volume 8531, Page 159; Volume 8812, Page 626; Volume 8927, Page 842; Volume 8996, Page 606; Volume 8996, Page 609, and Volume 9120, Page 882, respectively, of the Real Property Records of Travis County, Texas, and all references to the "First Amended Declaration" appearing hereinafter shall mean and refer to the First Amended Declaration as so amended; and

WHEREAS, CFC/HARDIN JOINT VENTURE, a Texas joint venture designated in the First Amended Declaration as the "Declarant," has been divided into two separate joint ventures, one of which, known as WALNUT CREEK BUSINESS PARK JOINT VENTURE, a Texas joint venture, has succeeded to all rights of CFC/Hardin Joint Venture as "Declarant" under the First Amended Declaration, and all references to "Declarant" appearing hereinafter shall mean and refer to said Walnut Creek Business Park Joint Venture; and

WHEREAS, Section 9.02(B) of the First Amended Declaration provides that the First Amended Declaration may be amended by the recording in the Travis County Real Property Records of an instrument executed and acknowledged by the President and Secretary of Walnut Creek Improvement Association (the "Association"), setting forth the amendment and certifying that such amendment has been approved by Owners (as defined in the First Amended Declaration)

entitled to cast fifty-one percent (51%) of the number of votes entitled to be cast pursuant to Section 4.03(A) of the First Amended Declaration; and

WHEREAS, the President and Secretary of the Association hereby certify that fifty-one percent (51%) of the number of votes entitled to be cast pursuant to Section 4.03(A) of the First Amended Declaration have approved the amendment and restatement of the First Amended Declaration as set forth herein; and

WHEREAS, the President and Secretary of the Association desire to acknowledge and record the amendment by executing and recording this document;

NOW, THEREFORE, it is hereby declared that the First Amended Declaration is hereby amended and restated in its entirety as set forth herein, and that all of the Property (hereinafter defined) 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 the Property, 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, and it is further hereby declared 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 (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 specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.01 Architectural Committee. "Architectural Committee" shall mean the committee created pursuant to this Declaration and having the authority and responsibility delegated thereto by this Declaration.

1.02 Articles. "Articles" shall mean the Articles of Incorporation of Walnut Creek Improvement Association which have been filed in the office of the Secretary of State of the State of Texas, as the same may be from time to time amended.

1.03 Assessment Property. "Assessment Property" shall mean those portions of the Property which are subject to regular annual Assessments pursuant to the provisions of Section 7.04 hereof.

1.04 Assessments. "Assessments" shall mean assessments of the Members of the Association determined by the Board and includes regular annual assessments, special assessments, assessments benefiting specific areas and Subassociation assessments.

1.05 Association. "Association" shall mean and refer to Walnut Creek Improvement Association, a Texas non-profit corporation incorporated on March 5, 1981.

1.06 Association Property. "Association Property" shall mean all real or personal property now or hereafter owned by or leased to the Association, including, but not limited to, the Common Area.

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

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

1.09 By-Laws. "By-Laws" shall mean the By-Laws of the Association which may be adopted by the Board, as the same may be from time to time amended.

1.10 City Restrictions. "City Restrictions" shall mean all of the restrictive covenants contained in that certain Restrictive Covenant recorded in Volume 7188, Page 1326 of the Real Property Records of Travis County, Texas.

1.11 Common Area. "Common Area" shall mean and refer to all those areas of land within the Property which Declarant may designate and set aside for the common use and benefit of all Owners of land within Walnut Creek Business Park, including, without limitation, all easements and other areas upon which entrance signs to Walnut Creek Business Park are located, and all public streets and dedicated rights-of-way shown on any plat of all or any portion of the Property filed of record in the Real Property Records of Travis County, Texas.

1.12 Declarant. "Declarant" shall mean Walnut Creek Business Park Joint Venture, a Texas joint venture, its duly authorized representatives, or its successors or assigns; provided that any assignment of the rights of Walnut Creek Business Park Joint Venture, as Declarant, must be expressly set forth in writing and the mere conveyance of a portion of Declarant's Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder. The term Declarant shall not include the Owners other than Declarant or any other person or legal entity which consents to its real property being included under this Declaration, or which assigns to Declarant the right to impose the terms, conditions and restrictions of this Declaration on its real property.

1.13 Declarant's Property. "Declarant's Property" shall mean those portions of the Property that are from time to time owned by Declarant.

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

1.15 Improvement. "Improvement" or "Improvements" shall mean every structure and all appurtenances thereto of every type and kind, including

but not limited to buildings, outbuildings, patios, garages, 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, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.16 Lot. "Lot" or "Lots" shall mean any unit or units of land within the Property.

1.17 Manager. "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.

1.18 Member. "Member" shall mean any person who is a member of the Association.

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

1.20 Notice and Hearing. "Notice and Hearing" shall mean ten (10) days' prior written notice and a hearing before the Board at which the Person to whom notice is directed shall have the opportunity to be heard in person or by counsel at his expense.

1.21 Owner(s). "Owner(s)" shall mean the person or entity including Declarant, holding a fee simple interest in all or any portion of the Property or a condominium unit constructed on the Property, but shall not include the Beneficiary of a Mortgage.

1.22 Person. "Person" shall mean an individual or entity having the legal right to hold title to real property.

1.23 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to those indicating size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications for all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.24 Property. "Property" shall mean the land described on Exhibit "A" attached hereto, together with all land hereafter added thereto in accordance with the provisions hereof.

1.25 Record, Recorded and Recordation. "Record, Recorded and Recordation" shall mean, with respect to any document, the recordation of such document in the office of the County Clerk of Travis County, Texas.

1.26 Subassociation. "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.

1.27 Subdivision. "Subdivision" shall mean any parcel of the Property which has been shown on a final subdivision plan, recorded in the Plat Records of Travis County, Texas.

1.28 Supplemental Declaration. "Supplemental Declaration" shall mean any declaration of covenants, conditions and restrictions which may be hereafter recorded by Declarant, subject to all of the terms and restrictions of this Declaration and not in conflict herewith.

1.29 Walnut Creek Business Park Restrictions. "Walnut Creek Business Park Restrictions" shall mean this Declaration together with any and all Supplemental Declarations as either may be amended from time to time, together with the Articles, By-Laws and Walnut Creek Business Park Rules from time to time in effect.

1.30 Walnut Creek Business Park Rules. "Walnut Creek Business Park Rules" shall mean the rules adopted by the Board pursuant to the powers granted herein as they may be amended from time to time.

ARTICLE II

DEVELOPMENT, ANNEXATION AND WITHDRAWAL OF LAND

2.01 Development by Declarant. Declarant may divide or subdivide the 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 master plan 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, in which the development of the Property and restrictions upon each portion thereof will benefit each other's portion and the whole thereof. 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 lands, 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 lands 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 consent if the land being added is not owned by Declarant. As part of such written consent, Declarant may agree 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

BUILDING AND USE RESTRICTIONS

Except as otherwise provided herein, all of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following specific and general limitations and restrictions:

3.01 Business and Commercial Use. The use of the Property, unless specifically authorized to the contrary herein, shall be restricted to the following business and commercial activities:

(A) Office, commercial and financial related activities.

(B) Business services or any other commercial use, except that convenience stores shall not be permitted.

- (C) Storage and warehousing.
- (D) Wholesale distribution.
- (E) Manufacturing or processing where conducted as follows:
 - (1) All operations shall be within a fully-enclosed building; and
 - (2) All activities shall be conducted in such a way as to comply with the applicable performance standards.
- (F) Health related facilities that do not operate an emergency room serviced by ambulances or other emergency medical vehicles.
- (G) Hotels or Motels. Such facilities shall be authorized to serve alcoholic beverages.
- (H) Restaurants, exclusive of free standing fast food establishments.

3.02 Retail Use. Declarant reserves the right to designate any portion of the Property for "Retail Use." On property designated by the Declarant for Retail Use, which designation must be in writing, in recordable form, and recorded in the Real Property Records of Travis County, Texas, to be effective, all uses permitted in Section 3.01 are hereby expressly permitted with the approval of the Architectural Committee.

3.03 Multifamily Use. Subject to approval by the Architectural Committee, multifamily residential projects may be constructed and used on Lot 1, Block "G", WALNUT CREEK BUSINESS PARK PHASE A, SECTION 1, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 83, Pages 214C-215A, Plat Records of Travis County, Texas; Lots 2, 3, 4, 5 and 6, Block "G", WALNUT CREEK BUSINESS PARK PHASE A, SECTION 2, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 84, Pages 120C-120D, Plat Records of Travis County, Texas; Lots 2, 3, and 4, Block "A", WALNUT CREEK BUSINESS PARK, PHASE A, SECTION 5, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 87, Pages 43D-44A, Plat Records of Travis County, Texas; and Lots 15, 16, and 17, Block "D", and Lots 3, 4, 5 and 6, Block "E", WALNUT CREEK BUSINESS PARK, PHASE C, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 86, Pages 84D-86A, Plat Records of Travis County, Texas.

3.04 Antennas. No exterior radio or television antenna, aerial, or receiving dish shall be erected or maintained without the prior written approval of the Architectural Committee. If approval is granted, said devices shall be located where the Architectural Committee determines and said devices shall comply with all City of Austin standards. Approval by the Architectural Committee may be withheld for any reason.

3.05 Insurance Rates. Nothing shall be done or kept on any of the Property or any Lot which would increase the rate of insurance on any other Lot,

any Improvements constructed upon any other Lot, or the Association Property without the approval of the Board, nor shall anything be done or kept on the Property or any Lot which would result in the cancellation of insurance on any other Lot, any Improvements constructed upon any other Lot, or any part of the Association Property, or which would be in violation of any law.

3.06 Subdividing. No Lot which has been finally platted by the City of Austin shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee. Nothing herein shall be deemed to require the approval of the Architectural Committee for the transfer or sale of any Lot, including 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.

3.07 Signs. No sign of any kind shall be displayed to the public view without the prior written approval of the Architectural Committee, except for signs which are part of Declarant's overall marketing plan for the Property. The design of all signs must be submitted to the Architectural Committee for approval prior to fabrication and installation. All signs must conform to the then effective City of Austin sign ordinances and must be maintained in a clean and professional manner. The Architectural Committee may permit signs of any type advertising a portion of the Property for sale or lease and it may set standards for the same. Signs of a flashing or moving character and inappropriately colored signs will not be permitted. Each building may have a berm sign detached from the building and situated perpendicular or parallel to the main roadway servicing the building. A berm sign shall not exceed sixty-four (64) square feet of surface area on any side. A berm sign may be lighted internally or externally but such lighting shall be extinguished by 12:00 o'clock midnight each day. In granting approval of a sign, the Architectural Committee may specify the materials to be used, the location of the proposed sign, height and size, purpose, shape, lettering, landscaping and the type of lighting to be used in illuminating the sign.

Signs may be attached to buildings so long as they are approved in advance by the Architectural Committee and meet each of the following criteria:

- (A) The type face shall be Helvetica medium, upper case.
- (B) The cap height shall be 12": no larger or smaller.
- (C) All copy shall be 3/4" thick injection molded acrylic letters with a 1/4" projected pad mounting installed with G.E. silicone sealant.
- (D) Color of letters for the entire sign must be uniform, unless otherwise approved by Architectural Committee.
- (E) The sign shall not be illuminated in any form or fashion.
- (F) Logos shall be 14" maximum height, custom saw-cut from 1/2" acrylic, and have 1/2" projection (may be any color).

A directory sign may be constructed for each building so long as it is approved by the Architectural Committee and meets each of the following criteria:

- (A) Directory must be mounted on a berm that is detached from the building.
- (B) Directory must be a slatz systems using changeable tenant panels.
- (C) Color shall be duranodic bronze #313E, or color consistent with building architecture.
- (D) Type style shall be white vinyl die or computer cut helvetica medium letters.
- (E) Size of title copy shall be 2" in cap height. Subtitles shall be 1" in cap height. Both may use upper case and lower case.
- (F) Directory strips shall not exceed 4-3/4" X 48".
- (G) Directory shall be maintained in a clean and professional manner.
- (H) A drawing of the proposed sign shall be submitted to the Architectural Committee for approval prior to fabrication and installation.

Upon written request to and written approval by the Architectural Committee, temporary signs may be posted for a period not to exceed 120 days. Application for renewal of said term may be made in writing not less than three weeks prior to the end of said term. All temporary signs shall meet each of the following criteria:

- (A) Only one sign per Lot is allowed.
- (B) Signs shall have a maximum surface area of sixteen (16) square feet. All signs shall be plumb with no outriggings.
- (C) All signs shall face the roadway and not be placed in the Common Area or in a landscape easement.
- (D) Signs in violation of the above may be removed without notice by Declarant or the Association.
- (E) Announcement signs may not contain phone numbers; their message shall be merely an announcement of activity.
- (F) Sold signs may be posted upon written approval by the Architectural Committee, and shall have a maximum surface area of four (4) square feet. A sold sign may be posted from the time as the Lot is sold until the time the building on said Lot receives its Certificate of Occupancy.

3.08 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 Committee) shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property or to its occupants. The Architectural 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, and the decision of the Architectural Committee shall be final and binding on all parties. Refuse, garbage and trash shall be kept at all times in a covered container and any such container shall be kept within an enclosed structure or appropriately screened from view.

3.09 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 Board. No noise or other nuisance shall be permitted to exist or operate upon any of the Property so as to be offensive or detrimental to any other Property or to its occupants.

3.10 Construction of Improvements. No Improvements shall hereafter be constructed upon any of the Property without the prior written approval of the Architectural Committee. No Improvement may be constructed on any Lot which would unreasonably obstruct the view from other portions of the Property subject to this Declaration, and the positioning of all Improvements upon Lots within the Property is hereby expressly made subject to Architectural Committee review and approval. The Architectural Committee reserves the right to determine the precise location of the Improvement on the Lot. The Architectural Committee may, but shall not be required to prevent or allow the construction of a proposed Improvement based upon the effect it will have upon the view from any particular portion of the Property or the effect the location of the Improvement will have on other portions of the Property. Rather, the Committee may consider the effect the Improvement will have on the Property as a whole, it being expressly understood that neither the Declarant, the Board or the Architectural Committee, nor the members thereof, shall be liable to any Owner in monetary damages or otherwise due to the construction of any Improvement within the Property.

3.11 Repairs and Maintenance.

A. All improvements hereafter constructed upon any of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof. The opinion of the Architectural Committee as to condition shall be final.

B. Owners and occupants (including lessees) of any part of the Property shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that part of the Property so owned or occupied, and all areas adjacent to such Property which are within dedicated rights-of-way but not within an actual paved roadway, to the extent not maintained by the City of Austin, including buildings, Improvements and grounds in connection

therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance shall include, but is not limited to the following which shall be performed in a timely manner:

- (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 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.

3.12 Construction Standards.

(A) Construction, remodeling or alteration of any Improvement on any portion of the Property or any Lot contained in the Property shall meet standards set forth in these Covenants and shall require prior written approval of the Architectural Committee as more specifically set forth herein. No consent, however, of the Architectural Committee need be obtained for changes that are strictly internal, and not visible from the exterior of an Improvement. Any Owner, occupant or lessee, in conjunction with a request for approval of any such construction, remodeling, or alteration shall submit to the Architectural Committee the following:

- (1) A detailed site plan.
- (2) Elevations showing all sides of the proposed Improvement.
- (3) 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.

- (4) A detailed description, including exterior finish colors, and roof materials, of all building materials to be utilized in the construction.

(5) Detailed Plans and Specifications.

(B) All building exterior walls from grade to roof levels shall be faced and finished with brick, stone, stucco, marble, architectural concrete, glass or with such other equal or better quality face materials as may be approved in writing by the Architectural Committee. No building shall have sheet or corrugated aluminium, iron, steel, or asbestos covering the exterior walls. The restrictions set forth in the two foregoing sentences shall not apply to Lots 15, 16 and 17, Block "D," and Lots 3, 4, 5, and 6, Block "C," WALNUT CREEK BUSINESS PARK, PHASE C, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 86, Pages 84D-86A, Plat Records of Travis County, Texas. Windows shall not be glazed or reglazed with mirrored or reflective glass without prior written approval of the Architectural Committee. All Improvements constructed within the Property shall be built in place on the Lot, and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Committee.

(C) Construction must conform to Plans and Specifications approved in writing by the Architectural Committee. Factors to be considered by the Architectural Committee may include but shall not be limited to, whether the Plans and Specifications meet the following criteria:

- (i) Do not include wooden exteriors;
- (ii) Provide adequate fire protection systems;
- (iii) Provide for all underground utilities (public and private);
- (iv) Preserve the quality and atmosphere of the Property and do not detract from adjacent portions of the Property; and
- (v) Do not include exterior fire escapes.

(D) Approval by the Architectural Committee of any Plans and Specifications shall not be deemed to constitute any representation, warranty or guarantee that the particular Plans and Specifications actually meet any or all of the foregoing criteria. Each commercial building, complex of buildings, or separate commercial business enterprise shall have a trash receptacle on the premises adequate to handle the trash and waste items generated, manufactured, or acquired thereon by such commercial activities. The sorting, handling, moving, storing, removing and disposing of all such waste materials must be housed or screened in a manner approved in writing by the Architectural 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 Committee.

(E) No excavation shall be made except in conjunction with construction of an Improvement. When such Improvement is completed, all exposed openings shall be backfilled and graded.

(F) Once commenced, construction shall be diligently pursued to the end that it may not be left in a partly finished condition any longer than a reasonable time, which length of time shall be determined by the Architectural Committee.

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

3.14 Use of Common Area. No Common Area shall be improved, used or occupied, except in such manner as shall have been approved by Declarant in its sole and absolute discretion or by a majority vote of the Board.

3.15 Parking. Parking will not be permitted on any street or road, either public or private, or at any place other than paved parking spaces, and each Owner shall be responsible for compliance by the respective lessees, licensees, employees, guests, customers, business invitees and visitors. Parking will not be permitted nearer than five (5) feet to any interior property line nor nearer than ten (10) feet to any property line which is also a right-of-way line for any dedicated public street.

3.16 Landscaping. All open, unpaved space, including, but not limited to, front, side and rear building set-back areas, and all areas between the curb line and the property line, shall be planted and landscaped, and maintained as provided in Section 3.11 hereof. A sprinkler system of approved design shall be installed in all landscaped areas. Landscaping in accordance with the approved Plans and Specifications must be completed within sixty (60) days following the occupancy or completion of any building, whichever occurs first. Such sixty (60) day period may be extended in writing by the Architectural Committee, acting in its sole good faith and discretion, in the event of delays caused by adverse weather conditions or other conditions beyond the reasonable control of the Owner requesting such extension.

3.17 Illumination. If exterior illumination is required or desired for any building or parking area, such exterior illumination shall be designed so as to shine only on the particular building or parking area for which such illumination has been approved by the Architectural Committee and shall not interfere with any adjoining portions of the Property; and such illumination shall not be installed without the prior written approval of the Architectural Committee as to the plan therefor.

3.18 Loading Docks and Other Areas. The location of loading docks and garbage areas shall be approved by the Architectural Committee. Loading areas may not encroach upon set-back areas and shall be screened in a manner approved by the Architectural Committee, considering such matters as location and views from adjacent or nearby portions of the Property.

3.19 Sidewalks. If required by the City of Austin, each Owner shall install alongside any dedicated street abutting his Lot or portion of the Property a sidewalk which is constructed in accordance with City of Austin requirements, using aggregate concrete or comparable material approved in writing, and at a location approved in writing, by the Architectural Committee and the appropriate public authorities, such construction to be completed prior to occupancy of any building constructed on such Lot or Property.

3.20 Exempt Property. Notwithstanding any provision herein to the contrary, the Common Area shall not be subject to or burdened by the Covenants set forth in this Article III, except to the extent the same are made specifically applicable to the Common Area.

3.21 Violation of Declaration, By-Laws or Rules.

(A) A violation by an Owner, his family, guests, lessees, business invitees or licensees, of the By-Laws, the Walnut Creek Business Park Restrictions, or the Walnut Creek Business Park Rules shall authorize the Board to avail itself on behalf of the Association of any one or more of the following remedies:

(1) The imposition of a "special charge" not to exceed One Hundred Dollars (\$100.00) per each day of violation, to the extent permitted by applicable law; or

(2) The suspension of such Owner's rights to use any Association Property for a period not to exceed thirty (30) days per each day of violation; or

(3) 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; or

(4) The right to enter upon such Owner's property, and upon adjacent right-of-way areas, without liability to such Owner (or any lessee, invitee, customer or licensee of Owner) for trespass or otherwise, and cause to be done any work or any other act necessary to secure compliance with these protective covenants. As a condition precedent to exercising the rights given to the Board under this Section 3.21, the Board shall give the Owner written notice specifying with particularity the nature of the work or act which the Board considers necessary and such Owner shall have a period of ten (10) days after receipt of such written notice within which to commence such work or act. If such Owner timely commences such work or act and prosecutes same with due diligence until completion, the Board shall not have any right to enter upon such Owner's property or adjacent right-of-way areas for purposes of performing the same. The cost of any such work or act performed by the Board on the Owner's property or adjacent right-of-way areas shall be assessed against such Owner's property. Each Owner shall be deemed to have agreed to pay for any such work or act performed by the Board promptly upon receipt of a statement covering the cost of such work, and upon failure to make prompt payment, the amount due for such work or act

shall be a personal obligation of such Owner and shall be subject to the same lien and collection procedures as the Assessments provided for in Article VII hereof.

Before the Board may invoke either of the remedies provided in Paragraphs (1) or (2) above, it shall afford the Owner Notice and Hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day that a violation continues shall be deemed a separate violation for purposes of these covenants.

(B) The voting rights of an Owner who fails to pay any Assessment authorized or permitted by this Declaration, or a special charge authorized in Section 3.21(A), shall automatically be suspended and shall remain suspended until any such Assessment or special charge, including penalty, interest and attorneys' fees added to such Assessment as authorized in Article VII hereof, is paid in full.

3.22 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and written approval by the Architectural Committee is obtained prior to any construction work or other activity which may cause such interference with established drainage patterns.

3.23 Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted.

3.24 Temporary Structures. No tent, shack or other temporary building, Improvement or structure shall be placed upon the Property, except that temporary structures necessary for storage for tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the approval of the Architectural Committee, such approval to specify the nature, size, duration and location of such structure.

3.25 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or within any portion of the Property. No derrick or other structure designated for use in drilling for ore or natural gas shall be erected, maintained or permitted upon any portion of the Property.

3.26 Animals. No kennel or other facility for raising or boarding dogs, cats, poultry, livestock or other animals for commercial purposes shall be kept on any part of the Property.

3.27 Unightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any portion of the Property so as to be visible from adjoining property or public or

private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, 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 pickup truck, motorcycle, or motor scooter (other than minor emergency repairs), except in enclosed garages or other structures. Service areas and storage areas shall be appropriately screened from view and no lumber, metals, bulk materials, 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 view. Liquid propane, gas, oil and other exterior tanks shall be kept within enclosed structures or permanently screened from view.

3.28 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any portion of the Property at any time, and no travel trailers or recreational vehicles shall be parked on or near any portion of the Property so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight hours.

3.29 Fences. The construction of fences shall be restricted, and no fence shall be constructed on the Property without the prior written consent of the Architectural Committee. The Architectural Committee may, in its sole discretion, prohibit the construction of any proposed fence, or specify the materials of which any proposed fence must be constructed, or require that any proposed fence be screened by vegetation or otherwise screened so as not to be visible from other portions of the Property.

3.30 Screening. Storage areas, air conditioning and heating equipment, incinerators, storage tanks, trucks, roof objects (including, but not limited to fans, vents, cooling towers, skylights, air conditioning and heating equipment, and all roof mounted equipment which rises above the roof line), trash containers and maintenance facilities shall either be housed in closed buildings or otherwise completely screened from view at ground level from adjoining streets, buildings and other Lots and Improvements thereon. Such screening shall include landscaping or permanent fences of solid materials located as far from property lines as reasonably possible and approved by the Architectural Committee in writing prior to construction.

3.31 Application of City Restrictions. The City Restrictions shall only apply to the approximately 112.243 acres of real property described in Volume 7188, Page 1326 of the Deed Records of Travis County, Texas. The City Restrictions shall not apply to any other portions of the Property.

3.32 First Amended Declaration Superseded. The provisions of this Declaration are intended to and do amend, restate and supersede the provisions of the First Amended Declaration as heretofore amended in its entirety, and the provisions of First Amended Declaration as heretofore amended shall be void and have no further force and effect.

3.33 Set-Back Provisions. All buildings shall be set back at least thirty (30) feet from any right-of-way for a public road, street or highway and fifteen (15) feet from any interior side or rear lot line; provided, however,

that such restrictions shall not apply to Lots 15, 16, and 17, Block "D," and Lots 3, 4, 5 and 6, Block "E," WALNUT CREEK BUSINESS PARK PHASE C, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 86, Pages 84D-86A, Plat Records of Travis County, Texas; that the building constructed on Lot 2-B HEADWAY 7A, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 83, Pages 222B and 222C, Plat Records of Travis County, Texas, shall be set back at least five (5) feet from the side lot line separating said lot from Lot 2-A, HEADWAY 7A, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 83, Pages 222B and 222C, Plat Records of Travis County, Texas; and that the building constructed on Lot 6, Block "J," WALNUT CREEK BUSINESS PARK, PHASE A, SECTION 1, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 83, Pages 214C-215A, Plat Records of Travis County, Texas, shall be set back at least four (4) feet from the side lot line separating said lot from Lot 7, Block "J," WALNUT CREEK BUSINESS PARK, PHASE A, SECTION 1, a subdivision in Travis County, Texas according to the map or plat or record in Volume 83, Pages 214C-215A, Plat Records of Travis County, Texas.

ARTICLE IV

THE ASSOCIATION

4.01 Organization. The Association is a non-profit corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law or set forth in its Articles and By-Laws or in this Declaration. Neither the Articles nor By-Laws 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, by provision therefor in Supplemental Declaration(s) executed and recorded by Declarant, of Subassociations to own, develop, assess, regulate, operate, maintain or manage that portion of the Property subject to such Supplemental Declarations.

4.02 Membership. All Owners shall automatically be members of the Association; provided, however, that no Person shall be a Member by reason of ownership of lands used for public school or governmental or quasi-governmental purposes, or by reason of ownership of any park, public land, road, easement, right-of-way, mineral interest or mortgage. Membership in the Association shall be appurtenant to and shall run with the Property interest, the ownership of which qualifies the Owner thereof for membership. Membership may not be severed from, or in any way transferred, pledged, mortgaged or alienated except together with the title to the Property interest, the ownership of which qualifies the Owner thereof for membership, and then only to the transferee of title to said Property interest. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void.

4.03 Voting Rights.

(A) Classes of Membership.

(1) Class A. Class A Members shall be all the Members owning Assessment Property, including the Declarant. Each Class A Member shall be entitled to one vote for each acre, or major fraction thereof

(i.e., rounding up to the nearest acre for any fractional acre greater than or equal to one-half acre and rounding down to the nearest acre for any fractional acre less than one-half acre), of the Assessment Property in which he holds the interest required for membership by this Declaration.

(2) Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote for each acre or major fraction thereof contained in all of the Property, regardless of the ownership thereof, provided that the Class B membership shall cease when Declarant has sold all of the interest held by Declarant in the Property, or on December 31, 1990, whichever event or date occurs first.

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

(C) Proxy Voting. Any Owner, including Declarant, may give a revocable written proxy to any Person authorizing such Person to cast the Owner's votes on any matter. Such written proxy shall be in such form as may be prescribed by the By-Laws, but no such proxy shall be valid for a period of greater than eleven (11) months, and shall not be valid unless filed with the Secretary of the Association in the manner required by the By-Laws.

(D) Cumulative Voting. The cumulative system of voting shall not be allowed.

(E) Vote Casting. The Person holding legal title to the Property and whose voting rights have not been suspended shall be entitled to cast the vote allocated to such Property and not the Person merely holding beneficial title to the same unless such right is expressly delegated to the beneficial Owner thereof in writing.

4.04 Meetings. There shall be an annual meeting of the Members of the Association at such reasonable place and time as may be designated in the By-Laws. No notice need be given of any annual meeting held at the time and place specified in the By-Laws, but the Board shall have the power to designate a different time and place for any annual meeting, and in such case, written notice of the meeting shall be delivered not less than ten (10) nor more than fifty (50) days prior to the date fixed for said meeting, to all Members. All notices of meetings shall be addressed to each Member as his address appears on the books of the Association.

(A) Quorum. The presence at any meeting, in person or by proxy, of Members entitled to vote at least a majority of the total votes outstanding

and not suspended shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Members present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time set for the original meeting, at which adjourned meeting the quorum requirement shall be waived. Action may be taken by a vote of a majority of the votes present at such adjourned meeting.

(B) Presiding Officer. The President, or in his absence the Vice President, or in his absence the Secretary/Treasurer, or in his absence any other director, regardless of whether such Person is an officer, shall call meetings of Members to order and act as Chairman of such meetings. In the absence of all of the above, any Member entitled to vote or any proxy of any such Member may call the meeting to order and a Chairman of the meeting shall be elected.

(C) Vote Necessary. Except as provided otherwise in this Declaration, any action may be taken at any legally convened meeting of the Members upon the affirmative vote of the Members having a majority of the total eligible votes present at such meeting in person or by proxy.

(D) By-Laws. The Board may adopt By-Laws and such other rules and regulations as it deems appropriate to govern the Association and its procedures, including but not limited to the procedures for calling special meetings, provided however, if a conflict exists between the By-Laws and any amendment thereto, or such rules, and this Declaration, the provisions of this Declaration shall control.

4.05 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) Association Property.

(1) Ownership and Control. To accept, own, operate and maintain all Association Property, including the Common Area, together with all Improvements of whatever kind and for whatever purpose which may be located on the Association Property.

(2) Repair and Maintenance. To maintain in good repair and condition and to make capital improvements to all lands, Improvements and other Association Property and the Common Area.

(3) Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any Association Property and the Common Area, 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) Collection and Maintenance Obligation. To collect Assessments to administer the Maintenance Fund described in Section 7.01 hereof, to provide for the maintenance, repair, preservation, upkeep, and

protection of the Common Area (including, without limitation, repair, maintenance and lighting of entrance signs and other project identification, and installation and care of grass, shrubbery and other landscaping of that portion of the Common Area upon which same are located) and the other Association Property.

(C) Borrow or Raise Money. To borrow or raise money for any of the purposes of the Association and from time to time, without limit as to the amount, to draw, make, accept, endorse and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable and non-negotiable instruments and evidences of indebtedness, and to secure the payment of any principal thereof and of the interest thereon by mortgage, pledge, security agreement and financing statement, or conveyance or assignment in trust of the whole or any part of the property of the Association, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the Association for its corporate purposes.

(D) 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 functions.

(E) Rules and By-Laws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such By-Laws and Walnut Business Park Rules, 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 Area. Without limiting the generality of the foregoing, the Walnut Creek Business Park Rules may set dues and fees and prescribe the regulations governing the operation of the Common Area of the Association Property. The Walnut Creek Business Park Rules may also prescribe regulations governing the use of the Common Area and establish charges for the use of the Common Area by Owners or non-Owners. Each member shall be entitled to examine the Walnut Creek Business Park Rules and the By-Laws of the Association at any time during normal working hours at the principal office of the Association.

(F) Architectural Committee. To appoint and remove members of the Architectural Committee after Declarant has delegated such rights to the Association pursuant to Section 6.13 hereof.

(G) Enforcement. To enforce on its own behalf and on behalf of all Owners, this Declaration, as beneficiary of said covenants, conditions and restrictions and as assignee of Declarant; and to perform all other acts, whether or not anywhere expressly authorized herein, as may be reasonably necessary to enforce any of the provisions of the Walnut Creek Business Park Restrictions. The Board shall be authorized to institute litigation, settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the provisions of the Walnut Creek Business Park Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors and assigns for any violation of the Walnut Creek Business Park Restrictions as a direct result of Declarant's activities in installing, constructing or maintaining any streets, utilities, common areas or other

Association property. Association funds may be used, however, to bring suit against Declarant as an Owner of an improved Lot contained in the Property for violation of the Walnut Creek Business Park Restrictions.

(H) Records. To keep books and records of the Association's affairs.

(I) General. In general, to carry on any other business in connection with the foregoing and to have and exercise all the powers conferred by the laws of the State of Texas upon corporations formed under the Texas Non-Profit Corporation Act and to do any and all things hereinbefore set forth to the same extent as natural persons might or could do. Nothing in these stated purposes shall limit any general power conferred upon corporations by the Texas Non-Profit Corporation Act.

(J) Other. To carry out and enforce all duties and rights of the Association set forth in the Walnut Creek Business Park Restrictions.

4.06 Powers and Authority of the Association. The Association shall have the powers of a Texas non-profit 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 as follows:

(A) Assessments. To levy Assessments as provided in Article VII below.

(B) Right of Entry and Enforcement. To enter at any time in an emergency, or in a non-emergency after notice required by Article III, Section 3.21(A)(4), without being liable to any Owner, upon any portion of the Property or into any Improvement thereon, or onto any Common Area for the purpose of enforcing the Walnut Creek Business Park Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Walnut Creek Business Park Restrictions, at the expense of the Owner thereof, if, for any reason whatsoever, the Owner thereof fails to maintain or repair any such area, Improvement or facility as required by the Walnut Creek Business Park Restrictions. An emergency shall exist where circumstances result in an immediate threat to property, or the health and welfare of persons. The Association shall also 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 Walnut Creek Business Park Restrictions.

(C) Conveyances. To grant and convey to any Person the Association 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:

- (1) Roads, streets, walks, driveways, trails and paths;
- (2) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (3) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and
- (4) Any similar public, quasi-public, or private improvements or facilities.

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

(D) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including the Association Property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The Association and the members of the Board shall have no liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

(E) 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 Association Property, the enforcement of the Walnut Creek Business Park Restrictions, or in the performance of any other duty, right, power or authority of the Association.

(F) Association Property Services. To pay for water, sewer, garbage removal, landscaping, gardening, electric and all other utilities, services and maintenance for the Association Property and the Common Area.

(G) Other Areas. To maintain and repair easements, roads, roadways, rights-of-way, median strips, sidewalks and other areas in the Common Area as required by this Declaration.

(H) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or the terms of the Walnut Creek Business Park Restrictions.

(I) Construction on Association Property. To construct new improvements or additions to the Association Property and/or the Common Area.

(J) Collection for Subassociation. To levy and collect on behalf of and for the account of any Subassociation any assessment made by a Subassociation created pursuant to this Declaration.

(K) Contracts. To enter into contracts with Declarant and with Subassociations, and other persons on such terms and conditions as the Board shall determine, to operate and maintain any Common Area, or to provide any service or perform any function on behalf of Declarant, Subassociation, or other Person.

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

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

(N) Create Another Association. To create a subsidiary or other association to have the rights and powers, and to perform the duties, obligations or functions necessary to the obtaining of a tax exemption, if it shall ever be ruled or held that an exemption under the Internal Revenue Code is unavailable to the Association under this Declaration; or alternatively, the Association may retain the rights, powers, duties, obligations and functions which prevent the obtaining of the tax exemption and transfer some or all of its other rights, powers, duties, obligations, and functions to such subsidiary or other association.

4.07 Indemnification.

(A) Determination by Board. Subject to the provisions of the Texas Non-Profit Corporation Act, the Association shall indemnify Hardin Associates, Inc. or any employee or representative thereof, Declarant or any successor thereof, and any Person who was or is a party, or is threatened to be made a party to any threatened, pending or contemplated 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 or as a result of any act performed pursuant to this Declaration by such Person 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 (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the Person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

All liability, loss, damage, costs and expense incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses; provided, however, that nothing contained in this Article IV shall be deemed to obligate the Association to indemnify any Member or Owner,

who is or has been a Director, officer, committee member, or non-compensated agent of the Association, with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of the Walnut Creek Business Park Restrictions as a Member of the Association or Owner of a Lot covered thereby.

(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 V

ASSOCIATION PROPERTY

5.01 Use. Each Owner and each lessee of any portion of the Property shall be entitled to use the Association Property subject to the following:

(A) The provisions of the Walnut Creek Business Park Restrictions, and each Person who uses any of the Association Property, in using the same, shall be deemed to have agreed to comply therewith.

(B) The right of the Association to charge reasonable dues and use fees, which fees shall be in addition to Assessments levied pursuant to Article VII hereof.

(C) The right of the Association to suspend the rights to the use of any of the Association Property by any Owner or lessee and their respective families, guests, invitees, lessees and licensees for any period during which any assessment against the Owner's property remains past due and unpaid; and, after Notice and Hearing by the Board, the right of the Association to invoke any remedy set forth herein for any other infraction.

(D) The right of the Association, upon demand, to require that a security deposit be made and kept with the Association to secure all sums, and to guarantee performance of all duties, due and owing or to become due and owing to the Association.

(E) Such rights to use Association Property as may have been granted by the Association or prior Owners of the Association Property to others; and

(F) Such covenants, conditions and restrictions as may have been imposed on the Association Property by the Association or prior Owners of the Association Property.

5.02 Damages. Each Owner and lessee described above shall be liable to the Association for any damage to the Association Property which may be sustained by reason of the negligent or intentional misconduct of such person

or of his family guests, invitees, lessees or licensees. If the Property, the ownership or leasing of which entitles the Owner or lessee thereof to use Association Property, 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 VII below for the collection of Assessments.

5.03 Damage and Destruction. In case of destruction of or damage to Association Property by fire or other casualty, the available insurance proceeds shall be paid to the Association for the benefit of the Members and their mortgagees, and the Association shall contract to repair or rebuild the Association Property 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 as provided for in Article VII to make good any deficiency. If the Board determines not to rebuild any Association Property so destroyed or damaged, or to build facilities substantially different from those which 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 this Section. Notwithstanding any provision hereof to the contrary, however, the Association shall be required to repair or rebuild any damaged or destroyed water retention, detention or filtration facilities, subdivision entries, right-of-way improvements, lighting facilities, landscaping, sprinkler systems, or any other Improvements which it is required to maintain under the terms and provisions hereof.

ARTICLE VI

ARCHITECTURAL COMMITTEE

6.01 Membership of Architectural Committee. The Architectural Committee shall consist of not more than three (3) voting members ("Voting Members"), and such additional non-voting members serving in an advisory capacity ("Advisory Members") as the Board deems appropriate. The following persons are hereby designated as the initial Voting Members of the Architectural Committee: Richard G. Hardin, Regis Matejcik and Kathryn Parke.

6.02 Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.

6.03 Term. Each Member of the Architectural Committee shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein.

6.04 Declarant's Rights of Appointment. Declarant shall have the right to appoint and remove all members of the Architectural Committee, voting

and non-voting, prior to the delegation of such power to the Owners, if ever, pursuant to Section 6.13 hereof. In making such appointments to the Architectural Committee, Declarant shall consider, but not be bound by nominations made by the Owners. Nothing herein shall be construed to limit or restrict in any manner the Declarant's right to remove members of the Architectural Committee who were appointed by Declarant, whether or not such person was nominated by the Owners.

6.05 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties.

6.06 Review of Proposed Construction. Whenever in this Declaration or in any Supplemental Declaration the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, it deems relevant. Prior to 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 Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress, to assure conformance with Plans and Specifications approved by the Architectural Committee. The Architectural Committee shall review Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the Architectural Committee of any and all information or documents deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. No Improvement shall be allowed on any Lot or portion of the Property which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with other development in the Property and the surrounding area. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith and is not unreasonable. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes. If the Architectural Committee fails to review and act on the final Plans and Specifications, they shall be deemed to have been approved sixty (60) days after the date the Architectural Committee endorses the final Plans and Specifications as having been received. No consents of the Architectural Committee need be obtained for changes that are strictly internal, and not visible from the exterior of an Improvement. The documents which shall be submitted to the Architectural 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.
- (E) Elevations showing all sides of the proposed Improvement.

6.07 Meetings of the Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may, by resolution unanimously adopted in writing, designate one of its members to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances as hereinafter provided. In the absence of such designation, the vote of a majority of all of the Members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

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

6.09 Non-liability of Committee Members. Neither the Architectural Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's or the Boards' respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its member or the Board or its member, as the case may be. Neither the Architectural Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvements within the Property or the creation thereby of an obstruction to the view from such Owner's Lot or Lots.

6.10 Variances. The Architectural Committee may grant variances from compliance with any of the provisions of this Declaration or any Supplemental Declaration, including but not limited to restrictions upon height, bulk, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use when in the opinion of the Architectural Committee, in its sole and absolute discretion, such variance will not be adverse to the overall development plan for the Community. Such variances must be evidenced in writing and must be signed by at least a majority of the Voting Members of the Architectural Committee. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any Supplemental Declaration 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 any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and in the particular instance covered by the variance.

6.11 Guidelines for Building at Walnut Creek. The Architectural Committee may promulgate a set of guidelines not in conflict with this Declaration and any Supplemental Declarations for building and developing in the Community which shall be general in nature and may be amended from time to time by the Architectural Committee.

6.12 Submission of Final Plans and Specifications. The final Plans and Specifications shall be submitted in triplicate to the Architectural Committee in care of WCBP, Inc., 3701 Mopac Boulevard, Suite 450, Austin, Texas 78759, or such other address as may be designated from time to time, one copy of which will be returned to the Person submitting the Plans with an endorsement as to the date received by the Architectural Committee.

6.13 Delegation of Appointment Powers. Except as otherwise provided herein, the Declarant shall have the right, but not the obligation, to delegate to the Association in writing the right to appoint and remove members of the Architectural Committee and upon such delegation of authority filed of record in the Real Property Records of Travis County, Texas, the selection of Voting Members to serve on the Architectural Committee shall be by separate election in which the Owners shall have the same relative voting power as provided herein-above for elections of the Association. Declarant shall delegate to the Owners the right to appoint and remove members of the Architectural Committee upon the occurrence of one of the following events or dates, whichever occurs first:

- (A) Declarant no longer owns any interest in any portion of the Property; or
- (B) December 31, 1990.

6.14 Completed Work. Inspection of completed work and correction of defects therein shall proceed as follows:

(1) Upon the completion of any Improvement for which the final Plans and Specifications were approved under this Declaration, the Owner shall give written notice of completion to the Architectural Committee.

(2) Within such reasonable time as the Architectural Committee may set in its rules but not to exceed fifteen (15) days thereafter, the Architectural Committee or its duly authorized representative may inspect such Improvement. If the Architectural Committee finds that such work was not done in strict compliance with all approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within five (5) days, specifying in reasonable detail the particulars of non-compliance, and shall require the Owner to remedy the same.

(3) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such non-compliance,

the Architectural Committee shall notify the Board in writing of such failure. Upon notice to the Owner, given as provided in Section 9.04, the Board shall conduct a hearing at which it shall determine whether there is non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board's ruling within such period, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an assessment against such Owner and Improvement in question and the land upon which the same is situated for reimbursement and the same shall constitute a lien upon such land and Improvement and be enforced as in this Declaration provided.

(4) If for any reason after receipt of said written notice of completion from the Owner, no inspection is made or any non-compliance is not found within the period provided above in Subparagraph (2) of this Section 6.14, the Improvement shall be deemed to be in accordance with said approved Plans and Specifications. In the instances where an inspection has occurred and the Improvements are in compliance, upon request, the Architectural Committee shall issue a "Certificate of Compliance" in a form suitable for recording. The Certificate shall identify the Lot or Property and the Improvement, and shall certify only that the Improvements thereon are not in violation of the covenants of the Declaration, or if they are in violation, that a variance has been granted. THE CERTIFICATE SHALL NOT BE CONSTRUED TO CERTIFY THE ACCEPTABILITY, SUFFICIENCY OR APPROVAL BY THE ARCHITECTURAL COMMITTEE OF THE ACTUAL CONSTRUCTION OF THE IMPROVEMENTS OR OF THE WORKMANSHIP OR MATERIALS THEREOF. THE OWNER IS HEREBY NOTIFIED THAT THE CERTIFICATE IN NO WAY WARRANTS THE SUFFICIENCY, ACCEPTABILITY, OR APPROVAL BY THE ARCHITECTURAL COMMITTEE OF THE CONSTRUCTION, WORKMANSHIP, MATERIALS OR EQUIPMENT OF THE IMPROVEMENTS. RECORDATION OF SUCH A CERTIFICATE SHALL BE AT THE EXPENSE OF THE OWNER OF THE IMPROVED LOT.

(5) The Architectural Committee may inspect all work in progress and give notice of non-compliance as provided above in Subparagraph (2) of this Section. If the Owner denies that such non-compliance exists, the procedures set out in Subparagraph (3) of this Section shall be followed, except that no work shall be done, pending resolution of the dispute, which would hamper correction of the non-compliance if the Board should ultimately find that non-compliance exists.

ARTICLE VII

MAINTENANCE FUNDS AND ASSESSMENTS

7.01 Maintenance Fund. The Board shall establish a fund (the "Maintenance Fund") into which shall be deposited all monies paid to the

Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes related to the areas and Improvements owned by or leased to the Association, or subject to these restrictions for maintenance or operation by the Association or otherwise for purposes authorized by this Declaration, as it may from time to time be amended. Nothing contained herein shall limit, preclude or impair the establishment of other maintenance funds by a Subassociation pursuant to any Supplemental Declaration, as hereinafter provided in Section 7.06.

7.02 Regular Annual Assessments. Prior to the beginning of each calendar year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Walnut Creek Business Park Restrictions, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund and shall levy an annual Assessment in the manner hereinafter provided against the Owners of the Assessment Property, as that term is hereinafter defined. If the sums collected prove inadequate for any reason, including non-payment of any individual Assessment, the Association may at any time, and from time to time, increase the amount of the annual Assessments as necessary to satisfy the actual expenses incurred by the Association in performing its functions under this Declaration. All such annual Assessments shall be due and payable to the Association during the calendar year in equal quarterly installments within thirty (30) days after the date of invoices to be sent by the Association to each Owner of Assessment Property on or about the first day of each calendar quarter, or in such other manner as the Board may designate in its sole and absolute discretion. The annual Assessment shall commence with respect to any Lot on the first day of the month following the month in which the Lot becomes Assessment Property.

7.03 Special Assessments. In addition to the regular annual Assessments provided for above in Section 7.02, the Board may levy special Assessments on all the Owners of Assessment Property whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under the Walnut Creek Business Park Restrictions.

7.04 Assessment Property. The only portions of the Property which shall be subject to the regular annual Assessments provided for in this Declaration shall be those portions of the Property which have heretofore been subject to such regular annual Assessments or which the Board hereafter designates as Assessment Property. No land shall be designated as Assessment Property by the Board unless, at the time of such designation, such land possesses the following characteristics:

(A) The land is a subdivided lot described in a formal subdivision plat approved by the City of Austin, Texas, or the land is a "legal lot" as that term is defined by the City of Austin, Texas; and

(B) All streets and utilities which Declarant intends to construct to service the land have been completed and provide service to all portions of the land to be assessed.

7.05 Division of Assessment Among Owners. Assessments made by the Association under Section 7.02 and 7.03 shall be divided among all the Owners of Assessment Property located within the Property described on the exhibits to this Declaration, as amended, pro rata on the basis of the number of acres (or portion thereof) of the Assessment Property owned by each Owner. An Owner's pro rata percentage of any Assessment shall be calculated by dividing the total number of acres (or portion thereof) of land included within the Assessment Property owned by said Owner divided by the total number of acres (or portion thereof) contained in the Assessment Property.

7.06 Assessment Benefiting Specific Areas. The Board shall also have authority to levy Assessments against specific local areas and Improvements to be expended for the benefit of the area so assessed. The Assessments levied under this Section shall be levied in proportion to the benefits conferred or to be conferred, as determined by the Board, and therefore the amount levied against each parcel of land or Improvement need not be equal. Any such Assessments shall constitute a lien on the properties so assessed and such liens shall be enforced in the same manner and to the same extent as provided for regular and special Assessments in this Article.

7.07 Subassociation Assessments. Subassociations as defined in Section 1.26 and which are organized in accordance with the provisions of this Declaration shall have the authority and responsibility for levying and collecting general and special Assessments for the administration of the Subassociation and common expenses thereof, provided, however, any such Assessments shall be in addition to, and shall not limit or restrict the right of the Association to levy and make Assessments as herein provided. Any liens created as a result of the Assessments by the Subassociation shall be subordinate to the lien or liens created as a result of the Association Assessments.

7.08 Late Charges. If any Assessment levied pursuant to this Article VII, or any other Article of this Declaration, is not paid within thirty (30) days after the date of invoice, the Owner shall pay to the Association a late payment charge at the rate of Ten Dollars (\$10.00) per day for each day after such thirty (30) day period that the Assessment remains unpaid.

7.09 Unpaid Assessments as Liens. All Assessments, whether made pursuant to this Article VII, or any other Article of this Declaration, if not paid within thirty (30) days after the date of invoice, shall be deemed delinquent and in default. The amount of any delinquent Assessment, and any late payment charge attributable thereto, plus interest on such Assessment at a rate of ten percent (10%) per annum simple interest (not to exceed the maximum charge permitted under applicable law), and the costs of collecting the same, including attorneys' fees, shall be the personal obligation of the Owner of the land against which the Assessment fell due and shall be a lien upon such land. Each Owner of any portion of the Property by his claim or assertion of ownership or by accepting a deed or ground lease to any such portion of the Property, whether or not it shall be so expressed in such deed or ground lease, is hereby conclusively deemed to covenant and agree to pay to the Association, its successors or assigns, each and all of the charges assessed against such portion of the Property and/or assessed against him by virtue of his ownership or leasehold interest, as the same shall be come due and payable, without demand therefor.

The transfer of title to such Property shall not terminate the lien, but the personal obligation of the Owner shall not pass to successors in title unless they assume the obligation. The Association may either (a) bring an action at law against the Owner personally obligated to pay the same, (b) foreclose said lien against the Property, or (c) both. No Owner may waive or otherwise escape liability for any Assessment by non-use of Association Property or any Common Area or by the abandonment of any Property. A certificate executed and acknowledged by the Board stating the indebtedness secured by such lien shall be conclusive upon the Association as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon request at a reasonable fee. Each Owner, by his assertion of title or claim of ownership or by his acceptance of a deed or ground lease to any portion of the Property, whether or not it shall be so recited in such deed or ground lease, shall conclusively grant to, and does hereby grant to the Association and its agents the right, power and authority to take all action which the Association shall deem proper for the collection of Assessments and charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien foreclosure on real property, and such Owner expressly grants to the Association a power of sale and non-judicial foreclosure in connection with said lien. The lien created hereunder shall be considered a contract lien and shall be governed by the terms and provisions of Section 51.002 of the Texas Property Code.

No Owner shall be permitted to convey, mortgage, deed in trust, pledge, sell or lease any portion of the Property unless and until such Owner has paid in full to the Association all unpaid Assessments theretofore assessed against such Owner, and until such Owner has satisfied all unpaid liens against his portion of the Property other than Mortgages. On the voluntary sale or conveyance of any portion of the Property, all unpaid Assessments against the seller shall first be paid from the proceeds of the sale or by the purchaser in preference to any other assessments, liens or charges of whatever nature except amounts due under a Mortgage duly recorded prior to the date of the unpaid Assessment.

7.10 Mortgage Protection. Notwithstanding any other provision of the Walnut Creek Business Park Restrictions, no lien created under this Article VII or under any other article of this Declaration, nor any lien arising by reason of any breach of the Walnut Creek Business Park Restrictions, nor the enforcement of any provision of this Declaration or of any Supplemental Declaration, shall defeat or render invalid the rights of the Beneficiary under any recorded Mortgage of first and senior priority now or hereafter given upon any portion of the Property made in good faith and for value. However, after a foreclosure or a conveyance in lieu of foreclosure, such portion of the Property shall remain subject to the Walnut Creek Business Park Restrictions and shall thereafter be liable for all Assessments levied after completion of such foreclosure or conveyance in lieu of foreclosure.

7.11 Effect of Amendments on Mortgages. No amendment of Section 7.10 of this Declaration shall affect the rights of any Beneficiary whose Mortgage has the first and senior priority as provided in Section 7.10, unless

the Beneficiary consents in writing to the amendment thereof, or unless the amendment was filed of record prior to the recording of the Mortgage, provided, however, that after any foreclosure or conveyance in lieu of foreclosure, that portion of the Property which was subject to such Mortgage shall be subject to such amendment.

7.12 Subordination. The lien for Assessments provided for herein shall be subordinated to the lien of any first Mortgage if the Mortgage was recorded before the delinquent Assessment became due. Sale or transfer of any portion of the Assessment Property subject to unpaid Assessments shall not affect the Assessment lien. However, the sale or transfer of any portion of the Assessment Property pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such portion of the Assessment Property from liability for any Assessments thereafter becoming due or from the lien thereof.

ARTICLE VIII

EASEMENTS

8.01 Existing Easements. All grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Property shall be construed as being adopted in each and every contract, deed, conveyance or ground lease executed or to be executed by or on behalf of Declarant conveying or leasing any part of the Property. Each of said easements shall apply to an Owner's land only insofar as such easement is by its terms specifically applicable to such Owner's land.

8.02 Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing utilities, streets, signs, landscaping and other improvements, and for such other purposes as Declarant may deem to be in the common best interest of the Owners or to be necessary or advisable for the proper development of the Property as a business park. However, after the plat and plans of the roads which specifically affect an Owner's land are approved by the City of Austin and are constructed and accepted by the City of Austin, Declarant shall have no further rights under this section with respect to such land.

8.03 Title to Easements and Appurtenances Not Conveyed. Title to any portion of the Property conveyed by Declarant by deed or other conveyance or made the subject of a ground lease shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way, or any pipes, liens, poles, or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any portion of the Property, and the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

ARTICLE IX

MISCELLANEOUS

9.01 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until December 31, 2032, unless amended as herein provided. After December 31, 2032, this Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the total acreage of the Property then subject to this Declaration.

9.02 Amendment.

(A) By Declarant. This Declaration may be amended by the Declarant so long as Declarant holds a majority of the votes of the Association, or after that date if the Amendment is made to correct a typographical error. No amendment by Declarant shall be effective until there has been recorded in the Real Property Records of Travis County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Association certifying that the Declarant had the requisite number of votes.

(B) By Owners. In addition to the method set forth in Section 9.02(A), this Declaration may be amended by the recording in the Real Property Records of Travis County, Texas of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least fifty-one percent (51 %) of the number of votes entitled to be cast pursuant to Section 4.03(A) hereof.

9.03 Utility Easements. The Declarant reserves the right to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on any areas conveyed to the Association, any easements dedicated for such purpose or areas reserved as Common Area, sewer and other pipelines, conduits, wires and any public utility function beneath or above the surface of the ground, with the approval of the Architectural Committee and with the right of access to the same at any time for the purposes of repair and maintenance.

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

9.05 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their 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 as a business park. This Declaration shall be construed and governed under the laws of the State of Texas, and all obligations herein shall be performed in Travis County, Texas.

9.06 Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any portion of the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, 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 conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision, including but not limited to any provision prohibiting temporary waiver of the applicable provision and any provision prohibiting temporary structures, may be granted by the Architectural Committee, provided that such waiver shall be effective only for the reasonable period of such construction.

9.07 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's development activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property. Declarant shall be subject to the control of and under the jurisdiction of the Architectural Committee if Declarant, in the capacity of an Owner, elects to construct any permanent structures on any Lot or Lots contained in the Property, other than the Common Area or the Association Property.

9.08 Assignment by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may, in writing, 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.

9.09 Enforcement and Non-waiver.

(A) Right of Enforcement. Except as otherwise provided herein, any Owner (at his own expense), Declarant, the Board and the Architectural Committee, shall each have the right to enforce all of the provisions of the Walnut Creek Business Park Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against the breach of any such provision.

(B) Violation of Walnut Creek Business Park Restrictions. Every act or omission whereby any provision of the Walnut Creek Business Park

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, the Board, or the Architectural Committee.

(C) Violation of Law. Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any of the Property is hereby declared to be a violation of the Walnut Creek Business Park Restrictions and subject to all of the enforcement procedures set forth in said restrictions.

(D) Non-waiver. The failure to enforce any provision of the Walnut Creek Business Park 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.

(E) Liens. The Association shall have the right, when appropriate in the judgment of the Board, to claim or impose a lien upon any Lot or condominium unit constructed on the Property in order to enforce any right or effect compliance with this Declaration.

9.10 Construction.

(A) Restrictions Severable. The provisions of the Walnut Creek Business Park 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.

(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.

EXECUTED this 24 day of August, 1987.

ORIGINAL DECLARANT:

CFC/HARDIN JOINT VENTURE,
a Texas Joint Venture
By Hardin Associates, Inc., Managing Venture

By: 

Richard G. Hardin, President

SUCCESSOR DECLARANT:

WALNUT CREEK BUSINESS PARK JOINT VENTURE,
a Texas Joint Venture
By WCBP, Inc., Managing Venturer

By: _____

Richard G. Hardin, President

bl/BL13/WCBP.1

CERTIFICATE OF OFFICERS

Richard G. Hardin, the President of the Walnut Creek Improvement Association, and Kathryn Parke, the Secretary of Walnut Creek Improvement Association, hereby certify that the foregoing Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Walnut Creek Business Park, has been approved by Owners entitled to cast at least fifty-one percent (51 %) of the number of votes entitled to be cast pursuant to Section 4.03 (A) of the Amended Declaration of Covenants, Conditions and Restrictions for Walnut Creek Business Park, Travis County, Texas, recorded in Volume 8447, Page 546 of the Real Property Records of Travis County, Texas.

Signed, this 24 day of August, 1987.

Richard G. Hardin
Richard G. Hardin, President
of Walnut Creek Improvement Association

Kathryn Parke
Kathryn Parke, Secretary of Walnut
Creek Improvement Association

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

This instrument was acknowledged before me on August 24, 1987, by Richard G. Hardin, President of Hardin Associates, Inc., Managing Venturer of CFC/Hardin Joint Venture, a Texas joint venture, on behalf of such joint venture.

Susan Kaleta
Notary Public for the State of Texas

My Commission Expires:

1-27-90

SUSAN KALETA
Printed Name of Notary

NOTARY SEAL

STATE OF TEXAS)
)
 COUNTY OF TRAVIS)

This instrument was acknowledged before me on August 24th, 1987, by Richard G. Hardin, President of WCBP, Inc., Managing Venturer of Walnut Creek Business Park Joint Venture, a Texas joint venture, on behalf of such joint venture.

Susan Kaleta
 Notary Public for the State of Texas

My Commission Expires:

1-27-90

Susan Kaleta
 Printed Name of Notary

STATE OF TEXAS)
)
 COUNTY OF TRAVIS)

NOTARY SEAL

This instrument was acknowledged before me on August 24th, 1987, by Richard G. Hardin, President of Walnut Creek Improvement Association, a Texas non-profit corporation, on behalf of said corporation.

Susan Kaleta
 Notary Public for the State of Texas

My Commission Expires:

1-27-90

Susan Kaleta
 Printed Name of Notary

STATE OF TEXAS)
)
 COUNTY OF TRAVIS)

NOTARY SEAL

This instrument was acknowledged before me on August 24th, 1987, by Kathryn Parke, Secretary of Walnut Creek Improvement Association, a Texas non-profit corporation, on behalf of said corporation.

Susan Kaleta
 Notary Public for the State of Texas

My Commission Expires:

1-27-90

Susan Kaleta
 Printed Name of Notary

NOTARY SEAL

EXHIBIT "A"

TO SECOND AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WALNUT CREEK BUSINESS PARK

The Property consists of the following subdivisions, or portions thereof as specified, in Travis County, Texas:

1. WALNUT CREEK BUSINESS PARK, PHASE A, SECTION ONE, according to the map or plat recorded in Volume 83, Pages 214C-215A, Plat Records of Travis County, Texas.
2. WALNUT CREEK BUSINESS PARK, PHASE A, SECTION TWO, according to the map or plat recorded in Volume 84, Pages 120C-120D, Plat Records of Travis County, Texas.
3. WALNUT CREEK BUSINESS PARK, PHASE A, SECTION THREE, according to the map or plat recorded in Volume 85, Pages 3A-3C, Plat Records of Travis County, Texas.
4. Amended Plat of Lots 5 and 6, Block "D", WALNUT CREEK BUSINESS PARK, PHASE A, SECTION THREE, according to the map or plat recorded in Volume 86, Page 5D, Plat Records of Travis County, Texas.
5. Amended Plat of Lot 7, Block "G", WALNUT CREEK BUSINESS PARK, PHASE A, SECTION THREE, according to the map or plat recorded in Volume 87, Page 39D, Plat Records of Travis County, Texas.
6. WALNUT CREEK BUSINESS PARK, PHASE A, SECTION FOUR, according to the map or plat recorded in Volume 84, Pages 197C-198A, Plat Records of Travis County, Texas, SAVE AND EXCEPT Lot 3, Block A, which shall not be included in the Property.
7. WALNUT CREEK BUSINESS PARK, PHASE A, SECTION FIVE, according to the map or plat recorded in Volume 87, Page 43D-44A, Plat Records of Travis County, Texas.
8. WALNUT CREEK BUSINESS PARK, PHASE B, according to the map or plat recorded in Volume 84, Pages 148A-148C, Plat Records of Travis County, Texas.
9. Amended Plat of Lots 3, 4 and 5, Block "A", WALNUT CREEK BUSINESS PARK, PHASE B, according to the map or plat recorded in Volume 86, Pages 138B-138C, Plat Records of Travis County, Texas.
10. WALNUT CREEK BUSINESS PARK, PHASE C, according to the map or plat recorded in Volume 86, Pages 84D-86A, Plat Records of Travis County, Texas.

11. Amended Plat of Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, Block "A", WALNUT CREEK BUSINESS PARK, PHASE C, according to the map or plat recorded in Volume 86, Pages 138D-139A, Plat Records of Travis County, Texas; SAVE AND EXCEPT Lot 2, Block "A", which shall not be included in the Property.
12. WALNUT CREEK BUSINESS PARK, PHASE C, SECTION TWO, according to the map or plat recorded in Volume 87, Pages 46A-46B, Plat Records of Travis County, Texas.
13. Lots 7 and 8, CENTRAL AUSTIN BUSINESS PARK, SECTION ONE, according to the map or plat recorded in Volume 86, Pages 151D-152B, Plat Records of Travis County, Texas.
14. Lot 1 of HEADWAY 1-A, according to the map or plat recorded in Volume 81, Pages 161, Plat Records of Travis County, Texas.
15. Lot 1 of HEADWAY 3, according to the map or plat recorded in Volume 81, Pages 151, Plat Records of Travis County, Texas.
16. Lots 1, 2 and 3 of HEADWAY 4, according to the map or plat recorded in Volume 81, Pages 209-210, Plat Records of Travis County, Texas.
17. Lot 1 of HEADWAY 5, according to the map or plat recorded in Volume 82, Pages 159, Plat Records of Travis County, Texas.
18. Lots 1, 2, 3, 4, 5 and 6 of HEADWAY 6, according to the map or plat recorded in Volume 82, Pages 29-30, Plat Records of Travis County, Texas.
19. Lots 1 and 2B of HEADWAY 7, according to the map or plat recorded in Volume 82, Pages 31 and 32, Plat Records of Travis County, Texas.
20. Lot 2-A, HEADWAY 7A, a resubdivision of Lot 2, Headway 7, according to the map or plat recorded in Volume 83, Pages 222B and 222C, Plat Records of Travis County, Texas.
21. Lots 1, 2, 3, 4, 5, 6, 7, 10 and 11, Block "B", HEADWAY 8, according to the map or plat recorded in Volume 82, Pages 142, 143 and 144, Plat Records of Travis County, Texas. ↙ should be "C"
22. Lot 1, HEADWAY 8A, according to the map or plat recorded in Volume 83, Pages 158C and 158D, Plat Records of Travis County, Texas.
23. Lot 1 of HEADWAY 9A, according to the map or plat recorded in Volume 83, Pages 29, Plat Records of Travis County, Texas.
24. WEATHERFORD ADDITION 2-A, according to the map or plat recorded in Volume 81, Page 340, Plat Records of Travis County, Texas.
25. BERKLEY SQUARE, according to the map or plat recorded in Volume 80, Pages 207, Plat Records of Travis County, Texas.
26. Lot 1, AMERICAN HEART ASSOCIATION, a subdivision in Volume 80, Page 356, Plat Records of Travis County, Texas.

FILED

1987 AUG 28 PM 1:48

COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me; and
was duly RECORDED, in the Volume and Page of the
record RECORDS of Travis County, Texas, on

AUG 28 1987



Laura R. Lawrence
COUNTY CLERK
TRAVIS COUNTY, TEXAS

AFTER RECORDING RETURN TO:
Pearce, Smith & Alkin
2424 Interfirst Tower
Austin, Texas 78701

ACT GF#87-4432

10393

0761

WALNUT CREEK IMPROVEMENT ASSOCIATION

PO BOX 1222

LOCKHART TX 78644-1222

Bill Faust, President

(512) 923-2523

Email – bfaust@outlook.com

January 1, 2017

City of Austin – Building Services

Attn: Taylor Youngblood

PO Box 1088

Austin TX 78767

Re: WCIA INVOICE # 22035

<u>Quarter</u>	<u>FIRST</u>
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Previous Balance Due:	-0-
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Late Charges:	-0-
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Quarter Assessments: (1st Quarter, 2017)	<u>4,866.00</u>
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TOTAL PAYMENT DUE:	<u>4,866.00</u>
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Headway 4, Lots 1-3

C:\windows10\wcia\20171st6

Any Regular Annual Assessment or Special Assessment not paid within thirty (30) days after the date of this invoice is delinquent and in default pursuant to Section 7.09 of the Restated Declaration of Covenants, Conditions and Restrictions for the Walnut Creek Business Park (herein the "Declaration"), Pursuant to Section 7.08 of the Declaration, a late payment charge of Ten and No/100 Dollars (\$10.00) per day will be charged for each day after such thirty (30) day period that the assessment remains unpaid. Additionally, pursuant to Section 7.09 of the Declaration, the amount of any delinquent assessment will bear interest at a rate of ten percent (10%) per annum simple interest (not to exceed the maximum charge permitted under applicable law). However, no interest shall be charged on the late penalty of any costs of collecting the assessment, which costs may include attorney's fees.

Please return a copy of the statement with your check to insure proper credit. Thanks!



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 01/03/2017

DEPT: Building Services

TO: Purchasing Officer or Designee

FROM: Taylor Youngblood

BUYER: Marian Moore

PHONE: (512) 974-3519

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
 - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
 - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
 - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
 - ☐ a procurement for personal, professional, or planning services
 - ☐ a procurement for work that is performed and paid for by the day as the work progresses
 - ☐ a purchase of land or right-of- way
 - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
 - ☐ a purchase of rare books, papers, and other library materials for a public library
 - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one- third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
 - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
 - cooperative purchasing administered by a regional planning commission established under Chapter 391
 - ☐ services performed by blind or severely disabled persons
 - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
 - ☐ electricity
 - ☐ advertising, other than legal notices
 - ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Building Services Department (BSD) receives quarterly invoices from Walnut Creek Improvement Association for annual Association Dues on the City property known as Rutherford Lane Campus (RLC) which is part of the Walnut Creek Business Park. The property is made up of four buildings and houses multiple City departments. The Walnut Creek Business Park is maintained through Association Dues. BSD is requesting an Exemption for a five year contract for calendar years 2017-2021 (Quarters 1-4).

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

The City of Austin acquired Rutherford Lane Campus (8301 Cameron Road) under a Purchase and Sale Agreement with Fisher Controls International, Inc. dated November 23, 2005 under Ordinance No. 20051006-030, Austin City Council RCA October 6, 2005 Item 30. The Agreement's Section 1. 3 (d) included a City commitment to annual fees. Section 7.02 of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Walnut Creek Business Park executed August 24, 1987 documents the current financial commitment. Estimating a 10% percentage change as property owners vote on annual dues:

Year 1 \$19,464
 Year 2 \$21,410
 Year 3 \$23,551
 Year 4 \$25,907
 Year 5 \$28,497
 Total \$118,830


6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with WALNUT CREEK IMPROVEMENT ASSOCIATION (VS0006) which will cost approximately \$ 118,830.00 (Provide estimate and/or breakdown of cost).

Recommended
 Certification



 1/3/17
 Originator Date

Approved
 Certification

 1-3-17
 Department Director or designee Date

 1/11/17
 Assistant City Manager / General Manager or designee (if applicable) Date

Purchasing Review
 (if applicable)

 1/11/17 
 Buyer Date Manager Initials

Exemption Authorized
 (if applicable)

 1/13/17
 Purchasing Officer or designee Date

02/26/2013