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DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
BRODIE SPRINGS

Applicable to Brodie Springs II Subdivision, Phases One and Two  
according to the Plats in Document Nos. 200400181 and 200400182 respectively  
in the Plat Records of Travis County, Texas

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DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
BRODIE SPRINGS

Recitals

This is the Declaration of Covenants, Conditions, and Restrictions for Brodie Springs (the "Declaration"). The Declaration applies to Brodie Springs II Subdivision, Phase One and Brodie Springs II Subdivision, Phase Two recorded respectively as Document Nos. 200400181 and 200400182, Plat Records of Travis County, Texas (collectively, the "Property"). The Property is sometimes referred to herein as "Brodie Springs" rather than "Brodie Springs II". The Property consists of 116 residential Lots (defined below) and various Common Areas (defined below). BJM Brodie Springs, Ltd., a Texas limited partnership, and Squirrel Hollow, Ltd., a Texas limited partnership, are the Owners of all of the Property at the time of recordation of this Declaration.

The Property is subject to the covenants, conditions, and restrictions contained in this Declaration, all easements and plat notes shown on the Plats (defined below), all applicable state statutes governing the Property and residential subdivision homeowner associations in Travis County, Texas, and all applicable codes and ordinances.

ARTICLE I. DEFINITIONS AND TERMS

1.1 DEFINITIONS AND TERMS. As used in this Declaration, the following terms shall have the respective meanings set forth unless the context shall expressly provide otherwise:

- (a) "ACC" means the architectural control committee formed under Section 4.6.
- (b) "Articles" means the Articles of Incorporation of the Association, as amended from time to time. The initial Articles are attached hereto as Exhibit D.
- (c) "Association" means Brodie Springs Homeowners Association, Inc., a Texas non-profit corporation.
- (d) "Board" means the Board of Directors of the Association.
- (e) "Building" means any Home or accessory building structure (such as a garage) built on any Lot.
- (f) "Bylaws" means the Bylaws adopted by the Association, as amended from time to time. The initial Bylaws are attached hereto as Exhibit E.
- (g) "City" means the City of Austin.
- (h) "Common Area" means Lot 21, Block A and Lot 18, Block B of Phase One of Brodie Springs, and Lot 33, Block E of Phase Two of Brodie Springs.
- (i) "Common Area Facilities" means the Improvements that are located in the Common Areas, including:
  - (1) all Improvements in the Common Areas for purposes of water quality or water detention, including the Water Quality Facilities;
  - (2) any other Improvements in the Common Areas; and
  - (3) all other Improvements owned or maintained by the Association for the benefit of the Property, including without limitation, the fences on the west and south boundaries of the Property, abutting Brodie Lane and Squirrel Hollow Drive.
- (j) "Common Assessment" means the regular, periodic charge against each Owner of a Lot for his/her allocable portion of the Common Expenses.
- (k) "Common Expenses" means:

- (1) all expenses incurred by the Association to promote the health, safety, welfare and recreation of the Owners, and in particular for the administration, management, ownership, maintenance, operation, repair, replacement, or improvement of and addition to the Common Areas (including unpaid assessments and reasonable reserves); plus
  - (2) expenses declared to be Common Expenses by provisions of this Declaration or by the Bylaws, including all expenses necessary to maintain the Common Areas and Common Area Facilities in accordance with prudent care practices and applicable regulations.
- (l) "Compliance Assessment" means a sum levied by the Board against any Owner under Section 3.6.
  - (m) "Control Period" means that period beginning when this Declaration is recorded in the Official Public Records of Travis County, Texas, and ending on the earlier of (i) the date neither Declarant owns any portion of the Property or (ii) the date Declarant files a notice of termination of Control Period in the Official Public Records of Travis County, Texas.
  - (n) "Declarant" means, collectively, BJM Brodie Springs, Ltd., a Texas limited partnership, and Squirrel Hollow, Ltd., a Texas partnership, or their respective successors or assigns.
  - (o) "Environmental Features" means those areas shown on the Plats as Frog Sink, Kentucky Sink, Brodie Cave, and Niemann Sink.
  - (p) "Environmental Management Plan" means the plan described in Exhibit H of this Declaration, as amended from time to time, for the management of the environment of the Property, including topography, storm water drainage, water quality controls, soils, trees and other vegetation.
  - (q) "First Mortgagee" means the holder of a purchase money or construction mortgage or deed of trust lien voluntarily granted against a Lot that has priority over all other voluntary liens encumbering that Lot.
  - (r) "Greenbelt" shall mean Lot 33, Block E, Phase Two.
  - (s) "Home" means the individual home and ancillary Buildings constructed on a Lot.
  - (t) "Improvements" means a structure or an appurtenance thereto of every type and kind, including but not limited to, Homes, Buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, trampolines, fountains, decorative statutes, arbors, clubhouses, tree-houses, play-scapes, play houses (if located outside Buildings), storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, Common Area Facilities, 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
  - (u) "Lot" or "Lots" means any parcel or parcels of land within the Property shown as a subdivided Lot for residential purposes on a Plat and on which the building of a Home is allowed, together with all Improvements located thereon. The term "Lots" excludes the Common Area.
  - (v) "Member" or "Members" means any Person holding membership rights in the Association.
  - (w) "Occupant" means a Person or the Persons in possession of a Home at the relevant time, regardless of whether the Person is an Owner, tenant, family member, guest or otherwise.
  - (x) "Owner" means a Person, including, without limitation, Declarant, who owns of record, fee simple title to any Lot.
  - (y) "Person" or "Persons" means any individual(s), entity or entities having the legal right to hold title to real property.

- (z) "Pest Management Plan" means the Integrated Pest Management Plan relating to exterior pesticides and insecticides attached as Exhibit I, as amended from time to time.
- (aa) "Plat" or "Plats" means either or both of the recorded plats of Brodie Springs II Subdivision, Phase One (sometimes referred to herein as "Phase One") and Brodie Springs II Subdivision, Phase Two (sometimes referred to herein as "Phase Two"), more particularly described on Exhibit A.
- (bb) "Property" means and includes all land within the Plats, together with all Improvements thereto.
- (cc) "Restrictions" means, collectively, this Declaration, the Bylaws and the Rules.
- (dd) "Rules" means the rules and regulations adopted from time to time by the Board. The initial Rules are attached as Exhibit F.
- (ee) "Water Quality Covenant" means the Access and Restrictive Covenant Regarding Maintenance and Monitoring for Critical Features, Water Quality Features and Related Facilities, recorded under Document No. 2004114140, Official Public Records of Travis County, Texas.
- (ff) "Water Quality Facilities" means the water quality facilities and controls that serve the Property and consist of a number of elements, including (i) berms and swales that will divert any water from developed areas away from Kentucky Sink and Frog Sink, (ii) 6 feet decorative metal-type fences installed at the edge of the critical environmental feature setback for Kentucky Sink and Frog Sink, (iii) water quality ponds from which water is pumped, after a sufficiently heavy rain, to an underground irrigation field, and (iv) overland flow of surface water that naturally purifies water through vegetative filtration. Some Lots abutting the creeks have vegetative filtration strips at the rear that are subject to the construction requirements and restrictions contained in the Water Quality Covenant.

## ARTICLE II. LOTS AND COMMON AREAS

2.1 RECORDATION OF PLAT. The Plats have been recorded. Reduced copies of the Plats are attached hereto as Exhibit B.

2.2 DESIGNATION OF LOTS. Brodie Springs consists of (1) 116 Lots on which Homes may be built, and (2) the Common Area. Only one Home may be built on each residential Lot. Each Lot is identified by a number and block reference on a Plat.

2.3 WATER QUALITY COVENANT AND COMMON AREAS. The Property is subject to the Water Quality Covenant. Owners will comply with any provisions of the Water Quality Covenant directly applicable to their Lot(s). The Common Areas include environmentally sensitive areas subject to the provisions hereof and of the Water Quality Covenant and the Environmental Management Plan and such areas shall be maintained and used in strict accordance with the Water Quality Covenant and the Environmental Management Plan. Accordingly, no Common Areas may be improved, altered, used or occupied in a manner that contradicts or is inconsistent with the Water Quality Covenant or the Environmental Management Plan, nor may they be improved, altered, used or occupied in a manner not authorized by Declarant. Without limiting the foregoing, no Owner or Occupant may store any personal property on Common Areas, drive or park on any Common Areas, or trim trees or other vegetation in or overhanging the Common Areas unless authorized by Declarant. The Kentucky and Frog Sink areas shown on the Plat shall remain in a natural vegetative state except that the Association may remove dead limbs, dead trees, diseased trees, non-native and prohibited trees and shrubs. The Board may enact Rules governing the use of the Common Areas. Each Owner and Occupant shall comply, and shall cause their guests and invitees to comply, with such Rules.

2.4 NO SUBDIVISION. Except for Plat modifications by Declarant, no Lot may be further subdivided. Two or more contiguous Lots may be combined, however, with only one Home built on the combined Tract.

2.5 EASEMENTS FOR ENCROACHMENTS, COMMON AREA FENCES AND SIDEWALKS. If any Common Area Facilities encroach upon a Lot or Lots, a valid easement for the encroachment and for the maintenance of such Common Area Facilities shall exist for the benefit of the Association. Within 15 feet of the right of way for Brodie Lane and Squirrel Hollow Drive, the Association shall have an easement to enter upon the

Lots adjacent to such right of way and maintain Common Area Facilities (consisting of fences) therein. The Association also may install sidewalks that encroach on a Lot within 10 feet of the right of way adjacent to such Lot, for aesthetic and tree preservation purposes. Owners must build any sidewalks shown on the Plat or required by the Association before issuance of a certificate of occupancy for the Home.

2.6 TAXES. The Association shall give written notice to the Travis County Appraisal District of the establishment of the subdivision regime with respect to the Property as is provided by law so that the value of the Common Areas will be blended, pro rata, into each of the Lots and the Association will not receive a property tax bill for the Common Areas. The Association shall timely file or cause to be filed any applicable income tax returns for the Association.

## 2.7 USE AND OCCUPANCY RESTRICTIONS.

(a) *Residential purposes.* Each Lot shall be improved and used only for single-family residential purposes. No Lot may be used as income-producing property, but the lease of an entire Lot for use for single family residential purposes shall be permitted. A "single family" shall be defined as any number of persons related by blood, marriage or adoption, and shall include foster children and domestic servants (but this Declaration shall not be interpreted to exclude from a Lot any person who is authorized to so remain by applicable laws or ordinances). If this Section 2.7(a) is held to violate any law, this Section shall be interpreted as restrictively as possible in order to preserve as much of the original intent of this Section as is permitted by law. No trade or business may be conducted in or from any Lot, except that an Owner or Occupant may conduct business activities that are incidental to the primary residential use of the Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Home; (b) the business activity conforms to all zoning requirements and all provisions of this Declaration; (c) the business activity does not involve visitation of the Lot by clients, customers, vendors or other business invitees, or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined by Declarant during the Control Period, and thereafter by the Board. Day care facilities, churches, nurseries, pre-schools and similar facilities are expressly prohibited.

(b) *Use restrictions.* In all events, the use of Brodie Springs by Owners and Occupants shall be subject to the following restrictions:

(1) *Nuisance; noise; insurance.* No unsafe, noxious, offensive, or illegal activity or odor is permitted on the Property. No activity shall be conducted on the Property if the Board deems that such activity might reasonably be considered as annoying to Persons of ordinary sensibilities, or as reducing the quality of life within the Property. No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No Owner or Occupant may play radios, televisions, stereos, and other electrical or mechanical devices at a volume that can be heard outside the Lot. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property that is reasonably offensive or detrimental to Persons of ordinary sensibilities. The Board may adopt further rules regulating noise generated from a Lot. Without the Board's prior written consent, no Person may do anything that will increase insurance rates for the Property, will cause Improvements to be uninsurable, or may cause any policy to be canceled, or suspended or materially modified by the issuing company.

(2) *Animals.* Animals kept on a Lot must be kept in strict compliance with the Rules. No animal may make excessive noise (in the Board's sole judgment). Animals may not be bred for commercial purposes. Animals (except cats, fish, and birds) must be kept on a leash when outside a Home (except within a fenced yard on a Lot). Leashes may not be tied to objects and must be held by a person who can control the animal at all times. The Owner or Occupant of any Home where an animal is housed must immediately clean up after such animal if it defecates in Common Areas, streets, rights of way, or on Lots of other Owners. Owners shall timely clean animal defecation by such animals on their own Lots. If an animal or Owner violates the Restrictions, Declarant or Board may remove the animal from the Property and place the animal with the local humane society.

(3) *Liability for animals.* Regardless of whether the Board gives permission for an animal to be present on the Property, (i) an Owner and a pet owner are jointly liable to all other Owners, Occupants, guests, and invitees for injury and damage caused by any animal brought or kept on the Property by the Owner, Occupant or their guests or invitees, and (ii) each Owner agrees, for themselves, and their Occupants, guests, and invitees, that

neither Declarant, the Board nor the Association shall have any liability for any injury or damage caused by any animal brought or kept on the Property by the applicable Owner or Occupant, or their guests or invitees.

(4) *Signs.* Subject to Section 2.9(a)(5), and except for (i) signs approved by Declarant during the Control Period, (ii) signs expressly allowed by law, or (iii) signs allowed in the Board's discretion and described in the Rules, only one "for sale" sign, no larger than 2 feet x 2 feet, may be maintained at any time on a Lot; all other signs are prohibited. The Board may enter a Lot without prior notice and remove and destroy prohibited signs.

(5) *Window coverings.* No foil shall be placed in or next to any window or sliding glass door. Burglar bars that may be seen from the street are prohibited. The Board may adopt Rules regarding window coverings.

(6) *Storage/garage sales.* No personal property may be stored temporarily or permanently outside a Home. The Board may adopt Rules regulating or prohibiting garage or similar sales.

(7) *Garages and carports.* No carport shall be placed, erected, constructed, installed or maintained on the Property. Each Home shall have a garage as an appurtenance thereto which either is attached and integrated into the design of the Home or, if detached, architecturally complements the Home. If approved by the ACC, garages may contain storage rooms, recreational workshops and tool rooms, or servants' quarters or guest quarters. All garage doors shall remain closed at all times, save and except for the temporary opening of same in connection with the ingress and egress of vehicles and the loading or placement and unloading or removal of other items customarily kept or stored therein, when a person is in the garage or engaged in yard work, or there is another activity occurring on the Lot which is reasonably facilitated by an open garage door. No garage shall be converted to another use (e.g., living space) without the substitution, on the Lot involved, of another garage meeting the requirements of this Section, and without ACC approval. Use of parking space in a garage for work areas or storage (including boxes, toys, exercise equipment, furniture, or work benches) to the exclusion of one or more vehicles is strictly prohibited.

(8) *Common driveways.* Certain groups of Lots shall share a common driveway for access to the Homes on the Lots. Those Lots are Lots 11, 12, 13, and 14, Block B, of Phase One and Lots 16, 17, and 18, Block D, of Phase Two. Maintenance of the common driveway and maintenance of the landscaping on either side of the common driveway shall be shared and paid for by the Owners sharing the common driveway. The Association shall maintain such common driveways and adjacent landscaping and charge the costs thereof to the respective Owners who use such driveway, which costs shall be deemed a part of the Common Assessment payable with respect to the applicable Lots.

(9) *Vehicle repair.* Except in an emergency when a vehicle is inoperable, no vehicle may be worked on outside of a garage. Otherwise, vehicles must be serviced or repaired off the Property. Vehicles which have expired license plates, expired inspection stickers, flat tires or which are obviously inoperable due to missing parts are prohibited and may be removed by the Association from the Property at the Owner's expense. Vehicle fluids and materials must be disposed of offsite in a proper manner.

(10) *Parking.*

(a) Parking of vehicles, motorcycles and bicycles on pervious cover or on sidewalks is prohibited. "Pervious cover" shall be as defined by the City from time to time. Owners may not park on any streets in the Property. Owners and Occupants shall park vehicles in their respective garages or off-street parking areas on their Lots. No Owner or Occupant may park, store, operate or keep within or adjoining the Property any commercial-type vehicle, truck larger than a pick-up truck, motorcycle, motorbike, motor scooter, recreational vehicle (e.g. camper unit, motor home, trailer, boat, mobile home, golf cart), or other similar vehicle unless same is kept solely within the garage on the Lot. No Owner or Occupant may park, store, operate or keep within or adjoining the Property any vehicle over 20 feet long. Bicycles, motorcycles and similar items may not be parked or stored outside a Home or in a manner visible from a street.

(b) Guest parking is in the Home's driveway or on the street. Guests may not park on the street for more than a 72-hour period without prior written approval from the Board.



(c) No vehicles may be parked or left unattended in such a manner as to block the passage of other vehicles on the streets or to driveways to Homes. No vehicle shall be left parked or unattended in such a manner as to prevent the ingress and/or egress of emergency vehicles (i.e., fire, EMS) or service vehicles (i.e., refuse trucks).

(d) If someone is physically disabled, the Board will accommodate special requests for wheelchair parking if possible. Handicap parking signs must be honored.

(e) The Board may adopt Rules regulating parking that are consistent with this Declaration.

(11) *Anti-theft alarms.* The Board may adopt Rules regarding vehicles with anti-theft systems.

(12) *Towing illegally parked vehicles.* Vehicles parked in violation of the Restrictions may be towed without permission of the vehicle's owner or operator. Notice and removal shall be in accordance with applicable statutes and/or Restrictions. An Owner is liable for all costs of towing vehicles of the Owner, the Occupants of that Lot or any guests of the Owner that are parked in violation of the Restrictions.

(13) *Trash.* The Board may designate required areas for trash receptacles, required types of receptacles that are not in conflict with receptacle standards of the City, and times when trash receptacles may be placed by streets for pick up. Trash kept outside the house shall be kept at all times in Board approved containers, and such containers shall be kept within an enclosed structure or appropriately-screened from view from the street.

(14) *Pest control.* The Association has no responsibility for pest control on a Lot.

(15) *Lighting.* Exterior lighting in the Property is an Improvement subject to ACC approval. All exterior lighting of Homes must be shielded except for front entry lights. Low voltage tree lighting shall be shielded if the ACC determines that such lighting impacts adjacent Lots or Common Areas. Except for seasonal or holiday lights allowed under the Rules, exterior lighting for a Home or Lot must be attached to the Home and may not be free standing. Christmas lights and decorations visible from a street may not be left out past January 15<sup>th</sup>. Lighting for other holidays shall be in accordance with the Rules. None of the foregoing shall apply to model home lighting; but model home lights must be removed when the model is first occupied by a homeowner.

(16) *Antennas.* There shall be no antennas or satellite dishes installed in the Common Area. Receiving antennas and satellite dishes on Homes must comply with the Rules.

(17) *Alteration or removal of Improvements.* No repair or alteration (other than normal maintenance) that alters the exterior appearance of any Improvement, and no removal of any Improvement, shall be performed without ACC approval. For example, any exterior repainting of any Improvement with a color or colors, or in an area or areas, other than those originally approved by the ACC shall require ACC approval. If any Building is damaged or destroyed by casualty, hazard or other cause, including fire or windstorm, then within a reasonable period (not to exceed 90 days after the occurrence of the event), the Owner of the affected Building shall cause same to be repaired or rebuilt, or shall cause all debris and damaged materials to be removed and cleared from the Lot. All such repair or rebuilding shall be approved and accomplished in the manner required for new construction under this Declaration.

(18) *Water wells; no drilling.* Except as may be approved by the ACC (which approval shall require shielding from view), no water wells may be drilled in the street yard or side yard of a Home. Water wells are permitted in a back yard or in a front or side yard if shielded by means approved by the ACC, subject in each instance to any required government permission. Except as provided in the preceding sentence, no drilling, digging, quarrying, or mining operation of any sort shall be permitted on the Property. Regardless of the location of any approved water well, storage tanks shall be situated within a fenced back yard and shielded from view from the street.

(19) *Care during construction.* An Owner who is having work performed on a Lot shall take reasonable and necessary precautions to prevent damage to the Common Areas, streets and sidewalks caused by construction companies, workmen, suppliers, or service companies working on or delivering materials to or removing materials from the Lot. Such Owner shall be liable to the Association for any damage to the Common Area, streets and/or sidewalks, and to other Owners for any damage to another Owner's Home or Lot, including costs

of cleaning up or replacing property damaged or destroyed by such construction companies, workmen, suppliers, or service companies. The Association may repair any such damage to the Common Areas, streets and sidewalks at the Association's expense, in which event the cost of repair shall be reimbursed to the Association by the Owner who caused, or whose construction company, workmen, suppliers, or service company caused, the damage.

(20) *No temporary structures.* No structure of a temporary character, trailer, tent, shack, garage, barn, tool shed, or other outbuildings is permitted in the Property, temporarily or permanently, except with the prior written consent of Declarant, or after the Control Period, the Board. However, temporary structures may be used in connection with the construction, repair or rebuilding of any Improvement so long as such temporary structures are promptly removed when the construction, repair, or rebuilding is complete.

(21) *Environmental Management Plan and Integrated Pest Management Plan.* Each Owner shall comply with all applicable provisions of the Environmental Management Plan and the Integrated Pest Management Plan, including without limitation, the restrictions on the application of pesticides.

(22) *Criminal activity.* No person may violate any criminal laws, health codes or other applicable laws. No tampering with Common Area Facilities or Water Quality Facilities is allowed. Except as expressly provided in the Environmental Management Plan, no entry into the enclosed areas of the Environmental Features is allowed without prior written permission from the Board.

(23) *Structural integrity.* No Owner shall do anything to impair the structural soundness or integrity of any Home or Improvement or to impair any easement or appurtenance.

(24) *Swimming pools.* Except for the Lots specified in the Environmental Management Plan, and subject to ACC approval, each Owner may build no more than one swimming pool on a Lot. All pools must be in-ground; above ground pools are prohibited. Pools and exterior spas and hot tubs must be enclosed with a fence or other enclosure device complying with all then-applicable governmental regulations. The Board may adopt additional Rules governing the enclosure of swimming pools, spas, and hot tubs.

(25) *Declarant rights.* In order that Declarant may develop and sell the Property, neither any Owner nor the Association shall do anything to interfere with special Declarant rights contained in Section 2.9.

2.8 RESTRICTIVE COVENANTS, EASEMENTS, AND ENCUMBRANCES EXISTING PRIOR TO DEVELOPMENT. The Property is subject to several recorded documents in addition to this Declaration. Those documents recorded as of the date of this Declaration are described in Exhibit C.

#### 2.9 RESERVATION OF SPECIAL DECLARANT RIGHTS.

(a) During the Control Period and not afterward, Declarant reserves the following rights, notwithstanding any provision in the Declaration to the contrary:

(1) the exclusive right, but not the duty, to amend either Plat and to vary the size, shape, physical lay-out, or location of the Common Area or any unsold Lot or Lots;

(2) the right to do what is reasonably necessary or advisable in connection with the completion of the Common Area Facilities;

(3) the right to construct and maintain the Common Areas and Lots owned or controlled by Declarant, their successors, assigns, or their contractors or subcontractors, as may be reasonably necessary for the conduct of Declarants' business or the completion of any work and developing, selling or leasing the Lots;

(4) the right to maintain or allow others to maintain, for the above purposes, one or more onsite model Homes and offices, the size, number, location, and relocation of which shall be determined solely by Declarant;

(5) the right to maintain or allow others to maintain a sign or signs for the purpose of marketing the Homes or Lots in Brodie Springs;

(6) the sole right to approve or reject any plans and specifications submitted by an Owner for approval as provided in Section 3.9;

(7) the special voting rights contained in Section 4.3;

(8) the assessment rights and duties contained in Section 5.1; and

(9) The exclusive right for the duration of the Control Period to amend the Restrictions without the joinder of any Owner or the Association so long as such amendment does not conflict with the Declaration amendment prohibitions in Section 7.1.

(b) Any mortgage of a Declarant's interest in the Property shall be deemed to include that Declarant's special rights in this Declaration; and any foreclosure sale pursuant to such mortgage shall automatically convey such Declarant rights.

2.10. CONSTRUCTION OF COMMON AREA FACILITIES. Declarant, at Declarant's expense, shall construct the Common Area Facilities. Once such Facilities are built, the Association shall maintain same.

2.11 CONDEMNATION. If any of the Common Area is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall be entitled to participate in proceedings incident thereto. The Association's expense of participation in such proceedings shall be a Common Expense. The Association may obtain and pay for assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for such taking shall be paid to and retained by the Association. The Association shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey the Common Area taken to the condemning authority in lieu of such condemnation proceedings. The Association, if it deems advisable, may call a special meeting at which the Members, by majority vote, shall decide whether to replace or restore as far as possible, any Common Areas taken or damaged. If it is determined that such Common Areas should be replaced or restored by obtaining other land, this Declaration shall be duly amended to reflect the new Common Area by instrument executed by the Association on behalf of all Owners.

### ARTICLE III. RIGHTS AND OBLIGATIONS OF OWNERSHIP

3.1 OWNERSHIP. A Lot will be a fee simple estate and may be held and owned by any Person singularly, as joint tenants, as tenants in common, or in any form of real property ownership recognized under Texas law.

3.2 PARTITION. The Common Areas shall be owned by the Association and shall remain undivided. No Owner shall bring any action for partition or division of the Common Areas.

3.3 NO EXCLUSIVE USE OF COMMON AREA. Each Owner shall have an easement of enjoyment in and to the Common Areas which is an appurtenance to the Lots and which is subject to the following:

(a) the Association's right to prescribe Rules governing the use, enjoyment, and maintenance of the Common Areas;

(b) the Association's right to sell and convey the Common Areas or any part thereof pursuant to the Bylaws;

(c) the Association's right to borrow money in order to improve or repair any part of the Common Areas;

(d) the Association's right to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(e) the Association's right to suspend the easements of enjoyment of any Member during the time any Assessment levied under Article V remains unpaid, or for any infraction of the Rules; and

(f) Declarant's reserved rights under Section 2.9 above.

3.4 OWNERSHIP OF COMMON AREAS. From time to time, Declarant shall identify and convey to the Association, and the Association shall accept, fee simple or easement interests in the Common Areas. Declarant will make multiple conveyances of Common Areas to the Association, and the Association's obligations set forth herein with respect to Common Areas shall refer only to the Common Areas owned by the Association at the particular point in time. Each conveyance shall be by special warranty deed or easement with special warranty of title, subject in either instance to all matters set forth in this Declaration, all liens securing the payment of taxes for the current and all subsequent years, and all easements, liens, rights of way, prescriptive rights, encroachments, overlapping of improvements, discrepancies, conflicts, leases, reservations, mineral severances, restrictions, covenants, conditions, regulations, and other rights, claims, title exceptions and other matters of any kind or nature affecting all or any of the real property interests conveyed as Common Areas, whether of record in the real property records of Travis County, Texas or apparent on the Common Areas. Each such conveyance shall be made solely for the benefit of the Owners and all right, title and interest in the Common Areas so conveyed shall be held by the Association solely for the use and benefit of the Owners. Each conveyance shall be made by Declarant and accepted by the Association, "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL. WITHOUT LIMITING THE FOREGOING, DECLARANT SHALL NOT MAKE AND SPECIFICALLY SHALL NEGATE AND DISCLAIM ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE COMMON AREAS, INCLUDING, WITHOUT LIMITATION, THE ACREAGE, WATER, SOIL OR GEOLOGY OF THE COMMON AREAS OR ANY SURROUNDING AREAS, (B) THE VALUE OF THE COMMON AREAS, (C) THE SUITABILITY OF THE COMMON AREAS FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON, (D) THE COMPLIANCE OF THE COMMON AREAS OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING WITHOUT LIMITATION ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (E) THE DISPOSAL OR EXISTENCE, IN OR ON THE COMMON AREAS, OF ANY ASBESTOS, PCB EMISSIONS, HYDROCARBONS, RADON GAS, OR HAZARDOUS OR TOXIC MATERIALS, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OF COMMON AREA FACILITIES OR MATERIALS INCORPORATED INTO THE COMMON AREA FACILITIES, (G) THE STATE OF REPAIR OR LACK OF REPAIR OF THE COMMON AREAS OR COMMON AREA FACILITIES, OR (H) ANY OTHER MATTER WITH RESPECT TO THE COMMON AREAS. IF THE ASSOCIATION OR ANY OWNER REQUESTS ANY INFORMATION WITH RESPECT TO THE COMMON AREAS, THE ASSOCIATION OR OWNER SHALL ACKNOWLEDGE THAT SUCH INFORMATION SHALL NOT HAVE BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY DECLARANT. DECLARANT SHALL MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, AND DECLARANT SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, REPORTS, SURVEYS OR OTHER INFORMATION OF ANY KIND OR NATURE PERTAINING TO THE COMMON AREAS, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON. The Association shall indemnify and hold harmless Declarant from and against all liability, damages, suits, actions, costs and expenses of whatsoever nature (including reasonable attorney's fees) to persons or property caused by or arising out of any use or activities of the Association or any of the Owners upon or within the Common Areas.

3.5 MECHANIC'S AND MATERIALMAN'S LIENS. No work authorized or performed by an Owner may be the basis for filing of a lien against the Common Areas.

3.6 RIGHT OF ENTRY; PARKING VIOLATIONS; COMPLIANCE ASSESSMENTS. The Association shall have the right to enter at any time in an emergency, or after 24 hours written notice in a non-emergency, without being liable to any Owner or Occupant, upon any Lot, for the purpose of enforcing this Declaration (including without limitation the provisions of Sections 3.7 and 3.8 below) or for the purpose of maintaining or repairing any Common Area Facilities or to place any Improvement or Lot in conformity with this Declaration. Upon unanimous consent of the members of the Board, and after reasonable attempts to notify the Owner, the Association also may enter a Home in order to cut off a security system in which the intrusion alarm is continuing to run and is disturbing other Owners or Occupants or to repair utility leaks as provided in Section 4.4(p) below. The Association may levy

a Compliance Assessment against such Owner and Lot in order to reimburse the Association for all expense incurred by the Association in connection with the entry upon that Lot and the cost of the maintenance and repair work conducted thereon. The Association also may levy Compliance Assessments to recover the cost to the Association of towing improperly parked vehicles pursuant to Section 2.7(b)(12) above. Failure to pay the Compliance Assessment upon demand shall be deemed a breach of this Declaration. Each Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 3.6 (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

3.7 MAINTENANCE BY OWNER. Each Owner shall keep all shrubs, trees, grass, and plantings of every kind on such Owner's Lot cultivated, pruned, free of trash, and other unsightly material. Improvements shall at all times be kept in good, attractive condition and repair, and adequately painted or otherwise maintained by the Owner and Occupants. By way of example, maintenance obligations shall include (but are not limited to): maintenance of all visible exterior surfaces of Improvements and prompt removal of paper, debris, and refuse; removal of dead or diseased trees and Landscaping from the Property; performance of all obligations of such Owner under the Environmental Management Plan; prompt replacement of dull and/or peeling paint from the exterior of Improvements; mowing, watering, fertilizing, weeding, pruning, replanting and replacement of Landscaping; and during construction, the cleaning of dirt, construction debris, and other construction-related refuse from street and storm drains and inlets as often as deemed necessary by the Board. The Board's recommendations with respect to tree disease control shall be followed immediately. Grass and weeds shall at no time be allowed to exceed 6" in height on any Lot (whether improved or unimproved) and Owners of unimproved Lots shall keep same neatly trimmed and free of trash and other unsightly material. Owners also shall maintain the portion of the right of way of each adjoining street that lies between the street curb and the property line in accordance with the provisions of this Section 3.7.

3.8 DRAINAGE; VEGETATIVE FILTERS. Owners may not alter any grades affecting drainage without written approval from the Association. The Association will not approve any grade change that will conflict with the grading plan approved by the City. No Owner may alter any sidewalks, berms, swales, vegetative buffers, fences, or drainage facilities that are an integral part of the drainage plan for the Property. Fencing across drainage swales in backyards must not obstruct the flow of water for drainage purposes. If such alteration is made without the Association's consent, the Owner on whose Lot the alteration is made shall reimburse the Association for all expenses related to restoring same. An Owner whose Lot contains a vegetative filter strip shall comply with the provisions of the Water Quality Covenant with respect to such strip.

3.9 CONSTRUCTION OF IMPROVEMENTS. NO CONSTRUCTION SHALL BEGIN UNLESS AND UNTIL THE ACC APPROVES IN WRITING THE PLANS AND SPECIFICATIONS FOR THE IMPROVEMENT. Each Owner shall comply with the Exterior Design Criteria set forth in Exhibit G. The ACC shall consider all of the plans and specifications for the Improvements or proposal in question and all other facts that the ACC, in its sole discretion, deems relevant. BEFORE any Owner other than Declarant begins construction of any Improvement on any of the Property, the proposed plans and specifications for the Improvement shall be submitted to the ACC. The ACC shall consider and act upon any and all Plans and Specifications submitted for its approval under this Declaration, and shall perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board. The ACC may review all plans and specifications submitted for its review and all other information that the ACC deems proper. Until the ACC receives any information or documents deemed necessary by the ACC, it may postpone review of any plans and specifications submitted for approval. No Improvement shall be allowed upon any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with development within the Property. The ACC may disapprove a proposed Improvement based upon the restrictions set forth in the preceding sentence or elsewhere in the Restrictions and the ACC's decision shall be final and binding so long as it is made in good faith. The ACC shall not review, or 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.

3.10 SUBJECT TO RESTRICTIONS. Each Owner and the Association shall comply strictly with each and every provision of the Restrictions and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be amended from time to time.

3.11 WATER QUALITY COVENANT. The Property is subject to the Water Quality Covenant and each Owner must comply with the provisions of the Water Quality Covenant applicable to Common Areas and such Owner's Lot.

#### ARTICLE IV. MANAGEMENT AND ADMINISTRATION

4.1 ORGANIZATION. The Association is a non-profit corporation created for the purposes and charged with the duties specified in the Bylaws and Articles. The initial Articles and Bylaws adopted by the Association are attached hereto as Exhibits D and E, respectively. The Articles and the Bylaws may be amended or changed only in accordance with the amendment procedure specified in the Bylaws or in accordance with applicable law. The Articles or Bylaws shall not be amended, changed or interpreted so as to be inconsistent with this Declaration.

4.2 MEMBERSHIP. Any Person upon becoming an Owner shall automatically become a Member. Membership shall be appurtenant to and shall run with the ownership of the Lot that 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 Lot.

4.3 VOTING. The right to cast votes, and the number of votes which may be cast, for election of the Board and on all other matters to be voted on by the Members shall be calculated as follows:

(a) The Owner (including Declarant) of each Lot within the Property shall have one vote for each Lot owned.

(b) In addition to the votes to which it is entitled by reason of Subsection (a) above by reason of being an Owner, during the Control Period, Declarant shall have 5 votes for each Lot within the Property.

(c) If any property interest entitling the Owner thereof to vote under Subsection (a) is held jointly or in common by more than one Owner, such Owners shall designate in writing a single Person who shall be entitled to cast such vote and no other Person shall be authorized to vote on behalf of such property interest. A copy of the written designation shall be filed with the Board before any such vote may be cast, and, if the applicable Owners do not file such designation, their vote shall neither be cast nor counted for any purpose whatsoever.

(d) The Board may suspend any Owner's right to vote during any period during which an Assessment against such Owner's Lot(s) remains past due.

While Declarant is comprised of two entities, Declarant shall exercise its voting rights hereunder through the action of either entity.

4.4 POWER AND AUTHORITY OF ASSOCIATION. The Association shall have the power of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts that 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 and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

(a) *Rules.* The Association and Board shall have the power to adopt, amend, repeal and/or re-enact the Rules. The content of the Rules shall be established by the Board, but shall not conflict with this Declaration. The initial Rules are attached as Exhibit F.

(b) *Late charges and fees.* The Association and Board shall have the power to adopt, from time to time, charges for late payment by the Owners of monies owed to the Association. If a check is returned for non-payment, in addition to late charges, the Board may assess returned check charges against the Owner.

(c) *Application of Payments.* The Association and Board shall have the power to apply any funds received from an Owner first to non-Assessment obligations of the Owner (such as fines, late charges, returned check charges, user fees, or similar items) regardless of notations on checks and transmittal letters.

(d) *Suspension of rights.* The Association and Board shall have the power to suspend an Owner's right to vote and/or right to use Common Areas at any time when the Owner is more than 30 days delinquent on any sum owed to the Association. Suspension of voting rights shall include voting at annual or special membership meetings, by mail-in ballots, and at committee meetings, board meetings, and all other meetings.

(e) *Fines.* Subject to compliance with the Texas Property Code, the Association and Board shall have the power to assess fines against an Owner for violations by the Owner, his Occupants or their guests or invitees of any provision of the Restrictions. If a violation continues after written notice to an Owner, each day of violation may be considered a separate violation. Notice of an alleged infraction and fine shall be provided to an Owner no later than 45 days from the later of (i) the first occurrence of the alleged infraction or (ii) notice to the Board of the alleged infraction. An Owner is liable for all fines or for repayment of property damage arising through the activities of the Occupants of the Owner's Home. If an Owner is delinquent in the payment of any sum due the Association for a period of 30 days or more, any tenant of that Owner who is an Occupant of a Lot may pay any sums due to the Association by that Owner in order to avoid suspension of Common Area use rights, and may deduct any sums so paid from the rent due to that Owner. The Association may enter into indemnity agreements to protect tenants who pay money to the Association under authority of this section.

(f) *Assessments.* The Association and Board shall have the power to levy Common, Special and Compliance Assessments as provided herein.

(g) *Leasing.* The Association and Board shall have the power to adopt reasonable requirements with which Owners must comply when leasing a Home, such as requiring Owners to notify the Board of tenant names, work phones, home phones, and emergency contact persons, requiring that Owners attached copies of the Restrictions to any lease, and providing that during the term of a lease, the Owner leasing the Home may not use Common Area Facilities.

(h) *Interest.* The Association and Board shall have the power to charge interest in the highest amount allowed by law on amounts due the Association and unpaid.

(i) *Fees for special services.* The Association and Board shall have the power to charge fees for special services (*i.e.*, furnishing resale certificates, eligibility certificates, copies of declarations, copies of information sent to mortgagees, copies of accounting records, and similar items).

(j) *Publication of delinquencies.* The Association and Board shall have the power to disclose and publish to Members, prospective purchasers of Lots, First Mortgagees and prospective First Mortgagees the financial condition of the Association, including a list of names and amounts of any delinquencies. The Board may notify First Mortgagees of delinquent monies owed by the Owner of the Lot encumbered by the First Mortgage.

(k) *Common Areas.* The Association and Board shall have the power to own, improve, grant and convey to any Person any Common Areas or Common Area Facilities, and/or any interest therein, including fee title, leasehold estates, easements, rights-of-way, or mortgages, out of, in, on, over, or under any of same for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder the Common Area Facilities, including:

- (i) roads, streets, walks, driveways, parking lots, trails, and paths;
- (ii) lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- (iii) sewers, water systems, storm water drainage systems, water quality facilities, sprinkler systems, and pipelines; or
- (iv) any other Improvements which the Board determines will benefit the Owners generally.

Nothing in this subsection (k) shall permit the use or occupancy of any Improvement in any way that would violate other provisions of this Declaration.

(l) *Personal property.* The Association and Board shall have the power to own personal property for use in connection with the Common Area and Common Area Facilities.

(m) *Management.* The Association and Board shall have the power to retain and pay for the services of a manager to manage and operate the Association and Common Areas 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 duties, powers, and functions to the manager. So long as either (i) a management company is bonded or maintains insurance with commercially reasonable limits, or (ii) the Board implements commercially reasonable safeguards as to Association funds, the Owners hereby release the Association and the Board from liability for any omission or improper exercise by the manager of any such duty, power, or function so delegated.

(n) *Enforcement.* In the Association's name and on its behalf, or in the name of and on behalf of any Owner who consents thereto, the Association and Board shall have the power to begin and maintain actions and suits to enforce, by mandatory injunction, action to recover damages, or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions; to settle claims; enforce liens, and take all such action as it may deem necessary or expedient to enforce the Restrictions, provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, their successors or assigns. All obligations of Owners, Occupants and the Association arising under any of the Restrictions shall be performed in Travis County, Texas, and venue for any lawsuits relating thereto shall be in Travis County, Texas.

(o) *Additional remedy against tenants.* The Association and Board shall have the power to evict Occupants who are tenants, after reasonable notice to the Owners and the tenants, for substantial or repeated violations of the Restrictions.

(p) *Emergency entry.* The Association may enter a Home where a utility leak has been discovered and cause such leak to be repaired at the expense of the Owner of the Home if (i) the Owner is absent, (ii) reasonable attempts to contact the Owner have been unsuccessful, and (iii) the need for repair constitutes an emergency. If a Home is vacant, the Association may, but is not required to, receive and retain from the Owner a key to the Home for use only in connection with emergencies or suspected emergencies. The Association shall not be obligated to exercise this authority.

(q) *Assignment of revenues.* The Association and Board shall have the power to convey a security interest in the revenue from Assessments to a lender for purposes of obtaining loans necessary or appropriate to carry out the Association's duties. No such security interest may be given without being approved by a vote of a majority of the Members voting in person or by proxy at an Association meeting.

4.5 DUTIES OF ASSOCIATION. Subject to and in accordance with this Declaration, the Association shall have and perform each of the following duties:

(a) *Common Area.* The Association shall accept, own and maintain in good condition and repair the Common Area, the Common Area Facilities, all appurtenances thereto, and all personal property used in connection with same, including without limitation, all entry signs and related landscaping; this obligation includes, but is not limited to, the obligation to maintain at the Association's expense:

- (i) the Improvements on Lot 21, Block A, Phase One (Kentucky Sink), including fencing and the mail pick-up area;
- (ii) the Improvements on Lot 18, Block B of Phase One (Frog Sink), including fencing, water detention pond, and related facilities;
- (iii) the improvements on the Greenbelt Lot, including the water detention ponds and the system for irrigating surface water effluent;
- (iv) the vegetative buffers required by the City along Slaughter Creek, as shown on the Plats;



- (v) all berms, swales, and underground drainage piping required by the City for the purpose of directing water drainage on the Property;
- (vi) the decorative metal type and masonry fences along Brodie Lane and Squirrel Hollow Drive;
- (vii) the area between the pavement and the east right of way line of Brodie Lane; and
- (viii) the area between the pavement and the north right of way line of Squirrel Hollow Drive.

(b) *Taxes.* The Association shall pay all real and personal property taxes and other taxes and assessments levied upon or with respect to 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.

(c) *Insurance.* The Association shall obtain and maintain in effect policies of insurance that are reasonably necessary or appropriate to carry out the functions of the Association, as determined by the Board; and inform the Association at each annual meeting of the insurance then carried by the Association.

(d) *Books and records.* The Association shall keep books and records of the Association's affairs and to make such books and records, together with a current copy of this Declaration, available for inspection by Owners and First Mortgagees upon request during normal business hours. All such books and records shall be kept in accordance with generally accepted accounting procedures, consistently applied, and shall be audited or reviewed at least once a year by an outside auditor selected by the Board unless directed otherwise at the annual Association membership meeting by a majority of those voting in person or by proxy.

(e) *Management.* Upon expiration of the Control Period, the Association shall retain a professional management company and file the required management certificate in the Official Public Records of Travis County, Texas. An acceptable form of management certificate is attached hereto as Exhibit J. Any agreement for professional management will be terminable by the Association without cause and without payment of a termination fee upon 90 days written notice, and the term of no such agreement shall exceed a period of three years.

(f) *In general.* The Association shall carry out and enforce all duties of the Association set forth in this Declaration and in the Restrictions.

4.6 ARCHITECTURAL CONTROL COMMITTEE. Declarant shall serve as the ACC during the Control Period or until Declarant relinquishes this right in writing, whichever is sooner.

(a) *Voting Members.* After Declarant ceases to serve as the ACC, the Board shall appoint the ACC, which shall consist of no less than 3 voting members ("Voting Members"). Each Voting Member shall serve until he is removed and his successor appointed, or until he resigns. If a Voting Member dies or resigns, the remaining Voting Members have full authority to act on behalf of the ACC until a successor Voting Member is appointed by the Board.

(b) *Design guidelines.* The ACC may recommend for adoption by the Board design guidelines, procedural and substantive rules, standards and policies, not in conflict with this Declaration, as it deems necessary or proper to perform its duties and to promote the orderly development of the Property. By example, without limitation, the ACC may recommend a building code, a fire code, a housing code, or other similar codes. Once adopted by the Board, such design guidelines, rules, standards, policies and procedures shall be included within the Restrictions, and shall be binding and enforceable against each Owner in the same manner as any other provision of this Declaration.

(c) *Variations.* The ACC may grant variations from compliance with the use and occupancy restrictions set forth in Section 2.7 or the Exterior Design Criteria set forth in Exhibit G when, in its opinion and in its sole and absolute discretion, the variance will not impair or detract from the high quality development of the Property and/or is justified due to aesthetic considerations or unusual circumstances. All variations must be evidenced by a written instrument in recordable form, and must be signed by a majority of the Voting Members. The granting of such variance shall not waive or amend any of the terms and provisions of the Restrictions applicable to the Lots for any

purpose except as to the particular Lot and matter covered by the variance, nor shall a variance establish a precedent or future waiver, modification or amendment of the terms and provisions hereof.

(d) *ACC action.* The ACC may, by unanimous written resolution, designate an agent (who may be a Voting Member) to act on its behalf to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of the majority of the Voting Members, taken with or without a meeting, shall constitute the act of the ACC. If any Owner objects to an action taken by the ACC, such Owner may petition the Board to review the action taken. The Board may, but is not obligated to, grant such petition and review the ACC action in question. If the Board reviews an ACC action, the Board's decision shall constitute the act of the ACC with respect to such action for all purposes of this Declaration. If the ACC fails to respond to a request for approval of plans and specifications within thirty days after receipt of all required information, the ACC shall be deemed to have approved such plans and specifications.

(e) *Approval not waiver.* The ACC's approval or consent to any plans or specifications for any work done or proposed or in connection with any other matter requiring ACC approval or consent shall not waive any right to withhold approval or consent as to any other plans, specifications or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

(f) *Administrative matters; certificate of compliance.* The ACC may inspect work in progress to ensure compliance with approved plans and specifications. The ACC may require a reasonable submission fee for each set of plans and specifications submitted for its review. Upon completion of any Improvement approved by the ACC and upon written request by the Owner of the Lot, the ACC shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the plans and specifications on file with the ACC pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved plans and specifications. The Certificate shall not be construed to certify the acceptability, sufficiency, or approval by the ACC of the actual construction of the Improvements or the workmanship or materials thereof. The Certificate in no way warrants, except as set forth above, the sufficiency, acceptability, or approval by the ACC of the construction, workmanship, materials, or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the Lot.

4.7 SECURITY. THE DECLARANT AND THE ASSOCIATION ARE NOT PROVIDING, AND HAVE NO DUTY TO PROVIDE, ANY SECURITY DEVICE, MECHANISM OR PATROL FOR THE BENEFIT OF PERSONS IN BRODIE SPRINGS. Neither Declarant nor the Association promises, warrants, or guarantees the safety or security of Owners, Occupants, guests, or any other Persons or any person or real property against the criminal actions of others. No security system, patrol, access gates, or electronic security device can provide protection against crime at every location at every moment of the day or night. Each Owner and other Person in Brodie Springs is responsible for protecting himself or herself and maintaining insurance to protect his or her belongings. Owners and Occupants should contact an insurance agent to arrange appropriate fire and theft insurance on their property. All security systems are subject to mechanical malfunction, tampering, human error or personnel absenteeism, and can be defeated or avoided. Therefore, persons in Brodie Springs should make no assumptions regarding security, should not rely on any security systems and should always protect themselves and their property as if no security systems exist. The best safety measures are precautions that can be performed as a matter of common sense and habit. Owners and Occupants should promptly report to the Association in writing any Common Area Facilities that they believe are unsafe or in need of repair or improvement. If Declarant or the Association ever maintains any security system, device or service, Declarant and the Association reserve the right to reduce, modify or eliminate such security system, security devices, or services (other than what is statutorily required) at any time; and such action shall not be a breach of any obligation or warranty on the part of Declarant or the Association. "Neighborhood Crime Watch" signs approved by the Board do not imply safety or security.

## ARTICLE V. ASSESSMENTS

5.1 IN GENERAL. Common and Special Assessments established pursuant to this Declaration shall be levied on a uniform basis against each Lot within the Property (except that the costs of the maintenance described in Section 2.7(b)(8) shall be levied only against the Lots described in said Section 2.7(b)(8)), whether or not improved; provided, however, that no Assessments shall be levied against Lots owned by Declarant. At such time as Declarant determines, regular Assessments shall be levied hereunder against all Lots within the Property as of the date of such levy. Where the obligation to pay an Assessment first arises after the first day of a year or other period for which the

Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date. Each unpaid Assessment, together with interest, late fees and costs of collection, shall be the personal obligation of the Owner of the Lot against which the Assessment fell due, and shall be secured by a vendor's lien against each such Lot and all Improvements thereon. No Owner may exempt himself from liability for such Assessments. The Association may enforce payment of Assessments in accordance with the provisions of this Article.

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

5.3 REGULAR ASSESSMENTS. Promptly after the completion of the sale by Declarant of the first Lot, and thereafter before the beginning of each calendar year, the Board shall estimate the Common Expenses to be incurred during the applicable year, shall make reasonable provision for contingencies and appropriate replacement reserves, and shall subtract any expected income and any surplus from the prior year's fund. The Board shall levy Common Assessments sufficient to pay the estimated net Common Expenses, and the level of Common Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Common Assessment, the Association may at any time and from time to time levy further Common Assessments in the same manner as aforesaid. All Common Assessments shall be due and payable to the Association in such manner as the Board may designate in its sole discretion.

5.4 SPECIAL ASSESSMENTS. In addition to the Common Assessments, the Board may levy special Assessments whenever the Board deems special Assessments necessary to enable the Board to perform the functions of the Association under the Restrictions. The amount of any special Assessments shall be in the Board's reasonable discretion.

5.5 COMPLIANCE ASSESSMENTS. The Board may levy a Compliance Assessment against the Owner or any Lot as reimbursement for costs (including attorney's fees) incurred by the Association or the ACC in order to place such Lot in compliance with the Restrictions, as further authorized and provided in Section 3.6.

5.6 NO EXEMPTION. No Owner may exempt himself from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Lot.

5.7 ASSESSMENT LIEN AND FORECLOSURE. All sums due and owing by an Owner to the Association but unpaid when due, together with interest, late fees and the cost of collection, including attorneys' fees as herein provided, shall be secured by the lien created by this Declaration (the "Assessment Lien"), which will be a continuing lien and charge on the Lot assessed (including any rent and insurance proceeds relating to such Lot), and which shall bind such Lot, rent and proceeds, in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The Assessment Lien shall be superior to all liens and charges against the Lot, except for tax liens and liens held by First Mortgagees, which shall be superior to the Assessment Lien. The Association may, but is not required to, subordinate an Assessment Lien to any other lien. Any such subordination must be authorized by the Board and signed by an officer of the Association. To evidence an Assessment Lien, the Association shall prepare a Notice of Lien stating the amount of the unpaid debt, the Owner(s) of the Lot covered by the lien and a description of such Lot. Such notice shall be signed by an officer of the Association and shall be recorded in the office of the County Clerk of Travis County, Texas. The Assessment Lien shall attach with the priority above set forth from the date that the payment secured becomes delinquent.

Each Owner, by accepting a deed to his Lot, recognizes the Assessment Lien as existing prior to his ownership of his Lot and hereby grants the Board the right and power to bring all actions against such Owner or Owners personally to collect unpaid Assessments and other sums due hereunder as a debt, and to enforce the Assessment Lien by all methods available for the enforcement of liens, both judicially and by non-judicial foreclosure pursuant to Texas Property Code § 51.002 (as same may be amended or revised from time to time hereafter). By acceptance of the deed to his Lot, each Owner expressly conveys to the President of the Association (from time to time serving) as trustee (and to any substitute or successor trustee as hereinafter provided for), that Owner's Lot and all rights appurtenant thereto, in trust, for the purpose of securing such Owner's payment of Assessments and other sums due hereunder from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the

Association and filed in the Office of the County Clerk of Travis County, Texas. If the Board elects a non-judicial foreclosure of the Assessment Lien because of nonpayment of sums secured by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this lien and to sell such Lot, and all rights appurtenant thereto, in accordance with the provisions of Texas Property Code § 51.002 (as same may be amended or revised from time to time hereafter), and to make due conveyance to the purchaser(s), with special warranty of title to such purchaser(s) binding upon the Owner(s) of such Lot and his heirs, executors, administrators and successors. Service of notices required by the Texas Property Code shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner(s) at the most recent address as shown by the records of the Association, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred.

At any foreclosure, judicial or non-judicial, the Association may bid up to the amount of the sum secured by the Assessment Lien, together with costs and attorneys' fees, and may apply as a cash credit against its bid all sums due to the Association secured by the Assessment Lien foreclosed. From and after any such foreclosure, the Occupants shall pay a reasonable rent for the use of such Lot, such occupancy shall constitute a tenancy-at-will, and the purchaser at such foreclosure may have a receiver appointed to collect such rent, and may sue to recover possession of such Lot by forcible detainer without further notice.

5.8 STATEMENT OF ASSESSMENTS. Upon payment to the Association of a reasonable fee calculated to reimburse the Association for the cost of providing same, and upon the written request of any Owner, First Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth: (1) the unpaid Assessments and other sums due, if any, with respect to the subject Lot; (2) the amount of the current regular Assessment; and (3) other information required by statute in a resale certificate, which statement shall be conclusive upon the Association in favor of the addressee of such statement.

#### ARTICLE VI. PROTECTION OF MORTGAGEES

6.1 MORTGAGE PRIORITIES. Any Owner shall have the right from time to time to encumber his Lot by deed of trust, mortgage or other security instrument.

6.2 NOTICE TO ASSOCIATION. A First Mortgagee may notify the Association that it holds a first lien deed of trust or mortgage on a Lot. The Board shall maintain such information in its records.

6.3 NOTICE OF DEFAULT. If a First Mortgagee notifies the Association of its name and address and the Lot against which it has a first lien, upon receipt of a written request for information from that First Mortgagee, the Association shall advise the First Mortgagee of any default under the Restrictions by the Owner of such Lot that then exists and has not been cured after at least 30 days notice from the Association.

6.4 MORTGAGEE REQUESTS. A First Mortgagee request for notice will be answered only when request is made, with answers that reflect the then-existing status quo according to Association records. The Association shall have no duty to update requests, but shall endeavor to respond in a timely manner to a request with information reflecting the then-existing status quo according to Association records.

6.5 RIGHT OF PAYMENT. Any holder of a lien encumbering a Lot may pay any unpaid sums due with respect to such Lot, and upon such payment, such holder shall have a lien on such Lot for the amount paid that has the same priority as the holder's original lien.

#### ARTICLE VII. MISCELLANEOUS PROVISIONS

7.1 AMENDMENTS. During the Control Period, except as provided below, this Declaration may be amended only by the entities comprising Declarant, acting jointly, but no amendment shall be effective until an instrument reflecting the amendment, executed and acknowledged by Declarant, has been recorded in the Travis County Official Records. After the Control Period, this Declaration may be amended by recording in the Travis County Official Records an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled

to cast at least 67% of the number of votes of the Members. In addition to the above, the Board may amend this Declaration (a) at any time in order to correct typographical errors, or (b) after the Control Period in order to comply with financing eligibility requirements of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, Federal Housing Administration, or comparable federal or state agencies, in each instance by recording in the Travis County Official Public Records an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been unanimously approved by the Board. No amendment to this Declaration may reduce the obligations of the Association, Owners or Declarant under the Water Quality Covenant, Environmental Management Plan or Pest Management Plan without the written approval of the City.

7.2 TERM. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run with the land until terminated by the vote of Owners entitled to cast at least 67% of the number of votes of the held by the Members. Any termination shall be evidenced by a written instrument executed and acknowledged by the President and Secretary of the Association, stating the termination and certifying that termination was approved by the required percentage of the Owners.

7.3 EXEMPTION OF DECLARANT; ASSIGNMENT OF DECLARANT RIGHTS. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the ACC, except that this provision shall not excuse Declarant from compliance with the Environmental Management Plan. 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 alter drainage patterns and facilities, to construct any and all other types of Improvements (including sales and leasing offices and similar facilities), and to post signs incidental to construction, sales, and leasing anywhere within the Property. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person and may permit the participation, in whole or in part, by any other Person in any of its privileges, exemptions, rights, and duties hereunder. Any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder. Any such assignment by Declarant shall be effective only when an instrument executed and acknowledged by Declarant evidencing such assignment is recorded in the Official Records of Travis County, Texas. If either entity comprising Declarant ceases to own any portion of the Property and does not assign the rights of Declarant as provided above, the other entity comprising Declarant shall become and be the sole Declarant hereunder.

7.4 NONLIABILITY OF ACC AND BOARD MEMBERS. Neither the ACC, nor any member or agent 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 ACC's or the Board's respective duties under this Declaration, including without limitation the obstruction of views from Lots by any Improvements, approval or disapproval of plans and specifications, or construction of any Improvement within the Property, unless due to the willful misconduct, gross negligence or bad faith of the ACC or its member or the Board or its member as the case may be.

7.5 NOTICES. All notices, demands or other notices intended to be served upon an Owner may be sent by: (1) first-class or certified mail, postage prepaid; or (2) by personal delivery, and shall be addressed to such Owner at the address shown on the Association's records and to any other address actually known by the secretary of the Association. All notices, demands or other notices to the Board or the Association shall be sent by certified mail, postage prepaid, or by personal delivery, to the management company for the Association, until such address is changed by a notice duly recorded in the Travis County Official Public Records. Notice to or from one of multiple Owners or Occupants of a Lot shall be deemed as notice to or from all Owners or Occupants of such Lot.

7.6 NO WARRANTY OF ENFORCEABILITY. While Declarant has no reason to believe that any of the covenants, terms and provisions of the Restrictions are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. *Any Owner acquiring a Lot in reliance on one or more of such covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to indemnify, and hold Declarant harmless therefrom.*

7.7 INVALIDATION OF PARTS. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstances is invalidated or declared unenforceable, such invalidity shall not affect the validity of enforceability of the remainder of this Declaration and the application of any provisions, paragraph, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

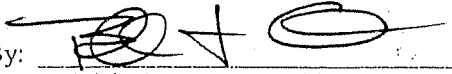
7.8 INTERPRETATION. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration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

7.9 CONFLICT WITH BYLAWS. If any provision of this Declaration conflicts with any provision of the Bylaws, the provisions of this Declaration shall prevail.

IN WITNESS WHEREOF, this Declaration has been executed as of the 17 day of July, 2006.

BJM BRODIE SPRINGS, LTD., a Texas limited partnership

By: BJM Brodie Springs GP, Inc., a Texas corporation, General Partner

By:   
Blake J. Magee, President

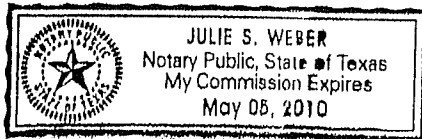
SQUIRREL HOLLOW, LTD., a Texas limited partnership

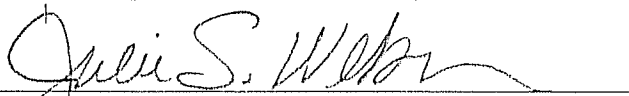
By: BJM Brodie Springs GP, Inc., a Texas corporation, General Partner

By:   
Blake J. Magee, President

STATE OF TEXAS  
COUNTY OF TRAVIS

This instrument was acknowledged before me on July 17<sup>th</sup>, 2006 by Blake J. Magee, President of BJM Brodie Springs GP, Inc., a Texas corporation, General Partner of BJM BRODIE SPRINGS, LTD., and SQUIRREL HOLLOW, LTD., each a Texas limited partnership, on behalf of said corporation and limited partnerships.



  
Notary Public for the State of Texas

After recording, please return to:

Ann Vanderburg  
Hurst, Savage & Vanderburg, LLP  
814 W. Tenth Street  
Austin, Texas 78701

LEGAL DESCRIPTION OF THE PROPERTY

All of Brodie Springs II Subdivision, Phase One and in Brodie Springs II Subdivision, Phase Two, according to the Plats thereof located in Document Nos. 200400181 and 200400182, respectively, Plat Records of Travis County, Texas.

(The Property is a total resubdivision of what formerly was Brodie Springs Subdivision, Sections 1, 2, and 3, according to the Plats thereof recorded in Volume 95, Page 33, Volume 95, Page 36, and Volume 95, Page 39, Plat Records of Travis County, Texas.)



PLATS OF THE PROPERTY

Reduced copies of the Plats are attached hereto as Exhibits B-1 and B-2.

1





2-00400181

# BRODIE SPRINGS II, PHASE ONE

STATE OF TEXAS,  
COUNTY OF TRAVIS:

I, JOHN PERDUE, CLERK OF TRAVIS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT, BEING A SUBDIVISION OF LAND IN TRAVIS COUNTY, TEXAS, WAS FILED FOR RECORD BY OFFICE OF TRAVIS COUNTY, TEXAS, ON THIS 13th DAY OF AUGUST, 2006, AT 10:52 A.M., AND IS RECORDED ON PAGE 25 OF BOOK 2006-0181, AS SHOWN BY THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. THE FOREGOING INSTRUMENT HAS BEEN FILED FOR RECORD IN TRAVIS COUNTY, TEXAS, IN ACCORDANCE WITH THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. THE FOREGOING INSTRUMENT IS CLASSIFIED AS A SUBDIVISION OF LAND IN TRAVIS COUNTY, TEXAS, AND IS SUBJECT TO THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. THE FOREGOING INSTRUMENT IS CLASSIFIED AS A SUBDIVISION OF LAND IN TRAVIS COUNTY, TEXAS, AND IS SUBJECT TO THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. THE FOREGOING INSTRUMENT IS CLASSIFIED AS A SUBDIVISION OF LAND IN TRAVIS COUNTY, TEXAS, AND IS SUBJECT TO THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

BRODIE SPRINGS II, PHASE ONE

AND DO HEREBY CERTIFY TO THE PUBLIC THE USE OF ALL STREETS AND ALLEYS AS SHOWN HEREON, SUBJECT TO ANY EXISTING LAWS OR REGULATIONS HERETOFORE ENACTED AND NOT REPEALED.

WITNESSES MY HAND, ON THE DATE WRITTEN HEREON BELOW

*John Perdue*  
JOHN PERDUE  
CLERK OF TRAVIS COUNTY, TEXAS

STATE OF TEXAS,  
COUNTY OF TRAVIS:

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JOHN PERDUE  
CLERK OF TRAVIS COUNTY, TEXAS

23. COMMON AREAS WILL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION, INCLUDING THE STORM WATER AND WATER QUALITY SYSTEMS, BUT TO THE RESTRICTIVE COVENANT FILED IN DOCUMENT NO. 2006-0181, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS.

| LOT | FTC   | LOT | FTC   |
|-----|-------|-----|-------|
| 1   | 724.6 | 8   | 724.6 |
| 2   | 724.6 | 9   | 724.6 |
| 3   | 724.6 | 10  | 724.6 |
| 4   | 724.6 | 11  | 724.6 |
| 5   | 724.6 | 12  | 724.6 |
| 6   | 724.6 | 13  | 724.6 |
| 7   | 724.6 | 14  | 724.6 |
| 8   | 724.6 | 15  | 724.6 |
| 9   | 724.6 | 16  | 724.6 |
| 10  | 724.6 | 17  | 724.6 |
| 11  | 724.6 | 18  | 724.6 |
| 12  | 724.6 | 19  | 724.6 |
| 13  | 724.6 | 20  | 724.6 |
| 14  | 724.6 | 21  | 724.6 |
| 15  | 724.6 | 22  | 724.6 |
| 16  | 724.6 | 23  | 724.6 |
| 17  | 724.6 | 24  | 724.6 |
| 18  | 724.6 | 25  | 724.6 |
| 19  | 724.6 | 26  | 724.6 |
| 20  | 724.6 | 27  | 724.6 |
| 21  | 724.6 | 28  | 724.6 |
| 22  | 724.6 | 29  | 724.6 |
| 23  | 724.6 | 30  | 724.6 |
| 24  | 724.6 | 31  | 724.6 |
| 25  | 724.6 | 32  | 724.6 |
| 26  | 724.6 | 33  | 724.6 |
| 27  | 724.6 | 34  | 724.6 |
| 28  | 724.6 | 35  | 724.6 |
| 29  | 724.6 | 36  | 724.6 |
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| 93  | 724.6 | 100 | 724.6 |

27. THE UTIL. FACILITY FOR THIS SUBDIVISION WILL BE LOCATED ON LOT 3, BLOCK F.

28. EVERY HOME OWNER WILL BE PROVIDED A COPY OF THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE SUBDIVISION, WHICH INCLUDES AN INTEGRATED PEST MANAGEMENT PLAN (IPMP), AND AN ENVIRONMENTAL MANAGEMENT PLAN (EMP). THE DE. DESCRIBES THE USE AND MAINTENANCE OF THE HOME OWNERS AND THEIR ASSOCIATION, A LIST OF THESE MATERIALS ARE ON FILE WITH THE CITY OF AUSTIN, FILE # 2006-0181.1A, AND DEVELOPMENT REVIEW DEPARTMENT IN AUSTIN, TEXAS.

29. THE AVERAGE IMPROVED COVER USED TO CALCULATE IMPROVEMENT VALUE IS 40%.

30. LOTS 1 AND 2, BLOCK 77, SHALL BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION.

31. CIRCULARS AND ASSOCIATION LAWS ARE REQUIRED TO BE CONSTRUCTED BY THE HOME OWNERS ASSOCIATION AFTER THE QUALITY ASSURANCE PROGRAM IS COMPLETED AND CONCRETE CURBS ARE IN PLACE. FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL BE CAUSE FOR THE CITY OF AUSTIN TO TAKE ENFORCEMENT ACTION AGAINST THE HOMEOWNERS ASSOCIATION.

32. THIS SUBDIVISION IS LOCATED WITHIN THE BOUNDARIES OF THE SPONGE WATER RECHARGE ZONE.

33. SURFACE DRAINAGE FROM WATERWAYS AND IMPROVEMENTS SHALL BE ALLOWED TO SEEP INTO BRODIE SPRINGS II, PHASE TWO UNTIL SUCH TIME BRODIE SPRINGS II, PHASE TWO IS CONSTRUCTED.

34. THE SURFACE DRAINAGE FROM ANTWERP PARK AND ANTWERP ROAD SHALL BE INCORPORATED INTO THE STORM WATER SYSTEM FOR BRODIE SPRINGS II, PHASE TWO.

35. THE IMPROVED/WATER QUALITY AREA FOR THE WATER QUALITY FOOD BRODIE SPRINGS II, PHASE ONE SHALL BE CONSTRUCTED ON BRODIE SPRINGS II, PHASE ONE. THE IMPROVED/WATER QUALITY AREA SHALL BE ELIMINATED WHEN BRODIE SPRINGS II, PHASE TWO WATER QUALITY FACILITIES ARE CONSTRUCTED.

53 SINGLE FAMILY LOTS 20,990 ACRES  
2 LANDSCAPE LOTS (1-F & 2-F) 0.131 ACRES  
R.O.W. DEDICATION 6,288 ACRES  
GREENBELT & AMENITIES AREA 7,998 ACRES  
TOTAL AC. 35,397 ACRES

**CUNNINGHAM-ALLEN, INC.**  
3105 OPE DAKE ROAD, SUITE 302, AUSTIN, TEXAS 78716  
TELEPHONE: (512) 297-2264 FAX: (512) 297-2922  
DATE AUGUST, 2006 PROJECT #CJ-30-001  
DRAWN BY: N.A. SHEET 3 OF 4

C8-03-0119.1A



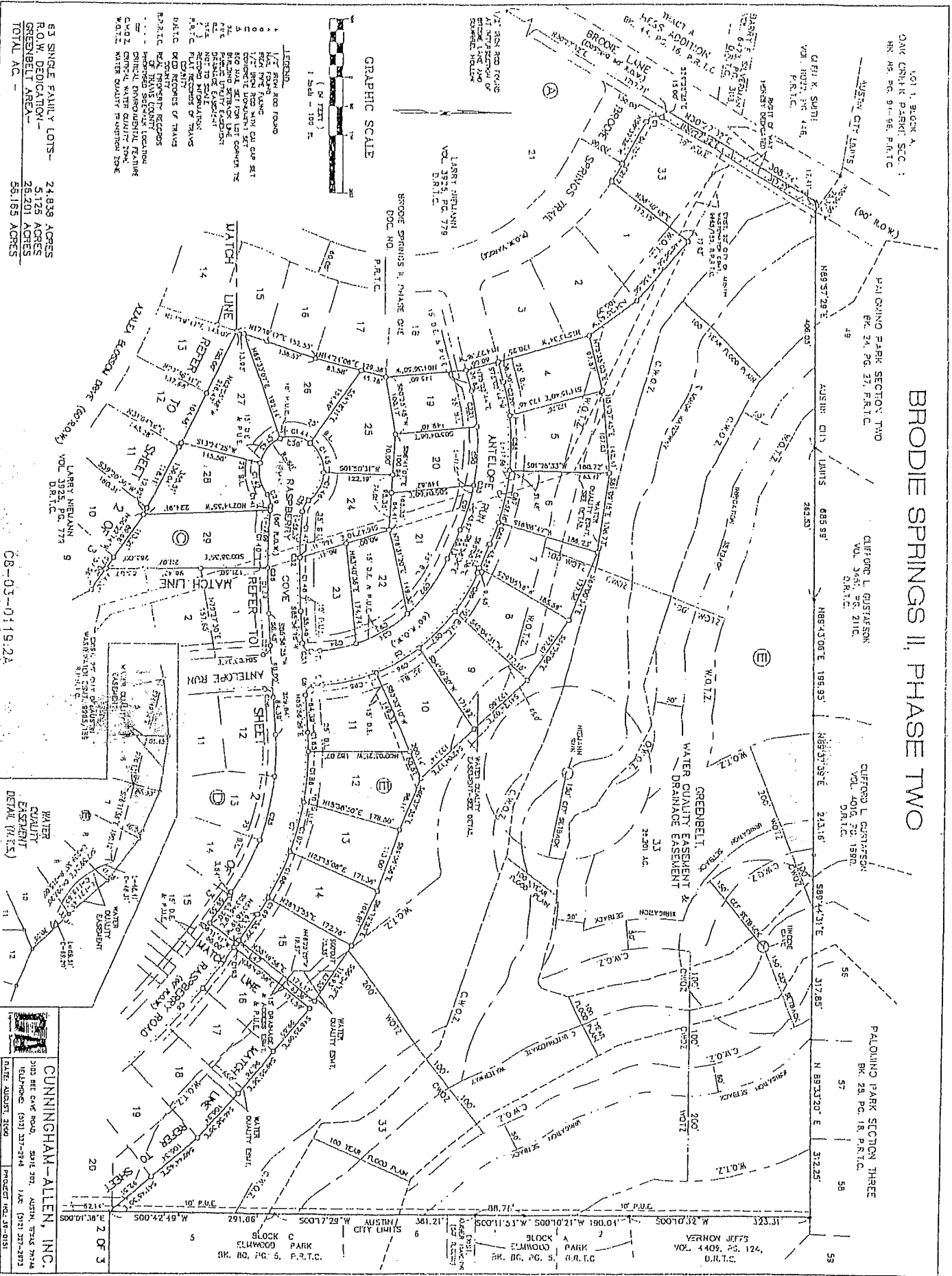




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# BRODIE SPRINGS II, PHASE TWO



63 SINGLE FAMILY LOTS - 24,839 ACRES  
 ROW DEDICATION - 5,125 ACRES  
 GREENBELT AREA - 26,201 ACRES  
 TOTAL AC - 53,185 ACRES

CB-03-0119-24

**CUNNINGHAM-ALLEN, INC.**  
 3100 BEE CREEK ROAD, SUITE 200, AUSTIN, TEXAS 78746  
 TELEPHONE (512) 377-2344 FAX (512) 377-2344

DATE AUGUST 21, 2006 PROJECT NO. CA-03-0119-24 SHEET 1 OF 3



RESTRICTIVE COVENANTS, EASEMENTS, AND ENCUMBRANCES  
EXISTING PRIOR TO DEVELOPMENT OF THE PROPERTY  
AND STILL APPLICABLE TO THE PROPERTY

The Property is subject to several additional recorded documents that predate the recording of this Declaration. Those documents are described below:

1. All easements shown on the Plats of Brodie Springs II Subdivision, Phases One and Two, Document Nos. 200400181 and 200400182, respectively, in the Plat Records of Travis County, Texas.
2. Grant of Access and Restrictive Covenants regarding Maintenance and Monitoring for Critical Environmental Features, Water Quality Facilities, and Related Facilities in the Brodie Springs II Subdivision, Phases One and Two, in Austin, Texas, recorded as Document No. 2004114140, Official Public Records of Travis County, Texas.
3. Wastewater easement to the City of Austin and Circle C M.U.D., as recorded in Volume 9965, Page 159, Real Property Record of Travis County, Texas, as shown on the above plat.
4. Temporary Drainage and Water Quality Easement to the City of Austin, as recorded in Document No. 2004137544, Official Public Records of Travis County, Texas (for temporary use pending construction of the permanent detention and water quality pond that serves both Phase One and Phase Two.)
5. Terms and Conditions of the Subdivision Construction Agreements, recorded in Document Nos. 2004114139 and 2004114156, respectively, Official Public Records of Travis County, Texas.
6. License Agreement dated July 25, 2005, between the City of Austin and Larry Niemann, recorded under Document No. 2005134170, Official Public Records of Travis County, Texas, and Affidavit Declaring License Agreement, recorded under Document No. 2005134171, Official Public Records of Travis County, Texas.
7. Edwards Aquifer Protection Plan recorded under Document No. 2005170132, Official Public Records of Travis County, Texas.

EXHIBIT D  
(see Section 1.1 of Declaration)

ARTICLES OF INCORPORATION OF  
BRODIE SPRINGS HOMEOWNERS ASSOCIATION, INC.

See Exhibit D-1 attached

EXHIBIT D-1

(see Section 4.3 of Declaration)

ARTICLES OF INCORPORATION OF  
BRODIE SPRINGS HOMEOWNERS ASSOCIATION, INC.

FILED  
In the Office of the  
Secretary of State of Texas

ARTICLE ONE: NAME

OCT 14 2003

The name of the corporation is "Brodie Springs Homeowners Association, Inc."

Corporations Section

ARTICLE TWO: NON-PROFIT

The corporation is a non-profit corporation.

ARTICLE THREE: DURATION

The period of its duration is perpetual.

ARTICLE FOUR: PURPOSES

The purposes for which the association is organized are to represent the interests of members of the Brodie Springs Homeowners Association, Inc., each of whom own or will own a Lot in the Brodie Springs II Subdivision in Austin, Travis County, Texas.

ARTICLE FIVE: MEMBERSHIP

The corporation shall be a membership corporation. The qualifications for membership and rights, duties and obligations of members shall be contained in the Bylaws of the corporation.

ARTICLE SIX: REGISTERED AGENT AND OFFICE

The name of its initial registered agent is Larry Niemann, and the street address of the initial registered office of the corporation is 1122 Colorado Street, Suite 313, Austin, Texas 78701.

ARTICLE SEVEN: BOARD OF DIRECTORS

The business and affairs of the corporation shall be managed by a Board of Directors in which shall reside all rights, powers, authority and responsibility with respect to the management and affairs of the corporation. The initial Board shall consist of five persons. The Board of Directors of the corporation shall, after the corporate charter has been issued, be elected pursuant to the Bylaws of the corporation at the first meeting of the general membership.

The initial Board of Directors are as follows:

President: Larry Niemann, 1122 Colorado Street, Suite 313, Austin, Texas 78701  
Vice President: Carol Niemann, 1122 Colorado Street, Suite 313, Austin, Texas 78701  
Secretary/Treasurer: Connie Heyer, 1122 Colorado Street, Suite 313, Austin, Texas 78701

ARTICLE EIGHT: INDEMNIFICATION

The corporation shall indemnify any director or officer or former director or officer of the corporation for expenses and cost (including attorneys fees) actually and necessarily incurred by him in connection with any claim asserted against the director or officer, by action in court or otherwise, by reason of being or having been the director

or officer, except in relation to matters as to which the officer or director is guilty of gross negligence or willful misconduct with respect to the matter in which indemnity is sought.

ARTICLE NINE: LIMITED LIABILITY

The members of the Board of Directors, the officers of the corporation, and committee members of the Association shall not be liable to any member or any person claiming by or through any member for any act or omission of the director or officer in the performance of his duties unless the director's or officer's act or omission is: (1) a breach of a duty of loyalty to the corporation or its members; (2) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law; (3) a transaction from which a director or officer receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the person's office; or (4) an act or omission for which the liability of the director is expressly provided for by statute. The corporation shall indemnify all such directors and officers from all claims, demands, actions and proceedings and any expenses in connection therewith except if the director or officer has acted in violation of the foregoing. The Board of Directors may purchase (but is not required to purchase) directors and officers liability insurance.


ARTICLE TEN: IRS EXEMPTION

The business and affairs of this corporation shall always be conducted so that the corporation does not exercise any power or engage directly or indirectly in any activity that would invalidate its status as a corporation which is exempt from federal income taxation under §501 (c) (4) of the Internal Revenue Code of 1986, as amended.

ARTICLE ELEVEN: INCORPORATOR

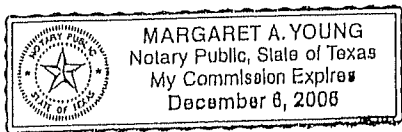
The Incorporator for the corporation is Larry Niemann, whose address is 1122 Colorado, Suite 3-13, Austin, Texas 78701.

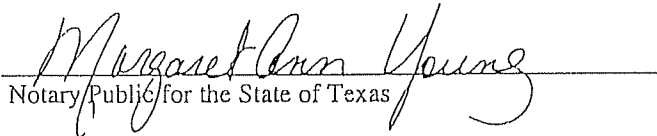
Dated October 9, 2003.

  
Larry Niemann

STATE OF TEXAS  
COUNTY OF TRAVIS

On this the 9th day of October, 2003, before me the undersigned authority appeared Larry Niemann who after being duly sworn, states that the foregoing information is true and correct.



  
Notary Public for the State of Texas

BYLAWS OF  
BRODIE SPRINGS HOMEOWNERS ASSOCIATION, INC.

Article I: NAME AND LOCATION

1.01. *Name.* The name of the Association is "Brodie Springs Homeowners Association, Inc." (the "Association").

Article II: DEFINITIONS; PURPOSES

2.01. *Definitions.* All capitalized terms contained herein that are not otherwise defined shall have the same meanings as set forth in the Declaration of Covenants, Conditions and Restrictions for Brodie Springs (the "Declaration").

2.02. *Purposes.* Subject to the provisions of Article 1396-2.01 of the Texas Non-Profit Corporation Act (the "Act"), the Association is organized exclusively to act as an agent for each and every Member in exercising all of the powers and privileges, and performing all of the duties and obligations, of the Association under the Declaration, as set forth in the Declaration and the Articles. No part of its activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and the Association shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office. The Association shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501 of the Internal Revenue Code of 1986 (as amended from time to time, the "Code") or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

Article III: MEETING OF MEMBERS

3.01. *In general.* The Association shall have Members. Each and every Owner of a Lot automatically and concurrently with acquiring the Lot, shall become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such Lot.

2.02. *Annual meetings.* The annual meeting of the Members shall be held each year on a date and at a place designated by the Board. At each annual meeting, the Members shall elect a Board and transact such other business as may be properly brought before the meeting.

3.02. *Special meetings.* Special meetings of the Members may be called at any time by the president, upon the written request of at least 2 members of the Board, or upon written request of 10 or more Members. The place of the meeting shall be as stated in the notice.

3.03. *Notice of meetings.* Written notice of each meeting of the Members shall be given by mailing a notice of the meeting, postage prepaid, at least 14 days before such meeting to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the address described above. Notice of a meeting shall be mailed to a First Mortgagee who requests such notice in writing and provides the address for notice.

3.04. *Quorum.* The presence at any meeting of Members entitled to cast, or of proxies entitled to be cast, one-fourth of the Members' votes shall constitute a quorum for any action except as otherwise provided by the Articles, Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members present shall have power to recess the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented.

3.05. *Proxies.* At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months. After the Control Period, all proxies shall be revocable. All proxies, even those stated to be irrevocable, will be revoked automatically and concurrently with a Member's conveyance of the Lot to which membership is appurtenant.

3.06. *Voting.* The vote of the majority of the votes entitled to be cast by the Members present, or represented by proxy, at a meeting at which a quorum is present, shall be the act of the Member, unless the vote of a greater number is required by law, these Bylaws, the Articles or the Declaration. Secret ballots shall be used upon the request of any Member. Where Directors or officers are to be elected by Members, such elections may be conducted in person, by mail, by facsimile transmission, or any combination of the above. If any Lot is owned jointly or in common by more than one Owner, and if there is dispute over who may vote on behalf of that Lot, the Owners of that Lot must designate, in writing, a single Owner who shall be entitled to cast such vote and no other person shall be authorized to vote in behalf of such Lot. A copy of such written designation shall be filed with the Board before any such vote may be cast, and, upon the failure of the Owners thereof to file such designation, such vote shall neither be cast nor counted for any purpose whatsoever.

3.07. *Informal action of members.* Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by a sufficient number of Members as would be necessary to take that action at a meeting at which all of the Members were present and voted. Any such written consent shall be executed, dated, and filed with the Association in the manner required by Article 1396-9.10 of the Act.

3.08. *Attendance by telephone or other remote communications technology.* Subject to the provisions of the Act and these Bylaws concerning notice of meetings and unless otherwise restricted by the Articles or these Bylaws, Members may participate in and hold a meeting of such Members by means of either (a) conference or speaker telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, or (b) another suitable electronic communications system, including video-conferencing technology or the Internet, but only if (i) each Member entitled to participate in the meeting consents to the meeting being held by means of that system, and (ii) the system provides access to the meeting in a manner or using a method by which each Member participating in the meeting can communicate concurrently with each other participant. Participation in a meeting pursuant to this Paragraph 3.08 shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

#### Article IV: BOARD OF DIRECTORS

4.01. *Number.* The affairs of the Association shall be managed by a Board of 3 directors; provided, however, that at the first annual meeting following expiration of the Control Period, the Board shall be expanded to 5 directors. Directors need not be Members or residents of the State of Texas.

4.02. *Term of office.* At the first annual meeting of the Members, the Members shall elect one director for a term of 3 years, one director for a term of 2 years and one director for a term of 1 year. When the Board expands to 5 directors, the 4<sup>th</sup> director shall be elected for an initial term of 2 years and the 5<sup>th</sup> director shall be elected for an initial term of 3 years. At each annual meeting of the Members after the initial election of a director, upon the expiration of the initial term of office of each respective member of the Board, the Members shall elect a successor Director for a term of 3 years. Unless removed in accordance with the provisions of Paragraph 4.03 below, each director shall hold office for the term for which they are elected, and until his or her successor shall have been elected, approved, or designated and qualified. Notwithstanding the foregoing, (i) any vacancy occurring in the Board shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, and any director thus elected shall be elected for the unexpired term of his or her predecessor in office, and (ii) any directorship to be filled by reason of an increase in the number of directors or a removal of a director in accordance with Paragraph 4.03 shall be filled by election at an annual meeting or at a special meeting of Members called for that purpose.

4.03. *Removal; resignation.* Subject to Article 1396-2.15D of the Act, at any meeting of the Members called expressly for that purpose at which a quorum is present, any Director or the entire Board may be removed either for or without cause. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining directors and shall serve for the unexpired term of his predecessor.

4.04. *Compensation.* No director shall receive compensation for any service he may render to the Association in his capacity as a director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

4.05. *Action taken without a meeting.* Any action required to be taken at a meeting of directors, or any action which may be taken at a meeting of the directors, may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall have been signed by a sufficient number of directors as would be necessary to take that action at a meeting at which all of the directors were present and voted. Any such written consent shall be executed, dated, and filed with the Association in the manner required by Article 1396-9.10 of the Act. After the Control Period, notice of the proposed action shall be delivered to the directors at least 48 hours in advance of the date the consent is executed.

4.06. *Voting.* Secret ballots shall be utilized upon request of any director. A director may vote in person or by proxy executed in writing by the director. No proxy shall be valid after 3 months after the date of its execution. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law. After the Control Period expires, each proxy shall be revocable.

4.07. *Power to indemnify and to purchase indemnity insurance.* To the maximum extent permitted by Article 1396-2.22A of the Act (without regard, however, to Section Q of such Article), the Association shall indemnify any person who is or was a director or officer of the Association against any and all judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses actually incurred by such person in connection with a proceeding (as defined in Article 1396-2.22A) because of that person's service or status as a director or officer. Further, the Association shall pay or reimburse reasonable expenses incurred by a director or officer who was, is or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding, to the maximum extent permitted by Article 1396-2.22A; provided, however, that payment or reimbursement of expenses pursuant to the procedures set out in Section K of Article 1396-2.22A may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the officer or director in question to make the repayment referred to in such Section. Further, the Association may indemnify, and may reimburse or advance expenses to or purchase and maintain insurance or any other arrangement on behalf of, any person who is or was a director, officer, employee or agent of the Association, or who is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, director, employee, agent or similar functionary of another Association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, in connection with any liability asserted against such person because of such service or status, to such further extent, consistent with Article 1396-2.22A and other applicable law, as the Board may from time to time determine. The provisions of this Paragraph shall not be deemed exclusive of any other rights to which any such person may be entitled. No amendment, modification or repeal of this Paragraph shall in any manner terminate, reduce or impair the right of any person to be indemnified by the Association in accordance with this Paragraph as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

#### Article V: ELECTION OF DIRECTORS

5.01. *Nomination.* Nominations may be made from the floor at an annual or special meeting of the Association.

5.02. *Election.* At each election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### Article VI: MEETINGS OF DIRECTORS

6.01. *Regular meetings.* The first meeting of each newly elected Board shall be held at such time and place as shall be fixed by the previous Board, and no notice of such meeting shall be necessary to the newly elected

director(s) in order legally to constitute the meeting, provided a quorum shall be present. If the Board fails to fix the time and place of a first meeting, it shall be held without notice immediately following the annual meeting of Members, and at the same place, unless the time or place is changed by the unanimous consent of the directors then elected and serving. Regular meetings of the Board may be held upon such notice, or without notice, and at such time and at such place as shall from time to time be determined by the Board. Any Member desiring to attend Board meetings shall contact the President (or if the Association is professionally managed at the time, the management company) who shall in return notify such Member of the time and place of the next meeting.

6.02. *Special meetings.* Special meetings of the Board shall be held when called by the president of the Association, or by any two directors, after not less than three days notice to each director.

6.03. *Quorum.* At all meetings of the Board, the presence in person (but not by proxy) of a majority of the number of directors in the manner provided by these Bylaws shall constitute a quorum for the transaction of business. The act of the majority of the directors present in person or by proxy at any meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by the Articles or these Bylaws. If a quorum is not present at any meeting of directors, the directors present in person may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

6.04. *Attendance by telephone or other remote communications technology.* Subject to the provisions of the Act and these Bylaws concerning notice of meetings and unless otherwise restricted by the Articles or these Bylaws, members of the Board, or members of any committee designated by the Board, may participate in and hold a meeting of such Board or committee by means of either (a) conference or speaker telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, or (b) another suitable electronic communications system, including video-conferencing technology or the Internet, but only if (i) each person entitled to participate in the meeting consents to the meeting being held by means of that system, and (ii) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant. Participation in a meeting pursuant to this Paragraph 6.04 shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

6.05 *Waiver of notice.* Attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Except as may be otherwise provided by law or by the Articles or by these Bylaws, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

## Article VII: POWERS AND DUTIES OF THE BOARD

7.01. *Powers.* The Board shall have power to exercise for the Association all powers, duties and authority vested in or delegated to the Association, and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration.

7.02. *Duties.* It shall be the duty of the Board:

(a) to cause to be kept a complete record of all its acts and corporate affairs and to present a report thereof to the Members at the annual meeting of the Members, or at any special meeting when such report is requested in writing by one-fourth of the Members;

(b) to supervise all officers, agents and employees of this Association, and to ensure that their duties are properly performed;

(c) to: (1) fix the amount of the Common Assessments pursuant to the Declaration; (2) notify each Owner of all Assessments; and (3) collect Assessments and enforce Assessments, all pursuant to procedures and limitations as set forth in the Declaration;

(d) to issue resale certificates, loan eligibility certificates, and verification certificates setting forth whether or not any Assessment has been paid. The Board may make a reasonable charge for the issuance of these



certificates and other written documents provided by the Association. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) to procure and maintain adequate insurance on Common Area Facilities and on property owned by the Association; cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate or necessary;

(f) to cause the Common Areas to be maintained as per the Declaration; and

(g) to carry out all other duties of the Association or Board under the Declaration.

#### Article VIII: OFFICERS AND THEIR DUTIES

8.01. *Officers.* The Officers of the Association shall be a president, a vice president, a secretary and a treasurer, all of whom shall at all times be members of the Board.

8.02. *Election.* The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

8.03. *Term.* Unless otherwise specified by the Board, the term of office for all officers shall be for one (1) year, commencing with the date of the annual Board meeting; provided that no such term of office shall exceed three (3) years and provided further that the officers shall hold office until their successors are elected or appointed and qualify, or until their death or until their resignation or removal from office.

8.04. *Special appointments.* The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.05. *Resignation and removal.* The Board may remove any officer from office with or without cause. Any officer may resign at any time giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.06. *Vacancies.* A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

8.07. *Multiple offices.* The same person may hold the offices of secretary and treasurer. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.04 of this Article.

8.08. *Duties.* The duties of the officers are as follows:

(a) *President:* The president shall preside at all meetings of the Board; shall ensure that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other legal instruments.

(b) *Vice-President:* The vice-president shall act in the place and stead of the president in the event of absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) *Secretary:* The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board. These duties, with approval of the Board, may be delegated to the Association management company.

(d) *Treasurer:* The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit or review by a third-party accountant

or bookkeeper of the Association books to be made at the completion of each fiscal year; and shall prepare an annual budget for the forthcoming year and a statement of income and expenditures for the previous year, to be presented to the membership at its regular annual meeting. The Treasurer shall also be responsible for supervising billings. These duties, with approval of the Board, may be delegated to the Association management company. All checks must be co-signed by: (1) at least two officers of the Association; or (2) one officer of the Association and an authorized representative of the Association management company.

(e) Temporary chair: In the absence of the president and vice-president, the Board members attending a Board meeting may elect, by majority vote, a temporary chair for that meeting.

#### Article IX: COMMITTEES

The Association shall appoint any committees required by the Declaration or these Bylaws. In addition, the Board may appoint other committees as deemed appropriate in carrying out the purposes of the Association.

#### Article X: BOOKS AND RECORDS

The books, records and papers of the Association shall at all times be subject to inspection by any Member during reasonable business hours. The Declaration, the Articles and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### Article XI: CORPORATE SEAL

The issuance of a corporate seal shall be unnecessary and is not required under Texas law.

#### Article XII: AMENDMENTS

During the Control Period, these Bylaws may be amended by the unanimous vote of the Board. After the Control Period, these Bylaws may be amended, at a regular or special meeting of the Members, by a vote of at least 67% of the votes that Members present in person or by proxy are entitled to cast. At least 14 days advance written notice to Members is required for amendments to the Bylaws.

#### Article XIV: MISCELLANEOUS

The fiscal year of the Association shall be the calendar year.

\_\_\_\_\_  
Date of Adoption

\_\_\_\_\_  
Secretary, Brodie Springs Homeowners Association, Inc.

RULES AND REGULATIONS  
FOR BRODIE SPRINGS  
(applicable to all Owners, Occupants, and guests)

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[Note to new Owners: The following rules are partially derived from the Declaration and partially adopted by action of the Board. Except for provisions of these rules that are derived from the Declaration, rules may be changed or added to by the Board. You must comply with all provisions of the Declaration in addition to compliance with the following rules.]

RULES AND REGULATIONS  
FOR BRODIE SPRINGS  
(applicable to all owners, occupants, and guests)

**RULES.** The Board has adopted the following rules (the "Rules") to help maximize enjoyment, maintain values, and assure the continued aesthetic beauty of Brodie Springs. The Rules apply to all Owners, Occupants and guests. Certain of the Rules set forth below restate provisions of the Declaration. Rules that restate provisions of the Declaration may not be modified by the Board and are noted below with the designation "Declaration Provision". The Rules are automatically a part of each lease of a Lot (even if not attached to the lease). Each Owner is responsible for making sure Occupants have a copy of the Rules and follow them. You are encouraged to ask your neighbors to follow the Rules.

**COMMUNICATIONS.** Please direct any repair requests, complaints, or rule violations to \_\_\_\_\_, the management company representative, at \_\_\_\_\_  
(name of management company) whose telephone number is \_\_\_\_\_ and address is \_\_\_\_\_.  
This avoids delay and telephone tag problems. You are encouraged to put your suggestions or complaints in the mail to the management company named above.

**ENFORCEMENT.** The Rules will be strictly enforced. If the Rules are violated by Occupants or guests of an Owner, that Owner will be responsible for corrective action, damages, and fines.

**RULES APPLICABLE TO ALL OWNERS, OCCUPANTS, GUESTS**

1. *Security, safety, and lighting/smoke detectors.* NEITHER DECLARANT NOR THE ASSOCIATION IS PROVIDING ANY SECURITY DEVICE, MECHANISM OR PATROL FOR THE BENEFIT OF PERSONS IN BRODIE SPRINGS. Each Owner and Occupant is responsible for the security of himself and his family and guests. The Association recommends that each Home maintain: (1) keyless deadbolts on all entry doors; (2) keyed deadbolts on all entry doors; (3) pin-locks on all sliding glass doors; and (4) door viewers [peepholes or clear glass pane(s)] on all exterior doors. Consult an attorney regarding your statutory security device obligations as a landlord if you rent your Home. The Association also recommends that each Home maintain in working condition at all times smoke detectors in each Home in accordance with city ordinances.

Owners and Occupants are requested to report lighting problems or hazardous conditions in Common Areas immediately to the Association's management company representative. The Association cannot and does not check Common Areas on a daily basis. The Association generally must rely on Owners and Occupants to notify the Association's managing agent when lighting problems or hazardous conditions exist.

2. *Exterior design criteria.* Each Owner must comply with the Exterior Design Criteria relating to construction of Improvements on his Lot.

3. *Storage of property on Lots and Common Areas.* All personal property, including without limitation, towels, bathing suits, mops, brooms, barbecue briquettes, fuel, wood, tools, carpeting, boxes, plastic bags, beverages, furniture, must be kept inside Buildings (including exterior closets or storage rooms approved by the ACC), or inside fenced yards out of view from the street. No personal property may be stored temporarily or permanently on sidewalks, streets or Common Areas. All property stored in violation of this rule may be removed and disposed without prior notice by the Board or management company.

4. *Visible items.*

(a) The Board shall control the visual attractiveness of the Property. Without limitation of the foregoing, the Board may require removal of, and/or may remove objects, that are visible from Common Areas and streets and that detract from the Property's appearance. Without limitation of the foregoing, (a) no clothes,

towels or other items may be hung outside where visible from streets or Common Areas, and (b) entry areas, walkways, steps and landings visible from streets and Common Areas shall be kept clean and neat by the Owners using them.

(b) (Declaration Provision) Use of parking space in a garage for work areas or storage (including boxes, toys, exercise equipment, furniture, or work benches) to the exclusion of one or more vehicles is strictly prohibited.

(c) (Declaration Provision) All garage doors shall remain closed at all times, save and except for the temporary opening of same in connection with the ingress and egress of vehicles and the loading or placement and unloading or removal of other items customarily kept or stored therein, when a person is in the garage or engaged in yard work, or there is another activity occurring on the Lot which is reasonably facilitated by an open garage door.

5. *Trash.* Garbage, rubbish or cuttings shall not be left or deposited, even temporarily, on any Common Areas or Lot. All refuse must be placed in a covered or enclosed receptacle and placed near the curb for pick-up not more than one day prior to a scheduled garbage or recycle pick-up day. Receptacles must be brought in from the curb area not more than one day after a scheduled garbage pick-up day.

6. *Animals.*

(a) Except for birds and fish, no more than four animals may be kept in a Home. Used cat litter must be disposed of only in trash receptacles. It may not be dumped on Lots or in Common Areas as the ammonia will kill the vegetation. Owners must keep their Homes in a sanitary condition and free from fleas, pet parasites and noxious odors. Pet feeding bowls may not be left outside because outside feeding bowls attract wild and stray animals. The Board may require permanent removal of any pet when the pet or its Owner has repeatedly violated these rules or the pet has become objectionable in the opinion of the Board.

(b) (Declaration Provision) No animal may make excessive noise (in the Board's sole judgment). Animals may not be bred for commercial purposes. Animals (except cats, fish, and birds) must be kept on a leash when outside a Home (except within a fenced yard on a Lot). Leashes may not be tied to objects and must be held by a person who can control the animal at all times. The Owner or Occupant of any Home where an animal is housed must immediately clean up after such animal if it defecates in Common Areas, streets, rights of way, or on Lots of other Owners. Owners shall timely clean animal defecation by such animals on their own Lots.

(c) (Declaration Provision) Regardless of whether the Board gives permission for an animal to be present on the Property, (i) an Owner and a pet owner are jointly liable to all other Owners, Occupants, guests, and invitees for injury and damage caused by any animal brought or kept on the Property by the Owner, Occupant or their guests or invitees, and (ii) each Owner agrees, for themselves, and their Occupants, guests, and invitees, that neither Declarant, the Board nor the Association shall have any liability for any injury or damage caused by any animal brought or kept on the Property by the applicable Owner or Occupant, or their guests or invitees.

7. *Window coverings.* All exterior windows shall be covered only by white, ivory or tan blinds or drapes or other coverings approved by the ACC. Blinds and drapes must be in good repair, hung properly.

8. *Barbeque grills.* Except for barbeque grills and exterior fireplaces attended by responsible adults, exterior fires are prohibited. Barbeque grills may not be operated within 10 feet of any Home.

9. *Noise.* Owners and Occupants shall refrain from playing radios, televisions, stereos, and other electrical or mechanical devices loudly enough that they may be heard outside their Home. Doors and windows must be shut when playing televisions, stereos and similar sound equipment at sound levels objected to by any Owner, tenant, or management representative.

10. *Mailboxes.* All mailboxes will be located at the special mailbox area near the Brodie Lane entrance to the Property. No individual mailboxes at individual lots are allowed. Mailboxes shall be identified only by number; no Owner or Occupant may have their name on their mailbox. If any name is placed on a mailbox, the Association may remove the name without notice to the Owner or Occupant.

11. *Children.* Each Owner is responsible for the conduct of children who are tenants or guests in his Home. No children's toys may be left outside in street yards.

12. *Antennas and satellite dishes.*

(a) The following antennas and satellite dishes are not permitted:

- antennas or dishes that only transmit signals, similar to ham radio operator antennas;
- antennas or dishes that interfere with reception of video signals by other Homes;
- antennas or dishes mounted on roofs or buildings;
- antennas or dishes in Common Areas; and
- dishes greater than one meter in diameter.

(b) Unless prohibited above, an antenna or satellite dish may be installed only with ACC approval. The ACC shall approve antenna and satellite dishes complying with the standards in this paragraph and located either: (1) inside the attic, garage or living area of a Home; or (2) outside within a fenced back yard or side yard of a Home (not visible from streets or Common Areas).

(c) The antenna or satellite dish must:

- be properly bolted and secured in a workmanlike manner;
- be located behind the Home or, as viewed from the street, behind a solid wall, fence or perennial landscaping in the side yard or back yard of a Home;
- be screened by the above fence or landscaping, to the greatest extent reasonably possible, in order to prevent the antenna or dish from being seen from any street, common area or neighboring Home; *and*
- be no higher than the fence or landscaping that screens it from view.

(d) The Owner is liable for all damages to Association property, personal property, animals and persons caused by the Owner's installation of an antenna or dish.

(e) Location, installation and screening requirements are based on aesthetics, non-interference with reception by neighbors, preservation of property values and safety, including avoidance of injury or property damage from improperly installed or otherwise dangerous antennas or dishes.

13. *Anti-theft alarms.* Owners and Occupants who have vehicles with anti-theft systems shall not allow the alarms or horns to sound and disturb other persons in Brodie Springs for more than three minutes. Any vehicle violating the three-minute rule shall be deemed to be illegally parked and subject to immediate towing, without prior notice to the vehicle owner or operator, by the Association under the Texas towing statutes. The Association may, without liability to the owner or operator of the vehicle violating the three-minute rule, cut or disconnect any power source to such alarm or horn to avoid having to tow the vehicle.

14. *Towing illegally parked vehicles.* Vehicles parked in violation of these Rules may be removed and stored without permission of the vehicle's owner or operator. Notice and removal shall be in accordance with state statutes. An Owner is liable for all costs of towing illegally parked vehicles of the Owner, his Occupants or guests.

15. *Landscaping requirements; grading, swales, and berms; pesticides and insecticides.* Landscaping may be installed and must be maintained in accordance with the Environmental Plan attached to the Declaration as Exhibit H. Owners also must comply with the landscaping requirements in the exterior design Criteria attached to the Declaration as Exhibit G, and in the Integrated Pest Management Plan attached to the Declaration as Exhibit I. Under Exhibit I, specific kinds of trees and plants are prohibited and recommended. Grading, berms, swales and other drainage features may not be altered since they have been engineered for proper drainage of the subdivision and lots.

16. *Common Area repairs.* If the Common Area is in need of repair or maintenance, please notify the management company immediately and leave a message about what needs to be repaired.

17. *Eviction of tenants.* (Declaration Provision) The Association has the right to evict Occupants who are tenants, after reasonable notice, for substantial or repeated violations of the Restrictions.

18. *Signs.* (Declaration Provision) Subject to Section 2.9(a)(5) of the Declaration, and except for (i) signs approved by Declarant during the Control Period, (ii) signs expressly allowed by law, or (iii) signs allowed in the Board's discretion and described in the Rules, only one "for sale" sign, no larger than 2' x 2', may be maintained at any time on a Lot; all other signs are prohibited. The Board may enter a Lot without prior notice and remove and destroy prohibited signs.

19. *Nuisance.* (Declaration Provision) No unsafe, noxious, offensive, or illegal activity or odor is permitted on the Property. No activity shall be conducted on the Property if the Board deems that such activity might reasonably be considered as annoying to Persons of ordinary sensibilities, or as reducing the quality of life within the Property. No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No Owner or Occupant may play radios, televisions, stereos, and other electrical or mechanical devices at a volume that can be heard outside the Lot. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property that is reasonably offensive or detrimental to Persons of ordinary sensibilities.

20. *Parking.* (Declaration Provision)

(a) Parking of vehicles, motorcycles and bicycles on pervious cover or on sidewalks is prohibited. "Pervious cover" shall be as defined by the City from time to time. Owners may not park on any streets in the Property. Owners and Occupants shall park vehicles in their respective garages or off-street parking areas on their Lots. No Owner or Occupant may park, store, operate or keep within or adjoining the Property any commercial-type vehicle, truck larger than a pick-up truck, motorcycle, motorbike, motor scooter, recreational vehicle (e.g. camper unit, motor home, trailer, boat, mobile home, golf cart), or other similar vehicle unless same is kept solely within the garage on the Lot. No Owner or Occupant may park, store, operate or keep within or adjoining the Property any vehicle over 20' long. Bicycles, motorcycles and similar items may not be parked or stored outside a Home or in a manner visible from a street.

(b) Guest parking is in the Home's driveway or on the street. Guests may not park on the street for more than a 72-hour period without prior written approval from the Board.

(c) No vehicles may be parked or left unattended in such a manner as to block the passage of other vehicles on the streets or to driveways to Homes. No vehicle shall be left parked or unattended in such a manner as to prevent the ingress and/or egress of emergency vehicles (i.e., fire, EMS) or service vehicles (i.e., refuse trucks).

(d) If someone is physically disabled, the Board will accommodate special requests for wheelchair parking if possible. Handicap parking signs must be honored.

21. *Vehicle repair.* (Declaration Provision) Except in an emergency when a vehicle is inoperable, no vehicle may be worked on outside of a garage. Otherwise, vehicles must be serviced or repaired off the Property. Vehicles which have expired license plates, expired inspection stickers, flat tires or which are obviously inoperable due to missing parts are prohibited and may be removed by the Association from the Property at the Owner's expense. Vehicle fluids and materials must be disposed of offsite in a proper manner.

22. *Criminal activity/facilities and common area modification.*

(a) (Declaration Provision) No person may violate any criminal laws, health codes or other applicable laws. No tampering with Common Area Facilities or Water Quality Facilities is allowed. Except as expressly provided in the Environmental Management Plan, no entry into the enclosed areas of the Environmental Features is allowed without prior written permission from the Board.

(b) (Declaration Provision) No Common Areas may be improved, altered, used or occupied in a manner that contradicts or is inconsistent with the Water Quality Covenant or the Environmental Management Plan, nor may they be improved, altered, used or occupied in a manner not authorized by Declarant (or after the Control Period, the Board).

## RULES APPLICABLE PRIMARILY TO OWNERS

23. *Leasing.* Each Owner shall notify the Association of the names of all Occupants of a leased Home. All Occupants and their guests must comply with these Rules. An Owner is liable for all damages to Common Area and Common Area Facilities caused by Occupants or their guests. All leases must (i) be in writing and expressly subject to the Restrictions; and (ii) attach a copy of the then-current Restrictions. A Home may not be leased for hotel or transient purposes or for less than 30 days. No "for lease" or "for rent" signs, or signs containing any other wording advertising the availability of the Home for lease or rent, may be placed on any Lot or Common Areas. The Association may, but has no duty to, require the Owner of any leased Home to comply with the Texas Property Code requirements for security devices on doors and windows. For the safety of neighborhood children, Occupants as well as Owners of Homes with swimming pools or exterior spas or hot tubs shall be responsible for maintaining pool yard and spa yard enclosures at all times. The Association advises Owners that if an Owner rents a Home, a special statute provides that the Owner must re-key for every new tenant and must install and maintain certain kinds of security devices in the Home. This is very important since Owners can be held responsible for crimes committed against tenants that are caused in part by the Owners' failure to comply with the Texas Security Device Statute.

24. *Fines; compliance assessments.* The Board may assess fines in accordance with the Declaration against an Owner for violation of any provision of the Restrictions committed by an Owner, an Occupant of the Owner's Home, or the Owner or Occupant's guests, employees, contractors, agents, or invitees. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess Compliance Assessments against an Owner in accordance with the Declaration.

(a) The Association manager may notify alleged violators, informing them of their violations and asking them to comply with the Restrictions and/or informing them of potential or probable fines or Compliance Assessments. The Board may from time to time adopt a schedule of fines for minor or reoccurring violations, but the Board may vary any fine depending on the special circumstances of each case.

(b) The procedure for assessment of fines and Compliance Assessments shall be as follows:

- (1) the Association, acting through an officer, Board member, or managing agent, must give the Owner written notice of the fine or Compliance Assessment not later than 30 days after same is established by the Board; this date shall in no event be later than 45 days after notice to the Board of the alleged infraction;
- (2) the notice must describe the violation or damage and state the amount of the fine or Compliance Assessment;
- (3) the notice must state that the Owner may, no later than 30 days after the date of the notice, request a hearing before the Board to contest the fine or Compliance Assessment; and
- (4) as to a fine, the notice must allow the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months. A reasonable time to cure is not necessary in a notice of damage charge.

(c) Fines and/or Compliance Assessments are due immediately after the expiration of the 30-day period for requesting a hearing; or if a hearing is requested, such fines or Compliance Assessments shall be due immediately after the Board's decision at such hearing, assuming that a fine or Compliance Assessment of some amount is confirmed by the Board at such hearing.

(d) The minimum fine for each violation shall be \$25. Fines may be assessed for each day of violation

25. *Late charges.* The charge for late payment of monies to the Association shall be a one-time \$25 charge to cover the administrative costs and overhead of collection (excluding attorneys fees). After the due date, interest shall run on unpaid sums due the Association at the rate of 18% per year compounded annually.



26. *Returned checks.* The charge for a returned check is \$25, plus bank charges incurred by the Association.

27. *Change of address.* Owners shall keep the Association timely informed of their current mailing addresses and any change of mailing addresses.

28. *Names and addresses of tenants.* Owners shall notify the Association of current names and addresses of tenants of their respective Homes.

29. *Utility leaks. (Declaration Provision)* The Association may enter a Home where a utility leak has been discovered and cause such leak to be repaired at the expense of the Owner of the Home if (i) the Owner is absent, (ii) reasonable attempts to contact the Owner have been unsuccessful, and (iii) the need for repair constitutes an emergency. If a Home is vacant, the Association may, but is not required to, receive and retain from the Owner a key to the Home for use only in connection with emergencies or suspected emergencies. The Association shall not be obligated to exercise this authority.

30. *Delinquencies.*

(a) (Declaration Provision) The Association may suspend an Owner's right to vote and/or right to use Common Areas at any time when the Owner is more than 30 days delinquent on any sum owed to the Association. Suspension of voting rights shall include voting at annual or special membership meetings, by mail-in ballots, and at committee meetings, board meetings, and all other meetings.

(b) (Declaration Provision) Subject to compliance with the Texas Property Code, the Association may assess fines against an Owner for violations by the Owner, his Occupants or their guests or invitees of any provision of the Restrictions. If a violation continues after written notice to an Owner, each day of violation may be considered a separate violation. Notice of an alleged infraction and fine shall be provided to an Owner no later than 45 days from the later of (i) the first occurrence of the alleged infraction or (ii) notice to the Board of the alleged infraction. An Owner is liable for all fines or for repayment of property damage arising through the activities of the Occupants of the Owner's Home. If an Owner is delinquent in the payment of any sum due the Association for a period of 30 days or more, any tenant of that Owner who is an Occupant of a Lot may pay any sums due to the Association by that Owner in order to avoid suspension of Common Area use rights, and may deduct any sums so paid from the rent due to that Owner. The Association may enter into indemnity agreements to protect tenants who pay money to the Association under authority of this section.

(c) (Declaration Provision) The Association may disclose and publish to Members, prospective purchasers of Lots, First Mortgagees and prospective First Mortgagees the financial condition of the Association, including a list of names and amounts of any delinquencies. The Board may notify First Mortgagees of delinquent monies owed by the Owner of the Lot encumbered by the First Mortgage.

31. *Fees for special services. (Declaration Provision)* The Association may charge fees for special services (*i.e.*, furnishing resale certificates, eligibility certificates, copies of declarations, copies of information sent to mortgagees, copies of accounting records, and similar items).

32. *Name and address of new Owners.* An Owner may not sell or convey his Lot without all monies due and owing to the Association paid in full; and if such Owner does sell, convey, or transfer his Lot without paying such monies, such selling Owner shall remain liable for all monies accruing to the Association thereafter on such until such monies are paid in full. If an Owner sells or transfers his Home and fails to notify the Association of the sale, the selling Owner shall continue to be liable for the Assessments accruing after the sale or transfer until such time as the selling or transferring Owner notifies the Association in writing of the name and address of the new Owner.

33. *Non-Liability and release of the Association, officers, and directors.* AS PROVIDED IN THE DECLARATION, THE ASSOCIATION AND ITS OFFICERS AND DIRECTORS SHALL NOT BE LIABLE TO OWNERS, OCCUPANTS OR PERSONS ON THE PROPERTY AT THEIR INVITATION OR WITH THEIR PERMISSION, FOR PROPERTY DAMAGE, PERSONAL INJURIES OR HARM RESULTING AT ANY TIME FROM NEGLIGENT CONDUCT OF THE ASSOCIATION OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS RELATING TO ENFORCEMENT OR NONENFORCEMENT OF THE RESTRICTIONS. THIS

INCLUDES BUT IS NOT LIMITED TO ANY RESTRICTION PROVISIONS REGARDING PET LEASH REQUIREMENTS, TRAFFIC INTERSECTION SIGHTLINES, TRAFFIC SIGNS, VEHICLE PARKING, COMMON AREA LIGHTING OR FENCING, COMMON AREA SECURITY, HAZARDOUS MATERIALS STORAGE, OR ELECTRICAL LINES, GAS LINE OR SANITARY SEWER SYSTEM FAILURES. UNDER THE DECLARATION, BY ACCEPTANCE OF A DEED OR LEASE, OWNERS, AS WELL AS OCCUPANTS AND PERSONS ON THE PROPERTY AT THEIR INVITATION OR WITH THEIR PERMISSION, ARE DEEMED TO HAVE RELEASED THE ASSOCIATION AND ITS OFFICERS AND DIRECTORS FROM SUCH LIABILITY, TO THE EXTENT AUTHORIZED BY LAW. THE FOREGOING DOES NOT RELEASE AN OFFICER OR DIRECTOR FROM LIABILITY FOR ACTS OR OMISSIONS WHICH ARE: (1) A BREACH OF THE OFFICER'S OR DIRECTOR'S DUTY OF LOYALTY AND FIDUCIARY DUTY TO THE ASSOCIATION OR ITS MEMBERS; (2) ACTS OR OMISSIONS NOT IN GOOD FAITH OR INVOLVING INTENTIONAL MISCONDUCT OR A KNOWING VIOLATION OF LAW; (3) A TRANSACTION FROM WHICH AN OFFICER OR DIRECTOR RECEIVES AN IMPROPER BENEFIT, WHETHER OR NOT THE BENEFIT RESULTED FROM AN ACTION TAKEN WITHIN THE SCOPE OF THE DIRECTOR'S OFFICE; OR (4) AN ACT OR OMISSION FOR WHICH THE LIABILITY OF THE DIRECTOR IS EXPRESSLY PROVIDED BY STATUTE.

34. *Reproduction and communication.* The Association may impose reasonable charges for all copies of documents. Upon request and for a charge set by the Board, the Association shall provide any Owner an electronic word processor version or paper copies of the Declaration and applicable rules. Notices from the Association to an Owner and notices from an Owner to the Association via facsimile shall be binding, provided that confirmation is generated by the facsimile machine and retained by the sender.

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Date Adopted

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Secretary, Brodie Springs Homeowners Association, Inc.

## EXTERIOR DESIGN CRITERIA

### BUILDINGS

Declarant may unilaterally modify the exterior design criteria during the Control Period. Thereafter, the exterior design criteria, as may be modified by Declarant during the Control Period, may not be changed except by declaration amendment. The ACC may grant variances to the exterior design criteria as provided in the Declaration.

1.1 *Building setbacks/environmental easements.* Front, side and rear yard setback requirements for all Lots are established by, and shown on, the Plats. Unless otherwise shown on a Plat, the front building setback line for each Lot is 25 feet from the front property line, the side building setback lines for each Lot are 10 feet from the applicable side property line (except that the setback line is 15 feet adjacent to a side street), and the rear building setback line is 10 feet from the rear property line. A side building setback line may be as little as 5 feet on one side of a Lot if the total side building setback lines on both sides of a Home equal at least 20 feet. Lots abutting Frog Sink are subject to a right of way environmental easement as shown on the Plat. No Improvements (with the exception of driveways and perimeter decorative metal-type fences and lockable gates) may be constructed within this easement area. Declarant will construct or cause to be constructed decorative metal-type fences around Frog Sink and Kentucky Sink, and will install one or more gates in each fence, which the Association will keep locked.

1.2 *Masonry requirements.* Two-story residences and garages (including chimneys) located on all Lots shall have 100% of first floor exterior walls as stone or masonry construction; however, gables, windows, and doors shall be excluded from this requirement and non-external chimneys (surrounded by roof) may be fiber cement. Overall, exterior wall of all floors and sides must be 75% masonry. For purposes of this paragraph, masonry includes only brick, stone or stucco. Concrete brick is prohibited. Fiber cement or Hardy Plank or similar materials are not considered masonry. No grey-toned masonry shall be allowed except mortar (this includes without limitation grey-toned bricks).

1.3 *Home size and height.* For any one-story Home, the floor area of the main structure, exclusive of open porches and garages, will not be less than 2,200 square feet of air-conditioned space. For any two-story or split level Homes, the combined floor area of the main structure, exclusive of open porches and garages, will not be less than 2,500 square feet. Homes may not exceed two stories in height, and may have finished-out attics and/or basements.

1.4 *Exterior colors.* Exterior colors of all Buildings (including walls, doors, and other exterior elements) shall be approved by the ACC.

1.5 *Roofs/shingles.* Roofs must have a minimum pitch of 6:12; however, porches may have a minimum pitch of 3:12. Roofing materials shall be limited to 30-year dimensional fiberglass shingles in "weathered wood" color. Roof vents, roof power vents, rain diverters, skylight housings, plumbing vent pipes, and non-copper flashing must be painted to blend with the roof shingles, except that flashing applied to vertical surfaces may be painted to blend with the vertical materials, if more appropriate.

1.6 *Exterior lighting.* All exterior lighting must be approved by the ACC. Exterior lighting must be limited to areas within courtyards and the immediate front and rear yards of each Home and shall be shielded or otherwise directed so as to not, in the ACC's discretion, unreasonably illuminate adjoining Lots.

1.7 *Garages.* All garages shall be sized for at least 2 standard size passenger vehicles. Each garage shall have a minimum width, as measured from inside walls, of 10 feet per car and a minimum depth for each car of 21 feet. Except with respect to detached garages, interior walls of all garages must be finished (*i.e.*, taped, bedded and painted at a minimum). All garages must have garage doors built or faced with wood or metal siding of a quality and color harmonious with the exterior of the Home. Each garage shall have garage doors that are wired so as to be operated by electric door openers. Side entry, swing entry, or detached garages are required on at least 50% of the lots in Phase One and 50% of the lots in Phase Two. The front of any front-entry garage must be at least 10 feet behind the front wall of a Home. Garage location with respect to the Home is to be approved for each Lot by the ACC.

1.8 *Driveways, sidewalks, patios and decks.* All driveways, sidewalks, patios and decks shall be installed and altered so as to not affect the drainage within the Subdivision and in accordance with Paragraph 34 of the Environmental Management Plan.

#### SWIMMING POOLS

2.1 *Swimming pools.* Because of their proximity to critical environmental features and because of certain City ordinances, certain Lots may not have swimming pools. Those Lots are listed in the Environmental Management Plan.

#### LANDSCAPING

3.1 *Common Areas.* The Greenbelt Lot has been designated as open space. Except as required by Section 3.7 of the Declaration, no Owner or Occupant may mow, fertilize, apply pesticides to, maintain, alter or modify any area outside an Owner's Lot unless approved in writing in advance by the ACC. All pesticides shall comply with the Pest Management Plan.

3.2 *Landscaping by Association.* The Association has the sole right to install and/or maintain landscaping in the Common Areas.

3.3 *Approved trees, grasses, and shrubs.* Only the trees, grasses, and shrubs listed in Schedule 1 to the Environmental Management Plan are allowed in Brodie Springs. See Paragraph 27 of the Environmental Management Plan for a list of prohibited trees. Planting of other trees, shrubs, and grasses requires ACC approval. A list of recommended flowering perennials is also attached in Schedule 1. No trees may be removed in violation of City of Austin ordinances.

3.4 *Fences.* Fences are Improvements that require ACC approval. Fences are not required on the Property except that (1) air conditioning compressor units must be screened from view from any street (and the ACC may require a fence for such screening), and (2) pool yards or spa yards of exterior pools, spas, and hot tubs must be enclosed in accordance with applicable ordinances; and such enclosure may consist of a wall(s) of a Home and/or a fence. Fences adjacent to a side street shall be no closer than 10 feet from the Lot boundary line. All wood fencing which faces a street must be stained in accordance with the ACC guidelines or instructions, and must be capped in a uniform manner throughout the neighborhood. No fence (other than structural retaining walls approved by the ACC) shall be maintained in front of the front wall line of the main residential structure on the Lot. Fences shall be made of wood, decorative metal-type material, or masonry only. If wood fencing is used, the Lot shall be fenced so that with respect to any portion of the fence that faces any existing or proposed street, the slats shall face the street. All other portions of such wood fencing shall be fenced in "shadowbox" style, with alternating slats (where one slat faces into the Lot and the next slat faces outward from the Lot). Fences on corner Lots shall not be placed closer to the street right-of-way than ten feet. Notwithstanding the foregoing, the ACC may in its discretion prohibit the construction of any proposed fence, modify the requirements as to how the slats of a wood fence shall face, specify the material of which any proposed fence must be constructed, or require that any proposed fence be screened by vegetation or otherwise so as not to be visible from the public view.

3.5 *Tree removal.* No trees may be removed in violation of City of Austin ordinances.

#### ENVIRONMENTAL MANAGEMENT PLAN

4.1 *Environmental Management Plan.* The Environmental Management Plan was developed for Brodie Springs in cooperation with the City of Austin. The purpose of the plan is to preserve certain natural aspects of the environment in an unpolluted, environmentally sensitive manner.

#### INTEGRATED PEST MANAGEMENT PLAN

5.1 *Fertilizers, herbicides, and pesticides; Integrated Pest Management Plan.* Fertilizers, herbicides, exterior pesticides, and insecticides may not be applied except in accordance with the Integrated Pest Management Plan.

ENVIRONMENTAL MANAGEMENT PLAN

Design and Management Concept

1. *Acknowledgment.* Each Owner by receipt of the Declaration and its exhibits acknowledges the rights, restrictions and obligations of the Owners and the Association with regard to this Environmental Management Plan and the design, construction, and maintenance of Brodie Springs. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Declaration.
2. *Definition of the EMP.* This Environmental Management Plan ("EMP") provides for the protection, management and enhancement of the natural and built environment of Brodie Springs. It affects activities and maintenance in the Common Areas, portions of the street right-of-way, and on individual Lots.
3. *Design objective.* Each Owner acknowledges that a primary objective of the design and construction of Brodie Springs and of the Homes is to preserve certain natural aspects of the environment and to protect it from destruction or undue disturbance. Brodie Springs is located over the recharge zone of the Barton Springs segment of the Edwards Aquifer (the "Aquifer"). This is an environmentally sensitive zone especially as it affects the quality and supply of groundwater, and discharge from Barton Springs, approximately ten miles to the north.
4. *Design elements.* Key elements of the design are:
  - (a) overland flow of stormwater with surface drainage wherever possible;
  - (b) capture of runoff to provide water quality treatment before entering streams or the Aquifer;
  - (c) retention and protection of certain trees;
  - (d) maintenance of lands near waterways and sinks in a natural state;
  - (e) use of native grasses, shrubs and trees to minimize water requirements and to provide a natural flora regime;
  - (f) grasses that capture pollutants such as oils flushing off roadways and driveways;
  - (g) unfertilized native grass buffers to filter or absorb nutrients that might otherwise get to the water courses and the Aquifer;
  - (h) trees to hold water in the soils along with grasses to minimize runoff;
  - (i) streets that have flat ribbon curbs to facilitate overland flow. (Owners and Occupants must exercise care in driving throughout Brodie Springs to stay on the pavement and not damage grasses or trees.)
5. *Education.* Each Owner and Occupant must become familiar with the design and operation of Brodie Springs. At each annual meeting, the Association shall make available to Owners and Occupants copies of this EMP (including all exhibits and attachments) and other information about the environment of Brodie Springs and its relationship to the larger ecosystems of which it forms a part. The Association is encouraged to invite guest participants who are knowledgeable in environmental studies and shall retain records of these programs for the long-term benefit of Brodie Springs and the enjoyment of its residents. All current Board and ACC members shall use reasonable efforts to attend all such programs unless their absence is excused for good cause by a majority vote of the Board. Upon request, the Association shall annually provide the Barton Springs Edwards Aquifer Conservation District with its most current Lot ownership and address roster for purposes of educational mail-outs. The Association shall erect and thereafter maintain informational signs in the area of the Environmental Features to identify each Environmental Feature. These signs shall also state that no unauthorized access to the Environmental Features is allowed.
6. *Enforcement.* The Association and the Owners shall work together to implement and enforce the EMP. The Association has the obligation, and in some instances, the right to access an Owner's Lot to inspect and maintain the elements (such as drainage, water detention, water quality treatment, landscaping, pesticide and fertilizer use) that are described in this plan. Each Owner also has certain obligations hereunder as to his Lot.
7. *Owners to act.* Where an Owner fails to maintain his Lot with respect to the EMP, the Association has the right to perform work for the Owner and to make a Compliance Assessment against the Lot.

8. *Association to act.* When the Association fails to perform certain of its duties, the City has the right to enter the Common Areas and Lots to perform EMP maintenance and repairs and to charge the Association.
9. *Resolution of EMP disputes.* Where the Association and an Owner disagree, they shall first seek the advice of a consultant retained by the Association in the area of expertise that applies to the matter in question. As an example, this may be an engineer, an architect, a landscape architect, or an environmental consultant. Where any dispute is not resolved by such consultant, it shall be resolved by agreement between two consultants, one acting for and paid by the Association and one acting for and paid by the Owner and a third consultant appointed by mutual agreement of the parties or by the president of the Austin Society of Professional Engineers.
10. *Right of entry by various entities.* The following entities, upon at least seven days advance written notice to the Association, may enter any Environmental Feature for the sole purposes of inspecting, monitoring, and/or enhancing the protection of the Aquifer: the City, Barton Springs Edwards Aquifer Conservation District, and U.S. Fish and Wildlife or any other entity designated in writing by the Declarant or the Board. Additional private environmental organizations shall have access rights contained in the Water Quality Covenant.
11. *Risk.* Any entry and inspection, monitoring, or enhancement by any authorized private entity shall be at the entity's sole risk and expense.

#### Storm Drainage

12. *Overland flow.* Stormwater flows over Brodie Springs, eventually making its way either to water quality ponds or to natural watercourses. Unlike subdivisions with underground storm sewer lines that disturb trees and compound the problem of removing harmful oils and other contaminants from the water, drainage is by natural overland flow that filters and detoxifies storm water drainage naturally. Water flows through yards, around Homes, across driveways and under fences from the high side of a block to the low side. On certain streets in an overland flow design, water may flow from one block across a street and through the next block.
13. *Grading and elevation of lots.* Brodie Springs has been graded in accordance with plans approved by the City of Austin. The initial construction on each Lot shall be consistent with this grading and shall allow stormwater to drain across the grassy areas of the Lots. Driveways and grassy areas are part of this system and the established grades should not and must not be changed. Unauthorized changes in elevations may result in flooding.
14. *Areas where grades may be changed.* The finished floor elevation for each Home foundation is established on the construction plans for Brodie Springs and for each Home. Although the defined drainage always must be left intact, there are areas on each Lot where soils may be used or added for flower and shrub beds, or where decks, patios, or additional driveway space may be constructed.
15. *Building envelope.* There is a building envelope established for each Lot, and in some cases there may be the potential to add on to a Home in the future. The minimum front yard is 25 feet, the minimum side yard is 10 feet (except as provided in the exterior design criteria, and with additional setbacks for corner lots as shown on the Plats) and the minimum rear yard is 10 feet. Any additions to Homes are subject to the design provisions of this EMP.
16. *Swimming pools.* (See also Declaration Section 2.7(24).) Swimming pools may not be constructed on some of the Lots, and on others the pool placement is limited to certain areas. No construction is allowed in the Water Quality Transition Zone or the vegetative filter strip along the creek, as depicted on the Plats. Swimming pools are not allowed on Lots 3, 4, 7, 8 and 11 of Block B, Phase One (the lots abutting Frog Sink). On all Lots where pools are permitted, the location, size, shape and elevation of the pool and decks must be approved by the ACC. The ACC may require geotechnical borings in connection with its review of swimming pool plans. The ACC's decision will be based on the need for stormwater drainage and tree preservation, having regard for the Owner's desire to improve his Lot in an aesthetic and sensible manner. This does not prohibit water gardens with non-chlorinated water.
17. *Fences.* Where necessary to allow drainage in accordance with the construction plans for Brodie Springs, fences must be constructed and maintained to provide at least four inches (4") of clearance from the soil to the

bottom of the fence. Each Owner is responsible for keeping these openings free at all times of grass, leaves, branches, debris and other obstructions. The Board has the right to inspect, and when necessary, to maintain such areas and assess the Owner for any fees or costs associated with fence maintenance that the Owner fails to do.

18. *Drainage swales.* There are drainage swales on the upstream side of most streets. These were designed to intercept stormwater where it is determined that it should not flow across a street and through the next block in the event of a major flood. Maintenance of these swales is very important, and each Owner has the responsibility to maintain any swales on its Lot and in the grassy areas of the street right-of-way abutting its Lot. If any Owner does not do so, the Association may cut the grass and maintain the swales, and assess the cost thereof against the Owner as a Compliance Assessment. The swales have a very slight slope (low gradient) along the channel in the swales. Some trees have been retained in these swales, but no vegetation other than grass and the retained trees may be grown in these swales.
19. *Drainage easements.* In some instances, drainage swales are located on Lots. These swales also may exist where major trees were preserved in the right of way. Any such swales are contained within drainage easements shown on the Plats. Some Lots have drainage easements that allow an underground drainage pipe to transmit water from swales to water quality ponds.

#### Water Quality Facilities and Pollution Controls

20. *Concept of water quality controls.* In the City and in many other parts of the United States, a certain amount of rainfall is captured and taken to a facility that is designed to remove some pollutants from runoff. These are called water quality facilities. The targeted pollutants are: (1) oil and other fluids from vehicles; (2) fertilizers, herbicides and pesticides that are placed on lawns and other vegetation; and (3) chemical spills. If not captured, these pollutants may find their way into streams and the Aquifer.
21. *Capturing runoff.* Brodie Springs has been designed so that any rainfall up to 1/2 inch should be captured entirely by the storm drainage system and diverted by overland flow and/or underground drainage pipes to the water quality ponds. In a rainfall greater than 1/2 inch, the water is diverted by engineered facilities (weirs) directly to the streams. The principle is to capture the first flush of rainfall, since it contains most of the pollutants. After the first flush, runoff is considered to be relatively clean.
22. *Treatment.* In Brodie Springs, there are two water quality ponds where the first flush is held for 24 hours. During this time, most suspended solids fall to the bottom of the pond, which is a process called sedimentation. In the succeeding 48 hours, the water is pumped out of the pond and irrigated underground (but near the surface) through a piping system that slowly puts the water into the soil on about eight acres of natural terrain. These areas are relatively flat, which allows the grasses, trees and shrubs to hold this water, take it up, and to release it to the air, a process called evapotranspiration. Some of the water evaporates directly into the atmosphere. There are setback requirements from streambeds so that all or most of the irrigated water stays away from watercourses.
23. *Maintenance.* The Association shall clean and maintain the water quality ponds. If the Association fails to do so, the City may intervene to maintain them and recover the cost from the Association according to the Water Quality Covenant.
24. *Vegetation buffers.* Runoff from Lots 1 through 20 of Block E, Phase Two, runs through what is known as a vegetative buffer before it reaches the natural watercourse. The buffer is an area of natural grasses and other vegetation that is not fertilized. The grasses capture and hold potential pollutants that are eventually broken down and rendered harmless.

#### Vegetation and Landscaping

25. *Brodie Springs landscape plan area.* Part of the construction plans for Brodie Springs is a landscape plan for the main entrance on Brodie Lane. The EMP requires that the Greenbelt Lot (containing two dry water courses and the irrigation area) shall be left in its natural vegetative state except for changes needed for the water quality facilities, and any other changes approved by the City and that the fenced Environmental Feature

setback areas of Kentucky Sink and Frog Sink, as shown on the Plats, shall be left in their natural vegetative state; however, removal of debris and non-native and prohibited trees and shrubs is permitted in each instance.

26. *Common area concept.* Except as noted herein, the Greenbelt Lot and the Environmental Features shall be left in a natural state. From time to time, native vegetation in the sink areas may be maintained and improved by the Association. Only approved grasses and trees are used within improved landscape areas (the Lots, entry and mailbox areas). The natural landscapes are managed to prevent the intrusion of non-native species and various prohibited trees, prohibited vegetation, and disease. The Association may establish and maintain walking trails on the Greenbelt Lot using only natural materials such as wood chips or crushed granite. No Owner or Occupant may perform any maintenance in the Common Areas. The Association shall maintain the gates and fences around the Environmental Features. The Association also maintains the landscaping along the common driveways on Lots 11, 12, 13, and 14, Block B, of Phase One and Lots 16, 17, and 18, Block D, of Phase Two as provided in the Declaration, Section 2.7(b)(8). Landscaping within street rights of way are not common areas and must be maintained by the Owner as provided above and in the Declaration.
27. *Prohibited trees and vegetation.* None of the following trees are allowed on any Lot in Brodie Springs: cedar trees, mesquite trees, cottonwood trees, sycamore trees, mimosa trees, willow trees, weeping willow trees, chinaberry trees, Chinese tallow trees, legustrom, bamboo, coma, hackberry trees, palm trees, and Arizona ash trees, regardless of how old they are and regardless whether they grew naturally or were planted by man. No grasses other than Bermuda, Buffalo, and Zoysia varieties are allowed on any Lot without prior ACC approval. Because of water consumption factors, St. Augustine and carpet grasses are prohibited and may not be approved by the ACC. Subject to the foregoing, the planting of trees, shrubs, vines, grass-like plants, and grasses must be approved by the ACC prior to installation; however, the permitted varieties in Exhibit H are pre-approved and need no prior ACC approval. Subject to the preceding sentence, the Board may adopt rules prohibiting other trees or vegetation.
28. *Existing trees.* All trees with a trunk over 8" in diameter in the developed area of Brodie Springs have been surveyed. A database has been created showing tree type, trunk diameter and size of crown. On the tree survey, existing trees are divided among three types: live oak, post oak, and cedar elm. All are excellent shade trees, are good hardwoods, and are medium too tall in height at maturity. All have a long life span under normal conditions. No tree greater than 8" diameter may be removed by an Owner or Occupant on any Lot without the approval of the ACC, which shall not be unreasonably withheld.
29. *Oak wilt.* Unless treated, oak wilt can eventually kill all live oaks, red oaks, and spanish oaks in a given area. The Association shall monitor oak wilt throughout Brodie Springs on an ongoing basis. The Association has authority to remove or require removal of trees on a Lot that are dying or dead from oak wilt or (at the Association's option) to treat such trees with fungicide or trench for the oak wilt. The Association shall manage oak wilt in Common Areas by removing trees, treating them with fungicide or trenching. The oak wilt fungus spreads through the roots of one live oak tree to another. The oaks propagate largely by root sprouts and hundreds of trees may be tied together genetically as one tree. Spores may also enter a tree through an open wound. Oak wilt does not affect burr oak, post oak, or cedar elm. Unchecked, the rate of spread is as little as 10 feet to as much as 300 feet per year and 75 feet a year is considered a norm. The Association shall retain an arborist to perform an annual inspection of all trees in Brodie Springs and obtain his or her advice as to suggested action.
30. *Grasses, flowers, shrubs, and tree plantings.* Trees, grasses and shrubs listed on Schedule 1 of this EMP are pre-approved and allowed in Brodie Springs. Some species are prohibited altogether. Others are allowed only with prior approval of the ACC. A recommended list of flowering perennials is also included. As stipulated in under "Storm Drainage" above, there are certain areas around the Homes where landscape materials are not permitted, but in most areas of each Lot, flower and shrub beds are allowed.
31. *Tree pruning.* All wounds on live oaks, red oaks, and spanish oaks must be sealed immediately. Trees may not be "scalped". Interior foliage is necessary for photosynthesis and the health of a tree.
32. *Topsoil.* An Owner or Occupant may apply additional topsoil only to areas of the Lot where drainage of storm water will not be impaired. The Association will maintain a list of approved topsoil and flowerbed soil suppliers selected to minimize the spread of weeds and diseases. The City of Austin recommends that before sod is laid, at least a 2-inch layer of biologically sterile nutrient-rich topsoil be applied on top of the sand clay



loam. Topsoil with heavy clay content should be avoided. No grading may be changed in any landscaping, including in the process of laying topsoil.

33. *Fertilizers, herbicides and pesticides.* The Integrated Pest Management Plan sets out what fertilizers, herbicides and pesticides may be used, how often, seasonality and quantities. The City maintains a list of the types allowed and rates of application, and will recommend the safest and most effective products. The Association shall maintain copies of the City produced materials available for Owners' use.
34. *Driveways, sidewalks, patios and decks.* Driveways, sidewalks, patios and decks may be installed and altered as approved by the ACC and as set forth in the Exterior Design Criteria and shall not interfere with overland flow which is an important part of the storm water drainage and water quality system. The ACC shall maintain in its records the plans for all such features.
35. *Swimming pools, exterior spas and hot tubs, and decorative pools.* Swimming pools may be constructed on all Lots not restricted against pool construction under paragraph 16 of this EMP.
36. *Compost.* Major accumulations of leaves, branches, and other debris must be removed with reasonable promptness except that Owners or Occupants may compost in piles or containers that are screened by fencing from neighbors and streets, so long as they are operated properly to prevent odors.
37. *Enforcement.* The Declaration gives the Association the right to enforce the obligations of the Owners to maintain their Lots in accordance with the Declaration and this EMP. See paragraph 3.6 of the Declaration for provisions regarding the Association's right of entry and right to remedy certain violations and assess costs against Owners who fail to comply with such obligations.

APPROVED TREES, SHRUBS, VINES, GROUND COVERS,  
GRASS-LIKE PLANTS, AND LAWN GRASSES  
FOR BRODIE SPRINGS

\*=Susceptible to severe freeze damage

**SHADE TREES (Reaching Mature Height of at Least 25')**

| <i>Botanical name</i>                      | <i>Common name</i>    |
|--|-----------------------|
| Carya illinoensis                          | Pecan                 |
| Chilopsis linearis                         | Desert Willow         |
| Fraxinus pennsylvanica marshall's seedless | Marshall Ash          |
| Fraxinus velutina rio grande               | Fantex Ash (Seedless) |
| Juglans majo                               | Texas Walnut          |
| *Koelrueteria paniculata                   | *Golden Raintree      |
| Leucaena retusa                            | Golden Ball Lead Tree |
| Pinus eldaric                              | Afghan Pine           |
| Pistachia chinensi                         | Chinese Pistache      |
| Prosopis glandulosa                        | Honey Mesquite        |
| Prunus serotina                            | Escarpment Cherry     |
| Pyrus spp.                                 | Pear                  |
| Quercus macrocarpa                         | Burr Oak              |
| Quercus muhlenbergii                       | Chinquapin Oak        |
| Quercus shumardii                          | Shumard Oak           |
| Quercus texana                             | Texas Red Oak         |
| Quercus virginiana                         | Live Oak              |
| Sapindus saponaria var. drummondii         | Western Soapberry     |
| Taxodium distichu                          | Bald Cypress          |
| Ulmus crassifolia                          | Cedar Elm             |
| Ulmus parvifolia 'Drake'                   | Drake Elm             |

**ORNAMENTAL TREES (Reaching Mature Height under 25')**

| <i>Botanical name</i>               | <i>Common name</i>                   |
|-------------------------------------|--------------------------------------|
| Acer Palmatum (and other varieties) | Japanese Maple (and other varieties) |
| Cercis canadensis var. mexicana     | Mexican Redbud                       |
| Cercis canadensis var. texensis     | Texas Redbud                         |
| Cornus drummondii                   | Roughleaf Dogwood                    |
| Diospyros texana                    | Texas Persimmon                      |
| Ilex decidua                        | Possumhaw Holly                      |
| Ilex vomitoria                      | Yaupon Holly                         |
| *Lagerstroemia indica               | *Crepe Myrtle                        |
| Photinia serrulata                  | Chinese Photinia                     |
| Prunus caroliniana                  | Cherry Laurel                        |
| Prunus mexicana                     | Mexican Plum                         |
| Rhus copallina and lanceolata       | Flameleaf Sumac                      |
| Sophora affinis                     | Eve's Necklace                       |
| Sophora secundiflora                | Mountain Laurel                      |
| Ungundia speciosa                   | Mexican Buckeye                      |
| Vitex agnuscastus                   | Vitex, Lilac Tree                    |
|                                     | All fruit trees                      |

**SHRUBS**

| <i>Botanical name</i> | <i>Common name</i> |
|-----------------------|--------------------|
| Abelia grandiflora    | Glossy Abelia      |
| Anisacanthus wrightii | Flame Acanthus     |
| *Aspidistra elatior   | *Aspidistra        |
| Berberis spp.         | Barberry           |

Berberis trifoliata  
 Buddleja davidii  
 \*Caesalpinia gillesii  
 Callicarpa americana  
 Chrysactinia mexicana  
 Cotoneaster glaucophylla  
 Cotoneaster horizontalis  
 Dalea frutescens  
 Dasyilirion texana  
 Elaeagnus ebbengii  
 Elaeagnus pungens  
 Eysenhardtia texana  
 \*Feijoa sellowiana  
 Hesperaloe parviflora  
 Hibiscus syriacus  
 Ilex cornuta 'Burfordii'  
 Ilex cornuta 'Burfordii' nana  
 Ilex cornuta rotunda 'nana'  
 Ilex decidua  
 Ilex vomitoria  
 Ilex vomitoria nana  
 \*Jasminum mesnyi  
 \*Lantana horrida and L. camara  
 \*Lantana hybrids  
 \*Lantana montevidensis  
 Leucophyllum frutescens  
 Ligustrum sinensis variegatum  
 Myrica pusilla  
 Nandina domestica  
 \*Nerium oleander  
 Opuntia spp.  
 Pavonia lasiopetala  
 Pistacia texensis  
 \*Punica granatum  
 \*Raphiolepis indica  
 Rhus aromatica  
 Rhus virens  
 \*Rosmarinus officinalis  
 Salvia greggii  
 Spirea cantoniensis  
 Viburnum dentatum  
 Yucca rupicola  
 Yucca spp.

Agarita  
 Butterflybush  
 \*Bird of Paradise  
 American Beautyberry  
 Damianita  
 Silverleaf Cotoneaster  
 Rock Cotoneaster  
 Black Dalea  
 Texas Sotol  
 Ebbinger's Elaeagnus  
 Elaeagnus  
 Kidneywood  
 \*Pineapple Guava  
 Red Yucca  
 Althaea, Rose of Sharon  
 Burford Holly  
 Dwarf Burford Holly  
 Dwarf Chinese Holly  
 Possumhaw Holly  
 Yaupon Holly  
 Dwarf Yaupon Holly  
 \*Primrose Jasmine  
 \*Texas Lantana  
 \*Lantana  
 \*Trailing Lantana  
 Texas Sage, Cenizo  
 Variegated Chinese Privet  
 Dwarf Wax Myrtle  
 Nandina  
 \*Oleander  
 Prickly Pear  
 Rose Mallow  
 Texas Pistachio  
 \*Pomegranate  
 \*Indian Hawthorn  
 Aromatic Sumac  
 Evergreen Sumac  
 \*Rosemary  
 Autumn Sage  
 Bridal Wreath Spirea  
 Arrowwood  
 Twisted-Leaf Yucca  
 Yucca

#### VINES AND GROUND COVERS

*Botanical name*  
 Achillea tomentosa  
 Antignon leptopus  
 Bignonia Capreolata  
 Campsis radicans  
 Cerastium tomentosum  
 Chrysactinia mexicana  
 Clematis drummondii  
 Clematis lexensis  
 Clematis paniculata  
 Dalea greggii  
 \*Ficus pumila  
 Gelsemium sempervirens

*Common name*  
 Woolly Yarrow  
 Queen's Wreath, Coral Vine  
 Crossvine  
 Trumpet Creeper  
 Snow-in-Summer  
 Damianita  
 Old Man's Beard  
 Scarlet Clematis  
 Sweet Autumn Clematis  
 Gregg Dalea  
 \*Fig Vine  
 Carolina Jessamine

Hedera helix  
 Hypericum calycinum  
 Ipomoea quamoclit  
 Liriope muscari  
 Lonicera japonica 'Halliana'  
 Lonicera sempervirens  
 Ophiopogon japonicus  
 Parthenocissus quinquefolia  
 Parthenocissus tricuspidata 'veitchii'  
 \*Passiflora incarnata  
 Phyla nodiflora var. incisa  
 Polygonum aubertii  
 Rose banksiae  
 Sedum spurium  
 \*Trachelospermum asiaticum  
 Vinca major  
 Vinca minor  
 Vitis mustangensis  
 Wisteria sinensis

English Ivy  
 St. Johnswort  
 Cypress Vine  
 Liriope  
 Halls Honeysuckle  
 Coral Honeysuckle  
 Mondo Grass  
 Virginia Creeper  
 Boston Ivy  
 \*Passion Vine  
 Frog Fruit, Lippia  
 Silver Lace Vine  
 Lady Banksia Rose  
 Stonecrop  
 \*Asian Jasmine  
 Bigleaf Periwinkle  
 Littleleaf Periwinkle  
 Mustang Grape  
 Wisteria

### GRASSES AND GRASS-LIKE PLANTS

*Botanical name*  
 Andropogon gerardii  
 Bouteloua curtipendula  
 Chasmanthium latifolium  
 Festuca ovina glauca  
 Muhlenbergia capillaris  
 Muhlenbergia dubiodes  
 Muhlenbergia lindheimeri  
 Muhlenbergia longiligula  
 Muhlenbergia reverchonni  
 Muhlenbergia rigens  
 Muhlenbergia dubia  
 Nolina lindheimeriana  
 Nolina texana  
 Schizachyrium scoparium  
 Stipa tenuissima

*Common name*  
 Big Bluestem  
 Sideoats Gramma  
 Inland Seoats  
 Blue Fescue  
 Gulf Coast Muhly  
 Weeping Muhly  
 Big Muhly  
 Long Tongue Muhly  
 Seep Muhly  
 Deer Muhly  
 Pine Muhly  
 Nolina or Devil's Shoestring  
 Saahuista, Bear Grass  
 Little Bluestem  
 Mexican Feather Grass

### LAWN GRASSES

*Botanical name*  
 Bermuda hybrids  
 Buffalo hybrids  
 Zoysia hybrids (preferred)

*Common name*  
 Bermuda hybrids  
 Buffalo hybrids  
 Zoysia hybrids

### RECOMMENDED FLOWERING PLANTS

#### FLOWERING PERENNIALS

*Botanical name*  
 Achillea filipendulina  
 Achillea millefolium  
 \*Agapanthus spp.  
 Aquilegia canadensis  
 Aquilegia 'hinkleyii'  
 Artemisia ludoviciana  
 Artemisia spp.  
 Asclepias tuberosa  
 Aster frikartii  
 Aurinia saxatilis

*Common name*  
 Fearnleaf Yarrow  
 Common Yarrow, Milfoil  
 \*Lily-of-the-Nile  
 Red Columbine  
 Hinkley Columbine  
 Artemisia  
 Artemisia  
 Butterfly Weed  
 Fall Aster  
 Basket-of-Gold

Calylophus drummondianus var. berlandieri  
 Chrysanthinia mexicana  
 Chrysanthemum leucanthemum  
 Coreopsis lanceolata  
 Coreopsis spp.  
 Cuphea hyssopifolia  
 Cuphea micropetala  
 Cuphea x 'David Verity'  
 Dianthus spp.  
 Dietes spp.  
 Echinacea purpurea  
 Eupatorium greggii  
 Eupatorium wrightii  
 Gaura lindheimer  
 Hamelis pantens  
 Helianthemum nummularium  
 Helianthus maximiliani  
 Hemerocallis spp.  
 Hibiscus cardiophyllus (martianus)  
 Hibiscus coccineus  
 Hymenoxys scaposa  
 Iris spp. (bearded)  
 Kniphofia uvaria  
 Liatris mucronata  
 Malpighia glabra  
 Malvaviscus drummondii  
 Melapodium leucanthum  
 Oenothera missouriensis  
 Penstemon cobaea  
 Penstemon triflorus  
 Phlox subulata  
 Physostegia virginiana  
 \*Plumbago auriculata  
 Poliomintha longiflora  
 Ratibida columnaris  
 Rivina humilis  
 Rudbeckia hirta  
 Ruellia brittoniana 'Katie'  
 Ruellia nudiflora  
 Salvia coccinea  
 Salvia farinacea  
 Salvia leucantha  
 Salvia leucantha  
 Salvia Roemeriana  
 Salvia spp. and hybrids  
 Santolina chamaecyparissus  
 Scutellaria suffrutescens  
 Scutellaria seleniana  
 Sedum spectabile  
 Sisyrinchium specie  
 Stachys byzantina  
 Tagetes lucida  
 Tradescantia spp.  
 \*Verbena peruviana  
 Viguiera dentata  
 Zexmenia hispida (Wedelia hispida)

Calylophus  
 Damianita  
 Oxeye Daisy  
 Coreopsis  
 Coreopsis  
 Mexican Heather  
 Cigar Plant  
 Cigar Plant  
 Dianthus  
 Fortnight Lily  
 Purple Coneflower  
 Greg's Mistflower  
 White Mistflower  
 White Gaura  
 Firebush  
 Rock Rose  
 Maximilian Sunflower  
 Daylily  
 Heartleaf Hibiscus  
 Texas Star Hibiscus  
 Four Nerve Daisy  
 Bearded Iris  
 Red-Hot Poker, Tritoma  
 Gayfeather  
 Barbados Cherry  
 Turk's Cap  
 Blackfoot Daisy  
 Fluttermills  
 Prairie Beardstongue  
 Hill Country Penstemon  
 Ground Pink  
 Fall Obedient Plant  
 \*Plumbago  
 Mexican Oregano  
 Mexican Hat  
 Pigeonberry  
 Black-Eyed Susan, Gloriosa Daisy  
 'Katie' Dwarf Ruellia  
 Wild Petunia  
 Scarlet Sage  
 Mealy Blue Sage  
 Royal Sage  
 Mexican Bush Sage  
 Cedar Sage  
 Salvia, Sage  
 Lavender Cotton  
 Pink Skullcap  
 Lavender Skullcap  
 Showy Stonecrop  
 Blue-Eyed Grass  
 Lamb's Ears  
 Mexican Marigold Mint  
 Spiderwort  
 \*Peruvian Verbena  
 Goldeneye  
 Orange Zexmenia

#### MISCELLANEOUS

*Botanical name*

Antique Roses  
Herbs  
Native Wildflowers

*Common name*

Antique Roses  
Herbs  
Native Wildflowers

Horizon Job No. 000119

INTEGRATED PEST MANAGEMENT PLAN  
FOR  
BRODIE SPRINGS II SUBDIVISION, PHASES ONE AND TWO,  
LOCATED AT BRODIE LANE AND SQUIRREL HOLLOW DRIVE  
AUSTIN, TRAVIS COUNTY, TEXAS

PREPARED BY:

HORIZON ENVIRONMENTAL SERVICES, INC.  
AUSTIN - BEAUMONT - HOUSTON - SHREVEPORT

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APPENDIX

- A SITE PLAN
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PART A - PROJECT DESCRIPTION

- 1. Project Name: Brodie Springs II Subdivision, Phases One and Two, Austin, Texas (referred to as "Brodie Springs")
- 2. Project Type: Single-Family Residential Development
- 3. Total Project Acreage:..... 91.55 acres
- 4. Landscape:
  - (a) Turf Acreage (estimate) ..... 38.92 acres
  - (b) Ornamental Acreage (estimate)..... 3.00 acres
  - (c) Total Landscape Acreage: ..... 41.92 acres
- 5. Natural areas:
  - (a) Critical and Transition Water Quality (exclusive of CEF setback areas and WQTZ in Residential Lots) ..... 18.58 acres
  - (b) Wastewater Irrigation Areas..... 0 acres
  - (c) CEF-setback areas ..... 8.49 acres
  - (d) Lot 33, Block E (balance of) ..... 4.15 acres
  - (e) Lot 21, Block A (balance of)..... 1.30 acres
  - (f) Lot 18, Block B (balance of) ..... 0.45 acres
  - (g) Total Natural Areas ..... 32.97 acres
- 6. Built Structures:
  - (a) Streets: ..... 4.64 acres
  - (b) Home Lots: 116..... 11.98 acres
  - (c) Common Area lot (Lot 21 ..... 0.88 acres
  - (d) Mail Pick-up Area:..... 0.16 acres
  - (e) Total Impervious Cover ..... 17.66 acres
- 7. Environmental Features:
  - (a) Environmental Features:  
The 100-year floodplain is on or within 150 feet of Brodie Springs; 2 water quality ponds are also planned; a re-irrigation field; and CEF setback areas are found in Brodie Springs.
  - (b) Pesticide-Free/Fertilizer-Free Buffer Zones: No pesticides or fertilizers may be used within the following buffer zones: 50 feet around the water quality ponds or irrigation fields, 100 feet around the on-site unnamed tributary (WQTZ), or within the CEF setbacks shown on the Plats.

Signs should be placed around pesticide-free and fertilizer-free buffer zones, when possible. Typically, these signs say something like "Environmentally Sensitive Area: No Pesticides or Fertilizers."

Some of the zones may cross residential lots. Pesticides and fertilizers must not be applied within these areas. Therefore, a copy of this Integrated Pest Management Plan will be distributed to Owners and Occupants. In certain areas, the setback around water quality ponds may be less than 50 feet where they abut residential lots.

Owners and Occupants are encouraged to participate in the overall pest management plan. Information packets with pest management and lawn care tips are available from the City of Austin at no cost.

PART B – ANTICIPATED PEST PROBLEMS

Potential pests in Brodie Springs include, but are not limited to, the following:



| Household Pests                 | Lawn and Garden Pests  |
|---------------------------------|--|
| Fleas<br>Cockroaches<br>Rodents | Aphids<br>Fire Ants<br>Fleas<br>Mealybugs and Whiteflies<br>Mosquitos<br><br>Plant Diseases:<br>Crabgrass, dallisgrass, brown patch, dollar spot, and<br>pythium blight (turfgrass)<br>Mole crickets, sod webworms, and armyworms<br>(turfgrass) |

### PART C – TREATMENT STRATEGY

The following is a description and treatment recommendations for potential pests that may require control in Brodie Springs.

#### A. Non-chemical Controls

Non-chemical controls include cultural controls (prevention), physical controls, natural controls, biological controls (the introduction of natural pest predators), and educational programs that encourage owners to participate with pest control efforts by maintaining a pest-resistant environment.

1. **CULTURAL CONTROLS (PREVENTION).** Healthy plants can generally overcome most diseases and pest problems. Therefore, it is important that plants receive enough light, water, and organic nutrients. Often, improper cultural practices are the root of a recurring pest problem. Pesticide applications are not substitutes for proper plant care. If horticultural practices are sound and plants still experience repeated pest outbreaks, consider replacing them with native, well-adapted, or drought-resistant types. Also, consider using Xeriscaping or plants that attract beneficial insects.

2. **NATURAL CONTROLS.** If any of the following pests are encountered, they can be left in place to control the pest population naturally:

- |                            |                      |
|----------------------------|----------------------|
| Praying Mantis             | Predatory Wasps      |
| Assassin Bug               | Spiders              |
| Minute Pirate Bug          | Bark Louse           |
| Ladybird Beetle (Lady Bug) | Mealybug Destroyer   |
| Ground Beetle              | Predaceous Stink Bug |
| Soft-Winged Flower Beetle  | Tiger Beetle         |
| Lacewings                  | Honey Bee            |
| Ant Lion (Doodle Bug)      | Wild Bee             |
| Parasitic Wasps            | Bats                 |

3. **PHYSICAL CONTROLS.** Physical control methods may prevent pest problems from occurring or may be used to control a minor infestation. These methods are usually safe and environmentally friendly. Following are a few ideas recommended by the City of Austin ([http://www.ci.austin.tx/ipm/care\\_tips.html](http://www.ci.austin.tx/ipm/care_tips.html)):

*Traps.* Some types of pests can be lured into traps. Traps commonly use food baits, colors, light, or reproductive hormones to entice pests. Ready-made traps for wasps, yellow jackets, whiteflies, and snails can be bought at many nurseries, or they can be constructed at home.

*Barriers.* These types of controls are designed to physically prevent pests from reaching a potential infestation of a site. Like traps, barriers can be bought or easily made from materials around the home. Examples include seedling collars, window and patio screens, row covers, Teflon tape, and sticky barriers for crawling insects, copper strip barriers for snails, and covers for food containers and trash cans. These common sense controls may seem obvious, but they are often overlooked.

*Hand-picking.* While not effective against all types of pest problems, especially if the pests are overwhelming in number or small in size, some pests can be physically removed and destroyed. Examples include caterpillars, garden snails, cucumber beetles, and grubs. Drop the pests in a bucket of soapy water and drown them. Snails and slugs can be crushed under foot or fed to ducks, chickens, or other fowl.

*Water blasts.* Slow-moving pests can be knocked off vegetation using a mist of high-pressure water. Be sure to spray the underside of leaves where most pests hide. Sufficiently harassed, the pests usually move along to more peaceful feeding grounds. Aphids and spider mites are especially easy to control using this method. A garden hose can also be used to drown flea larvae; simply flood infested areas with water.

4. **BIOLOGICAL CONTROLS.** Biological controls are meant to restore the balance of nature artificially. The introduction of insect predators and parasites, encouraging birds (e.g., placing purple martin houses or bat houses around detention ponds) can provide an effective control of pest populations. Biological controls are encouraged; however, care must be taken so that predators and parasites do not become pests themselves.

You can encourage beneficial insects to visit your yard by planting certain varieties of plants and providing a source of water. You can also purchase beneficial predators through mail-order companies or at local garden centers. Remember, some broad-spectrum pesticides will kill beneficial insects. The following are common beneficial insects you can purchase for release into your yard:

*Lady beetles (Ladybugs).* This well-known garden predator is good for controlling aphids, mealybugs, soft scales, and spider mites. Normally seen in pictures and drawings as red and black, lady beetles actually come in many different color combinations. Lady beetles are probably the most commonly available beneficial insect. They have a tendency to wander, so they may leave your yard for happier hunting grounds when they have taken care of your pest problem.

*Lacewings.* An excellent all-purpose garden predator, the larvae of this insect feed on aphids, mealybugs, spider mites, the immature stages of thrips, and many other insects. The adults are bright green, delicate insects whose wings have a lacy appearance. Lacewing eggs are readily available through mail order or online gardening companies.

*Praying mantis.* The praying mantis is a voracious predator of other insects, sometimes including other beneficial insects. Mantises usually have to be hatched from a chrysalis (a great project for the kids). Just be sure to spread the young mantids widely around or they will eat each other!

*Trichogramma wasps.* These are tiny parasites that attack the eggs of more than 200 types of insect pests, including the tomato hornworm, armyworm, cutworm, and webworm. They kill insects before they hatch and cause damage. Place the eggs in your yard during the springtime, and let the *Trichogramma* take care of unsightly webworms that eat the leaves of pecan trees.

*Other garden predators.* Avoid pesticide use and you will probably have these garden good-guys patrolling your yard: assassin bugs, minute pirate bugs, spined soldier bugs, paper wasps, ground beetles, spiders, hover flies, rove beetles, and predatory stinkbugs. Remember that birds, lizards, and toads also make great garden exterminators.

*Bacillus thuringiensis (Bt).* This naturally occurring bacteria can be used to control several different types of pests including certain caterpillars, flies, mosquitos, and beetle larvae. There are several different varieties of Bt. Check to see that the chosen variety is effective against the pest problem. When ingested by a pest, these bacteria release a crystalline protein that destroys the lining inside the pest's gut. This causes the pest to stop feeding and eventually die. Animals and other beneficial insects are not harmed by the application of BT.

*Avermectins.* These antibiotics (including ivermectin and abamectin) are produced by a naturally occurring bacteria and can be used against an increasing variety of pests. Some are fairly toxic to mammals and aquatic life so they should be used with care. Avermectins also are available as a fire ant bait.

*Beneficial nematodes.* Nematodes are microscopic worms that attack a wide range of soil-dwelling pest insects. These nematodes are not the same as the pest species that attack the roots of garden plants. The beneficial species can be bought commercially as pastes or powders and can be mixed with water for use in spray equipment or for pouring directly onto infested soil as a drench. Nematodes travel through the soil and kill susceptible insect species

by penetrating their body cavity and infecting them with a toxic bacteria. Nematodes are vulnerable to drying-out and are therefore best applied during wet weather or after a good evening watering.

## B. Botanical, Mineral, and Soap Pesticides

Mother Nature usually does a good job of balancing the pest populations. However, sometimes it is necessary to take action when a particular pest problem gets out of hand. Botanical, mineral, and soap insecticides are an acceptable option when preventive and other measures fail. Unlike most synthetic chemicals, natural insecticides are either harmless to the environment or degrade quickly into less toxic substances. They also tend to be less harmful to beneficial insects than synthetic chemicals. However, natural insecticides should still be used sparingly, with extreme care, and only as the label directs.

Registered uses for pesticides are subject to change. Therefore, always read and follow label directions. The Federal Environmental Pesticide Control Act of 1972, in part, prohibits the application of any pesticide inconsistent with the pesticide's labeling. [Labels should be read carefully and recommended dosages followed.] The particular pest that is sought to be controlled must appear on the label.

Misuse of pesticides can pose health and safety hazards to plants, household property, humans, and animals.

Following is a list of botanical, mineral, and soap compounds recommended by the City of Austin:

*Pyrethrum*. This plant-derived compound is one of the most widely used botanical insecticides. Pyrethrum is a compound made from the dried blooms of the chrysanthemum plant. The active insecticidal ingredient is sometimes extracted from the flowers and it is called pyrethrin. Chemists have also been able to synthesize the active ingredient, and the artificially-made compounds are called pyrethroids. Many types of pests can be controlled using these chemicals. Check the label on the products you select for a complete listing of pests controlled. Many pyrethrin- and pyrethroid-based products have other chemicals added to enhance their effectiveness. Beware, these additives may have health and environmental risks of their own.

*Neem (Azadiractin)*. Extracted from the seeds of the neem tree found in parts of Africa and India, this compound is another botanical insecticide. Native people have long been aware of the useful properties of this tree. It is the ingredient in many medicinal remedies. Neem is unique in that it has a triple-action effect on pests. It acts as a repellent, growth regulator, and insect poison. It can be used to control a wide range of insects on ornamental plants and shrubs. Neem is also virtually harmless to beneficial insects such as bees, lady beetles, and lacewings.

*Rotenone*. Another plant-derived insecticide, Rotenone is isolated from several plant species, mostly from South America. Even though it is botanically produced in nature, the active ingredient is still a powerful toxin. Products containing it should be used with extreme care and only after the other safer, organic pesticides have been used. *Rotenone is highly toxic to fish, so do not use in areas that drain directly to a creek, river, lake, or other bodies of water.*

*Diatomaceous earth (DE)*. This powdery white substance is the fossilized remains of microscopic algae. Diatomaceous Earth, or DE, clings to pests and destroys their exoskeleton (the hard outer covering), causing the pest to dry up and die. DE controls a wide range of pests but it can also be harmful to beneficial insects and spiders. An important thing to remember when using DE is to keep it dry. If it becomes moist, it doesn't work as well. Also, be sure to buy the Diatomaceous Earth sold for pest control. The DE that is commonly used in swimming pool filters has been heat-treated and will not be effective against pests.

*Horticultural oil*. Once only used for cool weather these oils can now be used, with care, in warm weather. Horticultural oil sprays will smother insects by blocking their breathing apparatus. Oils can also kill insect eggs by penetrating their outer covering and interfering with their development. These oils should be used carefully since you might inadvertently kill sensitive plants or beneficial insects.

*Insecticidal soaps (Potassium Salt of Fatty Acids)*. Soaps are specially formulated for use as pest control. Their insect-killing properties are the basis of the old home remedy of using a solution of dishwashing liquid and water to control pests. Scientists have discovered that potassium salts of fatty acids, found in soaps, will penetrate an insect's body and collapse cell walls. Companies have developed special soap products that contain a high proportion of these insect-killing compounds. They are especially effective against soft-bodied insects such as aphids, mealybugs,

and whiteflies. They also kill chiggers, fleas, mites, and ticks. Look for other pesticide soaps that kill weeds and certain types of garden fungus.

C. Aphids  
(Homoptera aphididae)

1. Pest(s) to be controlled: aphids

2. Biology of the aphid: Aphids can be various colors (black, green, yellow) and are associated with many different plants. They can cause damage to many common ornamental and vegetable plants, both indoors and out. Aphids congregate on new growth and suck the plant sap, causing stunted growth and leaf curling, and leave behind a sticky residue called honeydew. Aphids weaken plants to the point where they are susceptible to other pests, or to plant diseases that the aphids may carry.

Aphids are small, sap-sucking pests that are easily kept in check in nature by insect predators and parasites (natural predators). Frequently ants "tend" and protect aphids from natural predators to allow them to produce more honeydew, which the ants consume. When necessary, ants can be controlled so that the natural predators can control the aphid population.

Aphids breed prolifically under warm conditions, entering the egg stage only during the winter. They usually complete their life cycle within 30 days. Indoors, if conditions remain favorable, they may never enter the egg stage. Unfertilized females give birth to live young (parthenogenically), which in turn, can give birth upon maturity. Under favorable conditions, aphid populations can increase very rapidly.

Aphids are most vulnerable in the egg stage. It is important that plants not be under stress or over-fertilized. Plant locations should be selected carefully and slow-release fertilizers should be used. Generally, a small aphid population can be tolerated by a healthy plant. An effective control strategy is to monitor aphids frequently, either by inspecting plants or using sticky traps so that increasing populations can be identified before they present a danger.

3. Control tactics:

- (a) Physical control tactics include the pruning and washing of infested plant sections. Sticky adhesive barriers are an option to restrict ant movement into plants if they are suspected to be a problem.
- (b) Mechanical control tactics include the proper screening of greenhouses or sunrooms where indoor plants are kept to prevent invasions by aphids from outside. Weeds can be managed around exterior plants to reduce the availability of aphid overwintering sites.
- (c) Biological control tactics include the encouragement or release of green lacewing (*Chrysoperla carnea*) on exterior plants and the encouragement or release of parasitic wasps (many genera including *Aphidius*) on interior plants.

The use of nontoxic control tactics will be limited to spot applications or only used before releasing lacewings or predatory wasps. Nontoxic controls affect lacewings and predatory wasps and other natural predators. Supplemental feedings of sugar/protein diets are an option to increase egg laying of natural predators. The number of aphids will be monitored and rapid increases will prompt the next control tactic.

- (d) Nontoxic and less persistent control tactics include the use of dormant oils in the winter, and spot application of light horticultural oils, limonoid oils, insecticidal soaps, or pyrethrin/rotenone sprays during the growing season. Only an increase in the aphid population will prompt the next control tactic, with non-action as one option.

*Product list:*

|                           |                                 |
|---------------------------|---------------------------------|
| petroleum oil .....       | VOLK SUPREME OIL                |
| refined mineral oil ..... | SAFER'S SUNSPRAY ULTRA-FINE OIL |
| azadirachtin .....        | MARGOSAN-O (Class: III)         |
| insecticidal soap .....   | SAFER'S INSECTICIDAL SOAP       |

pyrethrin/rotenone..... FORD'S ORGANOCIDE (Class: III)

- (e) More persistent chemical control tactics include the use of organophosphates and pyrethroids that are more toxic to pests than to natural predators.

*Product list:*

acephate..... ORTHENE INSECT SPRAY (Class: III)

**D. Fire Ants**  
(*Solenopsis invicta*)

- 1. Pest(s) to be controlled: red imported fire ants.

- 2. Biology of the red imported fire ant: The red imported fire ant is a tropical insect that was accidentally introduced into the United States in the 1930s and has spread unchecked across the Southeast and into Texas.

Fire ants disperse naturally through mating flights that usually occur in the spring and fall, but may occur anytime warm humid conditions exist, even during the winter. Fire ant queens are also dispersed by the movement of infested nursery stock and turf sod, soil, waterways, and cars and trucks. Fire ant colonies are known to raft to higher ground during floods. The presence of fire ants is usually shown by their characteristic cone-shaped mounds.

Fire ants are a serious pest because of the venomous sting they can inflict repeatedly. Chest pains and nausea experienced by sting-victims are indications of hypersensitivity to fire ant venom. **SEEK MEDICAL ATTENTION IF CHEST PAINS OR NAUSEA ARE EXPERIENCED WHEN STUNG.**

The only way to effectively control or suppress fire ants is to use a method that stops egg production by the queen(s). Killing worker ants will not affect the fire ant colony. Therefore, the use of granular insecticides, which do not reach the queen, is not a long term solution. The ineffective use of pesticides, especially in environmentally sensitive areas, should be avoided.

- 3. Control tactics:

- (a) THE MOUND MUST NOT BE DISTURBED BEFORE OR DURING TREATMENT. Any disturbance will cause the fire ants to move away, thus escaping treatment.
- (b) Physical control tactics include the use of boiling water to drench individual fire ant mounds. Mounds drenched midmorning with at least a gallon of hot water on the sunny-side of the mound may kill the queen(s). Drenched mounds will be rebuilt by surviving workers, but the colony will soon disperse if the queen is killed. If mounds persist, it prompts the use of the next control tactic.
- (c) Currently, no mechanical control tactics are available to control fire ants.
- (d) Biological control tactics for control of fire ants may include the use of a product such as ANTidote (nematodes) on fire ant mounds. The time for elimination of fire ants varies according to soil and weather conditions. ANTidote can be applied uniformly or by spot treating individual mounds. ANTidote should be applied in the evening if the daytime temperature is above 80°F. Unused contents should be placed in the refrigerator.

*Product list:*

neopleotana carpocapsae..... ANTidote (nematodes)

- (e) Nontoxic and less persistent control tactics include the use of a fire ant bait such as LOGIC, followed by using products containing pyrethrins and diatomaceous earth used as a mound drench as directed under physical control tactics.

Fire ant baits are designed to be attractive to foraging fire ants who will ultimately pass them onto the queen(s). The effect of the bait is to neutralize the queen(s) by stopping egg production. Because fire ants will not forage

when ground temperature is below 70°F or above 95°F, and because the bait will not remain attractive if wet, care must be taken to apply the bait when the soil and vegetation are warm and dry. As fire ant baits require several weeks or months to affect colonies, the next control tactic will only be prompted by the persistence of mounds over a long period.

*Product list:*

pyrethins and diatomaceous earth ..... D-20 (Class: III)  
fenoxycarb..... LOGIC or AWARD (Class: III)  
amidohydrazone ..... AMDRO (Class: III)

- (f) More persistent chemical control tactics will include the use of liquid drenching or dust containing organophosphate for treating individual mounds.

*Product list:*

acephate..... ORTHENE 75-W (Class: III)

- 5. This IPM plan is a dynamic document. If other control tactics are found to be effective, then this plan can be amended to include those tactics. No regularly scheduled pesticide applications are planned.

**E. Fleas**

*Cat flea (Ctenocephalides felis)*

- 1. Pest(s) to be controlled: fleas

2. Biology of fleas: The most common flea encountered in Texas is the cat flea, although the dog flea, human flea, and oriental rat flea are encountered occasionally. Fleas are associated with warm-blooded animals and pass through 4 life stages: egg, larva, pupae, and adult. Optimal flea development occurs between 65 and 80 degrees F with a relative humidity of 70%. Hot dry summers reduce flea populations while cool, rainy weather increases populations.

When adult fleas emerge from pupae, they immediately seek a blood meal from warm-blooded animals. After mating, females lay eggs on hosts or on the host's sleeping areas. Eggs hatch into larvae within 12 days and usually feed on organic debris for 8 to 24 days. Pupae usually emerge into adults in 5 to 7 days. If conditions for development are unfavorable, larvae can live for up to 200 days and pupae for up to 1 year.

An effective control strategy is to arrest flea development before the pupal stage to prevent explosive population growth when optimal conditions occur.

- 3. Control tactics:

- (a) Physical control tactics include combing and bathing pets, vacuuming or washing rugs and carpets, and cleaning furniture and pet sleeping mats. The number of fleas captured in combs is to be used as an indicator of the overall flea population and should be monitored. When fleas reach annoying levels or the number of fleas captured in combs increases, the next control tactic is prompted.
- (b) Mechanical control tactics include screening pets from areas where fleas congregate or where vacuuming or washing is difficult. If flea monitoring shows mechanical controls have not decreased the flea population, the next control tactic is prompted. Note: some nontoxic control products work mechanically, but are listed within the nontoxic category.
- (c) Biological tactics for controlling fleas may include the use of a product such as ANTidote (nematodes). The treatment area should be moistened before application. ANTidote should be applied in the evening if the daytime temperature is above 80°F. Unused contents should be placed in the refrigerator.

*Product list:*

*Neopleotana carpocapsae* (nematodes) .....ANTidote

- (d) Nontoxic and less persistent control tactics include dusting pets and the areas they frequent with products containing pyrethrum, silica aerogel, or diatomaceous earth.

Yards or outdoor areas where pets frequent can be sprayed with products containing insecticidal soap, pyrethrum, or rotenone. An insect growth regulator can be added to the spray before application.

*Product list:*

|   |                        |
|---|------------------------|
| silica aerogel, pyrethrins and piperonyl butoxide .....     | DRIONE (Class III)     |
| pyrethrins, piperonyl butoxide and diatomaceous earth ..... | PERMAGARD (Class III)  |
| insecticidal soap .....                                     | SAFER'S SOAP           |
| pyrethrins, piperonyl butoxide and rotenone .....           | ORGANOCIDE (Class III) |
| fenoxycarb.....   | TORUS (Class III)      |

Veterinarians also dispense or recommend treatment to prevent appearance of fleas on pets.

- (e) More persistent chemical control tactics include using pet collars containing organophosphate and the use of pyrethroids to control fleas outside. The use of more persistent chemicals should be considered seriously, with non-action being one available option.

*Product list:*

|                  |                    |
|------------------|--------------------|
| dichlorvos ..... | HARTZ (Class: III) |
| permethrin ..... | FLEE (Class: III)  |

**F. Mealybuds and Whiteflies**  
(*Homoptera eriococcidae* and *Homoptera aleyrodidae*)

1. Pest(s) to be controlled: mealybugs and whiteflies.

2. Biology of the mealybug and whitefly: Mealybugs and whiteflies are common sap-sucking pests found on indoor and outdoor plants. Both are sessile (attached to the base, as a leaf to a stem) on plants during at least part of their life cycle, and both produce white or gray threads of wax that are easy to spot. Whiteflies develop into conspicuous winged adults, while mealybugs produce sessile females and inconspicuous winged males. Eggs are laid in clusters on the plant and maturation to adult averages from 4 to 5 weeks.

While mealybugs are sensitive to cold and survive year-round only on indoor plants, whiteflies are more tolerant and are present on outdoor plants year-round. Mealybugs may produce only 3 to 4 generations a year, while whiteflies can form extremely large populations. Tolerance to mealybugs and whiteflies varies greatly among plants, with the most affected having stunted, chlorotic leaves and loss of vigor. The honeydew produced by both pests may grow a black fungus called sooty mold that is unsightly but harmless.

To reduce infestations of whiteflies and mealybugs, it is important to limit possible overwintering sites by removing weeds and use slow-release fertilizers. The sessile stages of both pests are the most vulnerable, but whitefly adults are also attracted to yellow sticky traps.

3. Control tactics:

- (a) Physical control tactics include the use of yellow sticky traps. This monitors the population of whiteflies and prompts the next control tactic when populations increase. Rubbing alcohol can also be used to dissolve the wax covering of sessile stages of mealybugs and whiteflies.
- (b) Mechanical control tactics include the proper screening of plant areas to prevent pest entry. Weeds can be managed around exterior plants to limit possible overwintering sites and alternate host sites.
- (c) Biological control tactics for control of whiteflies include the release of green lacewing *Chrysoperla carnea* on exterior plants, and the whitefly parasite *Encarsia formosa* on interior plants. Mealybug control tactics include the release of mealybug destroyer (also known as the adult ladybird beetle or lady bug) (*Cryptolaemus montrouzieri*), on interior plants. Only an increase in the number of mealybugs and whiteflies following the establishment of natural predators prompts the next control tactic.

- (d) Nontoxic and less persistent control tactics include the use of horticultural oils, limnoid oils, or insecticidal soap for both pests. Only an increase in the number of mealybugs and whiteflies prompts the next control tactic.

*Product list:*

refined mineral oil ..... SAFER'S SUNSPRAY ULTRAFINE OIL  
 azadirachtin ..... MARGOSON-O (Class: III)  
 insecticidal soap ..... SAFER'S INSECTICIDAL SOAP

- (e) More persistent chemical control tactics include the use of organophosphate and pyrethroid that are less selective against natural predators.

*Product list:*

acephate ..... ORTHENE INSECT SPRAY (Class: III)

### G. Mosquitos

1. Pest(s) to be controlled: mosquitos.

2. Biology of the mosquito: Adult mosquitoes are small, slender, long-legged flies with a long, piercing mouthpart called a proboscis. Mosquitos' development consists of 4 distinct stages: egg, larva, pupa, and adult. Adult females feed on animal blood for the protein needed to produce eggs. Eggs are laid singly or in clumps on still or slow-moving water. Some mosquitos lay eggs in temporary water basins such as tree holes or at the edges of flood-prone areas.

Mosquito eggs may lie dormant for months before hatching, but under most circumstances hatch within 2 to 6 days. The aquatic larva and pupae stages each take from 4 to 10 days to develop and represent the most vulnerable stages. Adults can live up to 2 months after emerging. Most mosquitos die within yards of where they emerged.

The most effective method of controlling mosquitos is to limit the number of water basins where eggs can hatch. Examples of temporary basins include cans and jars, clogged roof gutters, used tires, plant saucers, plastic sheeting, and wheelbarrows. Larger, more permanent water basins can be drained or filled. However, not all water basins can or should be altered for environmental reasons. In addition, the excessive use of fertilizers should be discouraged because fertilizers in water will promote algal blooms that protect the mosquitoes from predation by fish.

3. Control tactics:

- (a) Physical control tactics include the use of screens on windows and doors. Electric "bug zappers" are not effective at reducing mosquito populations since they target only adults, and affect non-target insect populations as well (including natural predators).
- (1) Empty or turn over water-collecting containers.
  - (2) Discard, or store old tires indoors.
  - (3) Repair leaky plumbing and outside faucets, anything that might result in standing water.
  - (4) Clean roof gutters.
  - (5) Fill holes in trees with sand or mortar, or drain and spray them.
  - (6) Fix or replace damaged screens on windows.
- (b) Mechanical control tactics include the use of suffocating surface film where practical. This can include those basins not subject to runoff. The films to be used are highly refined and biodegradable, with no effect on human or non-target species.
- (c) Biological control tactics for control of mosquitos can include the use of mosquito-eating fish and the addition of purple martin houses to attract insect eating birds (or bat houses) in areas not subject to runoff. Examples of non-runoff areas include stormwater detention ponds, pools, and galvanized stock tanks.
- (d) Nontoxic and less persistent control tactics include the use of *Bacillus thuringiensis israelensis* or pyrethrum larvicides. These products can be applied to water basins where mosquito larvae develop.



*Product list:*

bacillus thuringiensis israelensis ..... MOSQUITO DUNKS (Class: III)  
encapsulated pyrethrum ..... TOSSITS (Class: III)

H. Plant Diseases

1. Pest(s) to be controlled: black spot (*Diplocarpon rosae*) and powdery mildew (*Erysiphe lagerstoemia*).

2. Biology of the plant diseases: Black spot and powdery mildew are common diseases that occur on many native and introduced ornamentals, particularly black spot on roses and powdery mildew on crepe myrtles. Each disease begins as a spore transported by the wind to the plant host. When enough heat and moisture are available, the spore germinates into a tube-penetrating plant tissue. The pathogen kills the tissue as it absorbs nutrients and gradually spreads throughout the plant, ultimately leading to its decline. Management of the diseases involves prevention of spore germination or killing or removing spores before they damage the plant.

Cultural practices involve the selection of disease-resistant native plants, the use of slow-release fertilizers that foster the growth of strong roots and stems, and the placement of plants in locations of proper shade and wind circulation.

3. Control tactics:

(a) Physical control tactics include the removal and destruction of leaves during the winter and the prompt pruning of leaves when spores germinate. Mulching is also used to provide a barrier between spores in the soil and the plant.

(b) Mechanical control tactics include the use of surfactants and antitranspirants to manage the moisture of plant leaves. Black spot will not germinate on dry leaves, whereas powdery mildew will not germinate on excessively wet leaves. Water washing can also be used to disrupt powdery mildew during active growth. Continued occurrence of either disease can prompt the next control tactic.

*Product list:*

surfactant ..... SAFER'S NATURAL GARDEN FUNGICIDE  
antitranspirant ..... CLOUD COVER

(c) No biological control tactics are available for the control of black spot or powdery mildew.

(d) Nontoxic and less-persistent control tactics include the use of sulfur-based fungicides. The persistence of disease prompts the next control tactic with non-action being one available option.

*Product list:*

sulfur ..... FLOTOX GARDEN SULFUR (Class: III)

(e) More persistent chemical control tactics include the use of a systemic fungicide.

*Product list:*

benomyl ..... SYSTEMIC ROSE AND FLORAL SPRAY (Class: III)

I. Cockroaches

German cockroach (*Blattella germanica*)

1. Pest(s) to be controlled: cockroaches.

2. Biology of the German cockroach: Five species of cockroaches commonly infest houses, with the German cockroach having one of the widest distributions. Roaches are tropical insects that have adapted to living with man by seeking areas where they can get warmth and moisture, such as bathrooms and kitchens. Female roaches glue egg cases to the surfaces of any dark place. The average development time for the German cockroach from egg to adult is 55 to 68 days. Adults can live more than 200 days and are most active at night.

3. Control tactics:

- (a) Physical control tactics include sealing cracks and crevices and screening windows and vents to limit access of large water bugs (the large roaches) from the outside. Roach traps can be used to monitor pest population inside.
- (b) Cultural control tactics include good sanitation, including proper storage of food and regular cleaning.
- (c) Currently, no biological control tactics are available for the control of cockroaches.
- (d) Nontoxic and less persistent control tactics include insecticidal dusts and baits and insect growth regulators.

*Product list:*

boric acid powder..... ROACH RID (Class: III)  
 silica aerogel, pyrethrum ..... DRIONE (Class: III)  
 hydramethylnon..... COMBAT (Class: III)  
 hydroprene ..... GENCOR (Class: III)

- (e) More persistent chemical control tactics will include the use of sprays containing organophosphates pyrethroids.

*Product list:*

diazinon..... ORTHO ROACH SPRAY (Class: III)  
 phenothrin ..... BENGAL ROACH SPRAY (Class: III)

**J. Rodents**

1. Pest(s) to be controlled: rodents

2. Biology of the common house mouse, roof rat, and Norway rat: The house mouse, roof rat, and Norway rat are all rodents that can be found almost everywhere humans live or work. While wild mice and rats will only invade houses when weather changes, these pests are dependent on man for shelter and food.

The reproductive rate of rodents overall and mice, in particular, is very high. Female mice produce 10 litters a year, 6 to 7 young per litter. Rats are almost as productive but suffer high mortality. All rodents respond to trapping or other declines in their population by producing more litters.

Strategies to control rodents involve preventive steps designed to limit access to shelter and food, trapping to reduce small populations, and poisoning.

3. Control tactics:

- (a) Physical control tactics include filling access holes, making food storage rodent-proof, and the use of barriers. These measures include the inspection of sewer lines into dwellings and sealing cracks in foundations.
- (b) Mechanical control tactics include trapping rodent populations in snap traps or glue boards. Most traps can be effectively placed to affect the population.
- (c) The use of domestic cats can be considered as a biological control tactic, if they do not become pests themselves.
- (d) Nontoxic and less persistent control tactics can include the use of cholecalciferol that does not lead to secondary poisoning.

*Product list:*

cholecalciferol..... QUINTOX (Class: III)

- (e) More persistent chemical control tactics will include the use of anticoagulants placed in bait boxes to prevent secondary poisoning.

*Product list:*

warfarin, sulfaquinoxaline..... PROLIN (Class: III)

**K. Termites**

Eastern subterranean termite (*Reticulitermes flavipes*)

- 1. Pest(s) to be controlled: termites

2. Biology of the eastern subterranean termite: Subterranean termites are social insects that live in colonies consisting of winged reproductive, sterile workers, and soldiers. Overcrowded conditions prompt reproductive termites to swarm, usually during the first warm, humid days of spring. Winged termites are often confused with ants but they can be identified by their equal-sized pair of wings. It is important that positive identifications are made of suspected termite infestations. Subterranean termites are different from other termites in that they must have regular contact with moisture. This is generally accomplished by building earthen tubes to the soil. Water leaks in structures provide a good environment from which termites can build tubes. In most structures, these tubes are visible on exterior walls, but they can be present on interior walls as well if termites have gained access through cracks in slabs.

The important first step in a termite control program is to eliminate the conditions that favor termite survival. These steps include the removal of wood debris around structures, eliminating areas of earth-to-wood contact and constructing barriers to termite entry. Regularly monitoring structures for signs of moisture is also important. Damaged wood or earthen termite tunnels are signals that actions should be taken. The most vulnerable aspects of the termite colony are the eggs and immature termites.

- 3. Control tactics:

- (a) Physical control tactics include plugging cracks and crevices in structures that provide access. Any exterior feature that leaks water such as gutters and water pipes should be repaired.
- (b) No mechanical control tactics are currently available to control termites. However, sand barriers have been tested as a deterrent to tunneling and are recommended as a control alternative.
- (c) No biological control tactics are currently available to control termites.
- (d) Chemical control tactics involve the use of toxic, long-lasting products.

*Product list:*

fenvaterate..... PYDRIN (Class: III)

**L. Turfgrass**

- 1. Pest(s) to be controlled: turfgrass weeds, diseases, and insects

2. Multiple tactics: Integrated pest management (IPM) of turfgrass involves the use of multiple control tactics to keep selected pests below an acceptable injury level. IPM has a complex series of responsibilities, the primary one being the proper identification and understanding of the pest. Selected pests are only those that pose a threat to turf quality. Common turfgrass pests are crabgrass, dallisgrass, brown patch, dollar spot, pythium blight, fire ants, mole crickets, sod webworms, and armyworms.

The tactics included in this IPM plan are: (a) physical, (b) cultural, (c) biological, and (d) chemical. The goal of the IPM plan is to emphasize the physical, cultural, and biological tactics, and minimize the chemical use; to improve the tilth of the soil and increase microbial activity, while lessening the effects of the hydrologic system.

- 3. Life cycle of pests:

- (1) Irrigation – The irrigation system used on the turfgrass should be designed to maximize the efficient use of irrigation water and reduce runoff. Ideally, an irrigation system should be controlled by a weather station that will continuously monitor wind speed, air temperature, humidity, soil moisture, solar intensity, and leaf wetness.
- (2) Mowing – Mowing practices should maintain the vigor of the turfgrass. Mowing turfgrass with a reel-type mower produces a healthy upright growth pattern. Mowing will occur at different intervals during the week. To inhibit disease, mowing should not remove more than 50% of the leaf blade.
- (3) Top dressing – Top dressing with a fine layer of sand or organic matter is an effective way to control thatch. Control of thatch will reduce the chance for disease and improve water filtration.
- (4) Aerification – Aerification is the process of removing soil cores from the soil profile. It increases water infiltration and air movement in the soil, relieves soil compaction, and helps in the decomposition of the thatch layer.
- (5) Fertilization – the nutrient requirements of turf grass vary with the amount of water received. To insure proper fertilization levels, soil tests should be taken once a year. The N to K ratio will generally be 1:1. To prevent nitrate leaching into ground water, slow release granular and foliar sources of N should be metered to the turf at very low rates. Fertilizers should not be applied during wet weather or when excessive rainfall is imminent. Fertilizers should not be applied within 50.0 feet of a waterway.

5. Biological control tactics include:

- (a) Overseed turfgrass with a cool-season grass such as perennial rye grass or tall fescue varieties while warm-season grass is dormant to inhibit germination. Rye also contains high levels of endophytic fungi that naturally repel surface feeding insects.
- (b) Entomopathogenic nematodes (*Steinernema carpocapsae*) may be applied over turfgrass during the growing season to control soil dwelling insects. Nematodes are slender, microscopic, unsegmented worms. Best results are obtained by applying the nematodes in the late afternoon, just before sunset.
- (c) Disease-resistant species: Plan disease-resistant species and cultivars whenever possible. Recommendation for regionally adapted cultivars can be obtained from most Cooperative Extension Service offices.
- (d) Night-lighting: Place lights away from sensitive turf areas because adults (moths) of sod webworms and armyworms are attracted to lights at night and they will oviposit nearby.

6. Chemical control tactics include the use of herbicides, fungicides, and insecticides. The user must be a qualified applicator, read the product label, and strictly follow the manufacturer's directions. Chemical control of weeds will be limited to spot treatment with the use of a non-selective, post-emergence herbicide. Pre-emergence herbicides should not be used. Chemical use should be re-evaluated every year or so in order that the most effective and most environmentally sensitive products are used.

*Herbicide list:*

Glyphosate (dallisgrass) ..... ROUNDUP, ROUND UP ULTRA (Class III)

*Fungicide list:*

propiconazole (brown patch, dollar spot)..... BANNER (Class III)  
 methlaxyl (pythium blight)..... SUBDUE (Class I)

*Insecticide list:*

fenoxycarb (fire ants) ..... LOGIC (Class III)  
 fluvalinate (mole crickets)..... MAVRIK (Class I)  
*Bacillus thuringiensis* (BT) (sod webworms)..... DIPEL (Class III)  
 azadirachtin (armyworms)..... TURPLEX (Class III)

7. This IPM plan is a dynamic document: If other control tactics are found to be effective, then this plan can be amended to include those tactics. No regularly scheduled pesticide applications are planned.

### M. Buffalograss

1. Pest(s) to be controlled: weeds

2. Guidance: Although no buffalo grass is planned for this development, this section is included to provide guidance on planting drought and insect-resistant buffalograss, if so elected in the future. Integrated pest management (IPM) of buffalograss involves the use of multiple-control tactics to control weeds. While buffalograss is disease and insect resistant, weed control is the greatest challenge during buffalograss establishment from plugs. Sodded areas do not normally show significant weed problems because of immediate total coverage. The fertility and irrigation required to establish buffalograss may promote aggressive weed species. No herbicides should be applied until the buffalograss planting has been mowed twice at recommended intervals.

Once the buffalograss is established and properly managed, weed invasion should not be significant. However, if herbicides are required, labels and directions should be read and followed carefully to maximize weed control and minimize damage to the buffalograss. Buffalograss may be invaded by weeds such as crabgrass and dallisgrass. A spring application for controlling summer weeds should be applied when soil temperatures reach 50°F. A second pre-emergence application in late summer or early fall can control winter annuals.

The tactics included in this IPM plan are: (a) physical, (b) cultural, (c) biological, and (d) chemical. The goal of the IPM plan is to emphasize the physical, cultural, and biological tactics and reduce the chemical use, to improve the tilth of the soil and increase microbial activity, while lessening the effects of the hydrologic system.

3. Life cycles of pests:

- (a) Crabgrass (*Digitaria* spp.) is an annual grass spread primarily by seed and, to a minor extent, by rooting from lower nodes. Crabgrass is a low-bunching leafy grass, light green to yellowish in color. It is often heavy in overwatered or compressed turf.
- (b) Dallisgrass (*Paspalum dilatatum*) is a perennial with bunch-type growth, leafy at the base. Seed heads are sparsely branching on long stems. It is an indicator of poorly maintained turf.

4. Control tactics:

- (a) Physical controls are simply removal of weeds by hand or mowing at recommended intervals to prevent seed head production.
- (b) Cultural practices maintain the quality of buffalograss by providing the best possible growing conditions. These practices must be constantly monitored, evaluated, and adjusted for their direct effect on buffalograss quality and the reduction of pest populations. To achieve quality buffalograss and reduce the need for fertilization and pesticides, the following practices (from "Vegetative Buffalograss Management Calendar" by Roch Gaussoin, Extension, Turfgrass Specialist and Terrance Riordan, Turfgrass Plant Breeder) should be used:
  - (1) Irrigation is critical during establishment of buffalo grass. The soil should be moist before planting sod or plugs. Irrigate for 2 hours immediately after planting. Irrigate daily for 7 to 10 days, wetting the soil to 6 inches. After 7 to 10 days, irrigate 1 to 1.5 inches per week in 2 to 3 irrigations, allowing the surface to dry within the top 0.5 inches between irrigations. The water requirements of buffalograss are considerably lower than commonly required by turfgrasses. Excessive irrigation, much like over-fertilization, promotes weed invasion. Irrigating buffalograss in many areas is not required. If natural precipitation is inadequate or untimely, supplemental irrigation may be required.
  - (2) Mowing – Although buffalo grass should not be mowed or maintained as turf, the following mowing recommendations should be followed during establishment of the buffalograss. Newly planted buffalograss should be mowed frequently to promote spreading of plugs and to increase density of

sodded areas. Mowing also decreases weed competition during establishment. No more than 33% of the turf height should be removed. Mowing should begin as soon as the turf reaches the desired mowing height and when the plugs are not easily pulled out of the soil. Sodded sites should be mowed as soon as the sod is rooted to the soils and turf exceeds the desired mowing height.

Established buffalograss may be mowed from approximately every 2 weeks to once per year, depending on management level and desired height. The recommended mowing height, if mowing is practiced, is 1.5 to 4 inches. Shorter mowing heights will require a greater mowing frequency. Again, no more than 33% of the turf height should be removed. Clippings may be left in place and removal is not recommended.

- (3) Top dressing – Top dressing with a fine layer of sand or organic matter is an effective way to control thatch. Control of thatch reduces the chance for disease and improves water filtration.
- (4) Aeration – Aeration is the process of removing soil cores from the soil profile. It increases water infiltration, air movement in the soil, relieves soil compaction, and helps in the decomposition of the thatch layer.
- (5) Fertilization – the nutrient requirements of buffalograss vary with how much water is received. Fertilizers should not be applied during wet weather or when excessive rainfall is imminent.

Newly planted buffalo grass should be treated with 1 to 3 pounds Nitrogen per 100 square feet. Slow release Nitrogen carrier should be used (e.g., sulfur-coated urea (SCU), ureaformaldehyde, or natural organic fertilizer). A split application should be used, with the first application occurring 3 to 4 weeks after planting, and the second application occurring 4 to 6 weeks after that. Sandy or low-fertility soils should use the upper end of the recommended rate. Overfertilization of buffalograss will result in higher weed invasion. The recommended fertility rate should not be exceeded.

Excessive nitrogen fertilization promotes weed populations in buffalograss. The following recommendations should not be exceeded or the low management concept of buffalograss will be defeated and weed invasion will increase. One to 3 pounds of Nitrogen per 1000 square feet per year in 2 applications (mid to late May and late July). On sandy or low-fertility soils, the upper end of the recommended rates should be used. A slow release Nitrogen carrier such as SCU, ureaformaldehyde or a natural organic fertilizer should be used. For phosphorous, potassium, and pH adjustments, the soil should be tested every 3 to 5 years.

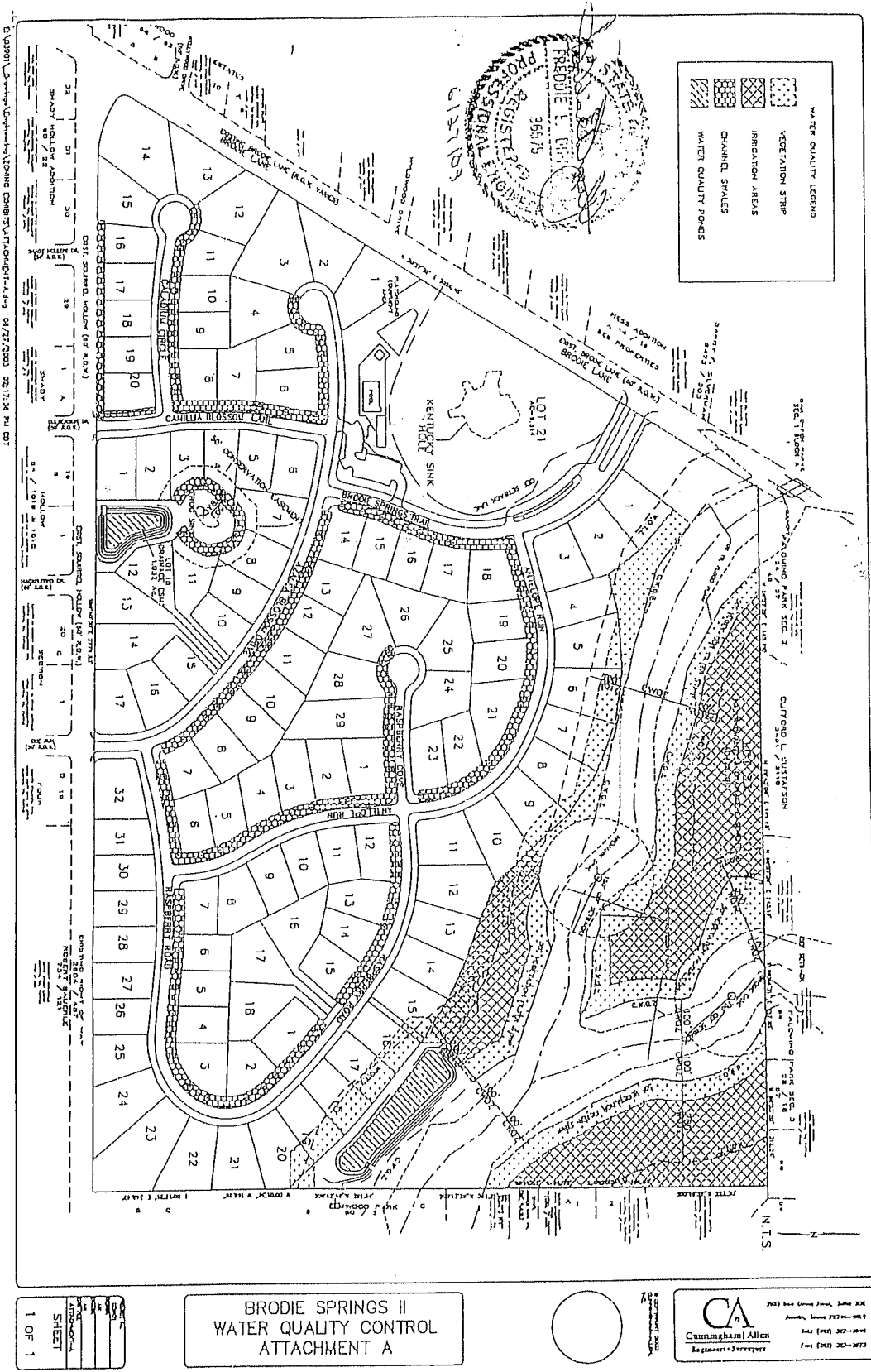
5. Chemical control tactics include the use of herbicides. Chemical use should be reevaluated every year so that the most effective and most environmentally sensitive products are used.

*Herbicide list:*

|                               |                     |
|-------------------------------|---------------------|
| MSMA (dallisgrass).....       | MSMA (Class III)    |
| B.T. (sod webworms).....      | DIPEL (Class III)   |
| azadirachtin (armyworms)..... | TURPLEX (Class III) |

6. This IPM plan is a dynamic document. If other control tactics are found effective, then this plan should be amended to include those tactics. No regularly scheduled pesticide applications are planned.

APPENDIX A TO IPMP  
(Map)



1 OF 1  
SHEET

BRODIE SPRINGS II  
WATER QUALITY CONTROL  
ATTACHMENT A



CA  
Cunningham & Allen  
REGISTERED PROFESSIONAL ENGINEERS

APPENDIX B TO IPMP  
(Guide For Managing Lawn  
And Garden Pests)

The City of Austin produces a fold-out brochure with excellent information.  
It is available on the City of Austin website, [www.ci.austin.tx.us/growgreen/program.htm](http://www.ci.austin.tx.us/growgreen/program.htm)



CITY OF AUSTIN  
LAWN CARE TIPS

Healthy Lawns and a Clean Environment

Nearly everyone wants to have a healthy, attractive lawn, right? Unfortunately, in their quest for a beautiful lawn, some homeowners go a little overboard with the fertilizers and pesticides. Overuse or misuse of these chemicals is not good for your lawn or the environment. So get smart about your lawn care, and learn to take care of your yard. That way, problems are prevented before they even start.

A well cared for lawn can overcome most disease and pest problems; therefore, make sure your plants are receiving the proper amount of light, water, and organic nutrients. Often improper cultural practices are at the root of a recurring pest or disease problem. Don't rely on chemical pesticide applications as a substitute for properly caring for your plants.

**Take Care of Your Soil**

Healthy soil is the best defense against pests and disease. Plants get nutrients from soil, so the soil must have the right biological, chemical and physical makeup. Healthy soil will have lots of organic matter and will have a diverse population of beneficial microbes. You should treat your soil as a living organism. If you suspect your soil may be lacking, send a sample to a soil testing service (call the Travis County Agricultural Extension Service for more information).

**Aerate and Dethatch Regularly**

Aeration revives hard-packed soil, allowing water and air to enter and oxygen from respiration to exit. Aerate your soil by punching a lot of deep holes in the lawn using a special tool. This can be done by hand or by using a mechanical aeration device. These tools can be purchased or rented at most lawn and garden centers. Try to do this at least once or twice a year.

Thatch is an accumulation of dead, compacted roots and stems that collect at the soil surface. Thatch acts like barrier and can prevent water from penetrating the soil, so you may need to remove it if it gets thick. This can be done with a rake, a special dethatching tool, or special power equipment. Check with your local lawn and garden center for purchase or rental advice.

**Topdress Turf Areas**

All lawns, especially those that have been neglected or treated only with synthetic chemical fertilizers, will benefit from a regular application of rich organic matter. Top dressing means thinly spreading compost or other organic matter over your lawn. This prevents the soil from compacting and adds essential nutrients to the lawn. The organic matter will usually be a bulky material, such as humus, compost, or "Dillo Dirt". This material will increase the fertility of your lawn by:

- Providing "slow-release" nitrogen to the roots of your grass;
- Helping to balance mineral content and buffer soil alkalinity;
- Enhancing the growth and development of beneficial microorganisms in your soil; and
- Improving the structure of the soil.

Soil, just like your body, benefits from a regular dose of vitamins and minerals. Adding organic matter regularly is a safe approach to supplying the type of nutrients that your soil needs. Compost will also tend to moderate the high pH factor of our local soils, which tend to be alkaline, since they were derived from limestone. Alkaline soils have a pH above 7.0. Irrigating with potable water will also tend to make the soil more alkaline, since our water tends to have a high pH.

Organic matter supplies raw materials to earthworms and naturally occurring bacteria, fungi, and other microorganisms in the soil. These organisms form a relationship with your plants' roots that is mutually beneficial. They assist the plants' ability to gather nutrients and water (thereby enhancing drought resistance) and boost the plants' natural immune system. Enriching the soil with organic matter also improves soil structure, which in turn improves the soil's capacity to hold water and nutrients. Regular use of organic matter will lead to a healthy, balanced soil that will require less irrigation, and will support plants that are more tolerant of insect and disease problems.

**Add Fertilizers If Needed**

Nutrients are essential to a healthy, thriving landscape. Fertilizers supply nutrients to your plants and are an important part of any yard maintenance strategy. They can be beneficial to your lawn, but they can also cause problems for our creeks, rivers, lakes and aquifers. Fertilizers that wash into creeks, either directly or through the storm sewer system, cause algae blooms. Algae blooms are a concern because they cause taste and odor problems in our drinking water and degrade aquatic wildlife habitat. Sometimes algae blooms can lead to fish kills.

There are three things to remember when fertilizing that will help you feed your plants properly and prevent damage to the environment.

Fertilize only when your lawn needs it. The best fertilizing strategy includes monitoring for nutrients (remember that soil test) and adjusting schedules for changing plant needs. Often, the available organic material in your soil will supply all the materials needed for growth, especially if you leave grass clippings on the lawn. Generally, though, spring and fall are the best times to consider adding fertilizer to your yard.

Use organic and slow-release fertilizers. For the long-term health of your yard, fertilize moderately with an organic or slow-release type. Do not over fertilize. Applying too much nitrogen prompts fast, weak growth, which attracts pest insects. Using an organic or slow-release type can prevent this sort of trouble; so check the label to see what kind you are buying.

Apply fertilizers with care. When using granular fertilizers, apply them with care and keep the pellets off streets, sidewalks and driveways. There, they can easily wash into the storm sewer and into a creek. When solid fertilizers are applied to the grass, water them down into the soil with a garden hose. Don't try and let a rainstorm do this chore for you! Rain can easily wash the fertilizer down the storm drain.

**Mow at the Correct Height**

Pay attention to mowing height because grasses have different preferences. You should adjust the height seasonally for some grasses. Your goal is to remove no more than one-third of the leaf blade at any time. Only mow when the lawn has had enough time to recover from the previous cut. Proper mowing will produce a tight, dense lawn, which discourages weeds. The accompanying chart gives some mowing height guidelines for some common Austin grasses.

**Mower Height Guide**

| GRASS TYPE                                      | MOWER SETTING | MOW on or BEFORE |
|---|---------------|------------------|
| Common Bermuda                                  | 1.5"          | 2.5"             |
| "Tif" Bermuda                                   | 1.0"          | 1.5"             |
| Buffalo grass                                   | 2.5"          | 3.0"             |
| Zoysia  | 2.0"          | 3.0"             |
| St. Augustine (not permitted in Brodie Springs) | 2.0"          | 3.0"             |

## Water at the Right Time

Watering the lawn is not as simple as it sounds. Doing it the right way is very important to your lawn's health. Watering too lightly or too often produces weak plants with shallow root systems. This makes your lawn susceptible to droughts and pests. Too much watering is wasteful and can wash the nutrients out of the soil. You will know it is time to water if your footprints remain visible when walking across the grass, the leaf blades curl and become dull green, or if a probe will only penetrate the soil a few inches.

## Don't Let Weeds Invade

Weeds are technically classified as "pests" even though most people only think of insects when they hear the word pest. The best defense against weeds is a thick and healthy lawn. As in the jungle, the law in your lawn is only the fittest survive. Therefore, the best way to control weeds is to give the competitive advantage to your grass and let it choke out the weeds.

Broadleaf weeds, such as clover, dandelion, sow thistle, and purslane, will gradually die back if kept regularly mowed. As your lawn begins to grow and thicken in the spring, it will crowd out these unwanted plants. Be sure to keep flowering weeds mowed down to prevent their reproduction. There is no need to apply herbicides such as those in "weed and feed" type fertilizers to control these pests. Simply stay consistent with the weekly mowing and make sure your lawn has the nutrients and water it needs. Hand pulling some of the weediest areas will help your grass quickly crowd out the pests.

Grass and sedge type weeds, such as quackgrass, nutsedge, bermuda, and crabgrass, can be some of the most difficult weeds to control even with herbicide use. Try to avoid problems with this type of weed by keeping established lawns thick and healthy and hand pulling any new invaders promptly. If installing a new lawn, use pure seed stock or good quality sod. Regularly mowed lawns, even ones with minor weed problems, can still look quite nice, so try giving yourself, and our environment, a break by learning to live with a few of these weeds among your grasses.

If certain areas of your lawn are so infested that they are beyond help, instead of waging chemical warfare, you may be better off digging up the area and reseeding or resodding. Solarize the area (moisten the soil and cover with clear plastic for several weeks) to sterilize the soil and replant. Be sure to give your new planting a good sprinkling of compost to get the biological activity in the soil going again. If grass refuses to do well in the area or just can't out compete the weeds, replace it with a groundcover or an ornamental bed with plants well suited to the site.

Basic weed management strategies for lawns will depend on the type of turf you are growing but may include making adjustments to mowing frequency, mower height, fertilizer applications, and watering schedule. Supplement this by hand pulling the remaining weeds and you will be on the right track toward a more attractive lawn.

## More Weed Control Options . . .

Weeds can pop up everywhere including your vegetable garden and flower beds. In these areas using a mulching material coupled with occasional physical removal will easily keep most weeds at bay. Three or 4.0 inches of mulch will keep most weeds from germinating. If you have an unusually bad weed problem, place newspapers (about 6 sheets thick) on the ground before applying your mulch. Once the paper is down moisten it to make it stick then spread your mulch on top. The paper will keep all but the most persistent weeds out. Physical removal can be done by hand or with a garden tool designed for weeding. Tools such as hoes and cultivators can make quick work of weeds while saving wear and tear on your knees and back. Many varieties are available at local garden centers and no gardener should be without one.

There are also pesticidal soaps available on the market that destroy weeds by dissolving their waxy membranes. They act rapidly but tend to only kill the top leafy portion of the plant so you may experience some root resprout. However, if you pull or retreat the sprouts, the roots will eventually weaken and die. While considered one of the safer herbicides, these soaps may damage plants if used inappropriately. Please read and follow the label directions.

Source: City of Austin, [http://ci.austin.tx.us/ipm/care\\_tips.htm](http://ci.austin.tx.us/ipm/care_tips.htm)

MANAGEMENT CERTIFICATE

(check as appropriate)

Commencement,  Change, or  Termination

The undersigned Manager or management company gives notice that (check one):

- it has commenced management of the Association named below; or
- it is continuing management of the Association but is refiling this management certificate because information in an earlier certificate needs updating; or
- it is no longer managing the Association.

1. Exact name of owners association: Brodie Springs Homeowners Association, Inc.
2. Name of Project or Subdivision: Brodie Springs II Subdivision, Phase One and Brodie Springs II Subdivision, Phase Two recorded respectively as Document Nos. 200400181 and 200400182, Plat Records of Travis County, Texas.
3. Address of Project: \_\_\_\_\_, Austin, Texas.
4. Exact name of declaration of covenants, conditions and restrictions: Declaration of Covenants, Conditions and Restrictions for Brodie Springs.
5. Declaration recording data : Document No. 2006 \_\_\_\_\_, Official Public Records, Travis County, Texas.
6. Name of managing agent: \_\_\_\_\_  
(name of management company or name of individual if not a management company)
7. Mailing address of managing agent: \_\_\_\_\_  
street address or P. O. Box address  
\_\_\_\_\_  
city state zip
8. Person to contact in management company: \_\_\_\_\_
9. Managing agent's telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

This certificate is filed of record in Travis County, Texas. It shall be valid until a management certificate is filed by another management company for the Association or until a termination of this management certificate is filed of record, whichever is sooner.

\_\_\_\_\_  
Name of management company

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name and title of above person

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ in the above stated capacity.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Printed name of notary \_\_\_\_\_  
My commission expires \_\_\_\_\_

After recording, please return to managing agent at the address stated in paragraphs 6 and 7 above.

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2006 Jul 17 04:40 PM 2006135768

GUERREROR \$356.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

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

After Recording Return To:  
Independence Title Company  
9442 Capital of Texas Hwy., Suite 100  
Austin, TX 78759

RET. INDEPENDENCE TITLE CO.

RATIFICATION OF DECLARATION

2

THE STATE OF TEXAS

§  
§  
§

COUNTY OF TRAVIS



OTHER 2006135771  
2 PGS

WHEREAS, at the time the foregoing Declaration of Covenants, Conditions and Restrictions for Brodie Springs (the "Declaration") was executed, BJM Brodie Springs, Ltd. and Squirrel Hollow, Ltd. (collectively, "Declarant"), each a Texas limited partnership, owned all of the lots within Brodie Springs II, Phase One, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Document No. 200400181, Official Public Records of Travis County, Texas and Brodie Springs II, Phase Two, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Document No. 200400182, Official Public Records of Travis County, Texas, except for Lot 2, Block "E" of Brodie Springs II, Phase One, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Document No. 200400181, Official Public Records of Travis County, Texas ("Lot 2"); and

WHEREAS, Lot 2 was owned by Grand Haven Homes, L.P., a Texas limited partnership ("Grand Haven"); and

WHEREAS, Grand Haven and Declarant intend that the Declaration cover Lot 2 and that Lot 2 be a part of the property under the Declaration for all purposes;

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, that Grand Haven, in order to receive the rights and benefits provided by the Declaration, expressly ratifies and confirms the Declaration as to Lot 2 for all purposes, and agrees that Lot 2 shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions contained in the Declaration.

EXECUTED July 17, 2006.

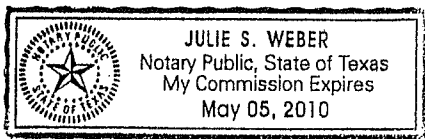
GRAND HAVEN HOMES, L.P., a Texas limited partnership

By: Rome Holdings, LLC, a Texas limited liability company, General Partner

By: Eric Rome  
Eric Rome, President

THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the 17<sup>th</sup> day of July, 2006, by Eric Rome, President of Rome Holdings, LLC, a Texas limited liability company, General Partner of **GRAND HAVEN HOMES, L.P.**, a Texas limited partnership, on behalf of said limited partnership and limited liability company.



*Julie S. Weber*  
\_\_\_\_\_  
Notary Public, State of Texas

After Recording, Please Return to:

Ann Engles Vanderburg  
814 W. Tenth Street  
Austin, Texas 78701

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2006 Jul 17 04:40 PM 2006135771

GUERREROR \$20.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS