

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WEST HILLS SUBDIVISION, A SUBDIVISION LOCATED IN AUSTIN  
COUNTY, TEXAS**

STATE OF TEXAS

COUNTY OF AUSTIN

THAT this Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Declaration") is made on the date hereinafter set forth by AUSTIN COUNTY PIN OAK HOLDINGS, LLC, a Texas limited liability company, (hereinafter referred to as "Declarant") acting herein by and through its duly authorized officers.

**WITNESSETH:**

WHEREAS, Declarant is the owner and developer of that certain property known as West Hills Subdivision, a subdivision located in Austin County, Texas, according to the map or plat (hereinafter referred to as "Subdivision Plat") thereof recorded in Volume \_\_\_\_\_, at Page \_\_\_\_\_ of the Plat Records of Austin County, Texas; and

WHEREAS, it is the desire of Declarant to place certain covenants, conditions, restrictions, stipulations, easements, and reservations upon and against West Hills Subdivision in order to establish a uniform plan for the development, improvement and sale of such property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners in said subdivision;

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon all of the Lots in West Hills Subdivision, the following reservations, easements, restrictions, covenants, and conditions applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property, which provisions of the declaration shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

Section 1. "Architectural Control Committee" or "Committee" shall mean and refer to the West Hills Subdivision Architectural Control Committee provided for in Article IV hereof.

Section 2. "Association" shall mean and refer to a property owners association to be established by this declaration (see Article V hereof).

Section 3. "Declarant" shall mean and refer to Austin County Pin Oak Holdings, LLC, its successors and assigns, if such successors and assigns are so designated in writing by Declarant as the successors and assigns of any of Declarant's rights hereunder.

Section 4. "Residential Dwelling" shall mean and refer to a structure on a lot which is designed and intended for occupancy and use as the principal residence on the Lot by one person, by a single family, or by persons living together as a single housekeeping unit, provided, however, the term "Residential Dwelling" shall not include a garage constructed on the Lot which is attached or detached from the other improvements on the Lot.

Section 5. "Lot" shall mean and refer to any of the numbered residential Lots shown on the Subdivision Plat or any replat thereof or which may become incorporated by annexation.

Section 6. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 7. "Restrictions" shall mean the covenants, conditions, restrictions, stipulations, easements, and reservations set out in the Declaration.

Section 8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and those having only an interest in the mineral estate.

Section 9. "Property" and/or "Properties" shall mean and refer to West Hills Subdivision, as identified in the Subdivision Plat.

Section 10. "Subdivision" shall mean and refer to the real property contained within the perimeter boundaries of the Subdivision Plat and any additional properties which may hereafter be brought within the scheme of this Declaration pursuant to the provisions set forth herein and hereafter brought within the jurisdiction of the Association.

Section 11. "Subdivision Plat" shall mean and refer to the map or plat of West Hills Subdivision recorded in the Plat Records of Austin County, Texas.

## **ARTICLE II RESTRICTIONS, EXCEPTIONS AND DEDICATIONS**

The Subdivision Plat dedicates for use, subject to the limitations set forth therein, the streets and easements shown thereon and such Subdivision Plat further establishes minimum setback lines applicable to the Property. All dedications, limitations, restrictions, conditions, easements, and reservations shown on the Subdivision Plat are incorporated and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed, or conveyance executed, conveying said Property or any part thereof, whether specifically referred to therein or not.

## Section 1. Easements.

(a) Easements for the installation and maintenance of utilities, drainage facilities (which includes detention ponds), roads, and streets are reserved, as depicted on the recorded Subdivision Plat of the Subdivision. There are hereby dedicated easements for detention of surface water, as shown on the recorded Subdivision Plat, and the easements for detention are hereby reserved. Any of the Property within the Easements but which Easements are a part of a Lot, shall be owned by the owner of that Lot subject to the Easement.

(b) No building or any other improvement shall be located over, under, upon or across any portion of any easement of any kind, except improvements which may be reasonably necessary to utilize the easements for the purposes for which the easements were created.

(c) The Declarant reserves reasonable access (for ingress to and egress from) for itself and for utility providers to the Easements over and across the Property for maintenance and other work required to be done within the Easements, which shall include reasonable access to and from the detention easements.

(d) All utility service lines, including, but not limited to, electric, telephone, water, and cable, shall be installed underground, other than at the point of delivery.

(e) Reserve A and Reserve B are owned by the Declarant and are within the Subdivision, but Reserve A and Reserve B are not part of a Lot within the Subdivision. Reserve A and Reserve B are intended to be used for the detention of the runoff of water resulting from rainfall. Reserve A and Reserve B may be used for such other purposes as may be reasonable.

(f) The owner of a Lot shall regularly, so far as may be practicable, mow that part of his Lot within an Easement.

## Section 2. Road and Street Easements.

(a) It is anticipated that the roads and streets in West Hills Subdivision shall be dedicated to the public. The offer of a public dedication must be accepted by a formal vote of the governing body of the public entity which has jurisdiction over the streets. Until formally accepted by such governing body, the roads and streets on the Property shall be operated as private roads and streets with each Owner, the Declarant, and the Association each having an easement for the use and benefit of such person and/or entity, which easement shall include rights of ingress, egress and passage over and along said roads and streets in favor of the Declarant, the Association, the Owners, and any other classes of persons for whose benefit the roads and streets are dedicated in the Subdivision Plat, and their respective legal representatives, successors and assigns, guests, invitees, licensees, designees and the successors-in-title to each Owner and other such persons

and/or entities, but not in favor of the public. Notwithstanding anything to the contrary contained herein, Declarant shall have the right to offer the roads and streets for public dedication and Declarant may assign this right to the Association or such other person or entity as may be reasonably necessary to complete the dedication.

(b) Subject to the terms and conditions of this Section, the roads and streets in West Hills Subdivision are hereby dedicated as utility easements strictly for the purpose of constructing, operating, maintaining or repairing a system(s) of electric lighting, electric power, telegraph and telephone lines, gas lines, sewer lines, if any, water lines, storm drainage (surface or underground), cable television, or other utilities that the Declarant sees fit to install (or permit to be installed) in, across and/or under the Property. The dedication of the roads and streets as utility easements shall not affect operation of the roads and streets as publicly dedicated roads and streets.

(c) Declarant reserves the right to make changes in and additions to the above easements for the purpose of efficiently and economically installing the improvements, including utilities. Should any utility company or cable television company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant, without the joinder of any other Owner, shall have the right to grant such easement on, under, and/or across the Property.

(d) Declarant reserves the right to grant additional ingress and egress easements along the roads and streets in the Properties and to grant the roads and streets to the Association, subject to such restrictions and conditions set forth in the deed conveying such roads and streets.

(e) Notwithstanding the operation of the roads and streets in the Property as private streets until the public dedication of same is accepted, Declarant hereby grants to Law Enforcement Agencies and Officers of Austin County and the State of Texas, other governmental law enforcement bodies, fire department officials and fire protection personnel, vehicles and equipment, ambulances, school buses, Austin County officials and personnel and other governmental officials and personnel, and to the authorized agents of the Association for performance of the Association's duties ingress and egress and passage over and along said private roads and streets of the Subdivision in connection with the performance of their official functions.

(f) No Lot may be used for the purpose of providing ingress, either directly or indirectly, to lands located adjacent to West Hills Subdivision, with such ingress being over, across, and by way of that Lot. Further, no Lot may be used for the purpose of providing egress from lands located outside of West Hills Subdivision into West Hills Subdivision.

### **ARTICLE III USE RESTRICTIONS**

Section 1. Residential Use. All Lots within the Subdivision are hereby restricted exclusively to single-family residential use, unless otherwise provided for herein. No Lot shall ever be

used for business or commercial use, unless otherwise provided for herein. Not more than one Residential Dwelling may be constructed and located on a Lot. In addition to the one Residential Dwelling, accessory structures and buildings may be located on a Lot. Accessory structures and buildings include barns, one guest cottage, work shops, and other outbuildings. No Owner shall use or permit such Owner's Lot or any improvements on the Lot to be used for any purpose that would (a) void any insurance in force with respect to the Subdivision; (b) make it impossible to obtain any insurance required by this Declaration; (c) constitute a public or private nuisance, which determination may be made by the Board of Directors of the Association in its sole discretion; (d) constitute a violation of the Declaration or any applicable law or (e) unreasonably interfere with the use and occupancy of the Subdivision by other Owners. As used herein, the term "Single Family Residential Use" shall be construed to prohibit the use of Lots for garage apartments or other apartments or multi-family dwellings; and no Lot shall be used for any commercial or manufacturing purpose, unless otherwise provided for herein. The rental of a Residential Dwelling on the Lot or guest cottage on the Lot for occupancy as a residence shall not be construed as a commercial business, except that such rental must be as a tenancy for a period of not less six months, and during the term of the tenancy, such tenancy shall be for principal residence of the tenant or tenants. The use of a tent, travel trailer, motor home, or camper, either as a weekend, temporary or permanent residence is prohibited. Notwithstanding anything to the contrary contained herein, no manufactured homes and/or mobile homes may be located on the Property or on any Lot.

Section 2. Size and Specifications. The Residential Dwelling on any Lot shall not be less than 1,800 square feet of heated and air conditioned space, exclusive of basement, garage and porches. In the case of multi-story dwellings, the minimum size shall be 1,800 square feet with not less than 1,200 square feet of heated and air conditioned space on the first floor. No improvement shall be erected, placed or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the improvements have been approved in writing by the Architectural Control Committee (see Article IV). No building may be lived in or occupied until the building is completed as per the Architectural Control Committee approved plans. All Residential Dwellings to be located in the Subdivision shall be site-built. No Residential Dwelling shall be moved onto a Lot.

Section 3. Location of Improvements on a Lot. No building or other improvement shall be located on any Lot:

- within twenty-feet (25') from any road or street which the Lot fronts.
- within twenty-five feet (25') from the side and rear line of the Lot.
- within ten feet (10') from any utility easement.

All storage buildings, shops, guest cottages, sheds, barns, pens, and other outbuildings or enclosures, other than the Residential Dwelling, shall be on the Lot behind the back line of the Residential Dwelling.

Section 4. Annoyance or Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No exterior speaker, horn, whistle, bell or other sound device, except security and fire devices used exclusively for security and fire purposes, shall be located, used or placed on a Lot. Activities prohibited include, but are not limited to, the following:

(a) The performance of work on automobiles or other vehicles if such repair work may be viewed from any street or roadway within the Properties.

(b) Storage of flammable liquids in excess of five (5) gallons.

(c) Activities which may be offensive by reason of odor, fumes, dust, smoke, vision, vibration, and/or pollution which are hazardous by reason of excessive danger, fire or explosion.

Section 5. Construction Timeframe. Construction of the Residential Dwelling must be completed within 18 months of beginning construction. The exterior of the Residential Dwelling must have a finished appearance within 6 months of beginning construction.

Section 6. Roofs. Roofing materials for all buildings (including garage, guest quarters and all outbuildings) shall be new and designed and manufactured specifically for roofs. Wood shingle roofs are prohibited on all buildings. Metal roofs not treated to prevent rust are prohibited on all buildings. Notwithstanding anything to the contrary contained herein, the roof of all buildings shall meet or exceed all Federal Housing Administration standards.

Section 7. Propane Tanks. If one or more propane tanks are installed, maintained, or located on any Lot, the propane tanks must be installed and maintained behind the front line of the Residential Dwelling and shall be obstructed from view from any road or street in front of the Lot and from all other Lots through use of shrubbery or fencing made of wood or masonry. Underground installation is permissible anywhere on the Lot that is not within a required setback.

Section 8. Buildings Moved to Property. No buildings shall be moved onto a Lot to be used as guest quarters, barns, or other outbuildings without permission of the Association. No building, shed, or other similar type structure shall be moved onto any Lot within the Subdivision without written permission of the Committee. No Residential Dwelling shall be moved onto any Lot. Any Residential Dwelling located on a Lot must be constructed on the Lot.

Section 9. Exterior Materials. The exterior materials of the Residential Dwelling and any attached garage and any guest cottages shall be constructed of masonry (including brick or rock), stucco, log, HardiePlank, cedar, or other wood siding.

Section 10. Exterior Colors. The following colors shall be prohibited from use on the exterior: pink, coral, purple, bright blue, bright yellow-green, bright blue-green, bright yellow, bright orange, bright red and any other colors that the Committee believes are not in the best interest of the owners of Lots in West Hills Subdivision.

Section 11. Signs. No signs, advertisements, billboards, or advertising structure of any kind may be erected or maintained in the Subdivision without the written consent of Declarant, with the exception of one (1) "FOR SALE" sign, advertising a residence for sale, such sign not to exceed 34" x 46". Declarant shall have the right to remove any such non-conforming sign, advertisements, billboards, or advertising structure which is placed in the Subdivision without consent and, in so doing, shall not be liable and is hereby expressly relieved from any liability for trespassing or other tort in connection with or arising from such removal. Notwithstanding anything to the contrary contained herein, the display of political signs shall be regulated by any applicable provisions of law which regulate the display of political signs in subdivisions.

Section 12. Outdoor Lighting. No unshielded lamp or light of any kind is permitted to be located on a Lot. A security light, or lights, mounted on a building is permitted so long as it has a shade or shield that prevents the light from shining directly onto the ground within sixty feet (60') of side or rear boundaries.

Section 13. Manufactured Homes and/or Mobile Homes. No manufactured homes and/or mobile homes may be located on any Lot or on any other part of the Subdivision.

Section 14. Temporary Structures. No structure of a temporary character, whether recreational vehicle, travel trailer, tent, shack, garage, barn or other outbuilding, shall be maintained or used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that Declarant reserves the exclusive right to, or allow another party to, erect, place and maintain such facilities in or upon any portion of the Property in its sole discretion, which may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Property. Such facilities may include, but not necessarily be limited to, sales and construction offices, storage areas, and signs.

Section 15. Oil and Gas and Mining Operations. So far as may be possible, considering the rights of the current owners of any interest in the oil, gas, and other minerals on, in and under the Property, no drilling for oil and gas, or development operations associated therewith, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon or under any of the Property.

Section 16. Mowing, Trash and Debris. Each Owner of a Lot is responsible for regularly mowing and/or otherwise maintaining the Lot and, further, the Lot shall be mowed a minimum of two times per month during the months of March, April, May, June, July, August, September, and October of each year, prior to and following construction of

Residential Dwelling on the Lot. The Association has the power to create rules and guidelines for cutting grass, including maximum height of grass, in order to assist in controlling potential problems with rodents, snakes, and other nuisances. No trash, garbage, or debris of any kind shall be dumped or permitted to accumulate on any Lot. Yard grass, leaves, and branches may be burned by the Owner of a Lot in a manner that is safe and does not result in creating a nuisance to other residences. No Lot shall be used for the open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in construction may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

Section 17. Fences. The Owner of Lot 1 and the Owner of Lot 42 shall maintain, in good condition, the Priefert Ponderosa Fencing fronting each of these Lots on Clens Road, unless the Architectural Control Committee authorizes other fencing to be used or authorizes the removal of the fencing of a Lot fronting Clens Road. The plans for all fencing must be approved in advance by the Committee before installation of the fencing can begin. Barbed wire fences, metal T-bar post fences and hog wire type fences and privacy fences or walls of any type are not allowed between the front of any Residential Dwelling and the road or street that the Lot faces. Notwithstanding anything to the contrary contained herein, barbed wire fences, metal t-bar post fences, and hogwire-type fences may be located along or near the front Lot line that borders a road or street, provided that there is no residential dwelling on that Lot.

Section 18. Solar Energy Devices. The Association shall adopt rules regulating the installation, use, and location of any solar energy devices on Lots within the Subdivision. "Solar energy device" has a meaning assigned by Section 171.107 of the Texas Tax Code. Regulations adopted by the Association shall be in accord with and subject to Section 202.010 of the Texas Tax Code, and any other application law concerning the regulation of solar energy devices within a subdivision.

Section 19. Motor Vehicles. No unlicensed motor vehicles shall be allowed within the subdivision. No motor bikes, motorcycles, motor scooters, "go-carts", or other similar vehicles shall be permitted to be operated on any of the Property, if, in the sole judgment of the Association, such operation, for reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance or jeopardize the safety of any of the Owners of the Property, their tenants and/or their families. Further, dirt bike riding shall be prohibited on any of the Property. The operation of all-terrain vehicles shall be permitted on the Property; however, the operation of such all-terrain vehicles shall be prohibited if noise or fumes emitted constitutes a nuisance or jeopardizes the safety of any of the Owners of the Property, their tenants, and/or their families.

Section 20. Storage of and Repair of Motor Vehicles, Boats, and Trailers. No motor vehicles shall be parked or stored on any part of any Lot, easement, right-of-way, or any other areas unless such vehicle is concealed from public view inside a garage or other approved enclosure, except passenger automobiles, passenger vans or pickup trucks that:



are in operating condition; have current license plates and inspection sticker; are in daily use as motor vehicles on the streets and highways of the State of Texas; and which do not exceed six (6) feet, six (6) inches in height or seven (7) feet, seven (7) inches in width or twenty-one (21) feet in length, may be parked in the driveway on such Lot. No non-motorized vehicle, trailer, boat, marine craft, hover craft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement, right-of-way, or any other area unless such object is concealed from public view inside the garage or other approved enclosure. The term "approved enclosure" shall mean an enclosure that has been previously approved by the Committee. Owners, visitors and guests are encouraged not to park vehicles in the streets of the subdivision.

Section 21. Antennas and Satellite Dishes. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any Lot, which is visible from any street, common area or other Lot unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a visible location as approved by the Committee. The Committee may require as much screening as possible while not substantially interfering with reception. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Properties. No satellite dishes shall be permitted which are larger than three feet (3') in diameter. No broadcast antenna mast may exceed the height of the center ridge of the roofline. No MMDS antenna mast may exceed the height of twelve feet (12') above the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property.

Section 22. Animals/Livestock.

(a) No animals shall be raised, bred, or kept on any Lot, with the following exceptions permitted:

- domestic or household pets
- horses if the Lot is greater than 1.50 acres, but not more than 3 horses on any Lot greater than 1.50 acres
- other livestock, provided that it is temporarily maintained and a part of a 4-H, FFA, or other bonafide and similar youth program
- chickens, but not roosters

(b) Dogs shall be limited to three (3) per Lot. Cats shall be limited to five (5) per Lot. If two or more Lots are combined for the location of one single family residence, the total number of dogs allowed shall not exceed the number that would be allowed for two Lots. Dogs and cats shall not be allowed to roam freely and must be confined within a building or fenced area.

(c) Any livestock enclosure which is overcrowded or not adequately maintained and cleaned and which presents an unkempt appearance or produces noxious odors is prohibited and may be declared to be a nuisance and ordered removed from the Lot.

Section 23. Non-Commercial Livestock and Poultry. Rabbits, poultry, swine, and other livestock raised for non-commercial purposes, including a 4-H, FFA, and vocational agricultural projects, for personal use, shall be allowed only if maintained at least fifty feet (50') behind the back wall of the main residence in a fenced or penned area and located no less than sixty feet (60') from any Lot line.

Section 24. Gardening. Gardening, including the growing of fruits and vegetables, shall be permitted on a Lot, provided that the size and location of the garden is approved by the Architectural Control Committee.

Section 25. Firearms. No pistol, rifle, shotgun, or any other firearms or explosives or any other device capable of killing or injuring or causing property damage shall be discharged on any part of the Property, except for the protection of owners of the Lots and their property or the protection of animals from predators or to prevent nuisance varmints. Any discharge of firearms, as allowed herein, must be made in a lawful manner.

Section 26. Drainage. Each Owner of a Lot shall not in any way interfere with the established drainage pattern over his Lot from adjoining Lots or other Lots in the Properties. Any changes necessary in the established drainage pattern must be included on the Owner's plans and specifications when submitted to the Committee. Such drainage plans shall be subject to the Committee's approval. Each Owner agrees that he will take all necessary steps to provide for additional drainage of his Lot in the event it becomes necessary. Established drainage shall be defined as drainage that exists at the time the Declarant completes street construction. In the event of construction on any Lot, the Owner must provide a drainage plan to the Committee for approval. No pockets or low areas may be left on the Lot where water will stand following a rain or during normal yard watering. With the approval of the Committee, an Owner may establish an alternate drainage plan for low areas by installing underground pipe and area inlets or other such methods as approved by the committee. No obstruction of the creeks on the Property shall be permitted. Construction of ponds, driveways, and buildings shall be done in such a manner that water shall not be caused to pool on any other Lot. Culverts installed by the Owners of Lots from a road within the Subdivision to their driveways shall be reinforced concrete, HDPE, or corrugated steel and shall have a minimum diameter of fifteen inches (15") and meet requirements as set out on the recorded plat of West Hills Subdivision then in effect and specifications required by Austin County or any other governmental entity, as may be applicable to West Hills Subdivision. On each end of a culvert, there shall be installed a concrete 6-to-1 safety end treatment.

Section 27. Driveways. Each Residential Dwelling must have either a concrete, asphalt, or gravel driveway (or other substance approved by the Committee), extending from the garage to the street, which driveway shall be at least ten feet (10') wide.

Section 28. Swimming Pools. No swimming pool may be constructed on any Lot without the prior written consent of the Committee. Plans and specifications for the proposed pool shall be submitted to the Committee including a plot plat showing the location and dimensions of the pool and related improvements together with the plumbing and excavation disposal plan. Excavation required for swimming pools shall be hauled from the site to a place outside of West Hills Subdivision.

Section 29. Clothes Drying Facilities. Outside clotheslines or other facilities for drying clothes or airing clothes shall not be erected, placed, or maintained on any Lot unless they are concealed in such a manner so as to not be visible from the streets.

Section 30. Playground Equipment. Playground equipment shall be placed behind or beside the Residential Dwelling. No tether pole, play net, tents or any other recreational facility shall be permanently erected in front of any residence without the prior written approval of the Committee. Temporary placement of such items is permitted so long as such placement does not exceed more than forty-eight (48) hours during any seven (7) day period.

Section 31. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain, during the period of construction and sale of Lots within the Subdivision, upon any portion of a Lot, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots.

Section 32. Septic Systems and Water Wells. Prior to occupancy of a Residential Dwelling or guest cottage located on a Lot, there shall be constructed and installed on the Lot a septic tank and soil absorption system in accordance with the specifications for the same, as established by applicable law, including the laws of the State of Texas and the rules and regulations of Austin County, Texas. Such septic tank and soil absorption system shall be regularly maintained; but if such septic system, even though in compliance with the required specifications, still emits foul or noxious odors or unsafe liquids onto streets, ditches or any part of the Property, such system shall be modified to eliminate such foul or noxious odors or unsafe liquid. It is anticipated that public water will be available at the front of each Lot facing a road or street. If a water well is drilled, it shall be drilled and maintained in accordance with the laws of the State of Texas and the rules and regulations of Austin County, Texas.

Section 33. Seasonal Decorations. A Lot and/or the improvements thereon may be decorated with seasonal decorations provided that the seasonal decorations are not placed on the Lot within 30 days prior to the holiday and are removed within 30 days after the holiday.

## **ARTICLE IV ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Approval of Improvement Plan. No improvements shall be erected, placed or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the improvements have been approved in writing by the Architectural Control Committee. A copy of the construction plans and specifications and a plot plan, together with such other information as may be deemed pertinent, shall be submitted to the Committee or its designated representative prior to commencement of construction. The Committee may charge a reasonable fee to cover the administrative expense of its review and comment, such fee to be payable to the Architectural Control Committee. A form survey prepared by a registered surveyor in the State of Texas shall be submitted to the Committee prior to pouring the foundation of any building or other improvement that is to be erected, placed or altered on any Lot.

Section 2. Committee Membership. The Declarant, in its sole discretion, shall appoint the members of the Committee which will consist of a minimum of three (3) members, none of whom shall be required to be residents of West Hills Subdivision. The Committee shall and will act independently of the Association. Two-thirds ( $\frac{2}{3}$ ) of the Committee shall have the full authority and power to act for the Committee. No member of the Committee or its designated representatives shall be entitled to any compensation for services performed pursuant to this Article. The Committee may, however, employ one or more architects, engineers, attorneys, or other consultants to assist the Committee in carrying out its duties hereunder, and the Association shall pay such consultants for such services as they render to the Committee. A majority of the Committee may designate a representative to act for it and such representatives shall have the full right, authority, and power to carry out the functions of the Committee.

Section 3. Replacement. Any member of the Committee may be removed, with or without cause, by the Declarant. In the event of death or resignation of any member or members of said Committee, the Declarant shall appoint its successor member or members, and Until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications and plat plans submitted or to designate a representative with like authority. In the event the Declarant fails to appoint members or successor members of the Committee or waives, in writing, its authority to appoint members or successor members of the Committee, the Association shall make such appointments.

Section 4. Minimum Construction Standards And Approval of Improvement Plan. The Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and may be amended from time to time. The purpose of the Committee is to protect the environmental and architectural integrity of the Subdivision. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been

submitted to and approved in writing by the Committee as to (a) conformity and harmony of external design, coloration, and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted shall specify, in such form as the Committee may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof as well as appropriate information concerning the structural, mechanical, electrical and plumbing details and the nature, kind, shape, height, color scheme, and materials of the proposed improvements or alterations.

Section 5. Committee Approval. Any approval or disapproval by the Committee or its designated representatives on any of the above matters shall be in writing and either conveyed in person or U. S. Mail, postage prepaid. In the event said Committee or its designated representatives fail to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, then such plans and specifications shall be deemed disapproved. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith deems that such variance does not adversely affect the architectural and environmental integrity of the Subdivision or the common scheme of the development. If the Committee shall approve a request for variance, the Committee may evidence such approval, grant its permission for such variance, only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved and signed by majority of the then members of the Committee. If any such variances are granted, no violation of the provisions hereof shall be deemed to have occurred with respect to the matter for which the variance is granted; however, the granting of a variance shall not operate to waive any of the provisions hereof for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lots and with the Subdivision Plat. Failure by the Committee to respond within sixty (60) days to a request for a variance shall operate as denial of the variance.

Section 6. Disclaimer. No approval of plans and specifications and no publication or designation of architectural standards shall ever be construed as representing or implying that such plans specifications will result in a properly designed structure or satisfy any legal requirements. Further, no person exercising any prerogative of approval or disapproval by the Committee shall incur any liability by reason of the good faith exercise thereof.

Section 7. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or Board of Directors with respect to the construction of any improvements within the Subdivision. Specifically, the approval by the Committee or Board of Directors of any such residential construction shall not be deemed a waiver of any right

or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications, or other materials submitted with respect to any other residential construction by such person or other Owner.

Section 8. Non-Liability for Committee Action. No member of the Committee, the Association Board of Directors, their successors or assigns, or the Declarant shall be liable for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee. The Committee's approval of any improvement shall not imply approval of the improvement from the standpoint of safety, whether structural or otherwise, or a determination of compliance with building codes or other governmental laws or regulations.

## **ARTICLE V WEST HILLS SUBDIVISION HOMEOWNER'S ASSOCIATION**

Section 1. Organization. The Association shall be organized as a non-profit corporation or other entity under the laws of the State of Texas. The purpose of the Association in general shall be to provide for and promote the health, safety, and welfare to the Members, to collect the maintenance charges, to administer the maintenance fund, to provide for the maintenance, repair, preservation, upkeep and protection of the common properties and facilities of the Subdivision and such other purposes as are stated in the certificate of formation or other governing document of the Association which shall be consistent with the provisions of the Declaration, Plat of West Hills Subdivision, and supplements and amendments to the Declaration and Plat of West Hills Subdivision. The Association may adopt such bylaws, rules and regulations as it deems appropriate and consistent with the Restrictions.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or non-judicial foreclosure, shall be a Member of the Association.

Section 3. Board of Directors. The Association shall act through a Board of Directors who will manage the affairs of the Association as specified in the bylaws of the Association. The Declarant shall name and select the initial members of the Board of Directors. The initial Board of Directors shall serve for a term of five (5) years and thereafter until each successor is elected and qualified.

Section 4. Voting Rights. There shall be two classes of membership entitled to voting rights in the Association with respect to the Subdivision and they shall be as follows:

(a) Class A. All Owners other than Declarant, shall be considered Class A Members, and for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors. When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine. No cumulative voting shall be permitted.

(b) Class B. Class B Members shall be the Declarant, and for such Lot owned it shall be entitled to four (4) votes on each matter coming before the Members at any meeting or otherwise. Once a Lot is sold to an individual or individuals who would be classified as Class A Members, subject to paragraph (c) below, the four (4) votes attached to that Lot shall be extinguished, subject to paragraph (c) below. All Class B Memberships with respect to the Subdivision shall cease and be automatically converted into Class A Memberships on the happening of any of the following events, whichever occurs earlier:

- (i) When the total number of votes entitled to be cast by the Class A Members, with respect to the Subdivision, at any meeting of the Members or otherwise, equals the total number of votes entitled to be cast by the Class B Member, with respect to the Subdivision;
- (ii) January 1, 2026; or
- (iii) At such earlier time as the Class B Member, in its sole discretion, shall elect.

## **ARTICLE VI MAINTENANCE CHARGES**

### Section 1. West Hills Subdivision Maintenance Fund.

(a) Each Lot, other than any Lot owned by the Declarant at the time of the filing of the Declaration and which has not been re-purchased by Declarant after such time, shall be subject to an annual maintenance charge to be used for the purpose of maintaining all private streets; paths; parks; esplanades; street lights; storm water facilities; including Reserve A and Reserve B; vacant Lots and any other land within the Subdivision owned by the Association, including the front entrance to the Subdivision; fogging; employing law enforcement officers and workmen; and paying ad valorem taxes on that part of the Property owned by the Association; costs of administration of the Association; and other purposes necessary or desirable in the opinion of the Association to maintain or improve the Property of which is considered to be a general benefit to the Owners of the Property covered by these Restrictions. Such fund may also be used for the purpose of enforcement of all covenants and restrictions of this section or subsequent sections of West Hills Subdivision. The amount of the maintenance charge shall be set by the Administrator of

the fund from time to time subject to the limitations contained herein. Notwithstanding anything to the contrary contained herein, those Lots owned by the Declarant at the time of the filing of the Declaration and not re-purchased at a later date by the Declarant, shall not be subject to the annual maintenance charge.

(b) Declarant shall collect and maintain control over the maintenance fund and administer same until all of the Lots in West Hills Subdivision are sold by Deed or Contract or until January 1, 2026, whichever comes first, or at any earlier time if Declarant so elects. After the sale of all of the Lots, or until January 1, 2026, whichever comes first or at any earlier time if Declarant so elects, the Association shall be authorized to collect and administer the maintenance fund.

(c) The initial maintenance charge for each Lot shall be \$300.00 per year, prorated for any partial year of Lot ownership immediately after transfer by the Declarant. The maintenance charge shall be paid in advance for any prorated portion of a year and in advance by January 1 for each calendar year. The maintenance charge will not accrue against any Lot in which the legal and/or equitable title is vested in Declarant, notwithstanding that a Lot may have been previously sold by a Deed or Contract and title thereto reverted back to Declarant. During the time that such fund is administered by the Declarant, the charge may be increased, but no more than once each twelve (12) months and no increase shall be more than twenty percent (20%) of the existing charge. However, after the Association assumes administration of responsibilities, the Association may adjust such rates pursuant to the rules and regulations of the Association. The annual assessment per Lot may be increased by the Association when it assumes administration of the fund in accordance with its by-laws. Interest on past due charges shall accrue at the highest rate allowable by law from date of delinquency. The payment of such maintenance fund shall be secured by a vendor's lien to insure payment of such maintenance charge in accordance with the provisions of law. In the event it becomes necessary to employ legal counsel to collect past due maintenance charges, such delinquent Owners shall be responsible for reasonable attorney's fees and other reasonable attorney's fees and other reasonable costs incurred in such collection efforts including all costs of court in any legal proceeding. No Owner may waive or otherwise escape liability for the maintenance charge provided for herein by non-use of any common areas or abandonment of his Lot.

(d) The administrator of the maintenance fund shall have the sole discretion as to how such maintenance fund shall be used to comply with the provisions of this Article. During all times that Declarant is the administrator of the maintenance funds, it shall maintain the proceeds in an account separate and apart from all other accounts of Declarant and shall keep accurate records of all receipts and disbursements. In the event Declarant is compelled to advance its own funds to defray expenses of maintenance of the facilities and Properties to be maintained by the fund, Declarant shall be entitled to repayment at such time as the fund is able.

(e) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment, applicable to that year only, for the



purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair, or replacement of a capital improvement, including fixtures and personal property related thereto, provided that any such special assessment shall have the consent of at least two-thirds ( $\frac{2}{3}$ ) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for that purpose.

## Section 2. Enforcement of Maintenance Fee / Assessments.

(a) Each such maintenance fee or assessment referred to in Section 1 of this Article VI (such maintenance fees and assessments hereinafter referred to as "Assessment") not paid when due shall incur a reasonable late fee as may be determined by the Association. Each Assessment and late fee, if not paid when due, together with interest accruing after 30 days from the date that the Assessment was due (said interest being at the highest legal rate permitted by law) together with costs of collection, including reasonable attorney's fees, shall be due and payable by the Owner and shall be a personal obligation against the Owner of the Lot against which they were assessed and shall be secured by a lien as provided herein. To secure the payment of the maintenance fund established hereby and to be levied on individual Lots, there shall be reserved in each deed (whether specifically stated therein or not) by which the Declarant shall convey such Lots, a vendor's lien for the benefit of the Administrator of the fund, whether Declarant or Association. Said lien shall be enforceable through appropriate proceedings at law by the beneficiary of such lien. However, notwithstanding anything to the contrary contained herein, each such lien shall be secondary, subordinate, and inferior to all liens, present and future, given, granted and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the construction of improvements on any such Lot to the extent of any such maintenance fund charge accrued and unpaid prior to foreclosure of any construction lien. Further, each such lien of the Assessment provided for herein shall be subordinate to the lien of any mortgage or mortgages granted or created by the Owner of the Lot to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot. Sale or transfer of any Lot shall affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure (whether by exercise of power of sale or otherwise) any proceeding in lieu thereof, shall extinguish the lien or Assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof, but such lien shall exist as, and constitute a separate and distinct charge and lien on each Lot.

(b) If an Assessment is not paid within thirty (30) days after the due date, it shall bear interest from the due date until paid at the lesser of (i) ten percent (10%) per annum or (ii) the maximum rate permitted by law, and the Association may bring an action at law against the person personally obligated to pay the same for the collection of the amount due and, in addition, the Association may foreclose against the lien on the Lot in pursuit of the collection of such amount.

Section 3. Term of Maintenance Fees / Assessments. The maintenance charges and assessments provided for herein will remain effective for the full term (and extended term, if applicable) of this Declaration.

Section 4. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot or improvements thereon which is used as a residence shall be exempt from said assessments and charges.

Section 5. Savings Clause. All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising, and whether written or oral, and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount of interest collected, charged, or received by the Association, its agent and/or Declarant for the payment or performance of any covenants or obligations contained herein or in any other document related hereto exceed the maximum amount of interest permitted to be collected, charged, or received under applicable law. If from any circumstance whatsoever, the fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Association, its agent and/or Declarant should ever collect, charge, or receive an amount deemed to be collected, charged, or received under applicable law, such amount which would be excessive interest shall be applied to the reduction of the principal amount owing on such obligation and not to the payment of interest, or if such excess interest exceeds the principal balance of the assessment or other obligation, the excess shall be refunded to the Owner or other obligor. The right to accelerate the maturity of any assessment or other obligation owing to Declarant or the Association shall not include the right to accelerate the maturity of any interest which has not otherwise accrued on the date of such acceleration, and the Declarant and the Association do not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term of such indebtedness until payment in full so that the actual rate of interest on account of such indebtedness is uniform throughout the term thereof. The terms and provisions of this paragraph shall control and supersede any other provision of this Declaration and any other agreement between any Owner and the Association and/or Declarant. The maximum lawful rate shall be determined by utilizing the indicated rate ceiling from time to time in effect pursuant to laws of the State of Texas.

## **ARTICLE VII GENERAL PROVISIONS**

Section 1. Term. This Declaration shall run with the land and shall be binding upon all parties and persons claiming under them for a period of forty (40) years from the date the

Declaration is recorded at which time said Declaration shall be automatically extended for successive periods of ten (10) years each.

Section 2. Amendment. This Declaration may be amended at any time from the date hereof by the vote of more than two-thirds ( $\frac{2}{3}$ ) of the then Owners of the Lots. Such amendment shall be set out in a recordable instrument and shall become effective when such instrument is duly filed for record.

Section 3. Enforcement. The Declarant, the Association, or any Lot Owner is authorized to prosecute proceedings at law or in equity against any person or persons violating or attempting to violate any part of this Declaration and to prevent him or them from doing so and/or to recover damages or other dues for such violations. The Declarant also reserves the right to enforce these restrictions.

Section 4. Severability. Invalidation of any one of these restrictions by judgment or further court order shall in no way affect any of the other provisions.

Section 5. Merger and Subdivision of Lots. Upon application in writing by an Owner or Owners of adjoining Lots, the Committee may authorize the merger or subdivision of adjoining Lots; provided, however, such merger or subdivision shall be in accordance with these Declarations, including provisions which may further regulate the merger or subdivision. No merger or subdivision of Lots shall be allowed unless approved by the Committee. Two adjoining Lots may be subdivided provided that in no event shall either of the subdivided Lots contain less than ninety (90) percent of their original Lot area. The Committee's decision shall be final. Such plats and plans as may be necessary to show the merger or subdivision of Lots shall be thereafter prepared at the expense of the requesting Owner or Owners, who shall additionally be responsible for all costs, including legal fees, associated with the merger or subdivision of such Lots. In addition, the side Lot utility easement, if any, must be abandoned or released in accordance with applicable law. The Committee may impose conditions for use of the merged or subdivided Lots as a condition precedent to granting approval of such a merger or subdivision. From and after the time a merger or subdivision of Lots is approved, such Lots shall, for all purposes, be considered Lots in accordance with their new boundaries.

Section 6. Corrected Plats. Until the time a Lot or residential unit within the Properties is transferred by the Declarant to another (other than an affiliate of the Declarant, or a holder of a first mortgage on the entire Property), no Owner of any Lot or residential unit shall have any rights whatsoever to the continuation of any covenants, conditions, or restrictions on such Properties as contained herein or as may be imposed, expressly or impliedly, by recordation of any plat or as might otherwise be implied or expressed. In furtherance thereof, until the time a Lot or residential unit within the Properties is transferred by the Declarant as aforementioned, the Declarant may revoke or cancel any plat or other instrument which might be deemed, either expressly or impliedly, to impose any covenants, conditions or restrictions or may take whatsoever steps it deems necessary or desirable to avoid the implication of such existing.

Section 7. Amendment by Declarant. Declarant shall have the right to make amendments, modifications and charges to these Covenants, Conditions and Restrictions, without the joinder of any Owner or any other party, for the purpose of correcting any inconsistencies that may be found herein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

AUSTIN COUNTY PIN OAK HOLDINGS,  
LLC

By: \_\_\_\_\_  
JESSE L. BYLER, Manager

STATE OF TEXAS

COUNTY OF AUSTIN

BEFORE ME, the undersigned authority, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared JESSE L. BYLER, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was signed by him, as Manager of AUSTIN COUNTY PIN OAK HOLDINGS, LLC, and that he executed the same as the act of such corporation for the purposes and considerations therein expressed, and in the capacity therein stated.

\_\_\_\_\_  
Notary Public, State of Texas