

4.2
Shirley

WESTCHESTER PARK

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, is made on the date and year below written, by LMG Builders, LP, which is the owner of Westchester Park Subdivision in Williamson and Travis Counties, Texas.

1. The Declarant is the owner of that certain real property described in Section 1.12 hereof.

2. The purpose of this Declaration is to preserve so far as possible the natural beauty of the Property; to avoid harsh contrasts between structures and landscape; to guard against the erection of poorly designed or proportioned structures or use of unsuitable materials; to encourage freedom of individual expression in the development of the land and structures, limited only to these protections which seem to be mutually advantageous; to provide for common maintenance of front yard landscaping; and in general, to enhance the environmental quality and economic value of the property.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, sold, used, developed, occupied, leased, and conveyed subject to the following reservations, easements, restrictions, covenants and conditions and which shall run with the Property and shall be binding on all parties having or acquiring any right, title and interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. **"Architectural Control Committee"** shall mean the committee created pursuant to Article VI, herein referred to as "ACC" or "Committee".

Section 1.2. **"Architectural Control Committee Rules"** shall mean such rules as adopted by the ACC pursuant to the authority contained in Article VI hereof.

Section 1.3. **"Association or Homeowner Association"** shall mean the Westchester Park Home Owner Association, Inc., a Texas non-profit corporation, which Declarant shall cause to be incorporated.

Section 1.4. **"Declarant"** shall mean LMG Builders, LP, a Texas Limited Partnership, Bevron Corporation, a Texas Corporation, and/or GM Builders, LP, a Texas Limited Partnership.

Section 1.5. **"Declaration"** shall mean the covenants, conditions and restrictions herein set forth in this entire document, as the same may be from time to time amended.

Section 1.6. **"Construction Plan"** shall mean the plan for the construction of improvements on or development of a Lot which is required to be submitted to the ACC pursuant to Section 3.2 hereof.

Section 1.7. **"Improvements"** shall mean the buildings, garages, carports, streets, roads, antennas, driveways, parking areas, walls, hedges, plantings, planted trees and shrubs, lighting and all other structures or Landscaping Improvements of every kind and type affecting on the natural condition of the land or the drainage of surface waters on, across or from the land.

Section 1.8. **"Lot"** shall mean each parcel of land shown as a lot on the recorded final Plat Map of the Property and designated on said map by a separate number, or any subsequent subdivision thereof.

Section 1.9. **"Unit"** shall mean either individual living unit in a duplex residence.

Section 1.10. **"Owner(s)"** shall mean and refer to the record Owner, whether one or more persons, associations or entities, of legal, equitable or beneficial title of or to any Lot or Unit. Owner shall include the purchaser of a Lot or Unit under an executory contract of sale of real property. The foregoing does not include persons or entities who hold interest in any Lot merely for the security or the performance of an obligation. Any reference herein to woners shall include Owners as defined herein and as defined or included in any Supplemental declaration.

Section 1.11. **"Property"** shall mean and refer to that certain real property described in Section 1.14 hereof, including the aerial and subsurface rights appurtenant thereto, and such additions thereto as may hereafter be annexed.

Section 1.12. **"Westchester Park Subdivision" or "Subdivision"** shall mean all of the Westchester Park Subdivision, as recorded in plat Book ____ Volume ____ of the Real Property Records of Williamson County, Texas, and Book ____ Volume ____ of the Real Property Records of Travis County, Texas.

Section 1.13. **"Duplex Family Residential Use"** shall mean the occupation or use of a Structure as a residence or dwelling unit by a two persons or families, with one person or family occupying each Unit in a Structure, in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other State, County, or Municipal laws, rules, regulations, codes or ordinances.

Section 1.14. **"Structure"** shall mean anything erected, constructed, placed, laid or installed in, on, or over said real property, the use of which requires a location on or in the ground but not including vegetation, trees, shrubs or paintings.

Section 1.15. **"Subdivision Map or Subdivision Plat" or "Plat Map" or "Plat"** shall mean a recorded map or plat covering any or all of the Property referred to in this Declaration.

Section 1.16. **Visible From Neighboring Property:** shall mean that with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of a neighboring property. A neighboring property shall be any Lot having a common lot line except for the intervention of a street, road, right-of-way or easement.

ARTICLE II

PROPERTY SUBJECT TO RESTRICTIONS

Section 2.1. **General Declaration.** Declarant hereby declares that the Property within the Subdivision is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of the Declarant, all Owners and their successors in interest.

Section 2.2. **Description of Property.** The property subject to this Declaration is all Property described in Section 1.12 hereof.

ARTICLE III

LAND USE

Section 3.1. **Duplex Family Residential Use.** All Property shall be used, improved and devoted exclusively to Duplex Family Residential Use and no business or commercial activity to which the general public is invited shall be conducted within the Subdivision. Nothing contained herein shall be deemed to prevent the leasing of all of a Lot or Unit to a single person or family from time to time by the Owner thereof, subject to all the provisions of this Declaration.

Section 3.2. **Construction Plan.** Each Owner (other than the Delarant) shall be required to submit a detailed Construction Plan, pursuant to the Rules of the ACC, and such plan must be approved in writing prior to the commencement of construction of any Improvement. The Construction Plan shall include, but is not limited to:

- a) a topographic survey

- b) a site plan with grades at 2' intervals showing location of the home, fences, driveways, and all other Improvements to the Lot as well as all trees 4" or larger in diameter within 30' of all planned improvements, unless steep topography renders it impractical.
- c) A set of house plans by a registered architect who has been approved by the ACC in writing that include a demonstration that the house described by the plans is designed for the specific Lot in addition to: floor plans, foundation plans, building section, landscape plan with external lighting, specifications including detailed descriptions and samples of all exterior materials and finishes.
- d) A stakeout on the Lot of the home site, driveway, and all Improvements to the Lot.
- e) A landscape plan that encompasses the area between the street and the back of the house.

Section 3.3. **Time for Construction.**

- a) Construction of Structure or Improvement shall be continuous and proceed in an orderly fashion without interruption and any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed nine (9) months from the earlier of commencement of construction or issuance of a Building Permit by the City of Round Rock, Texas.
- b) Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, clearing of trees, excavation or site preparation for the purpose of foundation.
- c) Materials and equipment necessary for construction, and all debris resulting from clearing or construction shall be confined to the Lot, and shall not be left on any other Lots, Common Areas, or roadway.

Section 3.4. Declarant Exemption. So long as the Declarant constructs all improvements to the Property made by it in compliance with the rules and restrictions set out in this Declaration, Declarant will not be required to submit Construction plans for approval and shall not be subject to the provisions set out in Section 3.2 and 3.3 above, and nothing contained in this Declaration shall be construed to prevent the erection and maintenance by Declarant of Structures, Improvements or signs necessary or convenient to the development, sale, operation or other disposition of the Property within the Subdivision.

Section 3.5. Resubdivision. One of the intentions of the Declarant is to encourage individual home ownership; therefore, any provision in these Declarations to the contrary notwithstanding, the Owner of any Lot may, at any time, at its own expense,

without the approval or joinder of any other Lot or Unit Owner, the Homeowners' Associations or the ACC, subdivide (by filing a subdivision plat, filing a condominium regime, or otherwise: any Lot owned by the Owner into two (2) Units, one for each of the existing living units in the Duplex Structure along with the adjoining front, back and side yards and driveways. The foregoing power (i) is coupled with an interest, (ii) is irrevocable, (iii) shall survive the dissolutions of or resignation of Declarant, and (iv) shall be binding upon all assignees and successors of each Owner.

ARTICLE IV

RESIDENTIAL STRUCTURES

Section 4.1. **Requirements.** All Duplex Family Residential Structures shall be subject to the following requirements, and each enumerated item must be included in the Construction Plan Submitted and approved in writing by the ACC prior to the commencement of construction. Once approved, the Structure of an Improvement may not vary from the Construction Plan without further approval of the ACC:

- a) **Set Backs:** All city and county setback requirements will be observed. In addition, all setbacks set out on the Subdivision Plat will be observed. The ACC shall have the right to impose additional setback requirements from all Lot Lines in order to preserve lines of sight, and views of neighboring properties, subject to approval by the ACC in any event.
- b) **Minimum Floor Areas:** All Duplex Family Residential Structures shall have a floor area of not less than 1,800 square feet, exclusive of open and closed porches, patios, garages, carports, balconies, or decks.
- c) **Height Limitations:** No structure shall exceed 35 feet in height from the slab elevation. Additionally, the ACC shall have the right to impose limitations on the height of any Duplex Family Residential Structure of Improvement to preserve lines of sight and views enjoyed by neighboring Lots.
- d) **Exterior Color Schemes:** The ACC shall have the right to impose limitations on the exterior color and materials to be used in all Duplex Family Residential Structures.
- e) **Roofing Materials:** The roofing materials of any Improvement must be of a color which will blend with the environment. The material must be concrete, clay, or wood slate tile; factory finished metal; fiberglass; or composition shingles with a minimum weight of 220 pounds per square. No reflective material will be allowed. The ACC shall have the right to impose other limitations on roofing materials.

- f) **Driveways:** The ACC shall have the right to impose limitations on driveway and approach design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways in the Subdivision. Driveways and approaches shall be concrete. No gravel or other loose materials shall be allowed.
- g) **Exposed Slabs and Open Spaces:** No slab may be exposed more than two feet. Open space under decks must be minimized to six feet.
- h) **Stacks, Gutters, Service/Storage Areas:** All roof stacks and gutters must be painted a color that is in harmony with the roof. All services and storage areas must be screened so that they are not Visible From Neighboring Property.
- i) **Utility Services Hook-ups:** All utility service hookups shall be located such that they are not visible from the roadway.

✓ Section 4.2. **Trees, Shrubs and Landscaping.** The ACC shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping. All lots must be fully sodded from the curblin to the front of the Duplex Family Residential Structure. Areas that are not fully sodded must be fully landscaped to the approval of the ACC. All landscaping must be maintained to be consistent with the overall style and appearance of the subdivision. All landscaping located in the front yards of all Units will be maintained by the Homeowners' Association as set out in Section 5.15, below.

Section 4.3. **Fences, Walls, and Hedges.** Any fence, wall, hedge or other similar structure or Improvement must be included in the Construction Plan with respect to location, height, and type of material and must be approved in writing by the ACC. No barbed wire and chain link shall be allowed in the construction of any fence on the Property. The design and location of any wood fence must receive prior approval of the ACC. Each Owner shall be required to erect and maintain a fenced enclosure, or other ACC approved method, for the keeping and maintaining of the domestic pet allowed pursuant to Section 5.1 hereof (except cats). Said enclosure shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof and shall be screened so that it is not Visible From Neighboring Property.

Section 4.4. **Towers and Antennas.** No visible antenna or other service for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used or maintained on any Lot, whether attached to a building or structure or otherwise, without prior approval of the ACC, except for a single receiver wireless antenna designed to receive a wireless cable signal (or similar signal) with a receiving dish less than thirty inches (30") in diameter. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television or radio signal on any other Lot.

Section 4.5. Underground Utility Lines. No utility lines, including but not limited to wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any Property within the Subdivision unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Structures as approved in writing by the ACC; provided, however, that no provision hereof shall be deemed to forbid the erection or temporary power or telephone structures incident to the construction of buildings or Structures which have been previously approved in writing by the ACC. The installation method, including, but not limited to, location, type of installation, for both temporary and permanent utilities shall be included in the Construction Plan and approved in writing by the ACC.

Section 4.6. Temporary Structure, Occupancy During Construction. No trailer, basement of any incomplete building, tent, shack, garage or barn and no temporary building of any kind shall be used at any time for a residence on the Property within the Subdivision either on a temporary or permanent basis.

Section 4.7. Out-Buildings. Any proposed outbuilding or structure, including without limitation, any type of mailbox or receptacle, must be included in the Construction Plan and approved in writing by the ACC. All out-buildings must be of same design and materials as main structure and must meet same requirements as main structure.

Section 4.8. Signs. No sign, billboard, including, but not limited to, commercial and similar signs, which are Visible From Neighboring Property or from streets or access roads shall be erected or maintained on any Lot or parcel of property within the subdivision, except the following types of signs, each of which must be approved in writing by the ACC

- a) signs which may be required by legal proceedings;
- b) not more than two (2) residential identification signs (street number and/or names of Owners) for a maximum combined total face area of 144 inches;
- c) during the time of construction of any building or other Improvement, on job identification sign not larger than eight (8) feet by four (4) feet having a face area not larger than thirty-two (32) square feet;
- d) signs, the nature, number and location of which have been approved in advance by the ACC;
- e) signs, the number, type, and size of which have been approved in advance by the Declarant or the ACC, for developers or builders; and

f) one "for sale" sign to advertise that the Lot or Unit of an Owner is being offered for sale is permitted, but such sign shall not exceed a total of six (6) square feet and must be removed when the listing expires.

No signs other than those listed in (a) through (f) above shall be permitted.

Section 4.9. Improvements and Alterations. No structures, Improvements, alterations, repairs (excluding routine repairs), excavations or other work which in any way alters the exterior appearance of any Structure within the Subdivision or the appearance of any other Improvement located thereon from its natural or improved state existing on the date such Property was first conveyed in fee to the current Owner, Purchaser or annexed by Declarant, whichever is later, shall be made or done without the prior approval of the ACC.

Section 4.10. Solar Equipment. Request for approval of installation of any type of solar equipment must be included in the Construction Plan and shall be approved in writing by the ACC.

Section 4.11. Garages. Each Duplex Family Residential Structure shall have sufficient enclosed garage space as approved by the ACC, to house at least one vehicle. Owners shall not keep more than two vehicles per Unit in such a manner as to be Visible from Neighboring Property for a period of more than Seventy-two (72) hours.

ARTICLE V

RESTRICTIONS

Section 5.1. Animals, Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets, except cats, will be allowed on the Property other than the lot of its owner unless confined to a leash or under voice control. Upon written request of any Owner, the Homeowners Association shall conclusively determine at its sole discretion, in accordance with its rules, whether an animal is a domestic household pet, whether an animal is being allowed to run at large or whether an animal is a nuisance. The decision of the Homeowners Associations is final, conclusive and shall be enforced as other restrictions contained herein. No animal may be stable, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed.

Section 5.2. Hunting/Trapping/Firearms. Hunting, trapping and discharge of firearms are expressly prohibited within the subdivision.

Section 5.3. **Dumping.** Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive material is expressly prohibited within the Subdivision. Composting shall be permitted only of vegetation matter and only if such composting is: (i) Confined to an area to the rear of the house and in a receptacle approved by the ACC, (ii) not visible from Neighboring Property or from any street, and (iii) maintained in an inoffensive manner.

Section 5.4. **Waste.** The commission of waste is expressly prohibited within the Subdivision.

Section 5.5. **Mineral Exploration.** No mining, quarrying, tunneling, excavation or drilling for exploration or removal of any minerals including oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted within the Subdivision.

Section 5.6. **Business Activities.** No business or commercial activity to which the general public is invited shall be conducted within the Subdivision.

Section 5.7. **Obnoxious Activities.** No nuisance, obnoxious or offensive activities shall be carried on on any Lot or Unit, nor shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Property within the Subdivision, and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property which are audible from neighboring Property.

Section 5.8. **Garbage.** No garbage or trash shall be placed or kept on any Lot except in covered containers of standard type. In no event shall such containers be maintained so as to be Visible from Neighboring Property. All rubbish, trash, and garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No incinerator shall be kept or maintained on any Lot. No garbage or trash shall be permitted to be buried on any Lot at any time.

Section 5.9. **Vehicles and Equipment.** No bus, truck larger than $\frac{3}{4}$ ton pickup, semi-trailer, tractor, machinery or equipment shall be kept, placed, maintained, constructed, reconstructed, or repaired on the Property (except during the course of making deliveries for the purpose of loading and unloading). No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired on the Property in such a manner as will be visible from Neighboring Property. Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles of any sort or type which are intended to be kept on the Property by the Owner must be placed in such a manner that they will not be Visible From Neighboring Property or from streets or

access roads. No motorized vehicle of any kind may be operated in any manner which is dangerous, noisy or which creates a nuisance

Section 5.10. **No Overnight Parking.** No vehicle of any kind shall be allowed to park overnight on any street within the subdivision.

Section 5.11. **Emergency or Temporary Maintenance Vehicles.** The provisions of this Declaration shall not prevent any emergency vehicle repairs or operation of emergency vehicles, including but not limited to ambulances, fire engines, police cars, within the Subdivision. The provisions of this Declaration shall also not prevent the operation or temporary use of construction trailers, vans, or other trucks, machinery/equipment, construction shelters or facilities maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the ACC.

Section 5.12. **Motorcycles.** The use of motorcycles and any motorized vehicles shall be limited to those which: have been approved; that are legal for street use; have mufflers installed in good condition; and which limit the exhaust noise to not more than 80 decibels, ten (10) feet from the end of the exhaust pipe. Such use shall be limited to the public streets. No off-roads use of any motorcycles shall be allowed within the Subdivision.

Section 5.13 **Continuing Adequacy of Repair or Maintenance.** No building or structure upon the Property within the Subdivision shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any exterior Structures and finish which was included in the Construction Plan and approved in writing by the ACC.

Section 5.14. **Service Yards and Storage Yards.** Any wood pile shall be located so as not to be Visible from Neighboring Property or streets or access roads. Any Structure of a permanent nature is to be built with regard and approved in writing by the ACC.

Section 5.15. **Maintenance of Lawns and Plantings.** Each Owner shall keep all shrubs, trees, grass and plantings of every kind on his Lot or Unit including setback areas, utility easements, drainage easements, right-of-way or other Property, public or private, on which such Owner's Property abuts properly cultivated, pruned, free of trash and other unsightly material. Declarant, the Association and the ACC shall have the right at any reasonable time to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located therein at cost to Owner.

The Homeowners' Association shall mow, trim and maintain all from yards for all Units on the Property landscaping and signs in common areas. The Homeowners' Association shall pay for same from the funds of the Homeowners' Association. Maintenance shall not include watering, seeding or planting of grass.