

Hidalgo County  
Arturo Guajardo Jr.  
County Clerk  
Edinburg, Texas 78540

Document No: 3422276

Billable Pages: 39

Recorded On: February 16, 2023 10:46 AM

Number of Pages: 40

\*\*\*\*\*Examined and Charged as Follows\*\*\*\*\*

Total Recording: \$ 188.00

\*\*\*\*\*THIS PAGE IS PART OF THE DOCUMENT\*\*\*\*\*

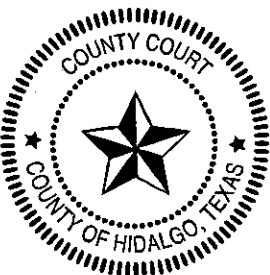
Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document No: 3422276  
Receipt No: 20230216000058  
Recorded On: February 16, 2023 10:46 AM  
Deputy Clerk: Aerial Salazar  
Station: CH-1-CC-K01

**Record and Return To:**

Corporation Service Company  
919 North 1000 West  
  
Logan UT 84321



STATE OF TEXAS  
COUNTY OF HIDALGO

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas.

Arturo Guajardo Jr.  
County Clerk  
Hidalgo County, Texas



**DECLARATION OF PROTECTIVE COVENANTS  
THE MID VALLEY INTERNATIONAL INDUSTRIAL PARK**

**DECLARATION OF PROTECTIVE COVENANTS OF  
THE MID VALLEY INTERNATIONAL INDUSTRIAL PARK  
TABLE OF CONTENTS**

<b>Table of contents</b>	<b>Page</b>
ARTICLE I	
DEFINITIONS	1
ARTICLE II	
PROPERTY	
Section 2.1 Adding and Removing Property Owned by EDCW	4
Section 2.2 Permitted Uses	5
Section 2.3 Prohibited Uses	5
ARTICLE III	
ASSOCIATION	
Section 3.1 Membership; Governances	6
Section 3.2 Voting	6
Section 3.3 Control	7
ARTICLE IV	
ARCHITECTURAL REVIEW COMMITTEE	
Section 4.1 Committee	8
Section 4.2 Necessity of Architectural Review and Approvals	8
Section 4.3 Approval	8
Section 4.4 Design Criteria	9
Section 4.5 Color Scheme	11
Section 4.6 Signs; Flag Standards	11
Section 4.7 Landscaping	11
Section 4.8 Conditions of Approval	12
Section 4.9 Powers and Duties	12
Section 4.10 Liability	13
ARTICLE V	
CONSTRUCTION OF IMPROVEMENTS	
Section 5.1 General	13
Section 5.2 Licenses	13
Section 5.3 Set Backs	14
Section 5.4 Accessory Buildings	14
Section 5.5 Exterior Walls	14
Section 5.6 Screening	14
Section 5.7 Fences	14
Section 5.8 Open Storage Areas	15
Section 5.9 Site Lighting	15
Section 5.10 Landscaping	15
Section 5.11 Pedestrian Walkings	15

Section 5.12 Parking and Driveways	16
Section 5.13 Service Yards and Off-Street Loading Ares	16
Section 5.14 Underground Utilities	16
Section 5.15 Time Requirements for Commencing Construction	17
Section 5.16 Time Requirements For Completing Construction	17
Section 5.17 Condition During Construction	18
Section 5.18 Damage or Destruction	18
ARTICLE VI	
GENERAL COVENANTS	
Section 6.1 General	20
Section 6.2 Use Regulations	20
Section 6.3 Drainage and Water Retention	20
Section 6.4 On Site Detention	20
Section 6.5 Noxious or Offensive Activity	20
Section 6.6 Subdivision	20
Section 6.7 Hazardous Materials	20
Section 6.8 Governing Criteria	21
Section 6.9 Rules and Regulations	21
Section 6.10 Public Land Use Regulations	21
Section 6.11 Minimum Standards	21
ARTICLE VII	
LAND USE REGULATIONS (intentionally omitted)	21
ARTICLE VIII	
MAINTENANCE, ALTERATIONS, AND IMPROVEMENTS, ASSESSMENTS	
Section 8.1 As to Parcels	21
Section 8.2 Assessment	22
Section 8.3 Due Dates of Annual Assessments	23
Section 8.4 Effect of Non-Payment of Assessment and Remedies Of the Association	23
Section 8.5 As to Areas Owned by Governmental Entity Within the Park	23
Section 8.6 Inspection by Association	23
Section 8.7 Declarant's Right to Enter	24
ARTICLE IX	
EASEMENTS	
Section 9.1 Easement Rights of Declarant	24
Section 9.2 Easement Rights of Institutional Mortgagees	24
Section 9.3 Persons Bound; Beneficiaries	24
ARTICLE X	
TRANSFER OF UNIMPROVED PARCELS	
Section 10.1 Declarant's Right of First Refusal	25
Section 10.2 Notice	25
Section 10.3 Exercise of Right	25
Section 10.4 Waiver	25

Section 10.5 Certificate of Waiver	25
Section 10.6 Unauthorized Transactions	25
Section 10.7 Exceptions	25
ARTICLE XI	
OBLIGATIONS OF OWNER	26
ARTICLE XII	
STATUS AND WAIVER	
Section 12.1 Covenants	26
Section 12.2 Waiver	26
Section 12.3 Enforcement	26
ARTICLE XIII	
REMEDIES	
Section 13.1 Rights of Declarant for Violation by Owner	26
Section 13.2 Rights of Owners for Violation by an Owner	27
Section 13.3 Attorney's Fees	27
Section 13.4 Liability of Declarant and its Partners	27
Section 13.5 Proviso	27
ARTICLE XIV	
DURATION AND AMENDMENT	
Section 14.1 General Procedure	27
Section 14.2 Proviso	28
Section 14.3 Term Duration	28
Section 14.4 Variances	28
ARTICLE XV	
NOTICE	29
ARTICLE XVI	
RIGHT TO MODIFY, CANCEL, OR LIMIT	29
ARTICLE XVII	
SEVERABILITY	29
ARTICLE XVIII	
APPLICABLE LAW/VENUE	29
ARTICLE XIX	
CAPTIONS	30
ARTICLE XX	
SINGULAR/PLURAL - MASCULINE/FEMININE	30
ARTICLE XXI	
VETO POWER (intentionally deleted)	30

ARTICLE XXII RESTRICTIONS PREVAIL OVERLESS STRINGENT GOVERNMENT REGULATIONS	30
ARTICLE XXIII LESSEES	30
ARTICLE XXIV COVENANTS RUN WITH THE LAND	31
ARTICLE XXV EFFECTIVE DATE OF THIS DECLARATION	31
ARTICLE XXVI BY LOT	31

## **DECLARATION OF PROTECTIVE COVENANTS OF THE MID VALLEY INTERNATIONAL INDUSTRIAL PARK**

### **KNOW ALL MEN BY THESE PRESENTS:**

**WHEREAS, THE ECONOMIC DEVELOPMENT CORPORATION OF WESLACO**, is the owner of certain lands situated in Weslaco, Hidalgo County, Texas, and legally described as **Lots 2 through 19, and Lot A, MID-VALLEY INTERNATIONAL INDUSTRIAL PARK, Weslaco, Hidalgo County, Texas, as per map or plat thereof recorded in the office of the County Clerk of Hidalgo County, Texas, under Document No. 3401204, Map Records, Hidalgo County, Texas** (hereinafter "Property"), more particularly described below in this Declaration of Protective Covenants of the Mid Valley International Industrial Park; and WHEREAS, Declarant desires to place from time to time certain easements, covenants, conditions and restrictions upon the use of the Property and to cause same to benefit, burden and run with the Property; NOW, THEREFORE, for good and valuable consideration, the said Declarant does hereby for itself and its successors and assigns hereby place upon the Property the following certain easements, covenants, conditions and restrictions.

## **ARTICLE I**

### **DEFINITIONS**

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) Accessory Building:** The term "Accessory Building" shall mean and refer to a building located on a Parcel that is separate from the Principal Improvement constructed on such Parcel.
- (b) Association:** The term "Association" shall mean and refer to **MID VALLEY INTERNATIONAL INDUSTRIAL PARK OWNERS ASSOCIATION, INC., a Texas non-profit corporation.**
- (c) Building Site:** The term "Building Site" or "Site" shall mean and refer to that portion of the Property being improved.
- (d) Board:** The term "Board" shall mean and refer to the board of directors of the Association.
- (e) Bylaws:** The term "Bylaws" shall mean and refer to the bylaws that govern the operation of the Association.
- (f) Class A Member:** The term "Class A Member" shall have the meaning assigned in Section 3.2(a) of this Declaration.
- (g) Class B Member:** The term "Class B Member" shall mean and refer to the Declarant.

- (h) **Commencing Construction or Commence Construction:** The term "Commencing" or "Commerce" shall mean and refer to the issuance of a building permit by the County or other applicable governmental body for the construction of the Principal Improvements or any Accessory Building thereon and the actual commencement of the construction of vertical Improvements on the Site; site work only shall not satisfy the foregoing requirement.
- (i) **Committee:** The term "Committee" shall mean and refer to the Architectural Review Committee, as more particularly described in Article IV herein.
- (j) **Completed the Improvement or Completed Improvement or Completely Constructed:** The terms shall mean and refer to the issuance of a final Certificate of Occupancy (or other official written statement of final approval) for the Improvement by the governmental body having jurisdiction there over.
- (k) **County:** The term "County" shall mean and refer to Hidalgo County, Texas.
- (l) **Date of Initial Conveyance:** The term "Date of Initial Conveyance" shall mean and refer to the date that the ground lease or deed to the Parcel was delivered by the Declarant or other grantor or ground Lessor to the Owner of such Parcel.
- (m) **Declarant:** The term "Declarant" shall mean and refer to **THE ECONOMIC DEVELOPMENT CORPORATION OF WESLACO**, and those successors and assigns to whom Declarant's rights and obligations as Declarant hereunder are specifically assigned by Declarant.
- (n) **Declaration:** The term "Declaration" shall mean and refer to this Declaration of Protective Covenants of the Weslaco Mid Valley International Industrial Park.
- (o) **Design Criteria:** The term "Design Criteria" shall mean and refer to the specifications, guidelines, and standards, which, regulate the construction, placement, installation, alteration, maintenance, and repair of Improvements within the Park, as specified in Section 4.3 of this Declaration.
- (p) **Force Majeure Delays.** The term "Force Majeure Delays" shall mean shall mean delays in the performance of its obligations to commence construction within the periods set forth in this Declaration when caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits or approvals, enemy or hostile governmental action, recession, civil commotion, fire or other casualty, pandemic or epidemic, and other causes beyond the reasonable control of the Owner and the Owner shall be excused from and not held responsible for such Force Majeure Delays and any time period for such performance shall be extended one day for each day such Force Majeure Delay existed.
- (q) **Improvement:** The term "Improvement" shall mean and refer to any building, structure, sign, flag standard, exterior lighting, drainage facility, water retention/detention facility, sewer facility, road, lake, and/or landscaping that is constructed, installed, erected,



placed or made within or upon the Property, as well as any construction, demolition, excavation, and/or grading, within or upon, and any subdividing (or resubdividing) and/or platting (or replatting) of, the Property.

- (r) **Institutional Mortgagee:** The term "Institutional Mortgagee" shall mean any Person owning the beneficial interest in a deed of trust or owning a mortgage encumbering the fee interest in or a leasehold interest in a Parcel by virtue of a ground lease as defined in this Article I, a Parcel which in the ordinary course of business makes, purchases, guarantees, or insures mortgage loans. An Institutional Mortgagee may include, but is not limited to, banks, savings and loan associations, insurance companies, union pension funds authorized to lend money in the State of Texas, an agency of the United States or any other governmental authority, a mortgage investment trust, a real estate investment trust, a mortgage company, or a lender generally recognized in the County as an institutional type lender. In addition, an Owner who conveys or ground leases a Parcel and takes back a vendor's or a Purchase Money Deed of Trust or Mortgage shall be deemed to be an Institutional Mortgagee.
- (s) **Lessee:** The term "Lessee" shall mean and refer to any Person who leases from an Owner all or any portion of a Parcel. The Lessee shall be subject to the terms of this Declaration, and shall have the same obligations as an Owner hereunder.
- (t) **Lot:** The term "Lot" may be used interchangeably herein with the term "Parcel".
- (u) **Lot 5:** The term "Lot 5" refers to Parcels to be purchased by BT-OH, LLC, which shall not be subject to certain provisions of this Declaration and which Owner may not be subject to certain provisions of this Declaration. Lot 5 are sometimes referred to herein as the "BT Lot" and the Owner of such BT Lot along with any successor or assign, is referred to herein as the "BT Owner".
- (v) **Lot 12:** The term "Lot 12" refers to the Parcel to be conveyed to Glazer's Weslaco, LLC, which shall not be subject to certain provisions of this Declaration and which Owner shall not be subject to certain provisions of this Declaration. The Owner of Lot 12 along with any successor or assign is referred to herein as the "Lot 12 Owner."
- (w) **Member:** The term "Member" shall mean and refer to an Owner.
- (x) **Occupant:** The term "Occupant" shall mean and refer to the actual occupant of a Parcel, which may be the Owner of the Parcel, a Lessee, or any other person who has a right to use any portion of a Parcel.
- (y) **Owner:** The term "Owner" shall mean and refer to (i) a ground lessee under a ground lease of a Parcel having an original term of not less than fifty (50) years and (ii) the record owner or owners of the fee simple title to a Parcel conveyed by Declarant or a successor in title of Declarant. Declarant is now an "Owner." If a Parcel is subject to a ground lease as described in (i) above, only the ground lessee shall be the "Owner" with respect to that Parcel and the fee title holder shall not be an "Owner" with respect to that Parcel. The term "owned" when used herein shall refer to the interest in a Parcel of an Owner. In the event that a Parcel is owned by more than one (1) Person, each such Person shall

be jointly and severally liable for all of the obligations of an Owner of a Parcel hereunder.

- (z) Parcel:** The term "Parcel" shall mean and refer to any platted lot within the Property, together with all Improvements thereon. A platted lot shall mean and refer to a tract of land designated as a lot under a plat duly recorded in the county records of the County. Currently, the Parcels covered by this Declaration are Lots 2 through 19, and Lot A. In the event any of such Parcels shall in the future be consolidated into one (1) Lot, then such combined Parcel shall still be considered separate Lots. Any Lot added to the Property after the date of this Declaration may not be less than ten (10) acres.
- (aa) Park:** The term "Park" shall mean and refer to the Property.
- (bb) Person:** The term "Person" shall mean and refer to an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, limited liability company, two or more persons having a joint or common interest, or any other entity.
- (cc) Plans and Specifications:** The term "Plans and Specifications" shall mean and refer to the plans and specifications (and amendments thereto) for Improvements that must be submitted and approved in accordance with Article IV herein. Any reference to any amendment of the Plans and Specifications shall include any change in, alteration of, addition to, or deletion from the Plans and Specifications.
- (dd) Principal Improvement:** The term "Principal Improvement" shall mean and refer to the Improvement located on a Parcel that is the largest structure on the Parcel and the primary place of operations on the Parcel.
- (ee) Property:** The term "Property" shall have the meaning stated in the first paragraph of this Declaration.
- (ff) Rear Yard:** The term "Rear Yard" shall mean and refer to the space on a Parcel located to the rear of the Primary Improvement.
- (gg) Subdivide:** The term "subdivide" shall mean and refer to the dividing of a Parcel into two or more Parcels.

## **ARTICLE II**

### **PROPERTY**

The Property shall consist of all property that Declarant submits, and makes subject to, the terms of this Declaration.

**Section 2.1 Adding and Removing Property Owned by EDCW.** EDCW reserves, and shall at all times have the right, without the consent or approval of any other person to plat or re-plat the boundaries or dimensions of any lot or other property owned by EDCW and may increase or decrease or change the size, shape, or dimensions of any lot or other property owned by EDCW, provided that such adding and/or removing of such property does not result

in any burden on any other Parcel or common areas or infrastructure of the Park, or to any Owner, or result in an increase in the costs of any Owner or in any manner interfere with, burden, hinder, or obstruct the use of any Lots in the Park by the Owner or occupant of such Lots.

**Section 2.2 Permitted Uses.** Lots may only be used for the following uses:

- Offices, office-showrooms, office-warehouses, which are ancillary to any warehouse, logistics, or distribution use;
- Wholesaling, warehousing, logistics, and distribution;
- Light industrial manufacturing and assembly;
- Research, development, and testing laboratories;
- Office, retail, and commercial services ancillary to the above uses;
- Parking of passenger vehicles, light trucks, trailers, and other vehicles or ancillary equipment used in the trade or business of the Owner or the occupant of a Parcel.
- Uses which are not specifically prohibited by this declaration shall be permitted if a proposed use plan describing such proposed use in detail is submitted to and approved in writing by EDCW.

Notwithstanding anything to the contrary set forth in this Declaration, nothing herein shall be construed to prohibit, hinder, or interfere with the intended use of the BT Lot or any expansion Lots as a United Parcel Service facility, nor shall there be any restriction imposed against the BT Lot or any expansion Lots purchased by the BT Owner, or its successors or assigns, which prohibits, hinders or interferes with the intended use of such lots as a United Parcel Service facility.

**Section 2.3 Prohibited Uses.** Notwithstanding any provision to the contrary contained herein, no portion of any Lot shall be used for any purpose which is unlawful and constitute a nuisance by reason of odor, fumes, dust, smoke, noise or pollution, or which shall increase the danger to any other lot of fire or explosion damage, or for any purpose which may be or become a nuisance, or in violation of any applicable law.

The following uses shall not be permitted on any portion of the Park:

- Storage lot for automobiles, boats or recreational vehicles;
- Storage of commercial trailers exclusively for the purpose of operating a "drop and hook" yard;
- Self-storage units;
- HUD Code Manufactured home dealers;
- Livestock auction barn;
- Sexually oriented business;
- Dumping, disposal, incineration or reduction of garbage, trash, sewage, offal, dead animals or refuse,
- Construction or operation of wastewater treatment plants;
- Commercial excavation of building or construction materials; but not including excavation in connection with the construction of Improvement(s);
- Extraction or refining of petroleum or of its products;

- Correctional institutions;
- Residential use of any kind; and
- Such other uses as may reasonably be prohibited by the Board and approved in an amendment to this Declaration that is adopted in accordance with the provisions of this Declaration.

Notwithstanding the foregoing, vehicles, including trailers, used in the operation of a Lot for a use permitted hereunder may be parked and stored on a Lot.

For the purpose of clarity, the use of the BT Lot as a United Parcel Facility by United Parcel Service or its successors or assigns for similar purposes including without limitation general warehouse and distribution purposes, including, but not limited to a logistics operation, and (1) office use ancillary to a warehouse/distribution facility, (2) light manufacturing, (3) the washing and performance of light maintenance/repair work on trucks, trailers and other vehicles used in connection with BT Owner's business conducted inside the Primary Improvement, and (4) product assembly (or the use thereof by one of its affiliated companies or its successors or assigns ) shall not be deemed a Prohibited Use or to constitute a nuisance or noxious or offense activity referred to in Section 6.5 herein . For the purpose of clarity, the use of Lot 12 to warehouse and distribute alcoholic and non-alcoholic beverages shall not be deemed a Prohibited Use or to constitute a nuisance or noxious or offense activity referred to in Section 6.5 herein.

## **ARTICLE III**

### **ASSOCIATION**

The filing of this Declaration establishes the Association that is governed by this Declaration and the Bylaws. The Association shall have all of the powers of a non-profit corporation and a property owners association for the Property under the Texas Business Organizations Code, the Texas Property Code, this Declaration, and the Bylaws.

**Section 3.1 Membership; Governance.** Every person or entity who is an Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from such ownership. The Board may adopt rules and Bylaws governing the operation of the Association and the Property that do not conflict with local, State, or Federal law, or this Declaration. If required by Texas law, the Board will cause such rules and Bylaws to be recorded in the Official Records of Hidalgo County, Texas.

#### **Section 3.2 Voting.**

- (a) Each owner, with the exception of the Declarant for so long as Declarant is a Class B member, shall be a Class A member and shall be entitled to one Class A vote for each acre of the Property owned. Where such owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the Secretary of the Association.

- (b) The Declarant shall be the sole Class B member and shall be entitled to three votes for each Lot owned; provided, however, in no event shall the Class B member have less than the total number of Class A votes plus one. The Class B membership shall cease and be converted to Class A membership at such time as Declarant no longer retains the right to appoint and remove members of the Board pursuant to Section 3.3(a) of this Article III below.
- (c) To the extent not prohibited by Texas law, the Board may suspend the voting rights of any Member and of any owner or Occupant who shall be delinquent in the payment of any assessment levied by the Association in compliance with the terms of this Declaration and such delinquency continues for more than ten (10) business days after the Owner's receipt of written notice that payment is delinquent or who shall be in violation of the provisions of this Declaration or the rules and regulations of the Association and such violation remains uncured for a period of thirty (30) days after written notice and an opportunity to cure. At the time of the recording of this Declaration, there are no rules and regulations established by the Association.

### **Section 3.3 Control.**

- (a) Notwithstanding anything contained herein to the contrary, or in the Articles of Incorporation or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board, except as provided in the Bylaws and in this Declaration whereby the BT Owner and Lot 12 Owner may elect to be members and officers as expressly set forth herein, and any officer or officers of the Association until the first of the following events shall occur: (i) the expiration of ten (10) years after the date of the recording of this Declaration; (ii) the date upon which ninety percent (90%) of the Lots have been conveyed by Declarant to Owners other than an entity controlled by Declarant; or (iii) a surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.
- (b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this section, such rights shall automatically pass to the Members, including Declarant if Declarant then is a Member. At such time, a special meeting of the Association shall be called. At such special meeting subject to the rights of the BT Owner and the Lot 12 Owner, the Members shall elect a new Board which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. The Bylaws shall clearly set forth the procedure for the election of the Board, which Board shall consist of no fewer than three (3) members and no more than five (5) members, of which the BT Owner and the Owner of Lot 12, may at their election, each occupy one (1) of such Board seats.

## ARTICLE IV

### **ARCHITECTURAL REVIEW COMMITTEE**

**Section 4.1 The Committee.** The Committee shall consist of not more than five (5) persons appointed by the Declarant, or if applicable, the Board. Notwithstanding anything to the contrary herein, the BT Owner and the Lot 12 Owner may each, at such Owner's election and upon notice to Declarant or the Board (as applicable), occupy one of such Committee positions. The Committee has exclusive jurisdiction over all matters relating to architecture in the Park and to ensuring that the design of the Improvements situated on a Parcel complement the design of Improvements situated on other Parcels and contribute to the overall aesthetics of the Property. The Declarant may assign the right to appoint the members of the Committee to the Board by an express amendment to this Declaration executed and recorded in the real property records of Hidalgo County, Texas, by the Declarant, which amendment shall specify that the BT Owner and Lot 12 Owner, or their successors or assigns, may elect, at the option of the BT Owner or Lot 12 Owner, as applicable, to occupy one of the Board positions and one of the Committee positions. In addition, Declarant's right to appoint members of the Committee shall automatically terminate upon the occurrence of any of the conditions specified in Section 3.1 and revert to the Board. The Committee shall review plans and specifications for and shall have jurisdiction over all construction on any Lot, except for such construction on the BT Lot and any expansion to such Lots and Lot 12.

**Section 4.2 Necessity of Architectural Review and Approvals.** No improvement of any kind shall be commenced, constructed, installed, erected, or placed upon or within the Property, nor shall any amendment, change or alteration of the exterior of any Improvements be made until such time as the Plans and Specifications with respect thereto have been submitted to and approved in writing by the Committee in accordance herewith. Amendment, changes or alterations to the interior portion of any Improvements do not require approval of the Committee except as set forth in Section 4.8(b). The Plans and Specifications shall be submitted to the Committee in a manner and form satisfactory to the Committee, and shall show the proposed Improvement(s), plot layout, exterior elevations, materials, colors, traffic engineering, building materials, layout of parking spaces, easements, utilities, and such other information as may be reasonably requested by the Committee. The Plans and Specifications shall be submitted in writing by the Owner or the Owner's authorized agent. Upon the submission of Plans to the Committee, the Committee shall respond with comments regarding the approval of such Plans, or requesting changes or amendments to the Plans, within thirty (30) days following submission so as not to unreasonably delay the progress of construction of the contemplated Improvements. Decisions of the Committee may be appealed to the Board, and the decision of the Board regarding any such appeal shall be final.

**Section 4.3 Approval.** Approval of the Plans and Specifications shall be based upon:

- (a) the adequacy of Building Site dimensions;
- (b) the conformity and harmony of the design and layout of the proposed Improvement(s) with neighboring Parcels and with the Park as a whole;
- (c) the effect of the location and use of the proposed Improvement(s) on

neighboring Parcels and on the Park as a whole;

- (d) the relation of the proposed Improvement(s) to the topography of the Building Site;
- (e) the grade and finished ground elevation of the Building Site in relation to that of neighboring Parcels;
- (f) proper facing of the main elevation of the proposed Improvement(s) with respect to nearby streets; and
- (g) the conformity of the Plans and Specifications with the Design Criteria, and with the terms of this Declaration. The Committee shall not arbitrarily or unreasonably withhold its approval of the Plans and Specifications.

**Section 4.4 Design Criteria.** Unless otherwise set forth herein, the Design Criteria set forth in this Declaration shall apply to all of the Economic Development Corporation of Weslaco Mid Valley International Industrial Park. This Section may be amended at any time and from time to time by Declarant, in its sole and absolute discretion provided however, to be enforceable against the BT Lot or expansion lots thereto or the BT Owner or its successors or assigns the BT Owner must consent to such amendment which consent may be withheld in its sole and absolute discretion and to be enforceable against Lot 12 or the Lot 12 Owner, the current Lot 12 Owner must consent to such amendment, which consent may be withheld in its sole and absolute discretion.

- (a) Building Coverage. Building coverage of Lot areas shall comply with the then applicable municipal or other zoning code, subdivision plat, with respect to building coverage.
- (b) Setback Requirements. All Improvements shall comply with the then applicable municipal or other zoning code, subdivision plat, with respect to setback lines.
- (c) Parking Requirements. Parking Requirements shall comply with the then applicable municipal or other zoning code or subdivision plat.
- (d) Driveways. All driveways, fire lanes, approaches, turn lanes, and other roads installed on a Lot shall conform with the following guidelines:
  - All Driveways shall comply with the then applicable municipal or other zoning code, subdivision plat, with respect to driveways.
  - All driveways, approaches, turn lanes and other roads installed on Lot shall be paved and curbed and guttered from street right-of-way to the building setback line and shall be designed, erected, altered and maintained in accordance with Plans and Specifications submitted to and approved in writing by the Committee.
  - Truck courts, loading dock parking areas and trailer parking areas shall be paved in accordance with Plans and Specifications submitted to and approved in writing by the Committee..

- (e) Erosion Control. Grading and drainage for site sediment control and erosion control shall be provided during the construction process to protect the overall quality of development. All erosion control measures shall comply with all city and state requirements.
- (f) Loading and Maneuvering. Adequate area shall be required on each Lot for all loading and maneuvering of trucks and other vehicles in order that such operations will not be carried out in the streets. All loading and maneuvering areas shall be paved in accordance with Plans and Specifications submitted to and approved in writing by the Committee .
- (g) No on street parking shall be permitted within Park. All roadways will be kept free of any parked vehicles to permit traffic flow and emergency vehicles to access the area.
- (h) Trailers may be parked only in specially designated areas of a Parcel and shall not used for storage of goods or products. No travel trailers or recreational vehicles shall be permitted to park in Park.
- (i) For such approved drop and hook yards, outdoor storage shall be permitted but only on a temporary basis for items waiting for trans-shipment. No broken or damaged or graffitied trailers shall be permitted to park in Park except on a temporary basis while repairs are pending in specially designated areas of a Parcel.
- (j) Exterior Illumination. All exterior lighting shall be designed, erected, altered and maintained in accordance with Plans and Specifications submitted to and approved in writing by the Committee.
- (k) Building Construction. The outside wall of all buildings shall be as provided in Section 5.5 of this Declaration, except as otherwise permitted by the Committee. No building shall be constructed with a wood frame. All elevations must be constructed of architecturally finished pre-cast concrete exposed aggregate concrete, or must be finished and covered with face brick, split face block or equivalent except as otherwise approved by the Committee.
- (l) Building Roofs. Building roofs shall be so designed and constructed to prevent water ponding and to shed water in a reasonable time. The slope shall be the minimum recommended by the manufacturer of the proposed roofing system to achieve proper drainage. No excavation shall be made except in conjunction with construction of an Improvement.
- (m) When such Improvement is completed and placed in service, all exposed excavated pits shall be backfilled, graded, and landscaped or paved as shown on Plans and Specifications approved by the Committee. Once commenced, all construction shall be diligently pursued to completion. Such construction may not be left in a partly-finished condition any longer than four (4) months subject



to Force Majeure.

- (n) Parapet walls shall be tall enough to screen rooftop equipment from public view at the front of buildings.

**Section 4.5 Color Scheme.** The overall color scheme for each building shall be submitted to the Committee for review and approval. Light colors are recommended to reduce utility costs and emphasize the glazing, entrance and landscape elements. Painted trim and other colors shall coordinate with the general color scheme of the development. An earth tone palette that reflects the earth natural tones in South Texas is recommended.

Building materials selected are to be durable, attractive and compatible. Avoid materials and features that change or degrade greatly over time. The requirement for ongoing maintenance is also a major concern. Where possible, color shall be integral to the materials; not painted or applied.

**Section 4.6 Signs; Flag Standards.** It is the intent of Declarant that all signs and flag standards be uniform and limited to specific graphic as illustrated in the Plans and Specifications. No billboard, flashing lighting or advertising sign shall be permitted on any Parcel within the Property. Only signs identifying the name, business and products of the person or firm occupying the premises, directional signage, and those offering the premises for sale or lease will be permitted. Only one (1) sign of approved design shall be permitted within the area between the front setback line and the property line; one (1) sign identifying the name, business and products may be (a) attached to the side of the building which faces a public street or (b) a primary occupant monument adjacent to occupant's entry, and directional signage of approved design may be installed on the building in locations approved by the Committee.

No portable or temporary signs of any form shall be permitted, except for "Building for Sale" or "Building for Lease" signs placed upon any Lot.

Design and construction of signs and flag standards shall be approved in writing by the Committee with respect to size, design, materials, construction, and color. Signs shall also conform to local building codes as well as regulations of the Federal Aviation Administration to the extent applicable. Multiple occupancy building signs may be approved on a case-by-case basis by the Committee.

**Section 4.7 Landscaping.** It is the intent of Declarant to obtain high quality landscaping throughout the Park. Every Site or Parcel upon which a building shall have been placed or, in the case of multi-parcel Sites, all Parcels even if the building is located only on one or more Parcels to the exclusion of other Parcels, shall have landscaping according to the plans approved as specified herein and maintained thereafter in a sightly and well-kept condition. The Owner shall provide landscaping in accordance with the City of Weslaco's, Texas Vegetation Regulation and approved by the Committee prior to any development.

All sprinkler systems shall be maintained in proper working order and programmed to provide sufficient water to maintain healthy landscaping including sodded areas.

**Section 4.8 Conditions of Approval.** In the event of approval of the Plans and Specifications, the following conditions shall apply:

- (a) Prior to commencing construction, the Owner shall provide the Committee with evidence of Owner's financial capability of completing the proposed Improvement(s) for purposes of protecting the Park against any unsightly unfinished construction. Examples of such evidence would include a payment and performance bond, building loan commitment or other proof of available financing, or letters from appropriate bank (or other acceptable lending institution) representatives. The BT Lot Owner shall be exempt from this requirement.
- (b) There shall be no changes made to the approved Plans and Specifications without the prior written approval of the Committee. If the Committee deems the changes to be substantial, the approval process hereunder must start over, and the Plans and Specifications will have to be resubmitted in accordance with this Article. However, anything to the contrary herein notwithstanding, changes in the interior of a structure shall not be subject to the approval of the Committee as long as such changes are not visible outside of the structure.

**Section 4.9 Powers and Duties.** The Committee shall have the following powers and duties:

- (a) To require submission to the Committee of at least three (3) complete sets of all Plans and Specifications. The Committee may also require submission of samples of building materials and colors proposed for use regarding any Improvement(s) and may require such additional information as reasonably may be necessary for the Committee to evaluate completely the proposed Improvement(s) in accordance with this Declaration. Reviews shall be coordinated with any required governmental approvals.
- (b) To adopt a schedule of reasonable fees for processing requests for Committee approval of proposed Plans and Specifications (and any amendments thereof) and the inspection of Building Sites before, during, and after construction. Such fees, if any, shall be payable to the Association in U.S. cash or by check at the time that Plans and Specifications (or amendments thereto) are submitted to the Committee. In the event such fees are not paid by the Owner, the Plans and Specifications shall be deemed to be improperly submitted by Owner, and need not be reviewed by the Committee. Neither the BT Owner nor the Lot 12 Owner shall be required to any such fees.
- (c) To approve or disapprove Plans and Specifications (and any amendments thereof) which approval may not be unreasonably withheld, conditioned or delayed.
- (d) To retain professional advisors such as attorneys, architects and inspectors as may be necessary in the exercise of its powers, which advisors shall be paid out of the fees collected in.

- (e) To inspect (or designate a qualified person to inspect) upon not less than thirty-six (36) hours' prior notice to the Owner, the Building Site(s) from time to time during construction (but in no event interfere with any such construction in any manner), and upon completion of construction, for purposes of determining if the Improvements are being (or have been) constructed, installed, erected, or placed in accordance with the approved Plans and Specifications.
- (f) To perform such incidental acts as may be necessary in the exercise of its powers.

**Section 4.10 Liability.** Neither the members of the Committee nor Declarant or any of its partners, nor their respective representatives, agents, employees, successors, or assigns, shall be liable in any manner to anyone submitting Plans and Specifications, or to any Owner or other Person, by reason of negligence, mistake in judgment, or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve or disapprove the Plans and Specifications, or arising out of or in connection with this Declaration. Every Person who submits Plans and Specifications to the Committee for approval agrees and certifies, by submission of such Plans and Specifications, that he will not bring any action, suit, or other proceeding against the members of the Committee or Declarant, or any of its partners, or their respective representatives, agents, employees, successors or assigns, for any negligence, mistake in judgment, or nonfeasance. In approving Plans and Specifications and/or Improvements hereunder, the Committee makes no representations, warranties, or claims as to the soundness or quality of the construction or design of the Improvements, or as to the effectiveness or suitability of the use of such Improvements.

## **ARTICLE V**

### **CONSTRUCTION OF IMPROVEMENTS**

**Section 5.1 General.** No Improvement shall be permitted upon or within the Park unless such Improvement(s) shall have been commenced, constructed, installed, erected, performed or placed in accordance with the approved Plans and Specifications. Each Owner and Parcel shall be subject to any and all new rules and regulations approved by the Board with notice of certified mail to all Owners to the address provided to the Board by the Owner. Notwithstanding anything to the contrary herein, the Lot 12 Owner and BT Owners and their successors and assigns, the BT Lot and if applicable any expansion lot later purchased by the BT Owner or its successors or assigns, and Lot 12 shall not be subjected to any new rules and regulations approved by the Board without the consent of the BT Owner or the Lot 12 Owner or their successors or assigns which consent may be withheld in the sole and absolute discretion of such Owner.

**Section 5.2 Licenses.** All Plans and Specifications must be prepared and/or stamped by a Texas registered architect or engineer, and all construction must be performed by duly licensed Texas contractors and subcontractors. In order to be "duly licensed," the contractors and subcontractors must have obtained all required licenses from all governmental bodies, agencies, departments and the like having jurisdiction there over, and must have satisfied all other requirements established as conditions precedent to constructing the Improvement.

**Section 5.3 Set Backs.** All setbacks shall be as shown in the subdivision plat covering the Property.

**Section 5.4 Accessory Buildings.** An Accessory Building, except for a guard shack (which may be located in the front of a Parcel), shall be located in a Rear Yard and shall be a minimum of fifteen (15) feet excluding any overhang, from a side lot line or rear lot line.

**Section 5.5 Exterior Walls.** Permitted finished wall surfaces shall be limited to architecturally finished concrete tilt-wall, pre-finished metal panels, architecturally finished precast concrete, limestone, brick or glazed brick masonry, concrete masonry units, or glazing systems.

In addition to meeting all approved building codes, the quality of the architectural design should enhance the appearance of the industrial park. All designs, alterations, additions or remodeling are subject to prior review and approval of the Committee.

- (a) The front façade of the Principal Improvement shall be of masonry, pre-cast concrete, tilt-up concrete, or the equivalent or better of any of the foregoing. The rear and sides of the Principal Improvement may be constructed of similar materials or pre-finished metal panels, where the aesthetics of such use will not be adverse to adjoining Parcels, in the discretion of the Committee.
- (b) There shall be no expansion walls in front yards of any Lot. Office area expansions may occur in the front of the lot; all manufacturing/distribution area expansions must occur in the side or rear of the lot.
- (c) If any wall exceeds 100 feet in length or 20 feet in height, the pattern of the brick construction must be altered so as to provide variation and visual relief.
- (d) All exposed metals (i.e. downspouts, gutters and gravel stops) shall be pre-finished metal and of a color fitting with the architectural façade of the building.

**Section 5.6 Screening.**

- (a) No outside storage of any form shall be visible from any public street or right-of-way. The parking and staging of vehicles and trailers shall not be deemed to be outside storage.
- (b) Scrap containment areas, trash dumpsters, tanks, compressors and other equipment shall be located in such a manner as to minimize visibility from the street or shall be visually screened by masonry wall or architecturally consistent material or landscaping and shall be placed on a concrete pad. No such masonry screening wall shall be required to be greater than the lesser of two feet above the height of the items being screened or fourteen (14) feet in height.

**Section 5.7 Fences.** Fences in the front and side yards of any Lot must conform to all setback requirements set forth above. Vinyl-clad, chain-link, ornamental metal, or other similar fencing materials are permitted. Masonry columns shall be required at the corners of all

fencing facing the front of any Lot.

**Section 5.8 Open Storage Areas.** No article, goods, materials, incinerators, storage tanks or like equipment may be stored in the open or exposed to public view or view from adjacent buildings. If it shall become necessary to store or keep articles, goods, materials, incinerators, storage tanks or like equipment in the open, then such storage may be permitted with prior written approval of the Committee, provided that the area used shall be enclosed with a screening fence and/or landscaping treatment of a design and materials approved in writing by the Committee. In no event shall any article, goods, materials, storage tanks or like equipment be stored within 50 feet of any street. Water storage tanks for the purpose of feeding fire suppression systems may be installed in a location approved by the Committee without meeting the foregoing restrictions.

**Section 5.9 Site Lighting..** All lamps shall be high-pressure sodium, low pressure sodium, mercury vapor or LED only. All exterior lighting shall be replaced as needed to provide the minimum lighting requirements as provided in approved site plans. No exterior lighting shall be situated upon a wooden post.

**Section 5.10 Landscaping.** Landscape treatment is required. "Green" treatment of the site may be in the form of grass lawns and ground covers, shade trees in parking areas, street trees, planting in areas used as dividers, and in areas otherwise unusable. Landscaping can be used to mark entrance points and parking areas; it can be used to shield or define service areas and property divisions, and to enhance building scale and forms. All landscape regulations of the City of Weslaco shall be enforced.

- (a) The entire area of any Lot containing a building site, including the area between the Lot line and street curb line, shall be landscaped except for those areas covered by the building and paved areas. Expansion areas may be grassed until such time as construction on the expansion areas commence.
- (b) All landscaping must be irrigated. Automatic sprinkler systems are required for front yards only. Hoses and movable sprinklers may be used in other areas. All lawn areas shall be planted with ground cover that complies with rules and regulations of the Association and said lawn shall not exceed 90% of the total landscaped area.
- (c) Planting beds shall be mulched and maintained weed-free and in an orderly appearance.
- (d) Ditches and swales shall have a minimum side slope of one foot vertical to three feet horizontal.
- (e) Subject to Force Majeure, all landscaping shall be installed within sixty (60) days of the occupancy or substantial completion, as determined by the Committee, or a building, whichever occurs first.

**Section 5.11 Pedestrian Walkways.** Pedestrian walks may be lit with bollard lights in the landscape or with down lights on poles of metallic or fiberglass material.

**Section 5.12 Parking and Driveways.** Parking areas and driveways may be lit with up lights in the landscape, or with down lights on poles, fences, walls or in building soffits. Light poles shall be of metallic or fiberglass material. Lights on poles shall have a total cutoff above 90 degrees to minimize light pollution.

**Section 5.13 Service Yards and Off-Street Loading Areas.** All service yards for truck or work activity including loading, unloading, turnarounds and maintenance shall be lit with down lights on poles and/or in building soffits, on walls or on fences. Light poles shall be of metallic or fiberglass material. Lights on poles shall have a total cutoff above 90 degrees to minimize light pollution.

**Section 5.14 Underground Utilities.** Where at all feasible, all utilities must be underground. When above ground utilities are a necessity for a potential tenant, sites bordering the park's perimeter should be used to allow above ground utility access to the site without disturbing the aesthetics of the remaining sites or the interior of the park. Except for special street lighting or other aerial facilities which may be required by any Governmental Authority, or which may be installed by EDCW pursuant to EDCW's development plan, no aerial utility facilities of any type (except meters, risers, service pedestals, transformers, and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed by a utility company, any Owner, or Occupant, or any other party. All utility service facilities (including, but not limited to, water, sewer, gas, electricity, telephone, and cable TV) shall be buried underground unless otherwise approved in writing by EDCW or unless otherwise required by any Governmental Authority or by the applicable utility company. Ground mounted transformers and switching gear shall be visually screened from view by landscaping. All streetlights and parking lot lights shall comply with the rules and regulations of the Association throughout the Property.

**Section 5.15 Time Requirements for Commencing Construction.** Subject to Force Majeure Delays, within eighteen (18) months after the Date of Initial Conveyance of a Parcel to an Owner, the Owner thereof shall Commence Construction of the Principal Improvements upon such Parcel unless otherwise agreed to in writing by the Declarant. If the Owner has not Commenced Construction within such 18-month time period, the Declarant, at its option (which option must be exercised, if at all, within one hundred twenty (120) days after the Owner's default under this Section) may require the Owner to re-convey the Parcel to the Declarant, free and clear of all encumbrances, except those applicable to the Parcel at the Date of the Initial Conveyance. In the event that Declarant desires to exercise its right to repurchase the Parcel hereunder, the repurchase price shall be the purchase price paid by the Owner to the Declarant in acquiring the Parcel, less:

- (a) any unpaid balances of any liens against the Parcel,
- (b) charges owed the Declarant or the Association by the Owner,
- (c) the costs and expenses of an owner's title insurance policy for Declarant,
- (d) any costs and expenses incurred by Declarant in clearing the title of all encumbrances that were not applicable to the Parcel at the Date of initial

Conveyance,

- (e) the recording and tax charges (if any) on the deed of conveyance to Declarant, and
- (f) the costs and expenses to be incurred by Declarant in restoring the Parcel to the condition the Parcel was in at the Date of initial Conveyance.

In the event that Declarant exercises its right to repurchase the Parcel hereunder, Declarant shall give thirty (30) days written notice to Owner of Declarant's intent to repurchase the subject Parcel pursuant to the terms of this Section. In the event the Owner refuses or fails to reconvey the Parcel by Special Warranty Deed within thirty (30) days after receipt of the notice referred to in the preceding sentence, the Declarant shall be entitled to seek specific performance of this covenant by filing an action in a court of competent jurisdiction. The Declarant may also recover its court costs and reasonable attorneys' fees in enforcing this provision.

For the sake of clarity, Commencing Construction of Primary Improvements or Ancillary Improvements causes the repurchase right set forth above to be null and void.

For purposes of this Declaration, the BT Owner shall not be subject to the 18-month deadline for Commencing Construction and shall be permitted to commence no later than five (5) years following the closing date of the BT Owner's purchase of the BT Lot subject to Force Majeure Delays.

**Section 5.16 Time Requirements For Completing Construction.** Upon Commencing Construction of the Principal Improvement or any other Improvement, the Owner shall proceed diligently without stopping until Owner has completed the Principal Improvement or such other Improvement. The Principal Improvement, or such other Improvement, shall be Completed within a reasonable period of time from the Date of Commencing Construction of the Improvement, not to exceed twenty-four (24) months from the Date of Commencing Construction of the Improvement; however, in the event that the Improvement is at least thirty-three percent (33%) complete (based upon the construction costs of the Improvement) upon the expiration of the said 24-month period, and the Owner is diligently pursuing the construction of the Improvement, the deadline for completing the Improvement shall be extended to allow the Owner to Complete the Improvement for so long as the Owner diligently and in good faith pursues without interruption the Completion of Construction, and, in such case, the Owner will be deemed to be in compliance with the time deadline herein for completing the Improvement. The Committee shall also have the power to extend the deadline for completing the Improvement, provided Owner makes application therefore and the Committee determines the request is reasonable. Such a request is hereby deemed to be reasonable in the event that the Improvement is not completed within the twenty-four (24) month period due to forces beyond the Owner's control. In the event that an Owner fails to comply with the terms herein:

- (a) The Declarant shall have the power to terminate the Committee's approval under Article III of this Declaration (and Owner will have to obtain new approval from the Committee prior to proceeding with any Improvement) and to restore the Building Site to the condition the Building Site was in immediately prior to the

Commencement of Construction of the Improvement; for purposes of carrying out its rights hereunder the Declarant (and/or Persons designated by the Declarant) may enter upon the Parcel for purposes of carrying out such restoration at Owner's cost and expense, and shall have a lien for the costs and expenses incurred with respect to such restoration, against the Parcel containing the Building Site in the same manner as a lien for unpaid Assessments hereunder; and/or

- (b) The Declarant shall have the right to require the Owner to reconvey the Parcel to the Declarant in the same manner (and with the same remedies) as set forth in Section 5.16 above. Within one hundred twenty (120) days after the Owner's default under this Section, the applicable party shall give notice to the Owner of the remedies that such party intends to pursue hereunder.

**Section 5.17 Condition During Construction.** During the construction of any Improvements on a Parcel, the Parcel shall be kept in a clean, neat and orderly condition during construction of the Improvements so as not to cause an unsightly condition of the Parcel. In the event that the Owner shall fail to so maintain the Parcel and continues such failure more than seven (7) business days following written notice thereof, the Association is authorized to enter upon the Parcel to carry out such cleanup, and shall have a lien for the costs and expenses incurred in carrying out such cleanup, against the Parcel containing the Building Site in the same manner as the lien for unpaid Assessments hereunder. This Section 5.17 in its entirety shall not be applicable to the BT Owner or the Lot 12 Owner or any of their successors or assigns and the BT Lot and any expansion thereto and Lot 12.

**Section 5.18 Damage or Destruction.**

- (a) In the event that a Completed Improvement is damaged by less than 50% (as measured by the square footage of the Improvement), the Owner, within six (6) months after the date of such damage, shall have restored the Improvement to its condition immediately prior to such damage; however, in the event that the Owner takes the necessary remedial action (within four (4) months after the date of such damage) to eliminate any dangerous or unsightly conditions arising from the damage, upon the approval of the Committee (not to be unreasonably withheld), the six-month period shall be extended to eighteen (18) months after the date of such damage subject to Force Majeure Delays. If the Owner fails to restore the Improvement as required herein, then the Declarant (upon five (5) business days prior written notice to the Owner) shall have the power to terminate the Committee's approval under Article IV of this Declaration (and Owner will have to obtain new approval from the Committee prior to proceeding with any Improvement), and (upon five (5) business days prior written notice to the Owner) to:
1. restore the Parcel to the condition the Parcel was in immediately prior to the Commencement of Construction of the Improvement; or
  2. take the remedial action necessary to eliminate any dangerous or unsightly conditions arising from the damage, either of which may



include removing or otherwise clearing the Improvement from the Park; for purposes of carrying out these rights the Association may enter upon the Parcel for purposes of carrying out such restoration or remedial action at Owner's cost and expense, and shall have a lien for the costs and expenses incurred with respect to such restoration or remedial action, against the Parcel containing the Parcel in the same manner as a lien for unpaid Assessments hereunder. Within one hundred twenty (120) days after the Owner's default under this Section, the Declarant shall give notice to the Owner of the remedies that it intends to pursue hereunder.

**(b)** In the event that a Completed Improvement is damaged by fifty percent (50%) or more (as measured by the square footage of the Improvement), the Owner shall take the following actions:

- 1.** within four (4) months after the date of such damage, the Owner shall take the necessary remedial action to eliminate any dangerous or unsightly conditions arising from the damage, upon approval of the Committee (not to be unreasonably withheld), which may include removing or otherwise clearing the Improvement from the Park, and
- 2.** within the time periods established for commencing construction under Section 5.15 (with the Date of Initial Conveyance being changed to the date of the damage or destruction) and for Completing Construction under Section 5.16, the Owner shall have:
  - (i)** restored the Improvement to the condition the Improvement was in immediately prior to such damage or
  - (ii)** completed construction of a different Principal Improvement after obtaining the necessary approvals under Article IV herein. In the event that the Owner fails to comply with the terms required herein:
    - The Board shall have the power, upon five (5) business days prior written notice to the Owner, to terminate the Committee's approval under Article IV of this Declaration (and Owner will have to obtain new approval from the Committee prior to proceeding with any Improvement) and to restore the Parcel to the condition the Parcel was in immediately prior to the Commencement of Construction of the Improvement (which will include removing or otherwise clearing the Improvement from the Parcel); for purposes of carrying out these rights the Association may enter upon the Parcel for purposes of carrying out such restoration at Owner's cost and expense, and shall have a lien for the costs and expenses incurred with respect to such restoration, against the Parcel containing the Parcel in the same manner as a lien for unpaid Assessments

hereunder; and/or

- The Declarant shall have the right to require the Owner to reconvey the Parcel to the Declarant in the same manner (and with the same remedies) as set forth in Section 5.15 above. Within one hundred twenty (120) days after the Owner's default under this Section, the applicable party shall give notice to the Owner of the remedies that such party intends to pursue hereunder.

## ARTICLE VI

### GENERAL COVENANTS

**Section 6.1 General.** No Improvements of any kind nor site work shall be commenced, constructed, installed, erected, or placed within the Park until the Plans and Specifications for the Improvement(s) shall have been submitted to and approved in writing by the Committee as more fully set forth in Article III of this Declaration. There shall be no amendment(s) made to the Plans and Specifications unless and until such amendment(s) have been approved in writing by the Committee in accordance with Article III of this Declaration.

**Section 6.2 Use Regulations.** The use of the Parcels shall be governed by all applicable governmental land use regulations, the terms of this Declaration, and matters of public record, all as may be amended from time to time.

**Section 6.3 Drainage and Water Retention.** Each Parcel must conform to the terrain management and drainage requirements of all applicable governmental regulations and to the approved plans and specifications therefore prepared for Declarant. A copy of such approved plans and specifications shall be provided to each Owner upon written request made to the Declarant accompanied by the Declarant's charge for such copy.

**Section 6.4 On-Site Detention.** On-site detention for each Parcel shall be in accordance with the Plat of the Subdivision and in accordance with the approved plans and specifications therefore prepared for Declarant. A copy of such approved plans and specifications shall be provided to each Owner upon written request made to the Declarant accompanied by the Declarant's charge for such copy. The on-site detention area for Lots 2 through 6, which includes the BT Lot, may be located in the drainage easement located in the south 75-feet of such lots.

**Section 6.5 Noxious or Offensive Activity.** No noxious or offensive activity shall be allowed on any portion of the Property, nor shall an Owner take any action that is or may become a nuisance to the other Owners.

**Section 6.6 Subdivision.** No Parcel or Site of less than ten (10) acres shall be subdivided into two or more Parcels without the prior written approval of the Committee, the approval of which may be withheld in the sole and absolute discretion of the Committee.

**Section 6.7 Hazardous Materials.** To the extent applicable to such Person, each

Person (including, but not limited to, Owners or Lessees) shall comply with all the rules, laws and regulations of any and all legally constituted governmental body having jurisdiction, governing the use, storage and handling of any material, substance or process which is deemed hazardous under such rules, laws and regulations. The Declarant shall have the right to evict, or to compel an Owner to evict, any Lessee that fails to comply with the terms of any such law or regulation.

**Section 6.8 Governing Criteria.** All Improvements within the Park, as well as the use and operation of the Parcels, shall be governed by, and in compliance with, the terms of this Declaration.

**Section 6.9 Rules and Regulations.** Each Owner and Parcel shall be subject to any rules and regulations pursuant to this Declaration.

**Section 6.10 Public Land Use Regulations.** Anything to the contrary herein notwithstanding, the minimum standards and development regulations of any applicable governmental body, board, agency or the like shall be complied with by each Owner.

**Section 6.11 Minimum Standards.** The covenants contained in this Declaration are the minimum standards for development and use of the Property. Declarant makes no warranties or representations as to the adequacy of the matters and items governed hereunder, and all Owners are hereby urged to retain the services of the necessary experts in order to determine those situations in which it is necessary to exceed the minimum standards hereunder.

## ARTICLE VII

**intentionally omitted**

## ARTICLE VIII

### **MAINTENANCE; ALTERATIONS AND IMPROVEMENTS; ASSESSMENTS**

#### **Section 8.1 As to Parcels.**

- (a) Each Owner shall have the duty and responsibility, at its sole cost and expense, to
  - (a) Subject to the terms and conditions of this Declaration, keep its Parcel and all Improvements thereon in a safe, clean, attractive, and operable condition at all times in accordance with the standards established in this Declaration and Rules and Regulations promulgated in accordance with this Declaration, and
  - (b) comply with all governmental, health, police, and fire codes, ordinances, regulations and statutes applicable to its Parcel.
- (b) The Declarant shall have the authority to ensure adequate maintenance and replacement of the external site improvements including paving, drainage, fencing, landscaping and/or grass areas within each Parcel, including public

sidewalks and driveways located within any easements located on each Parcel, the cost of which shall be assessed against each Parcel in accordance with the work performed, if any, as to the subject Parcel. The Declarant shall have the right to enter upon each Parcel to carry out such obligations.

- (c) Entrance Area. The Association shall maintain and keep in good repair the entrance area to the park, if any, with such maintenance to be provided by the Association hereinafter defined. Such maintenance shall include but not be limited to maintenance, repair and replacement of all landscaping and other flora, signage, other structures and improvements situated upon such areas.
- (d) Property maintenance includes, but is not limited to, the following duties:
  1. Buildings shall at all times be kept in good condition and repair and adequately painted or otherwise finished.
  2. Prompt removal of all litter, trash, refuse and wastes.
  3. Lawn mowing on a regular basis.
  4. Tree and shrub pruning.
  5. Watering by means of an irrigation lawn sprinkler system or hand watering as needed.
  6. Installing adequate exterior lighting and maintaining mechanical facilities in working order.
  7. Keeping lawn and garden areas in good condition, and any adjoining drainage ditches free of weeds and refuse.
  8. Removing and replacing any dead plant material.
  9. Keeping vacant land well maintained for a depth of at least 35 feet from a street and right-of-way, and the entire site free of trash and tall weeds.
  10. Keeping parking areas, driveways and roads in good repair.
  11. Complying with all governmental health and police requirements.
  12. Striping of parking areas and repairing of paved improvements and enclosures including fencing and gates.
  13. Repair of exterior damage to improvements.

**Section 8.2 Assessments.** The Association may levy Assessments to fund the operating expenses of the Association and to improve and maintain the Park. Assessments are the personal obligation of the Owners when such Assessments accrue. Assessments are secured by a continuing vendor's lien and contractual lien on each Parcel, which lien is reserved by the Declarant and assigned to the Association. By acceptance of a deed to a Parcel, each Owner grants the lien, together with the power of sale, to the Association to secure the Assessments.

- (a) Regular Assessments. Regular Assessments are levied by the Board, annually, to fund the reasonably estimated operating and maintenance expenses of the Association. Regular Assessments shall be based on a uniform rate of assessment for each Parcel to be determined by dividing the square footage of each Parcel by a number which represents the total square footage of the Property ("Owner Proportionate Share"). Each Owner shall pay its Owner's Proportionate Share.
- (b) Special Assessments. In addition to the regular Assessments described above,

the Board may levy special Assessments for purposes identified by the Board and approved by the Members for the purpose of funding the cost of any projects for the benefit of the Park that require funds exceeding those available from the regular Assessments. Special Assessments must be approved by the Members by a 2/3 majority vote at a meeting of the Members held in accordance with the Bylaws.

**Section 8.3 Due Dates of Annual Assessments.** The annual assessments provided for herein shall commence as to all Lots on the last day of the first month after the Association is formed. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board shall establish the due date. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 8.4 Effect of Non-Payment of Assessments and Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from said due date at a rate equal to 2.0 % above the Prime Rate, but not to exceed the maximum rate allowed by law. The "Prime Rate" shall mean the rate of interest announced from time to time in the Federal Reserve Statistical Release H.15 as the current weekly average of the "Bank Prime Loan" interest rate. In the event that such publication ceases to be issued by the Federal Reserve System, then the "Prime Rate" shall mean the rate of interest by any national commercial bank, with offices located in the City of Weslaco, Texas, selected by the Association. The Association may bring an action at law against the Owner personally obligated to pay the same or may foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of its Lot or any building on its Lot. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale to enforce its lien, and to acquire and hold, lease, mortgage and convey the same. During the period owned by the Association following foreclosure, no assessment shall be assessed or levied on such Lot foreclosed upon. The Association shall also have the right to pursue a money judgment to recover unpaid assessments.

**Section 8.5 As to Areas Owned by Governmental Entity Within the Park.** The Declarant, at its discretion, may enter into agreements with a governmental entity, body, agency or authority owning land (or an easement therein) within the Park whereby the Declarant agrees at no cost and expense to any Owner to maintain, repair, and improve such land (or the land underlying such easement), or portions thereof, and/or improvements (including, but not limited to, driveways, landscaping, street lighting, and signage) thereto.

**Section 8.6 Inspection by Association.** Each Owner shall allow the Association, or its agent, to enter upon its Parcel for the purpose of inspecting same to determine if the Parcel is in compliance with the provisions of this Declaration and the Exhibits hereto. Except in the case of a bona fide emergency, such entry shall be made at reasonable times and with reasonable advance notice.

**Section 8.7 Declarant's Right to Enter.** The Declarant shall be entitled to enter upon any Parcel for purposes of constructing, installing, altering, repairing, replacing or relocating utility, communications and security lines, cables, wires, pipes, drainage facilities, and other facilities; provided, however, that in such event Declarant shall give three (3) days prior written notice of such entry (except in an emergency, when no notice is required), shall not unreasonably interrupt the business of the Owner, and shall fully restore and repair the Parcel from the effects of Declarant's actions.

## **ARTICLE IX**

### **EASEMENTS**

**Section 9.1 Easement Rights of Declarant.** Declarant reserves unto itself, its designees, successors and assigns, perpetual easements and/or use rights over, upon, across, under, and/or through the Property (or any part thereof), at any time, without the need for any joinder, ratification or consent by the Declarant, any Owner, or any lienholder, provided, that said easements so reserved shall not materially interfere with the uses for which the Property or any portion thereof, are intended. If requested, the Declarant, Owners and/or lienholders shall join in documents specifically granting and describing the easements reserved hereunder for purposes of evidencing same.

It is understood that such easements may be used at Declarant's, (or its designee's, successor's, or assigns') option for the purpose of constructing, installing, using, maintaining, repairing, extending and/or replacing any and/or all: improvements and systems related to the common areas of the Park; facilities reasonably necessary to service the Park; electric, water, sewer, security, drainage, irrigation, and utility systems; telephone, radio, cable television, satellite master antenna television and cable distribution, and other communications systems; landscaping and water areas; pedestrian and vehicle access; and/or loading operations.

Such reservation granting a perpetual easement and/or use rights over, upon, across, under, and/or through the Property does not include any perpetual easement and/or use rights over, upon, across, under, and/or through the BT Lot. The BT Lot is subject only to the certain limited use of the 75' stormwater drainage easement for storm water purposes across the southern portion of the property (and also for purposes of on-site water detention for the BT Lot) as depicted on the Plat which is attached hereto and made a part hereof and for no other purpose or use there or any other portion of the BT Lot.

**Section 9.2 Easement Rights of Institutional Mortgagees.** An easement is hereby granted to each Institutional Mortgagee for the purpose of access to the property subject to its deed or trust or mortgage.

**Section 9.3 Persons Bound; Beneficiaries.** The easements set forth in this Article shall run with the land and shall be binding upon every Owner and every claimant of the Property or any portion thereof or of any interest therein, and their respective heirs, executors, administrators, personal representatives, successors and assigns and all Persons claiming by, through or under such Persons. No action shall be taken that would significantly interfere with the easement rights set forth herein.

Should the intended creation of any easement fail for any reason, then any such grant or reservation of easement deemed not to be so created shall nevertheless be considered as having been granted directly to the Declarant (its successors and assigns) for the purpose of allowing the original party or parties to whom the easements were originally granted or reserved the benefit of such easement, and the Owners designate the Declarant as their lawful attorney in fact to execute any instrument on their behalf as may hereafter be required or deemed necessary for the purpose of creating or reserving such easement(s).

## **ARTICLE X**

### **TRANSFER OF UNIMPROVED PARCELS**

**Section 10.1 Declarant's Right of First Refusal.** No Owner of any "Unimproved" (as defined in the following sentence) Parcel or any part thereof interest therein shall be sold, ground leasehold interest assigned or otherwise transferred ("Sale") unless and until the Owner of such Parcel shall have first offered to Sell such Parcel to Declarant at the original purchase price and Declarant has waived, in writing, its right to purchase said Parcel. For purposes of this Article, an "Unimproved" Parcel shall be a Parcel upon which the Principal Improvement has not been Completely Constructed.

**Section 10.2. Notice.** Any Owner intending to make a bona fide Sale of its Unimproved Parcel (or any part thereof interest therein) shall give to Declarant notice ("notice") of such intention, together with a fully executed copy of the proposed contract of Sale (the "Proposed Contract").

**Section 10.4 Exercise of Right.** If Declarant elects to exercise its right of first refusal, it shall, within thirty (30) days after receipt of such notice and Proposed Contract, deliver to the Owner an agreement to purchase the Parcel upon the same terms and conditions as the Proposed Contract including the purchase price therein.

**Section 10.5 Waiver.** If Declarant shall fail to exercise its right of first refusal hereunder within the said fifteen (15) days after receipt of the notice and Proposed Contract, the Declarant's right of first refusal shall be deemed to have been waived and Declarant shall furnish a certificate of waiver as hereinafter provided.

**Section 10.6 Certificate of Waiver.** If Declarant shall elect to waive its right of first refusal, or shall fail to exercise said right of first refusal within fifteen (15) days after receipt of the notice and Proposed Contract, then Declarant shall provide the Owner with a Certificate of Waiver of such right of first refusal, executed by Declarant in recordable form. Such waiver shall be contingent upon the Owner Selling the Parcel in accordance with the terms of the Proposed Contract.

**Section 10.7 Unauthorized Transactions.** Any Sale of an Unimproved Parcel in violation hereof shall be deemed to be void at Declarant's option.

**Section 10.8 Exceptions.** This Article shall not apply to sales or other transfers to or by any Institutional Mortgagee which acquires its title as a result of owning a deed of trust or a

mortgage upon the Parcel concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successors in title or through foreclosure proceedings. In addition, this Article shall not apply to any transfer of title of a Parcel between related companies under the same control or at a duly advertised public sale with open bidding provided by law, such as, but not limited to, an execution sale, foreclosure sale, judicial sale or tax sale.

## **ARTICLE XI**

### **OBLIGATIONS OF OWNER**

Each Owner, by becoming such, agrees that it shall be responsible for the payment of all obligations that may become liens against its Parcel pursuant to this Declaration during the period of its ownership. Further, the amount of any lien granted to the Declarant hereunder shall include the costs and reasonable attorneys' fees incurred in enforcing the lien, and all such liens may be foreclosed in the same manner as a mortgage against real property.

## **ARTICLE XII**

### **STATUS AND WAIVER**

**Section 12.1 Covenants.** The terms contained in this Declaration shall be construed as covenants running with the land and shall inure to the benefit of and be enforceable by the Declarant and by any Owner or Owners, by actions at law and/or by suits in equity.

**Section 12.2 Waiver.** The failure of any Person to enforce any covenant or obligation herein contained shall in no event be deemed a waiver by that or any other Person of its rights to thereafter enforce the same. No liability shall attach to the Declarant or an Owner for failure to enforce such covenants or obligations.

**Section 12.3 Enforcement.** The Declarant, the Association, or any Owner of property within the Park, shall have the right to enforce by any proceedings at law or in equity any and all of the Covenants contained in this declaration. A Failure to enforce shall not be deemed a waiver of any right to enforce in the future.

## **ARTICLE XIII**

### **REMEDIES**

**Section 13.1 Rights of Declarant for Violation by Owner.** In the event that an Owner violates any provision of this Declaration and/or other rules, restrictions, regulations, and criteria adopted by the Declarant in accordance with this Declaration, the Declarant shall have the right to:

- (a) seek any available relief in law and/or equity, including but not limited to, damages and injunctive relief; and/or
- (b) after thirty (30) days prior notice to the Owner specifying such violation and an opportunity to cure (except in an emergency, when no notice shall be required),



- enter (or designate the proper Person or Persons to enter) upon the Owner's Parcel, and summarily abate, cure and/or remove any such violation without being liable for any manner of trespass; and/or
- (c) charge the Owner for all costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred by the Declarant in seeking and/or enforcing any of the remedies provided for herein, which charge shall constitute a lien against the Owner's.

**Section 13.2 Rights of Owners for Violation by an Owner.** In the event that an Owner violates any provision of this Declaration, or any rules, regulations, restrictions, and criteria adopted by the Declarant in accordance with this Declaration, any Owner (or group of Owners) may seek any remedy available in law and/or equity.

**Section 13.3 Attorney's Fees.** In the event that attorney's fees are incurred in any level of litigation arising hereunder (including, but not limited to, trial, appellate, post-judgment and bankruptcy proceedings), the prevailing party shall be entitled to reimbursement from the other party (or parties) to the litigation for the costs and reasonable attorney's fees incurred by the prevailing party.

**Section 13.4 Liability of Declarant and its Partners.** Neither the Declarant, its successors, and assigns, nor any of the partners constituting the Declarant, nor any of the agents or employees of the Declarant, shall be liable in any manner for (i) any actions taken under this Declaration, or (ii) any failure to act under this Declaration, unless such action or inaction was committed with malice or with willful intent to harm the complaining party.

**Section 13.5 Proviso.** Anything to the contrary herein notwithstanding, in the event that an Owner fails to comply with the time deadlines set forth in this Declaration herein, the remedies set forth in said this Declaration shall be the exclusive remedies available for such default.

## ARTICLE XIV

### DURATION AND AMENDMENT

**Section 14.1 General Procedure.** Except as otherwise specifically provided in this Declaration, any of the terms in this Declaration may be amended or deleted, and/or new terms and provisions may be created, by an amendment to this Declaration approved by the Declarant, provided that any amendment shall not materially prejudice the rights of any Owner to the use and enjoyment of its Lot without the consent of such Owner. The amendment shall be evidenced by a Certificate of Amendment executed with the formalities of a deed. The Certificate of Amendment need only be executed by the Declarant, together with the written consent of the BT Owner and the Lot 12 Owner or their successors and assigns which consent may be withheld in such BT Owner's or Lot 12 Owner's sole and absolute discretion, and shall include the recording data identifying this Declaration and a certification executed in accordance with the terms of this Declaration. After the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to Section 3.3 of this Declaration, any amendment to the Declaration must be approved by seventy-five (75%) of the vote of the Members of the Association in accordance with the articles and bylaws

of the Association.

**Section 14.2 Proviso.**

- (a) Anything to the contrary herein notwithstanding, this Declaration may be amended by Declarant at any time without the joinder, ratification or approval of any Owner except the BT Owner and the Lot 12 Owner, or any lienholder, where specifically provided in this Declaration. Such Amendment, which shall be recorded in the county records of the County, need be executed and acknowledged only by the Declarant with the formalities of the execution of a deed, and shall include reference to the recording information identifying this Declaration.
- (b) Anything to the contrary herein notwithstanding, until the Declarant specifically elects in writing to terminate this right of consent, all amendments to this Declaration must be consented to by Declarant, and in the absence of such consent the Amendment shall be null and void.

**Section 14.3 Term Duration.** The initial term of this Declaration ends twenty-five (25) years from the date this Declaration is recorded in the Official Records of Hidalgo County, Texas, and automatically renews for 5-year terms unless terminated in accordance with the terms of this Declaration.

**Section 14.4 Variances.** Upon submission of a written request for variances, the Board or the Committee may, from time to time, in either the Board's or the Committee's sole discretion, permit an Owner to construct, erect, or install Improvements which are in variance with the covenants, conditions and restrictions or architectural standards which are contained in this Declaration or which were developed subsequent and pursuant to this Declaration. Written requests for variances shall set forth in narrative detail the particular standard from which a variance is sought. The Board or the Committee shall have the right to require additional information, supporting data and/or plans and specifications in the form and substance satisfactory to the Board or the Committee as a condition to such body's consideration of any request for a variance. Neither the Board nor the Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the granting or denial of any requested variance. By acceptance of any deed to any Parcel, the Owners expressly waive any such claims, demands, or causes of action arising from the granting or denial of any requested variance. Each request for a variance shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of either the Board's or the Committee's right to strictly enforce the covenants, conditions and restrictions and architectural standards contained herein against any other Owner.

The Committee, subject to an Owner's right to appeal the decision of the Committee to the Board, shall have the power and authority, in its sole discretion, to grant variances in compliance with the Development Guidelines, provided, however, that such variances shall be reasonably consistent with the purposes of these Restrictions and this Declaration shall not materially and adversely affect existing Improvement(s), and provided that the requested deviation, in the opinion of the Committee, is in the best interest of the Property and the variance requested is compatible with the character of the Property. Whenever, in the exercise

of its discretion, the Committee grants a variance to the Development Guidelines each Owner and/or Occupant of a Lot hereby acknowledges that such variance shall constitute a waiver of any conflicting provisions of these Restrictions, this Declaration and the Development Guidelines. All other restrictions contained herein not specifically covered by the variance will still be in full force and effect. Each Owner and/or Occupant of a Lot appoints the Committee as its true and lawful attorney-in-fact for the limited purpose of consenting to and granting variances in accordance with the terms of this section.

## **ARTICLE XV**

### **NOTICE**

Any notice or other communication to an Owner (other than Declarant) shall be deemed properly given only when mailed in the U.S. mail postage prepaid or hand delivered to the address of the Owner as set forth in the Declarant's files. It shall be the Owner's responsibility to keep its address current with the Declarant. Any notice or other communication to Declarant shall be deemed properly given only when mailed in the U.S. mail, by registered mail or certified mail, return receipt requested, to the Declarant at 275 South Kansas Ave, Suite A, Weslaco, TX 78596, or such other address provided by Declarant to the Owners

## **ARTICLE XVI**

### **RIGHT TO MODIFY, CANCEL OR LIMIT**

Anything to the contrary herein notwithstanding, Declarant specifically reserves the absolute and unconditional right, without any joinder, ratification or approval of any Owner or any lienholder, to alter, modify, change, revoke, rescind, limit or cancel any of the terms contained in this Declaration and/or to add new terms to the Declaration, when required to do so by any applicable governmental authority.

## **ARTICLE XVII**

### **SEVERABILITY**

The determination of any Court that any provision of this Declaration is unenforceable, invalid or void shall not affect the enforceability or validity of any other provisions hereof

## **ARTICLE XVIII**

### **APPLICABLE LAW/VENUE**

This Declaration shall be interpreted according to the laws of the State of Texas, and the proper venue of any actions arising hereunder shall be Hidalgo County, Texas.

## **ARTICLE XIX**

### **CAPTIONS**

The captions used in this Declaration and Exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text of this Declaration or Exhibits hereto annexed.

## **ARTICLE XX**

### **SINGULAR/PLURAL - MASCULINE/FEMININE**

Words used herein in the singular shall include the plural (and vice versa), and words in the masculine shall include words in the feminine or neuter gender (and vice versa), unless the text thereof expressly requires the contrary.

## **ARTICLE XXI**

### **INTENTIONALLY DELETED**

Intentionally deleted.

## **ARTICLE XXII**

### **RESTRICTIONS PREVAIL OVER LESS STRINGENT GOVERNMENT REGULATIONS**

Where the covenants and restrictions set forth in this Declaration impose minimum standards more stringent than government standards and regulations, the covenants and restrictions in this Declaration shall prevail, unless otherwise precluded by Texas law.

## **ARTICLE XXIII**

### **LESSEES**

Owners shall be responsible for all acts and actions of their Lessee(s) other than ground lessees described in Article I who shall be responsible for their own acts. Lessees shall comply with this Declaration (and the Exhibits hereto), as well as any rules, regulations, restrictions and criteria adopted by the Declarant hereunder, in the same manner as an Owner, and any violation of same by a Lessee shall be treated as a violation by the Owner. Any lease between a Lessee and an Owner shall specifically require the Lessee to comply with the terms of this Declaration (and the Exhibits hereto), as well as any rules, regulations, restrictions and criteria adopted by the Declarant hereunder.

## **ARTICLE XXIV**

### **COVENANTS RUN WITH THE LAND**

The easements, restrictions, covenants, and conditions contained in this Declaration are for the purpose of protecting the value and desirability of the Property. Consequently, they shall run with the real property and shall be binding on all parties having any right, title, or interest in the Property in whole or in part, and their heirs, successors, and assigns. These easements, covenants, conditions, and restrictions shall be for the benefit of the Property, each Parcel, and each Owner.

## **ARTICLE XXV**

### **EFFECTIVE DATE OF THIS DECLARATION**

This Declaration shall become effective upon its recordation in the county records of Hidalgo County, Texas.

## **ARTICLE XXVI**

### **BT LOT**

Notwithstanding anything to the contrary set forth in the Declaration, the BT Owner purchased the BT Lot in reliance on the following and the same shall remain a part of these covenants and shall not be subject to any amendment or modification without the consent of the BT Owner or its successors or assigns which consent may be withheld in its sole and absolute discretion:

- (a) No modification to the Declaration shall be made without the consent of BT Owner or its successor or assigns which consent may be withheld by BT Owner or its successors and assigns;
- (b) At the BT Owner's election, the BT Owner shall be entitled to appoint a representative to serve as a Director on the Board of Directors, as an officer of the Association and one of the the Committee positions of the Architectural Control Committee set forth in Article IV;
- (c) The BT Owner and its successor or assigns shall not be subject to any rule, regulation, terms, conditions, provisions of the Declaration or the Declarant or its successors or assigns that prohibits, hinders or interferes with the BT Owner's intended use of the BT Lot for a United Parcel Service facility;
- (d) The BT Owner and its successor or assigns shall not be subject to the imposition of any fees and costs to the BT Owner including any assessments other than for the reasonable costs of maintenance and repair of the Subdivision common areas which are identified in the Declaration
- (e) No additions, modifications or amendments to the Declaration shall be enforceable against BT Owner or its successor or assigns without the consent of BT Owners or its successors or assigns which consent may be withheld in its sole and absolute discretion.

In each instance in the Declaration where reference is made to the Declarant repurchasing any parcel due to the failure of the Owner of such Parcel to commence or complete construction or a reconveyance of the Parcel to Declarant, the Declarant may only repurchase the BT Lot and cause a reconveyance of the BT Lot to Declarant only if (i) BT Owner has not Commenced Construction of vertical improvements to the BT Lot within five (5) years following the Closing subject to "Force Majeure Delays" (i) upon the payment of the Purchase Price (without adjustment) set forth in the agreement of purchase and sale between the Declarant and BT Owner and in the event of (ii) upon the payment of the Purchase Price (without adjustment) set forth in the agreement of purchase and sale between the Declarant and BT Owner.

If the BT Owner fails to purchase the BT Lot, the provisions of this Article XXVI shall be null and void.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

The Declarant has caused this Declaration to be executed this 15<sup>th</sup> day of February, 2023.

**THE ECONOMIC DEVELOPMENT  
CORPORATION OF WESLACO, a Texas  
nonprofit corporation**

By:

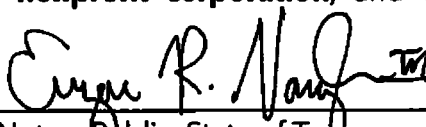
  
**STEVEN M. VALDEZ, Executive Director**

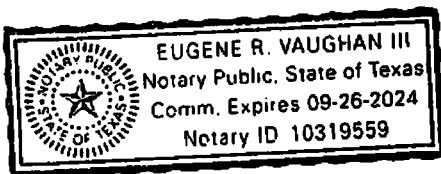
STATE OF TEXAS

§  
§  
§

COUNTY OF HIDALGO

ACKNOWLEDGED BEFORE ME on the 15<sup>th</sup> day of February, 2023, by  
**STEVEN M. VALDEZ** in his capacity as Executive Director of **THE ECONOMIC DEVELOPMENT  
CORPORATION OF WESLACO, a Texas nonprofit corporation**, and on behalf of said  
corporation.

  
Notary Public, State of Texas



The owner of Lot 12 hereby acknowledges that the Property is subject to the foregoing covenants and restrictions.

**GLAZER'S WESLACO, LLC, a Texas limited liability company**

By: Btt Glazer

Name: Bennett J. Glazer

Title: Manager

STATE OF TEXAS

§  
§

COUNTY OF DALLAS §

ACKNOWLEDGED BEFORE ME on the 14th day of February, 2023, by **Bennett J. Glazer** in his/her capacity as Manager of **GLAZER'S WESLACO, LLC, a Texas limited liability company**, and on behalf of said company.

Tracey E Hiatt  
Notary Public, State of Texas

