SUBDIVISION REVIEW SHEET

<u>CASE NO.</u>: C8J-2018-0208 <u>ZAP DATE</u>: August 20, 2019 (pp/N)

September 3, 2019

SUBDIVISION NAME: Live Oak Springs Preliminary Plan

AREA: 51 acres LOT(S): 32

OWNER/APPLICANT: Artek Investments (David Knapp)

AGENT: Civil Insite, LLC (Gregg Andrulis)

ADDRESS OF SUBDIVISION: 9406 Morning Hill Dr.

DISTRICT NUMBER: N/A

GRIDS: WY17 **COUNTY**: Travis

WATERSHED: Slaughter Creek **JURISDICTION**: 2-Mile ETJ

EXISTING ZONING: N/A MUD: N/A

NEIGHBORHOOD PLAN: N/A

PROPOSED LAND USE: single-family residential

ADMINISTRATIVE WAIVERS: The applicant has requested an administrative waiver to the requirement to plat the entire tract. The applicant is the owner of the balance of the tract and does not wish to plat the remainder of the property at this time. Note: as a condition to the granting of the balance of the tract waiver a Phasing Agreement, (see attached), will be required by the County to be approved with the Preliminary Plan (approximately 51 acres – for improvements to Morninghill). In addition the County prepared a restrictive covenant, (see attached), for the remaining portion of the balance of the tract (approximately 113 acres) so the document can be recorded and run with the property if it is ever sold. This restrictive covenant was to memorialize connectivity and improvements associated with the original TIA for the entire tract. A TIA was not required for the revised preliminary plan for 30 single family lots.

VARIANCES: None

SIDEWALKS: Sidewalks will be provided on one side of all internal streets.

<u>DEPARTMENT COMMENTS</u>: The request is for approval of the Live Oak Springs. The proposed plat is composed of 32 lots on 51 acres, (30 residential lots and 2 open space/drainage lots). The lots will take access via an internal street network via the extension of Morninghill Drive to Zyle Road. The plat has been approved for adequate fire flow by the Travis County Fire

Marshall's office. Water service will be provided by the West Travis County Public Utility Agency and on-site septic will be provided for wastewater. The developer will be responsible for all costs associated with any required improvements.

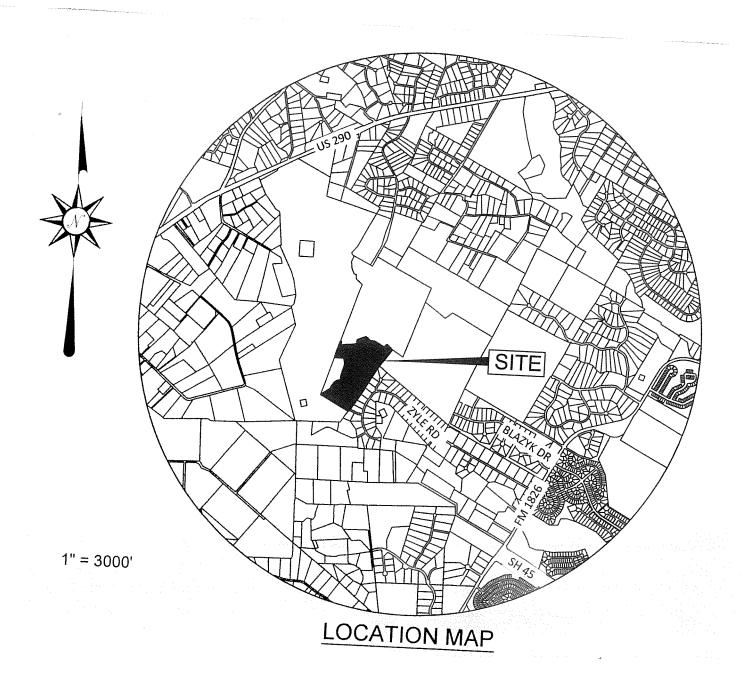
STAFF RECOMMENDATION: The staff recommends approval of the plan. This plan meets all applicable State and City of Austin LDC requirements.

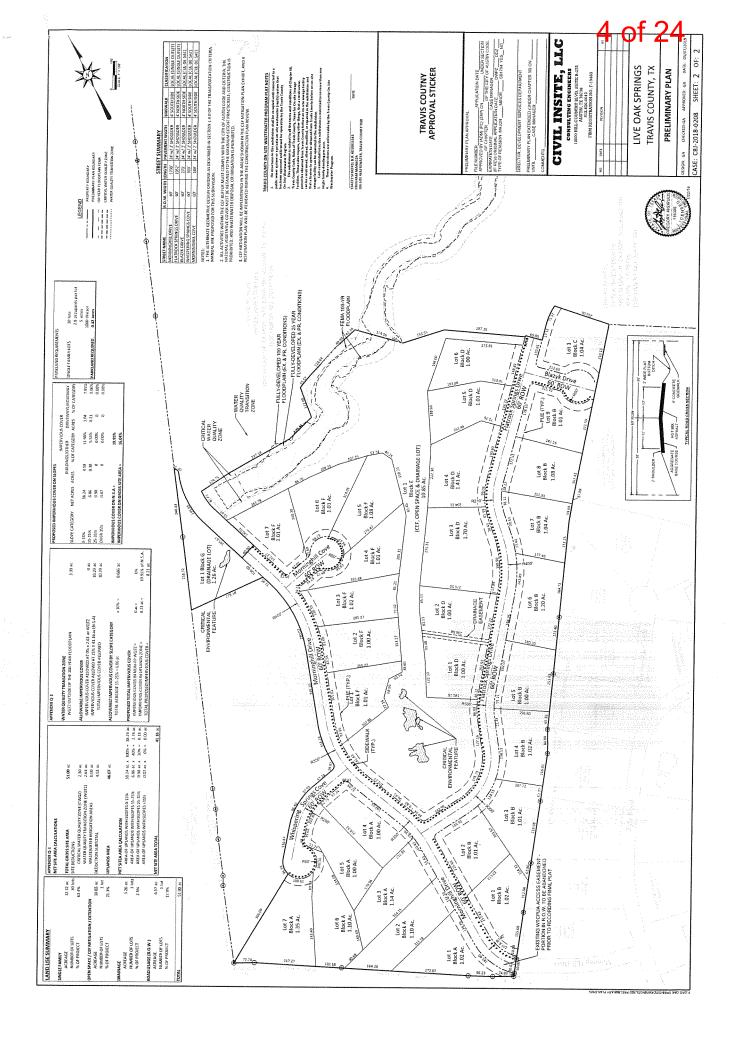
ZONING AND PLATTING COMMISSION ACTION:

CITY STAFF: Don Perryman

E-mail: don.perryman@austintexas.gov

PHONE: 512-974-2786





David Knapp, Manager Artek Investments LLC 3801 North Capital of Tx Hwy Suite E240-180 Austin, Tx 78746

February 7, 2019

David Knapp. Manager Artek Investments LLC 3801 North Capital of Tx Hwy Suite E240-180 Austin, Tx 78746

Subject Balance of Tract

As the sole manager of Artek Investments LLC, which solely owns the 164.60 acres of land out of the William S Holton Survey, No 57, Abstract No 378, it is my responsibility under the City of Austin regulation 30-2-34 to request all owners of land that is a portion of this tract and contiguous to the land included in the application for Live Oak Springs to provide written confirmation that (a) the owner's land is not a legal lot or tract; and (b) the owner must plat the land before the city may approve a development permit or a utility company may provide initial or additional service.

As Artek Investments LLC is the sole owner of both the 46.9 acres associated with the Live Oak Springs application and the remaining balance of tract, 117.7 acres, this letter serves both the request for written confirmation and the written confirmation that the balance of tract is not a legal lot or tract and that it must be platted before the city may approve a development permit or a utility company may provide initial or additional service.

Recards

David Khappi

Manager Artex Tyest 1638 (L.C.

LIVE OAK SPRINGS PHASING AGREEMENT

STATE OF TEXAS

8000

COUNTY OF TRAVIS

THIS AGREEMENT is made and entered into by and between Artek Investments, LLC, a Texas limited liability company (the "Owner"), and Travis County, Texas (the "County"), hereinafter collectively referred to as the "Parties", for the purposes and consideration stated herein.

WHEREAS, the Owner or its permitted assign pursuant to Section 8d below (in either event, the "Developer") will subdivide that certain 51.00 acre tract of land described in Exhibit "A", which is attached hereto and made a part hereof (the "Property"); and

WHEREAS, it is contemplated that the Developer will submit a Final Plat for the subdivision of the Property for County approval in accordance with the approved Preliminary Plan for Live Oak Springs, C8J-2018-0208 as depicted on Exhibit "B", which is attached hereto and made a part hereof (the "Preliminary Plan"), dated November 16, 2018; and

WHEREAS, the Owner and the County desire to provide for the orderly development of the subdivision of the Property, including: (i) the improvement of the portion of Morninghill Drive located between the southeast corner of the Property and the Zyle Road as depicted on Exhibit "C" (the "Morninghill Improvement"); and

WHEREAS, the development of the subdivision of the Property will necessitate the construction of the Morninghill Improvement; and

WHEREAS, the Parties desire to establish a process to coordinate the construction of the Morninghill Improvement with the development of the subdivision of the Property;

NOW, THEREFORE, in consideration of these premises and the promises contained herein, the Parties agree as follows:

- In connection with the development of the subdivision of the Property, the Developer will, with submittal of a Final Plat, post, under a County-approved form, the construction security for the cost of the Morninghill Improvement, submit construction plnas to the Austin - Travis County Single Office for these improvements for review and approval, and construct these improvements concurrently with the construction of the related subdivision improvements.
- In the development of the subdivision of the Property, the County will, subject to the performance by the Developer of its obligations under this Agreement and

the Travis County Standards for Construction of Streets and Drainage in Subdivisions, approve the Final Plat(s) of the Property.

- 3. Notwithstanding anything in this Agreement to the contrary, if the County initiates a project to construct the Morninghill Improvement, the Developer will continue to have the obligation to post construction security pursuant to this Agreement. If such fiscal is received after the County has begun or has completed the contemplated improvements, the fiscal will be in the form of cash and be used to reimburse the County for the actual costs of constructing any portion or all of the Morninghill Improvement.
- 4. The presently estimated cost of constructing the Morninghill Improvement is \$28,000, which will be re-evaluated with the submittal of Morninghill Drive Improvement construction plans.
- 5. If the Developer submits a Final Plat for a portion of a phase of the Property or if the Preliminary Plan for the Property is revised and approved, the County and the Developer will, to the extent required, either amend this Agreement or enter into an additional or supplemental agreement(s) to coordinate the phasing process and the future improvement of Morninghill Drive.
- 6. The County and its officers, employees, and successors and assigns will not be liable or responsible for and shall be held harmless by the Developer from any claims, losses, damages, causes of action, suits and liability of any kind for personal injury or death or property damage arising out of or in connection with any actions by or negligence of the Developer under the terms of this Agreement.

7. Miscellaneous.

- a. Beneficiaries. This Agreement will be binding upon and inure to the benefit of the Parties and their successors and assigns.
- b. Restrictive Covenant. This Agreement touches and concerns real property located in Travis County, Texas, and, if recorded, will constitute a covenant running with the land. However, this Agreement will not affect the title to the land conveyed to purchasers of individual lots in the subdivision of the Property, who will take their interests free and clear of the conditions of this Agreement without the necessity of any release or consent by the County.
- c. Amendment to Agreement. Any revision, modification, or amendment of this Agreement will be effective only when reduced to writing and signed by the County and the current owners of the affected portion(s) of the Property which is affected. NO OFFICIAL, AGENT, OR EMPLOYEE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND OR MODIFY THIS AGREEMENT EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE DELEGATED BY THE COMMISSIONERS COURT.

- d. Assignment by the Owner/Developer. The rights, duties, and responsibilities of the Developer may be assigned only with the consent of the County, which will not be unreasonably withheld or unduly delayed.
- e. Entire Agreement. This is the entire agreement between the Parties with respect to the subject matter hereof. As of this date, there are no other agreements or representations, oral or written, between the Parties in conflict with this Agreement.
- f. Notice. Any notices hereunder will be in writing and addressed to the respective party at the address set forth below for such party, (i) by personal delivery, (ii) by U.S. Mail, certified or registered, return receipt requested, postage prepaid, or (iii) by FedEx or other nationally recognized overnight courier service. Notice deposited in the U.S. Mail in the manner hereinabove described will be effective on the earlier of the date of actual receipt or three days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

Owner/Developer: Artek Investments, LLC

3801 N. Capital of Texas Highway, Suite E 240-180

Austin, Texas 78746

Copy to: Gregg Andrulis, PE

Civil Insite, LLC 8556 West Hwy 290 Austin, Texas 78736

Travis County: Cynthia C. McDonald (or successor)

County Executive, TNR

P.O. Box 1748

Austin, Texas 78767

Copy to: David Escamilla (or successor)

Travis County Attorney

P.O. Box 1748

Austin, Texas 78767

The Parties may from time-to-time change their respective addresses by written notice to the other party.

- g. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Texas, concerns real property located in Travis County, and is wholly performable in Travis County, Texas.
- h. Severability. If any of the provisions of this Agreement are held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement will not be affected thereby and this

Agreement shall be construed as if such invalid or unconstitutional portion had never been contained herein.

Number and Gender. All terms or words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number or gender as the context may require.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the later date set forth below.

ARTEK INVESTMENTS, LLC, a Texas limited liability company			
By: David Knapp, Manager			
Date: 7/12 2018 PK			
TDAVIO COUNTY TEVAO			
TRAVIS COUNTY, TEXAS			
By: Sarah Eckhardt, County Judge			
Date:, 2018			
ACKNOWLEDGEMENT			
STATE OF TEXAS COUNTY OF TRAVIS			
This instrument was acknowledged before me on the day of July 12, 2019, by David Knapp, Manager of Artek Investments, LLC, a Texas limited liability company, on behalf of said limited liability company.			
JUDY YHU Notary Public, State of Texas My Commission Expires: Notary ID 10773683 Notary ID 10773683 Notary ID 10773683			

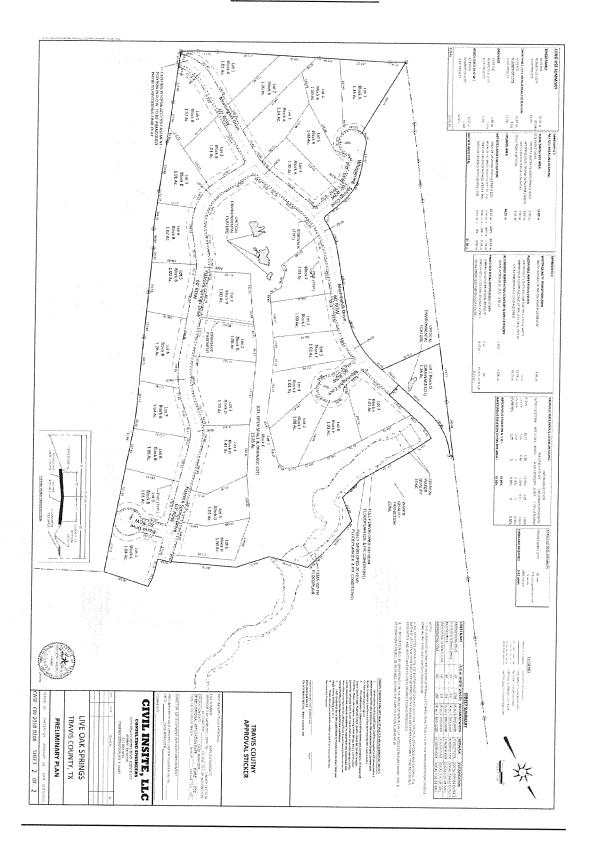
After Recording Return To:

Travis County, Texas Attn: Transportation and Natural Resources Department P.O. Box 1748 Austin, Texas 78767

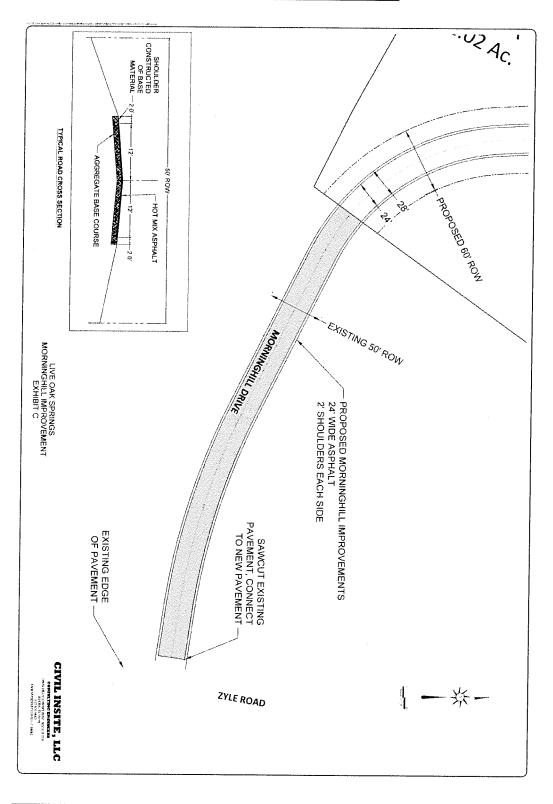
EXHIBIT "A" DESCRIPTION OF THE PROPERTY

51.00 ACRES OF LAND OUT OF THE WILLIAM S. HOLTON SURVEY, NO. 57, ABSTRACT NO. 378 AND THE WILLIAM S. HOLTON SURVEY NO. 67, ABSTRACT NO. 350 IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO ARTEK INVESTMENTS, LLC BY DEED RECORDED IN DOCUMENT NO. 2017174191 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT BEING A PORTION OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO THE FERGUSON FAMILY LIMITED PARTNERSHIP BY EXECUTOR'S DEED RECORDED IN DOCUMENT NO. 2010171179 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT BEING COMPRISED OF A PORTION OF THAT CERTAIN (99.00 ACRE) TRACT OF LAND AS RESERVED FOR GEOFFREY R. FERGUSON AS SET FORTH IN DEED RECORDED IN VOLUME 12529, PAGE 338 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, TOGETHER WITH ALL OF THAT CERTAIN (0.88 ACRE) TRACT OF LAND AS CONVEYED TO THE FERGUSON FAMILY LIMITED PARTNERSHIP BY DEED RECORDED IN DOCUMENT NO. 2001166213 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, ALSO TOGETHER WITH ALL OF THAT CERTAIN (82.50 ACRE) TRACT OF LAND KNOWN AS TRACT ONE AND A PORTION OF THAT CERTAIN (21.716 ACRE) TRACT OF LAND KNOWN AS TRACT TWO AS CONVEYED TO THE FERGUSON FAMILY LIMITED PARTNERSHIP BY DEED RECORDED IN DOCUMENT NO. 2006021320 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO TOGETHER WITH ALL OF THAT CERTAIN (11.89 ACRE) TRACT OF LAND AS CONVEYED TO GEOFFREY R. FERGUSON BY DEED RECORDED IN DOCUMENT NO. 2005232462 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID (11.89 ACRES) BEING COMPRISED OF ALL OF SAID (0.88 ACRE) TRACT AND A PORTION OF SAID (99.00) ACRE TRACT.

<u>EXHIBIT "B"</u> <u>PRELIMINARY PLAN</u>



<u>EXHIBIT "C"</u> MORNINGHILL IMPROVEMENT



RESTRICTIVE COVENANT REGARDING BALANCE OF TRACT WAIVER

This Restrictive Covenant regarding the 164.60	acre tract	of Land described in a Deed
to Artek Investments, LLC and recorded in Documen	nt Number :	2017174191, Official Public
Records of Travis County, Texas, is executed this	day of _	, 2019, by David
Knapp, in his capacity as Manager of Artek Investment	ts, LLC, ("I	Declarant") and is as follows:

RECITALS

The Original Tract Property

- A. WHEREAS, Declarant is the owner of property, more particularly described as 164.60 acres of Land out of the William S. Holton survey number 57, abstract number 378; the William S. Holton survey number 67, abstract number 350; the William P. Baxter survey number 58, abstract number 118 and the R.S.M.A. De La Tulle survey number 68, abstract number 222 all in Travis County, Texas, and more particularly described in that certain Deed recorded in Document Number 2017174191, Official Public Records of Travis County, Texas (the "Original Tract Property"); and
- B. WHEREAS, Declarant is the applicant of a preliminary plan for Live Oaks Springs Subdivision comprising a 51.00 acre portion of the Original Tract Property as more particularly described in attached Exhibit "A"; and
- C. WHEREAS, it is impractical or impossible to include all the Land in the Original Tract Property into the Preliminary Plan of Live Oak Springs at this time because of current limitations on access to existing public streets; and
- D. WHEREAS, Declarant has developed schematic plans for the Single Office demonstrating reasonably possible uses for the balance of the Original Tract Property in future subdivision plats; and
- E. WHEREAS, Declarant is the owner of the 113.60 acre balance of tract of the Original Tract Property comprised of 3 separate parcels as more particularly described as balance of the tract parcel 1, balance of the tract parcel 2 and balance of the tract parcel 3 as more particularly described in attached Exhibits "B, C and D" respectively; and
- F. WHEREAS, Declarant has agreed to impose the following Covenant upon the 3 balance of the tract parcels constituting the remaining 113.60 acres of the Original Tract Property in accordance with the provisions of Title 30, Section 30-2-34 (i), Code of the City of Austin ("City") and Travis County ("County"), Texas.

NOW, THEREFORE, Declarant imposes the following Covenants on the 3 balance of tract parcels out of the Original Tract Property containing 113.60 acres as a condition for the exclusion of the balance of tract parcels from the Live Oak Springs Preliminary Plan described in Exhibit A as follows:

SPECIFIC AGREEMENTS AND RESTRICTIONS:

- 1. <u>Recitals Incorporated</u>. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.
- 2. Restriction on Development Regarding Balance of Tract Waiver. Declarant shall provide access to currently-existing Morninghill Drive for the Live Oak Springs 51.00 acre Preliminary Plan described in Exhibit A attached hereto which shall be limited to serve not more than 30 residential lots from this single access proposed.
- 3. Declarant shall provide access to Derecho Drive for additional lots developed on the 24.59 acre balance of the tract parcel number 3 in the future. Improvements necessitated by the development on this 24.59 acre tract 3 will be evaluated at the time that a final plat or development permit application is filed with TNR.
- 4. Declarant shall provide connecting access to a new section of public street other than currently-existing Morninghill Drive for additional development on the 8.79 acre balance of the tract parcel 1 and the 80.22 acre balance of the tract parcel 2 developed in the future.
 - A. If the new section of public street connects to Zyle Road, Declarant shall construct a dedicated center left turn lane on FM 1826 if not already constructed and other appropriate improvements at the intersection of FM 1826 and Zyle Road.
 - B. If the new section of public street connects to Derecho Drive, Declarant shall construct improvements at the intersection of Highway 290 and Derecho Drive in conformance with the improvements identified in the Kimley-Horn TIA completed for the Live Oak Springs development in June 2018.
 - C. A Traffic Impact Analysis will be required for development that, considered cumulatively with the original 30 lot Live Oak Springs final plat, equal or exceed an estimated 1,000 vehicle trips per day.
- 5. <u>Breach Shall Not Permit Termination</u>. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant shall entitle the Owner to cancel, rescind or otherwise terminate this Restrictive Covenant, but this limitation will not restrict or bar any other rights or remedies which the Owner or Owners may have under this Restrictive Covenant by reason of any breach or violation of this Restrictive Covenant.

6. <u>Conveyance</u>. This Restrictive Covenant does not convey any interest in Real Property to the City, the public or any governmental body.

7. General Provisions.

- A. <u>Inurement</u>. This Restrictive Covenant will inure to the benefit of and be binding upon the Owner or Owners, their heirs, administrators, executers, successors and assigns of the balance of the tract portion of the Property.
- B. <u>Duration</u>. This Restrictive Covenant shall run with the Land and remain in effect in perpetuity.
- C. <u>Non-Merger</u>. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is or may be vested in one party or entity.

- D. <u>Severability</u>. The provisions of this Restrictive Covenant shall be deemed independent and severable, and the invalidity or partial invalidity of any portion or provision hereof shall not affect the validity or enforceability of any other provision.
- E. <u>Entire Agreement</u>. This Restrictive Covenant and the attached exhibits contain all the representations and the entire agreement between the Owner and the City and County regulatory agencies governing approval of Subdivision Plats. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the attached exhibits. The provisions of this Restrictive Covenant shall be construed as a whole according to their common meaning and not strictly for or against any Owner.
- F. <u>Captions</u>. The captions preceding the text of each section and subsection are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- G. <u>Governing Law: Place of Performance</u>. This Restricted Covenant and all rights and obligations created shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in Travis County, Texas.
- H. Notices. Any Notice to the Owner(s) or the City or County shall be in writing and given by delivering the same to such party in person, by expedited, private carrier services or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant shall be deemed to create a partnership between or among any Owner, or the City of Austin or Travis County, in their respective businesses or otherwise; nor shall it cause them to be considered joint ventures or members of any joint enterprise.
- J. <u>Enforcement.</u> If any person, persons, corporation, or entity of any other character, shall violate or attempts to violate this Restrictive Covenant, the City or County, its successors and assigns, may proceed at law, or in equity, against said person or entity violating or attempting to violate such Covenant or Covenants. The failure at any time to enforce this Restrictive Covenant by the City and/or County, its successors and assigns, whether any violations are known or not, shall not constitute a waiver or estoppel of the right to do so at any time.

	modified, amended or term amendment or termination Texas executed, acknowled Transportation Natural Reso	nent. This Restrictive Covenant may only be minated upon the filing of such modification, in the Official Public Records of Travis County, aged and approved by (a) the Director of the urce Department of Travis County and/or the City the Owners of the Property at the time of the
Evecut	modification, amendment, or	termination.
Execut	ted to be effective thisday of	, 2019. DECLARANT:
		ARTEK INVESTMENTS, LLC

By:

Its:

David Knapp Manager

STATE OF TEXAS § COUNTY OF TRAVIS §	
by David Knapp, the Manager of Artek Inv	restments, LLC on behalf of Artek Investments,
Given under my hand and seal of offi	
JUDY YHU Notary Public, State of Texas Comm. Expires 02-19-2021 Notary ID 10773683	Notary Public, State of Texas
By:	By:
Name:	Name:
Title:	Title: County Attorney

AFTER RECORDING, RETURN TO:

Travis County TNR Department 700 Lavaca Street, 5th Floor PO Box 1748 Austin, Texas 78767

