

STATE OF TEXAS

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COUNTY OF TRAVIS

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**SECOND AMENDMENT TO AMENDED AND RESTATED DECLARATION OF
RESTRICTIVE COVENANTS**
[Circle C: Tract 110]

This **SECOND AMENDMENT TO AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS** [Circle C: Tract 110] (this "**Amendment**") is made by **CIRCLE C LAND, L.P.**, a Texas limited partnership ("**Declarant**"), and **CIRCLE C HOMEOWNERS ASSOCIATION, INC.**, a Texas non-profit corporation (the "**CCHOA**"), and is as follows. This Amendment replaces and supersedes the First Amendment to Amended and Restated Declaration of Restrictive Covenants [Circle C: Tract 110] filed of record in Document No. 2026091422, Official Public Records of Travis County, Texas which was filed of record in error and is void and of no effect.

RECITALS:

A. Declarant and CCHOA are parties to that certain Amended and Restated Declaration of Restrictive Covenants [Circle C: Tract 110] recorded under Document No. 2011132004, Official Public Records of Travis County, Texas, as amended by that certain First Amendment to Amended and Restated Declaration of Restrictive Covenants (Circle C: Tract 110) recorded under Document No. 2017063911, Official Public Records of Travis County, Texas (as so amended, the "**Declaration**"). Except as otherwise provided herein, all defined terms are as defined in the Declaration.

B. Paragraph 7.B. of the Declaration provides that the Declaration may be amended with the consent of the owners of seventy-five percent (75%) of the aggregate of the Property and CCHOA (whose consent shall be expressed through the approval of a majority of the Board of Directors of CCHOA).

C. Declarant is the owner of not less than seventy-five percent (75%) of the aggregate of the Property, and CCHOA, acting through the affirmative vote of a majority of its Board of Directors, has duly authorized the execution and delivery of this Amendment; accordingly, the conditions precedent to amendment set forth in Paragraph 7.B. of the Declaration have been satisfied, and Declarant and CCHOA are authorized to execute and record this Amendment in accordance with the terms thereof.

D. Declarant and CCHOA desire to amend Paragraph 2 of the Declaration, titled "Access Prohibition", to (i) delete the existing prohibition on vehicular ingress and egress between Tract 110 and Dahlgreen Avenue, (ii) impose a prohibition on vehicular ingress and egress between Tract 110 and South Bay Lane, and (iii) expressly authorize and permit gated

vehicular ingress and egress between Tract 110 and Dahlgreen Avenue, all upon the terms and subject to the conditions set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant and CCHOA agree as follows:

1. **Access Prohibition.** Paragraph 2 of the Declaration, titled "Access Prohibition," is hereby deleted in its entirety and replaced with the following, and **Exhibit E** attached hereto is hereby added to the Declaration:

"2. **Access Prohibition.** There shall be no vehicular access for the purpose of ingress or egress from Tract 110¹ including any resubdivision thereof, to South Bay Lane. As used herein, "**South Bay Lane**" means the existing public road or right-of-way in Travis County, Texas known as South Bay Lane, together with any future extension of such road or right-of-way, regardless of the name of such extension, including any public road or public right-of-way constructed in whole or in part within the area described in that certain Street Deed recorded under Document No. 2002227415, Official Public Records of Travis County, Texas. Nothing in this Paragraph 2 shall be construed to prohibit ingress and egress between Tract 110 and MoPac/Loop 1, or any frontage road thereof. Notwithstanding the foregoing or any other provision of this Declaration, one, and only one, vehicular access point, including a controlled-access gate thereon and associated equipment and improvements (the "**Access Point**"), for the purpose of ingress and egress from Tract 110 to Dahlgreen Avenue, an existing public right-of-way, is expressly permitted, provided that:

(i) the Access Point shall be located on Dahlgreen Avenue near its intersection with Galsworthy Lane, at the driveway alignment and gate location shown and described on **EXHIBIT E**. The Access Point's exact location in this area shall be subject to final engineering and governmental approval, provided however that the Access Point may not be in a location other than generally opposite Galsworthy Lane;

(ii) the use of the Access Point shall be subject to final review and approval by the City of Austin in connection with the applicable site plan(s) for Tract 110, including any required traffic impact analysis or other transportation review. The City of Austin may determine through such site plan review and approval

¹ One intent of this Second Amendment is to prohibit vehicular access to South Bay Lane from all portions of the real property described as Tract 110 in the Declaration. This Second Amendment shall be construed so as to effectuate this intent.

whether the Access Point shall be limited to emergency access only or shall be opened and used for vehicular access by Authorized Users through a controlled-access gate. If the City of Austin determines that the Access Point shall be limited to emergency access only, the Access Point shall be limited to emergency access only in accordance with such determination. If the City of Austin approves the Access Point for vehicular access by Authorized Users through a controlled-access gate, the Access Point shall be controlled-access gated before the connection from Dahlgreen Avenue to Tract 110 is opened or available for such vehicular use, access through the controlled-access gate shall at all times be maintained in a closed, controlled-access status such that only Authorized Users may access Tract 110 through the Access Point, and the controlled-access gate shall remain closed except as to Authorized Users when entering and exiting, subject to temporary interruptions for maintenance, repair, emergency, casualty, utility work, governmental requirements, or causes beyond the reasonable control of the responsible party, and shall be accessible only to Authorized Users through code, FOB, or similar controlled-access device. As used herein, "**Authorized Users**" means the owner or owners of all or any portion of Tract 110 on which residential improvements have been substantially completed and which are served by the Access Point, residents and occupants of residential improvements constructed on any portion of Tract 110 served by the Access Point, guests of such residents and occupants, employees working in or serving such residential improvements, property managers of residential improvements, emergency responders, governmental authorities, utility providers, security personnel servicing residential improvements, and maintenance and repair personnel requiring access for emergency, governmental, utility, security, Access Point maintenance, repair, or access-control purposes; provided, however, that Authorized Users shall not include commercial delivery, package delivery, food delivery, routine service-delivery, routine maintenance or repair personnel servicing residential improvements, landscaping personnel, or construction-related traffic;

(iii) except as provided in subsection (ii), the Access Point shall not be designated or used as a commercial or service delivery entrance for Tract 110, and shall not be used for construction-related traffic in connection with the construction of improvements on Tract 110. Declarant shall install signage at the Access Point in a conspicuous location on or near the gate, readily visible to traffic entering Tract 110 from Dahlgreen Avenue, prohibiting commercial and service-delivery traffic from using the Access Point and directing such traffic to use the MoPac access serving Tract 110. The owner or owners of all or any portion of Tract 110 served by the Access Point, or any property owners' association or condominium association having maintenance responsibility for the Access Point, shall maintain such signage after installation. Owner shall use commercially reasonable efforts, to the extent permitted by applicable

governmental authorities, to cause the primary project address for the improvements constructed on any portion of Tract 110 served by the Access Point to be located off of MoPac and to cause mail and delivery services for such improvements to be routed through the MoPac access. Following completion of any such improvements, the owner of all portions of Tract 110 served by the Access Point shall use or cause its agents to use commercially reasonable efforts to include instructions in its applicable resident, vendor, and service-provider materials that service deliveries are to use the MoPac access; and

(iv) owners of all or any portions of Tract 110 served by the Access Point, jointly and severally, or any residential property owners' association or residential condominium association having maintenance responsibility for the Access Point as a permanent obligation in its governing restrictive covenant filed of record in the Official Public Records of Travis County, Texas, shall be responsible for maintaining the Access Point, including the controlled-access gate and signage required under this Paragraph 2, in accordance with this Paragraph 2, subject to temporary interruptions for maintenance, repair, emergency, casualty, utility work, governmental requirements, or causes beyond the reasonable control of such responsible party or parties².

Declarant may, without the consent or approval of CCHOA, assign its, or owners', obligations under Paragraph 2 only to either (i) owners of all portions of Tract 110 served by the Access Point (jointly and severally), or (ii) any residential property owners' association or residential condominium association having maintenance responsibility for the Access Point as a permanent obligation in its governing restrictive covenant filed of record in the Official Public Records of Travis County, Texas. Such assignment must be in a document recorded in the Official Public Records of Travis County, Texas. Declarant shall thereafter be released from such assigned obligations. Any such owner or association may cause the controlled-access gate, signage, and related access-control operations to be operated and maintained by its property manager or, with respect to an owner, by an affiliate under common control with such owner; provided, however, that no such delegation shall relieve such owner or association of its obligations under this Paragraph 2."

2. Ratification. Except as expressly modified by this Amendment, all terms and provisions of the Declaration remain in full force and effect and are hereby ratified and confirmed

² It is the intent of this Amendment, and it shall be construed so as to effectuate this intent, that the controlled-access gate shall not be open except when Authorized Users are entering and exiting, subject to temporary interruptions as expressly permitted herein.

in all respects. In the event of any conflict between the terms of the Declaration and this Amendment, the terms of this Amendment shall control.

3. **Binding Effect.** The terms of this Amendment shall run with the Property, shall be binding upon the owners of all or any portion of the Property, and shall inure to the benefit of CCHOA and all parties having right, title, or interest in or to such portion of the Property or any part, and their respective heirs, successors, and assigns.

4. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Texas. This Amendment is performable in Travis County, Texas.

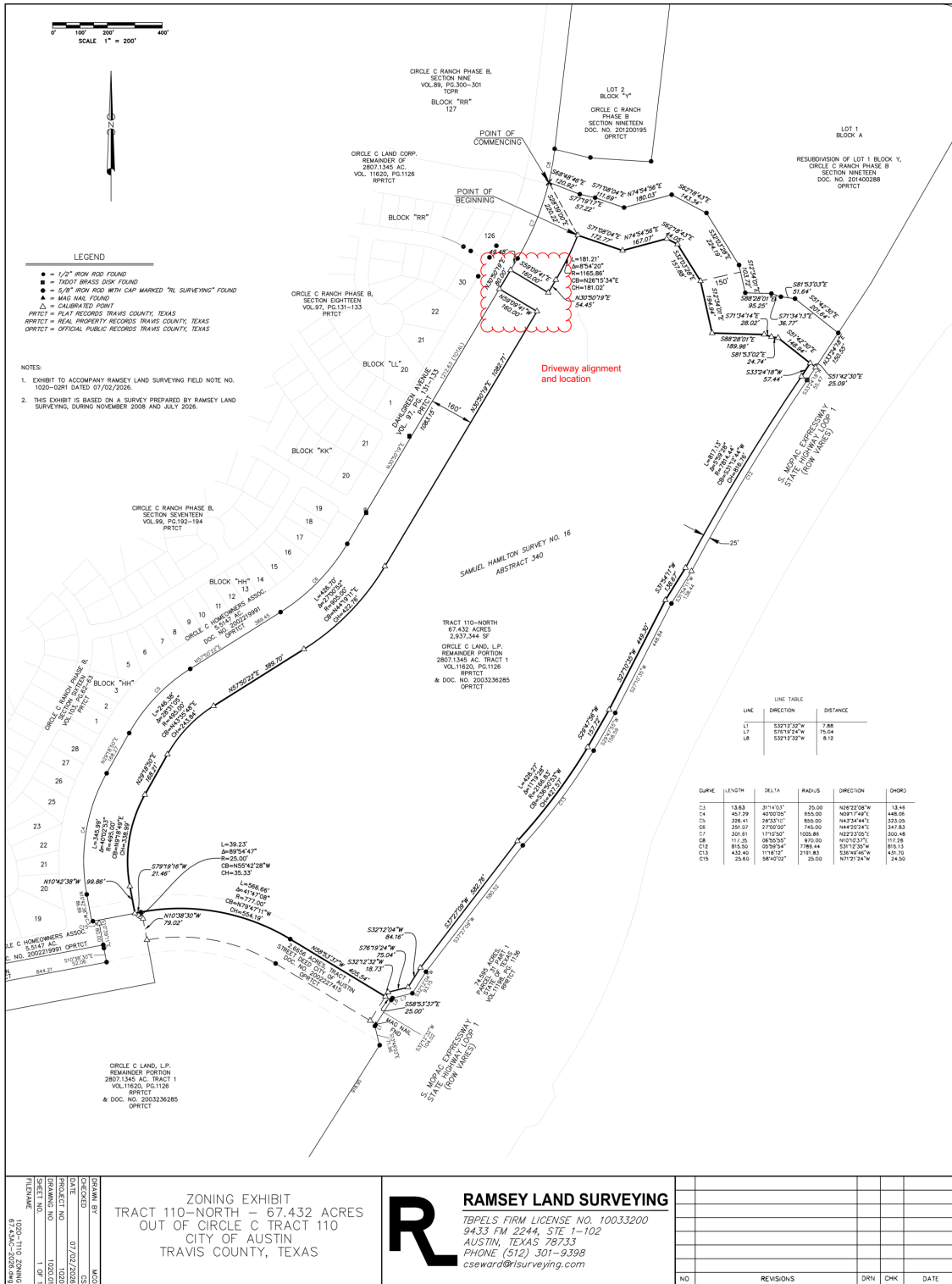
5. **Severability.** If any provision of this Amendment is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, and all other provisions shall remain in full force and effect.

6. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7. **Effective Date.** This Amendment shall be effective upon its recordation in the Official Public Records of Travis County, Texas.

[Signature Pages to Follow]

EXHIBIT E
Access Point Location



AFTER RECORDING RETURN TO:

Armbrust & Brown, PLLC

Attn: Kenneth Jones

100 Congress, Suite 1300

Austin, Texas 78701-2744

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