

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS
FORWARD

ARTICLE I

- 1.1 Architectural Committee
- 1.2 Architectural Committee Rules
- 1.3 Articles
- 1.4 Assessment
- 1.5 Association
- 1.6 Association Rules
- 1.7 Board
- 1.8 Bylaws
- 1.9 Common Area and Facilities
- 1.10 Declarant
- 1.11 Declaration
- 1.12 Improvement
- 1.13 Lot
- 1.14 Member
- 1.15 Mortgage
- 1.16 Mortgagee
- 1.17 Owner
- 1.18 Person
- 1.19 Plans and Specifications
- 1.20 Plat
- 1.21 The Restrictions
- 1.22 Subdivision

ARTICLE II

- 2.1 Development by Declarant .
- 2.2 Addition of Land .

ARTICLE III

- 3.1 Subdividing
- 3.2 Hazardous Activities
- 3.3 Insurance Rates
- 3.4 Mining and Drilling
- 3.5 Noise
- 3.6 Animals Household Pets
- 3.7 Rubbish and Debris
- 3.8 Maintenance
- 3.9 Antennae
- 3.10 Signs
- 3.11 Tanks
- 3.12 Temporary Structures
- 3.13 Unsightly Articles; Vehicles
- 3.14 Mobile Homes, Travel Trailers and Recreational Vehicles
- 3.15 Compliance with the Restrictions
- 3.16 Liability of Owners for Damage to Common Area and Facilities

3.17 No Warranty of Enforceability

ARTICLE IV

- 4.1 Approval for Construction
- 4.2 Use
- 4.3 Rentals
- 4.4 Dwelling Height
- 4.5 Fences and Sidewalks
- 4.6 Dwelling Size; Building Materials
- 4.7 Alteration or Removal of Improvements
- 4.8 Garbage Containers
- 4.9 Drainage
- 4.10 Construction Activities
- 4.11 Section 13 2 435 Restrictions
- 4.12 Landscaping

ARTICLE V

- 5.1 Common Area and Facilities
- 5.2 Maintenance
- 5.3 Condemnation

ARTICLE VI

- 6.1 OPTIONAL ASSOCIATION
- 6.2 Organization
- 6.3 Membership
- 6.4 Voting Rights
- 6.5 Powers and Authority of the Association
- (D) Assessments
- 6.6 Common Area and Facilities

ARTICLE VII

- 7.1 Membership of Architectural Committee
- 7.2 Action by Architectural Committee
- 7.3 Advisory Members
- 7.4 Term
- 7.5 Declarant's Rights of Appointment
- 7.6 Adoption of Rules
- 7.7 Review of Proposed Construction
- 7.8 Variance
- 7.9 Actions of the Architectural Committee
- 7.10 No Waiver of Future Approvals
- 7.11 Work in Progress
- 7.12 Address
- 7.13 Fees

ARTICLE VIII

- 8.1 Assessments
- 8.2 Maintenance Fund
- 8.3 Regular Annual Assessments
- 8.4 Special Assessments
- 8.5 Owner's Personal Obligation for Payment of Assessments

8.6 Assessment Lien and Foreclosure

ARTICLE IX

9.1 Reserved Easements

9.2 Installation and Maintenance

9.3 Drainage Easements

9.4 Surface Areas

9.5 Common Area and Facilities

ARTICLE X

10.1 Term

10.2 Amendment/Extinguishment

10.3 Notices

10.4 Interpretation

10.5 Exemption of Declarant

10.6 Nonliability of Architectural Committee and Board Members

10.7 Assignment of Declarant

10.8 Enforcement and Nonwaiver

10.9 Construction

THAT WHEREAS, CONTINENTAL HOMES OF AUSTIN, L.P., a Texas limited partnership doing business as Milburn Homes, successor in interest to Milburn Investments, Inc., ("Declarant"), previously recorded (i) Declaration of Covenants, Conditions and Restrictions - Cherry Creek Section Fourteen in Volume 12440, Page 203, Real Property Records of Travis County, Texas, (ii) Declaration of Covenants, Conditions and Restrictions - Cherry Creek Section Sixteen in Volume 12402, Page 352, Real Property Records of Travis County, Texas, and (iii) Declaration of Covenants, Conditions and Restrictions - Cherry Creek Section Seventeen in Volume 12402, Page 1225, Real Property Records of Travis County, Texas, (collectively, "Original Declarations") to provide certain protective easements, covenants, conditions and other terms governing that certain real property located in Travis County, Texas, as more particularly described, respectively, as (i) Cherry Creek Section Fourteen, a subdivision of record in Travis County, Texas, according to the map or plat of record in Volume 95, Pages 48-51, Plat Records of Travis County, Texas, (ii) Cherry Creek Section Sixteen, a subdivision of record in Travis County, Texas, according to the map or plat of record in Volume 94, Pages 337-340, Plat Records of Travis County, Texas, and (iii) Cherry Creek Section Seventeen, a subdivision of record in Travis County, Texas, according to the map or plat of record in Volume 94, Pages 341-343, Plat Records of Travis County, Texas (collectively, the "Property");

WHEREAS, Declarant desires to carry out a uniform plan for the governance of the Property for the benefit of the present and future owners of the Property;

WHEREAS, Declarant desires, pursuant to Section 10.2 of each of the Original Declarations, to amend and restate each of the Original Declarations in their entirety as hereinbelow described, such that the Property shall be and is bound by the covenants, conditions, restrictions, liens, charges and other terms of this Amended and Restated Declaration (this "Declaration");

WHEREAS, Declarant's purpose in amending and restating the Original Declarations in their entirety is to redefine the Association, as herein defined, as one Association governing all of the Property;

WHEREAS, Declarant desires to convey the Property subject to certain protective covenants, conditions, restrictions, liens, and charges hereinafter set forth; and

WHEREAS, Declarant desires to create and carry out a uniform plan for the improvement, development (in accordance with Section 13-2-435 of the City of Austin Land Development Code, if applicable, which terms and requirements of Section 13-2-435 are incorporated herein by reference), and sale of the Property for the benefit of the present and future owners of the Property:

NOW, THEREFORE, it is hereby declared: (i) that all of the Property shall be held, sold, conveyed, and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions regardless of whether or not the same are set out or referred to in said contract or deed.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.1 Architectural Committee

"Architectural Committee" shall mean the committee created pursuant to these restrictions to review and approve plans for the construction of Improvements upon the Property.

1.2 Architectural Committee Rules

"Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as the same are amended from time to time.

1.3 Articles

"Articles" shall mean the Articles of Incorporation of Tanglewood Oaks Owners Association, Inc., which will be filed in the office of the Secretary of State of the State of Texas, if the Association is formed, and as the same are from time to time amended.

1.4 Assessment

"Assessment" or "Assessments" shall mean assessment(s) levied by the Association under the terms and provisions of this Declaration.

1.5 Association

"Association" shall mean and refer to Tanglewood Oaks Owners Association, Inc., a Texas non-profit corporation which may be created pursuant to Section 6.1 of the Declaration.

1.6 Association Rules

"Association Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

1.7 Board

"Board" shall mean the Board of Directors of the Association.

1.8 Bylaws

"Bylaws" shall mean the Bylaws of the Association which may be adopted by the Board, as the same are from time to time amended.

1.9 Common Area and Facilities

"Common Area and Facilities" shall mean Lots and other properties, if any, designated by Declarant along with any areas within public right-of-ways or easements that the Board deems necessary or appropriate to maintain for the common benefit of the Owners. Common Area and Facilities may be designated by Declarant and dedicated or otherwise conveyed to the Association, if formed, the Owners, or to any public agency, authority or utility from time to time and at any time. If and at the time Declarant annexes additional real property to the Property in accordance with Section 2.2 hereof, additional Common Area and Facilities may be designated.

1.10 Declarant

"Declarant" shall mean CONTINENTAL HOMES OF AUSTIN, L.P., a Texas limited partnership doing business as Milburn Homes, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.11 Declaration

"Declaration" shall mean this instrument as it may be amended from time to time.

1.12 Improvement

"Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.13 Lot

"Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on the Plat of the Subdivision, together with all Improvements located thereon.

1.14 Member

"Member" or "Members" shall mean any person(s), entity or entities holding membership rights in the Association.

1.15 Mortgage

"Mortgage" or "Mortgages" shall mean any mortgage(s) or deed(s) of trust covering any portion of the Property given to secure the payment of a debt.

1.16 Mortgagee

"Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.17 Owner

"Owner" or "Owners" shall mean the person(s), entity or entities, including Declarant, holding a fee simple interest in any portion of the Property, but shall not include the Mortgagee of a Mortgage.

1.18 Person

"Person" or "Persons" shall mean any individual(s), entity or entities having the legal right to hold title to real property.

1.19 Plans and Specifications

"Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.20 Plat

"Plat" shall mean the subdivision plats of (i) Cherry Creek Section Fourteen, a subdivision of record in Volume 95, Pages 48-51, Plat Records of Travis County, Texas, (ii) Cherry Creek Section Sixteen, a subdivision of record in Volume 94, Pages 337-340, Plat Records of Travis County, Texas, (iii) Cherry Creek Section Seventeen, a subdivision of record in Volume 94, Pages 341-343, Plat Records of Travis County, Texas, as the same may be amended from time to time.

1.21 The Restrictions

The "Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with the Architectural Committee Rules, the Association Rules, and the Articles and Bylaws, if any.

1.22 Subdivision

"Subdivision" shall collectively mean Cherry Creek Section Fourteen, Cherry Creek Section Sixteen, and Cherry Creek Section Seventeen, all subdivisions in Travis County, Texas, according to the Plats.

ARTICLE II

DEVELOPMENT OF THE PROPERTY

2.1 Development by Declarant.

Declarant may divide or subdivide the Property into several areas, develop some of the Property, and, at Declarant's option, sell any portion of the Property free of these restrictions.

2.2 Addition of Land.

Declarant may, at any time and from time to time, add land to the Property, and upon such addition, this Declaration and the covenants, conditions, restrictions, and obligations set forth herein shall apply to the added land, and the rights, privileges, duties, and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Real Property Records of Travis County, Texas, a notice of addition of land containing the following provisions:

(A) A reference to this Declaration, which reference shall state the book and page numbers of the Travis County Real Property Records wherein this Declaration is recorded;

(B) A statement that the provisions of this Declaration shall apply to the added land; and

(C) A legal description of the added land.

Notwithstanding anything contained herein to the contrary, Declarant shall only be permitted to add land to this Declaration without the consent of two thirds of the Owners entitled to vote pursuant to Section 6.3 hereof (exclusive of Declarant) until the earlier to occur of (i) Declarant owns less than twenty-five (25%) of the Property, or (ii) ten (10) years from the date of this Declaration.

ARTICLE III

GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

3.1 Subdividing

No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Architectural Committee.

3.2 Hazardous Activities

No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

3.3 Insurance Rates

Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon.

3.4 Mining and Drilling

No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

3.5 Noise

No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

3.6 Animals - Household Pets

No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or

cared for on the Property. No Owner may keep on such Owner's Lot more than four (4) cats and dogs, in the aggregate, not more than two (2) of which may be dogs. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

3.7 Rubbish and Debris

No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view. Each Owner shall contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity.

3.8 Maintenance

Each Owner shall keep all shrubs, trees, grass, and plantings of every kind on such Owner's Lot cultivated, pruned, free of trash, and other unsightly material. All Improvements upon any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot. Declarant, the Association, and the Architectural Committee shall have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; to paint, repair, or otherwise maintain any Improvements in need thereof; and to charge the cost thereof to the Owner of the Lot in the same manner as provided for the Association in Section 6.5 (E) hereof.

3.9 Antennae

No exterior radio or television antenna or aerial or satellite dish receiver shall be erected or maintained on any Lot. The foregoing notwithstanding, in the event the absolute prohibition of such antenna or receivers is invalidated or held to be unenforceable in any respect, then no exterior radio or television antenna, satellite dish or similar device shall be permitted to be erected or placed on any Lot unless the same is screened from view from adjoining Lots, streets and other portions of the Subdivision.

3.10 Signs

No sign of any kind shall be displayed to the public view on any Lot without the prior written approval of the Architectural Committee, except for (i) signs which are part of Declarant's overall marketing or construction plans or activities for the Property and (ii) one (1) sign of not more than five (5) square feet, advertising any property within the Subdivision for sale or rent. All merchandising, advertising and sales programming shall be subject to the approval of the Architectural Committee.

3.11 Tanks

The Architectural Committee shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No elevated tanks of any kind shall be erected, placed or permitted on any Lot. All tanks shall be screened so as not to be visible from any other portion of the Property.

3.12 Temporary Structures

No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property without the prior written approval of the Architectural Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner shall be permitted, without Architectural Committee approval, to erect one (1) outbuilding on the Owner's Lot if (i) the surface area of the pad on which the outbuilding is placed is less than or equal to eighty (80) square feet, (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to six (6) feet, (iii) the outbuilding is constructed within an area completely enclosed by a privacy fence of not less than six (6) feet in height, (iv) the exterior of the outbuilding is constructed of the same or substantially similar materials as the exterior of any residence located on the Lot, and (v) the outbuilding is constructed within building setback lines in accordance with applicable building codes of the governmental entity having jurisdiction over the Property. The Architectural Committee shall be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements relating to size, height, fence enclosure and construction materials.

3.13 Unsightly Articles; Vehicles

No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, all-terrain vehicles, motor scooters, and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have sufficient garage space, as approved by the Architectural Committee, to house all vehicles to be kept on the Lot. Lot Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. No automobiles or other above-mentioned articles or vehicles may be parked overnight on any roadway within the Property. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view. No (i) racing vehicles, or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do

not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any roadway within the Subdivision. No commercial vehicles larger than a standard three-quarter (3/4) ton pickup truck or standard two-axle passenger van shall be permitted to remain on any Lot or to be parked on any roadway within the Subdivision.

3.14 Mobile Homes, Travel Trailers and Recreational Vehicles

No mobile homes shall be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time, and no motor homes, travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining property or from public or private thoroughfares at any time.

3.15 Compliance with the Restrictions

Each Owner shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Declarant, the Architectural Control Committee, the Board on behalf of the Association, an aggrieved Owner, or, if applicable, the Municipal Utility District having jurisdiction over the Property.

3.16 Liability of Owners for Damage to Common Area and Facilities

No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area and Facilities without the prior written approval of the Board. Each Owner shall be liable to the Declarant, or the Association, the Owners, or any public agency, authority, or utility, if the Common Area and Facilities have been dedicated or otherwise conveyed to any such party, for any and all damages to (i) the Common Area and Facilities, or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by any such party, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided for in Section 8.6 hereof, including, but not limited to foreclosure of such lien.

3.17 No Warranty of Enforceability

While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE IV

USE AND CONSTRUCTION RESTRICTIONS

4.1 Approval for Construction

No Improvements shall be constructed upon any Lot without the prior written approval of the Architectural Committee.

4.2 Use

All Lots, unless dedicated to the Association Common Area and Facilities, shall be improved and used solely for single family residential use, inclusive of an attached private garage for not more than three (3) cars, fencing and such other Improvements as are necessary or customarily incident to residential use.

4.3 Rentals

Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for terms of at least six (6) months.

4.4 Dwelling Height

No single family dwelling greater than two (2) stories in height may be constructed on any Lot without the prior written approval of the Architectural Committee.

4.5 Fences and Sidewalks

The design, construction materials, height and location of all fences shall be approved by the Architectural Committee. In no event shall any fence or wall be erected, placed or altered on a lot nearer to the front street than the front wall of the single family dwelling which is located on the Lot and no hedge may be installed or maintained more than three (3) feet in front of the wall of the single family dwelling which is located on the Lot and closest to the front property line of the Lot. The Owner of each Lot shall construct, at its sole cost and expense and prior to occupying any improvement located on the Lot, a sidewalk, located and designed in conformance with the Plat, to the extent the Plat requires a sidewalk on such Owner's Lot. The foregoing provision may not be amended or altered without the express written consent of the Planning Department of Austin, Texas.

4.6 Dwelling Size; Building Materials

All single-story dwellings shall contain not less than Seven Hundred (700) square feet of enclosed living space, exclusive of porches (open or covered), decks, garages, and carports. All two-story dwellings shall contain not less than Nine Hundred (900) square feet of enclosed living space, exclusive of porches (open or covered), decks, garages, and carports. All building materials shall be approved by the Architectural Committee, and only new building materials (except for used brick) shall be used for constructing any Improvements. Exposed metal roof decks which reflect light in a glaring manner such as galvanized steel sheets are specifically prohibited. Other roofing materials may be used with the prior written consent of the Architectural Committee, which may specify a minimum quality or grade of materials. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the color of the surface from which they project, or shall be of a color approved by the Architectural Committee. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

The masonry requirements for single and two-story dwellings shall be as follows:
One-Story Dwellings. The front exterior wall of all single family dwellings shall be constructed of masonry, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors and trim work.

Two-Story Dwellings. The front exterior wall of the first floor of all single family dwellings shall be constructed of masonry, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors and trim work.

4.7 Alteration or Removal of Improvements

Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement shall be performed only with the prior written approval of the Architectural Committee.

4.8 Garbage Containers

The Architectural Committee shall have the right to specify a specific location on each Owner's Lot in which garbage containers must be placed for trash collection service.

4.9 Drainage

There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Architectural Committee.

4.10 Construction Activities

This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Architectural Committee in its sole good faith judgment, the Architectural Committee shall have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Architectural Committee may contract for or cause such debris to be removed, and the Owner of the Lot shall be liable for all expenses incurred in connection therewith.

4.11 Section 13-2-435 Restrictions

The following restrictions shall apply to each Lot located on the Property which has an area of less than 5,750 square feet:

- (A) The minimum area of each Lot, except a corner Lot, shall be 3,600 square feet.
- (B) The minimum area of a corner Lot shall be 4,500 square feet.
- (C) Except as provided below, the minimum width of each Lot shall be forty (40) feet.
- (D) The minimum width of a corner Lot shall be fifty (50) feet.
- (E) Lots fronting on a cul-de-sac shall have a minimum chord width of thirty-three (33) feet at the arc formed by the street line, a minimum chord width of forty (40) feet at the front building setback line, and shall have a minimum width between side lot lines of forty (40) feet at all points fifty (50) feet or more to the rear of the street line.
- (F) The minimum front yard setback for each Lot shall be twenty (20) feet.
- (G) The minimum street side yard setback for any corner Lot shall be ten (10) feet.
- (H) Each Lot may have one (1) zero lot line, provided that the combined side yard setback of the Lot is not less than ten (10) feet.

(I) The minimum distance between single family dwellings on adjoining lots shall not be less than ten (10) feet. A patio and patio cover may be constructed in a dominant side yard (the side yard of a Lot having the larger width) within this ten (10) foot area, but at least six (6) feet unobstructed clearance between the patio cover and the roof line on the dwelling on the adjoining lot shall be maintained.

(J) The wall of any single family dwelling built on a zero lot line or within less than five feet of the common side lot line shall be constructed and maintained as a solid opaque plane, containing neither window nor door openings nor any other type of openings.

(K) The minimum rear yard setback shall be five (5) feet, exclusive of drainage easements; provided, however, when there is a private access easement at the rear of the Lot, there shall be a minimum setback of ten (10) feet between such access easement and any building or fence.

(L) The maximum building coverage on each Lot shall be forty-five percent (45%) of the Lot area.

(M) The maximum impervious coverage on each Lot shall be fifty-five percent (55%) of the Lot area.

(N) No Lot shall have more than one (1) single family dwelling unit.

(O) The maximum height of any building shall be thirty-five (35) feet.

(P) Three (3) off-street parking spaces, one of which shall be covered, are required for each dwelling unit.

(Q) A maintenance easement shall be required on the dominant side of any common side lot line which is adjacent to a small lot having a dwelling unit constructed within less than five (5) feet of the common lot line in order to facilitate the customary maintenance of the structure and fixtures, including site drainage, located on the subordinate side of such common lot line. Each required maintenance easement shall be a minimum of five (5) feet in width and extending the full length and parallel to the common side lot line.

(R) A use easement shall be required on the subordinate side of any common side lot line which is adjacent to a dwelling on the dominant side lot, the foundation of which is within less than five (5) feet from the common side lot line. Any required use easement shall be of a width of five feet (5') or extend from the common side lot line to the outer wall of the dwelling located on the subordinate side lot, whichever is less, and shall extend the full length and be parallel to the common side lot line. The purpose of any such use easement hereby required is to facilitate the use, enjoyment and privacy of the dominant side yard by the occupant(s) of the dwelling on the side of the common side lot line having the dominant yard. Such use easement shall be subject to the subordinate side lot owner's right to reasonably maintain the dwelling located on the subordinate side lot encumbered by such use easement.

(S) The maintenance of all easements created pursuant to this Section 4.11 shall be the responsibility of the Owners of the Lots adjacent to said easements. The maintenance of all Common Area and Facilities and all other easements created pursuant to this Declaration or the Plat shall be the responsibility of the Association.

4.12 Landscaping

The front yards of all Lots, from the front property line to the front wall of the house, shall be fully sodded with St. Augustine, Bermuda, Prairie Buffalo Grass or other sod approved by the Committee and at least one (1) tree shall be planted in the front yard of each Lot prior to the occupancy of the residence located on the Lot.

ARTICLE V

COMMON AREA AND FACILITIES

5.1 Common Area and Facilities

No land within any Common Area and Facilities shall be improved, used or occupied, except in such manner as shall have been approved by Declarant, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and improvement. Declarant may, by written instrument, delegate its right to grant such approval to the Board. Access to any Common Area and Facilities may be limited to persons currently paying Assessments, fees and other charges, or otherwise conditioned or restricted, or made available to non-owners, all upon such terms and conditions as Declarant may determine, in its sole and absolute discretion.

5.2 Maintenance

Declarant may, but shall not be obligated to, in its sole discretion, maintain the Common Area and Facilities, if any, at its own cost and expense. If the Association is formed pursuant to Section 6.1 hereof, maintenance of any Common Area and Facilities shall be governed by Section 6.6 hereof and Assessments may be levied upon the Owners pursuant to ARTICLE VIII hereof. Under no circumstances shall Declarant be liable to the Owners, the Association, if any, or to any other person for maintaining or failing to maintain the Common Area and Facilities.

5.3 Condemnation

If all or any part of the Common Area and Facilities is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), Declarant, or the Association, if applicable, shall be entitled to participate in the proceedings incident thereto. The expense of participation in such proceedings by the Association shall be a common expense to be paid out of Assessments. The Association is specifically authorized to obtain and to pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association, in its discretion, deems necessary or advisable to aid it in any matters relating to such proceedings. All damages or awards for any such taking shall be the property of Declarant, or, if applicable, deposited with the Association. The Association, if applicable, in addition to the general powers set out herein, shall have the sole authority to determine whether to contest or defend any such proceedings, to make any settlement with respect thereto or to convey such property to the condemning authority in lieu of condemnation.

ARTICLE VI

THE ASSOCIATION

6.1 OPTIONAL ASSOCIATION

THE PROVISIONS CONTAINED IN THIS ARTICLE VI AND RELATED PROVISIONS ELSEWHERE IN THIS DOCUMENT SHALL ONLY BE OPERATIVE IN THE EVENT DECLARANT DETERMINES, IN ITS SOLE AND ABSOLUTE DISCRETION, TO CREATE A HOMEOWNERS ASSOCIATION TO ASSUME THE DUTIES AND POWERS PRESCRIBED BY LAW AS SET FORTH IN THIS DECLARATION. ON THE EFFECTIVE DATE OF THIS DOCUMENT, DECLARANT DOES NOT CONTEMPLATE CREATING THE ASSOCIATION AND SHALL HAVE NO OBLIGATION TO DO SO. THIS ARTICLE VI AND THE PROVISIONS EXPRESSLY RELATED TO THIS ARTICLE VI SHALL HAVE NO

LEGAL OR OTHER EFFECT UNLESS AND UNTIL (1) DECLARANT ELECTS TO CREATE THE ASSOCIATION AS EVIDENCED BY THE DECLARANT'S INCORPORATION OF THE ASSOCIATION AND ISSUANCE OF ARTICLES OF INCORPORATION BY THE SECRETARY OF STATE OF TEXAS, OR (2) DECLARANT ACCEPTS, WHICH ACCEPTANCE SHALL BE IN DECLARANT'S SOLE AND ABSOLUTE DISCRETION, A PETITION IN RECORDABLE FORM SIGNED BY A MAJORITY OF OWNERS (EXCLUDING DECLARANT) OF LOTS WITHIN THE PROPERTY, EACH LOT BEING ALLOCATED ONE (1) VOTE. IN THE EVENT DECLARANT ELECTS TO ACCEPT THE PETITION PURSUANT TO Section 6.1 (2) ABOVE, DECLARANT SHALL INCUR NO EXPENSE RELATED TO THE INCORPORATION OR ORGANIZATION OF THE ASSOCIATION.

HOWEVER, ANY ASSOCIATION CREATED SUBSEQUENT TO DECLARANT'S ACCEPTANCE OF THE PETITION PURSUANT TO Section 6.1 (2) ABOVE, SHALL BE EMPOWERED TO REIMBURSE ALL REASONABLE INCORPORATION AND ORGANIZATION EXPENSES ADVANCED BY ANY MEMBER. IN THE EVENT DECLARANT NO LONGER OWNS ANY PORTION OF THE PROPERTY ENCUMBERED BY THIS DECLARATION, A MAJORITY OF OWNERS OF LOTS WITHIN THE PROPERTY, EACH LOT BEING ALLOCATED ONE (1) VOTE, MAY ELECT TO CREATE AN ASSOCIATION, AND DECLARANT'S ACCEPTANCE PURSUANT TO Section 6.1 (2) SHALL NOT BE NECESSARY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, DECLARANT SHALL BE UNDER NO OBLIGATION TO CREATE A HOMEOWNER'S ASSOCIATION.

6.2 Organization

Any Association formed pursuant to Section 6.1 shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

6.3 Membership

If the Association is formed, any Person who is or who becomes an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to the Lot.

6.4 Voting Rights

There shall be two classes of membership for the purpose of voting on any Association matter. The Class A Members shall include each Owner (excluding Declarant) of a Lot within the Property and each such Owner shall have one (1) vote for each Lot owned. The Class B Member shall be the Declarant and Declarant shall have three (3) votes for each Lot owned by Declarant. The Class B Membership shall convert to a Class A Membership upon the earlier to occur of (i) Declarant owns less than twenty-five percent (25%) of the Property, or (ii) ten years from the date of this Declaration.

6.5 Powers and Authority of the Association

The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this

Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

(A) Rules and Bylaws

To make, establish and promulgate, and in its discretion to amend or repeal and re-enact the Association Rules and Bylaws. The content of the Association Rules and Association Bylaws may be established by the Board, provided the same are not in conflict with this Declaration.

(B) Insurance

To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.

(C) Records

To keep books and records of the Association's affairs.

(D) Assessments

To levy Assessments as provided in ARTICLE VIII below. An Assessment is defined as that sum which must be levied in the manner and against the property set forth in ARTICLE VIII hereof in order to raise the total amount for which the levy in question is being made.

(E) Right Of Entry and Enforcement

To enter at any time in an emergency or in a non-emergency, after twenty-four (24) hours written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon, for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in ARTICLE VIII hereof for regular Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors, or assigns.

(F) Legal and Accounting Services

To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

6.6 Common Area and Facilities

Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

(A) To accept, own, operate and maintain all Common Area and Facilities which may be conveyed or leased to it by Declarant, together with all Improvements of whatever

kind and for whatever purpose which may be located in said areas; and to accept, own, operate and maintain all other property, real or personal, conveyed or leased to the Association by Declarant and to maintain in good repair and condition all lands, improvements and other Association property owned by or leased to the Association. Such maintenance shall include, but not be limited to, painting, mowing and removal of rubbish or debris of any kind.

(B) To pay all real and personal property taxes and other taxes and Assessments levied upon or with respect to Common Area and Facilities or any other property owned by or leased to the Association to the extent that such taxes and Assessments are not levied directly upon the Members of the Association. The Association shall have all rights granted by law to contest the legality of the amount of such taxes and Assessments.

(C) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment of the Common Area and Facilities. Such insurance shall be in an amount as the Board shall deem appropriate.

ARTICLE VII

ARCHITECTURAL COMMITTEE

7.1 Membership of Architectural Committee

The Architectural Committee shall consist of not more than three (3) voting Members ("Voting Members"), and such additional nonvoting Members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate. The following persons are hereby designated as the initial Voting Members of the Architectural Committee: Steve Herring, Bryan Rome and Terry E. Mitchell.

7.2 Action by Architectural Committee

Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.

7.3 Advisory Members

The Voting Members may from time to time designate Advisory Members.

7.4 Term

Each Voting Member of the Architectural Committee shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. In the event of death or resignation of any Voting Member, the remaining Voting Member or Voting Members shall have full authority to act until a replacement Voting Member or Voting Members have been designated.

7.5 Declarant's Rights of Appointment

Declarant, its successors or assigns shall have the right to appoint and remove all Voting Members of the Architectural Committee. Declarant may delegate this right to the Board by written instrument. Thereafter, the Board shall have the right to appoint and remove all Voting Members of the Architectural Committee.

7.6 Adoption of Rules

The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to, a building code, a fire code, a housing code, and other similar codes as it may deem necessary and desirable.

7.7 Review of Proposed Construction

Whenever in this Declaration the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Committee. The Architectural Committee may review Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the Architectural Committee of any information or documents deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. No Improvement shall be allowed upon any Lot which would unreasonably obstruct the view from any other portion of the Property, and no Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes, and materials and similar features as to be incompatible with development within the Property and the surrounding area. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

7.8 Variance

The Architectural Committee may grant variances from compliance with any of the provisions of this Declaration, when, in the opinion of the Architectural Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. Anything herein to the contrary notwithstanding, the Architectural Committee is hereby authorized, at its sole discretion, to waive any requirements relating to garages (including size), carports, dwelling size, masonry requirements, fences and setbacks and such decision shall be binding on all Owners of Property encumbered by this Declaration. All variances must be evidenced by written instrument in recordable form, and must be signed by at least two (2) of the Voting Members of the Architectural Committee. The granting of such variance shall not operate to waive or amend any of the terms or provisions of the covenants and restrictions applicable to the Lots for any purpose except as to the particular property and the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof.

7.9 Actions of the Architectural Committee

The Architectural Committee may, by resolution, unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of the majority of all of the members of the Architectural Committee taken without a meeting shall constitute an act of the Architectural Committee. Notwithstanding anything to the contrary, in the event the Architectural Committee fails to respond to a request for approval of Plans and Specifications within thirty (30) days of receipt of all required information, the Architectural Committee shall be deemed to have approved such Plans and Specifications.

7.10 No Waiver of Future Approvals

The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

7.11 Work in Progress

The Architectural Committee, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications.

7.12 Address

Plans and Specifications shall be submitted to the Architectural Committee at 11911 Burnet Road, Austin, Texas 78758, Attn: Steve Herring, or such other address as may be designated from time to time.

7.13 Fees

The Architectural Committee shall have the right to require a reasonable submission fee for each set of Plans and Specifications submitted for its review.

ARTICLE VIII

FUNDS AND ASSESSMENTS

8.1 Assessments

(A) The Association may from time to time levy Assessments against each improved Lot. The level of Assessments shall be equal and uniform between all improved Lots. For purposes of this section, a lot shall not be considered to be "improved" until a house has been constructed thereon. No Assessments hereunder shall be levied against any unimproved Lots.

(B) Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

(C) Each unpaid Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which the Assessment fell due, and shall become a vendor's lien against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

8.2 Maintenance Fund

The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the

functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

8.3 Regular Annual Assessments

Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Restrictions, which shall be limited to the costs incurred pursuant to the powers granted to the Association in Section 6.6 and the cost of enforcing the Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the maximum regular annual Assessments per Lot permitted hereunder be increased by more than five percent (5%) per year, unless approved by at least two-thirds of each Class of Members who are voting in person or by proxy at a meeting duly called for such purpose, with the same quorum as required for Special Assessments herein.

8.4 Special Assessments

In addition to the regular annual Assessments provided for above, the Board may levy special Assessments to enable the Board to carry out the mandatory functions of the Association under the Restrictions, upon the approval of at least two-thirds of the Members at a meeting called for that purpose, by adequate notice, with at least sixty percent (60%) of the Members or their proxies present at said meeting. If sixty percent (60%) of the Members do not attend, a second meeting may be called with the same notice and the quorum needed for said second meeting shall be thirty percent (30%) of the Members or their proxies.

8.5 Owner's Personal Obligation for Payment of Assessments

The regular Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the rate of six percent (6%) per annum on the amount of the Assessment, from the due date thereof, together with all costs and expenses of collection, including reasonable attorneys' fees.

8.6 Assessment Lien and Foreclosure

All sums assessed in the manner provided in this Article but unpaid shall, together with interest as provided in Section 8.5 hereof and the cost of collection, including attorneys' fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first Mortgage lien of record, securing in

either instance sums borrowed for the improvement of the Lot in question. Any foreclosure by the holder of a first Mortgage lien of record shall terminate the liability of the Lot for delinquent, pre-foreclosure Association Assessments. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must be signed by a duly authorized officer of the Association. To evidence the aforesaid Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Travis County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting Owner's Lot by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

ARTICLE IX

EASEMENTS

9.1 Reserved Easements

All dedications, limitations, restrictions, and reservations shown on the Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights, made prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other Person, to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public utility purposes (including without limitation, gas, water, electricity, telephone and drainage) in favor of any Person along any front, rear, or side boundary line of any Lot, which said easements shall have a maximum width of ten (10) feet (provided, however, that easements along side yard lot lines shall straddle such lot lines with five (5) feet on each of the adjoining Owner's Lots).

9.2 Installation and Maintenance

There is hereby created an easement upon, across, over, and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including but not limited to, water, wastewater, gas, telephones, and electricity lines and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and

maintain pipes, wires, conduits, service line, or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no electrical lines, water lines, or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Committee. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

9.3 Drainage Easements

Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as approved in writing by the Architectural Committee.

9.4 Surface Areas

The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants, or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation, or repair of any facility in any such easement area.

9.5 Common Area and Facilities

Each Owner shall have a non-exclusive easement for use and enjoyment in and to all Common Area and Facilities which shall be appurtenant to and shall pass with title to such Owner's Lot, subject to the following provisions:

(A) Right of Association to suspend the Owner's voting rights and right to use the Common Area and Facilities for any period during which an Assessment against such Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Association;

(B) The right of Declarant, or the Association, as applicable, to dedicate or transfer all or any part of the Common Area and Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be deemed reasonable by Declarant, in its sole discretion, or, in the case of the Association, approved by a two-thirds vote of each Class of Members who are voting in person or by proxy at a meeting duly called for such purpose, with the same quorum as required for Special Assessments herein;

(C) The right of the Association to borrow money for the purpose of improving the Common Area and Facilities and, in furtherance thereof, mortgage the Common Area and Facilities, all in accordance with the Articles and Bylaws;

(D) The right of Declarant, or the Association, as applicable, to promulgate reasonable rules and regulations regarding use of the Common Area and Facilities; and

(E) The right of Declarant or the Association, as applicable, to contract for services with third parties on such terms as Declarant or the Association may determine.

ARTICLE X
MISCELLANEOUS

10.1 Term

This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until January 1, 2019, unless amended as herein provided. After January 1, 2019, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished as set forth in Section 10.2 below.

10.2 Amendment/Extinguishment

(A) By Declarant

So long as no Home Owners Association has been formed pursuant to Section 6.1 hereof, this Declaration may be amended by the Declarant, without the joinder of any other party. No amendment by Declarant shall be effective until there has been recorded in the Real Property Records of Travis County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment.

(B) By Owners

In addition to the method in Section 10.2 (A), this Declaration may be amended or extinguished by the recording in the Travis County Real Property Records of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment or extinguishment and certifying that such amendment or extinguishment has been approved by Owners entitled to cast at least ninety percent (90%) of the number of votes entitled to be cast pursuant to Section 6.4 hereof for the first twenty years from the date hereof, and by seventy-five percent (75%) of said Owners thereafter.

10.3 Notices

Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by certified mail, return receipt requested, or personally delivered and a written receipt received therefor. If delivery is made by certified mail, it shall be deemed to have been delivered the date on which it was received by the person to whom such notice was addressed. Such address may be changed from time to time by notice in writing given by such person to the Association.

10.4 Interpretation

The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

10.5 Exemption of Declarant

Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct any and alter drainage patterns and facilities, to construct any and all other types of improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales, and leasing anywhere within the Property.

10.6 Nonliability of Architectural Committee and Board Members

Neither the Architectural Committee, nor any member thereof, nor the Board, nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage, or injury arising out of their being in any way connected with the performance of the Architectural Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its member or the Board or its member, as the case may be.

10.7 Assignment of Declarant

Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person and may permit the participation, in whole or in part, by any other Person in any of its privileges, exemptions, rights, and duties hereunder.

10.8 Enforcement and Nonwaiver

Except as otherwise provided herein, any Owner at his own expense, Declarant, the Board and/or the Municipal Utility District having jurisdiction over the Property shall have the right to enforce all of the provisions of the Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce any provision of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said Restrictions. Declarant, or the Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

10.9 Construction

The provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective on the 7th day of May, 1998.

DECLARANT:

CONTINENTAL HOMES OF AUSTIN, L.P.,
a Texas limited partnership

BY: CHTEX of Texas, Inc.,
formerly known as CHTEX of Austin, Inc.
a Delaware corporation, its sole general partner

By: _____
Terry E. Mitchell, Vice President

THE STATE OF TEXAS

§
§

COUNTY OF TRAVIS

§

This instrument was acknowledged before me on the 7th day of May, 1998, by Terry E. Mitchell, Assistant Secretary of CHTEX of Texas, Inc., a Delaware corporation, sole general partner of Continental Homes of Austin, L.P., a Texas limited partnership, on behalf of said partnership.

(SEAL) Notary Public Signature
AFTER RECORDING RETURN TO:
Milburn Homes
Attn: Sharon Campbell
4515 Seton Center Parkway, Suite 200
Austin, Texas 78759