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AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

CHIMNEYHILL P.U.D.

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RESTRICTIONS**

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Proposed - Subject to Review

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

CHIMNEYHILL P.U.D.

This Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "**Declaration**") is made by Chimneyhill-Austin Homeowners Association, a Texas non-profit corporation (the "**Association**"), and is as follows:

RECITALS:

A. The Mutual Savings Institution, a Texas savings and loan association, d/b/a Chimneyhill of Austin (the "**Developer**"), previously executed that certain Declaration of Covenants, Conditions and Restrictions, dated September 2, 1975, recorded in Book 5253, Page 1292, *et. seq.*, Official Public Records of Travis County, Texas, as amended by that certain Amended Declaration of Covenants, Conditions and Restrictions, dated May 6, 1987, recorded in Book 6557, Page 462, *et. seq.*, Official Public Records of Travis County, Texas and that certain Second Amended Declaration of Covenants, Conditions and Restrictions, dated August 19, 1985 (the "**Second Amendment**"), recorded in Book 9317, Page 14, *et. seq.*, Official Public Records of Travis County, Texas (as amended, the "**Original Declaration**").

B. The Original Declaration currently encumbers those certain tracts or parcels of land in Travis County, Texas known as Chimneyhill P.U.D. First Installment, First Resubdivision of Chimneyhill P.U.D. First Installment, Second Resubdivision of Chimneyhill P.U.D. First Installment, Third Resubdivision of Chimneyhill P.U.D. First Installment and Chimneyhill P.U.D. Phase II, Section One, all subdivisions of record in Travis County, Texas according to the maps or plats thereof recorded in Book 66, Page 9, Book 69, Page 5, Book 73, Page 53, Book 74, Page 90 and Book 75, Page 173, respectively, Official Public Records of Travis County, Texas, and that certain 2.339 acre tract of land in Travis County, Texas described by metes and bounds in Exhibit A to the Second Amendment (collectively, the "**Property**").

C. The Original Declaration creates two (2) classes of Members: (i) a Class A Member is any Owner excluding the Developer; and (ii) a Class B Member is the Developer only. The Class B membership is conditioned upon Developer's ownership of a Lot. Developer no longer owns a Lot subject to the Declaration and the Class B Member classification has terminated.

D. As provided in the Original Declaration, the Original Declaration may be terminated or modified by agreement of a majority of each class of members in the Association, and by the acquiescence of a majority of the Mortgagees (as defined in the Original Declaration).

E. A majority of the Class A Members and Mortgagees have approved and executed this Declaration.

F. The President and Secretary of the Association have executed this Declaration for the purpose of certifying that this Declaration was approved by a majority of the Class A Members and Mortgagees.

G. This Declaration hereby replaces and supersedes the Original Declaration in its entirety.

NOW, THEREFORE, it is hereby declared: (i) that the Property (or any portion thereof) will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) will 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 in full or by reference in said contract or deed.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

ARTICLE 1 DEFINITIONS

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

"Architectural Control Committee" or **"ACC"** means the committee created pursuant to this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot.

"Articles" means the Articles of Incorporation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

"Assessment" or **"Assessments"** means assessments imposed by the Association under this Declaration.

"Assessment Unit" has the meaning set forth in *Section 5.05*.

"Association" means the Chimneyhill-Austin Homeowners Association, a Texas non-profit corporation, created to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Declaration.

"Board" means the Board of Directors of the Association.

"Bulk Rate Contract" or "Bulk Rate Contracts" means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick up services, propane service, natural gas service, lawn maintenance services and any other services of any kind or nature which are considered by the Board to be beneficial.

"Bylaws" means the Bylaws of the Association as adopted and as amended from time to time.

"Common Area" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations. Common Area includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area will be for the use and enjoyment of the Owners and members of the public.

"Design Guidelines" means the standards for design, construction, landscaping, and exterior items placed on any Lot adopted pursuant to *Section 6.02(c)*, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Property. Neither the Board nor the Architectural Control Committee has any obligation to adopt Design Guidelines.

"Improvement" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, 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.

"Lot" means any portion of the Property shown as a subdivided lot on a Plat other than Common Area.

"Manager" has the meaning set forth in *Section 3.04(h)*.

"Members" means every person or entity that holds membership privileges in the Association.

"Membership Agreement" means an agreement in the form specified by the Board for execution by each Member, evidencing such Member's acknowledgment of and agreement to be bound by the terms of this Declaration. As provided in *Section 3.02(b)* below, the Board may, but will have no obligation to, require each Member to execute a Membership Agreement.

"Mortgage" or **"Mortgages"** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

"Mortgagee" or **"Mortgagees"** means the holder(s) of any Mortgage(s).

"Owner" means the person(s), entity or entities holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

"Plat" means a subdivision plat of any portion of the Property as recorded in the Official Public Records of Travis County, Texas, and any amendments thereto.

"Property" means all of that certain real property identified hereinabove.

"Resident" means an occupant or tenant of a residence constructed on a Lot, regardless of whether the person owns the Lot and residence constructed thereon.

"Restrictions" means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, or in any rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time. See Table 1 for a summary of the Restrictions.

TABLE 1: RESTRICTIONS	
Declaration (recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
Articles of Incorporation: (filed with the Secretary of State)	The Articles of Incorporation of the Association, which establish the Association as a not-for-profit corporation under Texas law.
Bylaws: (adopted by the Association)	The Bylaws of the Association which govern the Association's internal affairs, such as elections, meetings, etc.
Design Guidelines:	The design standards and architectural and aesthetics guidelines adopted pursuant to <i>Article 6</i> , which govern the construction of Improvements and modifications thereto.
Rules: (adopted by the Board of the Association)	The use restrictions and rules of the Association adopted pursuant to <i>Section 3.04(a)</i> , which regulate use of property, activities, and conduct within the Property.
Board Resolutions: (adopted by the Board of the Association)	The resolutions adopted by Board which establish rules, policies, and procedures for internal governance and activities of the Association.

ARTICLE 2 GENERAL AND USE AND CONSTRUCTION RESTRICTIONS

2.01 General. All Lots within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to: (i) the applicable conditions, restrictions, reservations, and easements contained in this Declaration; (ii) the Design Guidelines, as amended or modified from time to time; and (iii) any rules and regulations adopted by the Board. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within Property. Compliance with this Declaration and the Design Guidelines is not a substitute for compliance with such ordinances and regulations. Please be advised that neither the Declaration nor the Design Guidelines purport to list or describe each restriction which may be applicable to a Lot located within the Property. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot.

NOTICE

This Declaration, the Design Guidelines, and the rules and regulations adopted by the Board are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with this Declaration, the Design Guidelines, and the rules and regulations, as they may change from time to time.

2.02 Subdividing. No Lot may 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 Board.

2.03 Hazardous Activities. No activities may 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 may be discharged upon the Property, no open fires may 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. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2.04 Insurance Rates. Nothing may be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, the improvements located thereon, without the prior written approval of the Board.

2.05 Mining and Drilling. No portion of the Property may 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.

2.06 Noise. No noise or other nuisance will 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.

2.07 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 within any single residence more than three (3) cats and dogs, in the aggregate, of which no more than two (2) can be dogs.. No animal may 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 within the Owner's residence, or the fenced yard space associated therewith, 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 may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times.

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

2.09 Maintenance. The Owner of each Lot will have the duty and responsibility, at its sole cost and expense, to keep such Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Board, in its sole discretion, will determine whether a violation of the maintenance obligations set forth in this Section 2.09 has occurred. Such maintenance includes, but is not limited to the following, which must be performed in a timely manner, as determined by the Board, in its sole discretion:

- (i) Prompt removal of all litter, trash, refuse, and wastes.
- (ii) Lawn mowing.
- (iii) Tree and shrub pruning.
- (iv) Watering.
- (v) Keeping exterior lighting and mechanical facilities in working order.
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive.

- (vii) Keeping sidewalks and driveways in good repair.
- (viii) Complying with all government, health and police requirements.
- (ix) Repainting of all Improvements.
- (x) Repair of exterior damage, and wear and tear to Improvements.

2.10 Antennae. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any solar energy system, may be erected, maintained or placed on Lot without the prior written approval of the Board; provided, however, that:

(i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Board, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

Satellite dishes one meter or less in diameter, e.g., DirectTV or Dish satellite dishes, are permitted, HOWEVER, you are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the Board from time to time. Please contact the Board for the current rules regarding installation and placement.

2.11 Signs. No sign of any kind may be displayed to the public view on any without the prior written approval of the Board, except for:

(i) one (1) temporary “For Sale” sign placed on the Lot being advertised “For Sale”. or Such signs will be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade from the spot where the sign is located may not exceed four (4) feet. The sign must be removed within two (2) business days following the sale or lease of the Lot;

(ii) one (1) small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of residence;

(iii) permits as may be required by legal proceedings; and

(iv) permits as may be required by any governmental entity.

An Owner will be permitted to post a "no soliciting" sign near or on the front door of the residence constructed on a Lot, provided, that the sign not exceed twenty-five (25) square inches.

2.12 Tanks. The Board must approve 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 may be erected, placed or permitted on any Lot without the advance written approval of the Board. This provision will not apply to a tank used to operate a standard residential gas grill.

2.13 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure may be placed upon the Property without the prior written approval of the Architectural Control 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 the Board, approval to include the nature, size, duration, and location of such structure. Any outbuilding permitted hereunder may not be used for habitation, no window heating or air conditioning unit may be installed to serve any permitted outbuilding, and no utilities, including electricity, gas, cable, or telephone, may be extended to serve any permitted outbuilding. The Board will be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

2.14 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Board will 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, motor scooters, all-terrain vehicles and garden maintenance equipment must be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. No Owner or Resident may keep more than two (2) automobiles per Lot in such manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. All automobiles, unless in enclosed structures, must be parked entirely on the driveway associated with the Lot and no automobile may be parked on any other portion of the Lot. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view, and no lumber, grass, plant waste, shrub or

tree clippings, metals, bulk materials, scrap, refuse or trash must 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 will be permitted to remain visible on any Lot or to be parked on any roadway within or adjacent to the Property.

Parking of any commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages is prohibited; provided, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a residence.

No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Architectural Control Committee.

2.15 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes may 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 may be parked on or near any Lot so as to be visible from adjoining property or from public or private thoroughfares at any time.

2.16 Basketball Goals; Permanent and Portable. Permanent and portable basketball goals are only allowed between the street right-of-way and the front elevation of the residence on a Lot provided the basketball goal is located a minimum of twenty feet (20') from the street curb. The basketball goal backboard must be perpendicular to the street and mounted on a black metal pole permanently installed in the ground. Portable basketball goals, if permitted hereunder, are only allowed between the street right-of-way and the front elevation of the residence on a Lot and must not be placed, at any time on any street or right of way located within or adjacent to the Property. When not in use, portable basketball goals must be stored in a garage or in the rear of the Lots (i.e., out of public view). Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals, whether permanent or portable, must be approved by the Architectural Control Committee prior to being placed on any Lot.

2.17 Compliance with Association Restrictions. Each Owner, Resident, and their family, occupants of a Lot, tenants, and the guests, invitees, and licensees of the preceding must comply strictly with the provisions of the Association Restrictions as the same may be amended from time to time. Failure to comply with any of the Association Restrictions will constitute a violation of the Association Restrictions may result in a fine against the Owner or Resident in accordance with *Section 5.10* of this Declaration, and will give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Manager, the Board on behalf of the Association, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but will not be obligated to) remedy or attempt to remedy any

violation of any of the provisions of Association Restrictions, and the Owner whose violation has been so remedied will be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot will be secured by the liens reserved in the Declaration and/or this Declaration for Assessments and may be collected by any means provided in the Declaration and/or this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner will indemnify and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 2.17* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

If you fail to comply with Association Restrictions you can be fined or a claim may be pursued against you in court.

2.18 Liability of Owners for Damage to Common Area. No Owner or Resident may in any way alter, modify, add to or otherwise perform any work upon the Common Area without the prior written approval of the Board. Each Owner and/or Resident will be liable to the Association for any and all damages to: (i) the Common Area and any improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner, or the Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage will 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 5.08* of this Declaration.

2.19 Approval for Construction. No Improvements may be constructed upon any Lot without the prior written approval of the Architectural Control Committee.

2.20 Use. All Lots, unless dedicated to the Association as Common Area must be improved and used solely for single family residential use, inclusive of one attached private garage for each residence constructed thereon, fencing and such other Improvements as are necessary or customarily incident to residential use.

2.21 Rentals. Nothing in this Declaration will prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that: (i) all rentals must be for terms of at least six (6) months; and (ii) no portion of a Lot or Improvements constructed thereon may be rented. All leases shall be in writing, and the Board will have the authority to approve all leases in advance. Each lease must provide, or be deemed to provide, that the Board shall have the right to terminate the lease upon default by the tenant in observing any provisions of the Restrictions. The Board may deny permission to lease any Lot on any reasonable grounds the Board may find. The Board shall have the right to require all tenants to deposit in escrow with the Association (in addition to any other deposits which may be required by the Owner so long as such additional deposit is not prohibited by law) an amount not to exceed one month's rental fee paid to the Owner of the Lot. Said deposit may be used by the Association to repair any damage to the Property resulting from acts or omission by the tenants (as determined in the sole discretion of the Board). Regardless of whether or not expressed in the applicable lease, all Owners shall be jointly and severally liable with their tenants to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for any injury or damage to property caused by the negligence of the tenant or for the acts or omissions of the tenant(s) which constitute a violation of, or non-compliance with, the provisions of the Documents. All leases shall comply with and be subject to the provisions of the Restrictions and the provisions of same shall be deemed expressly incorporated into each lease. This Section shall also apply to assignments and renewals of leases. No lease approved by the Board shall be amended or modified without the Board's approval. In making its determination as to whether to approve a lease, the Board shall not discriminate on the grounds of race, gender, religion, national origin, familial status or physical or mental handicap; *provided, however,* nothing herein shall be construed to require the Association to furnish an alternate tenant to the Owner in the event the Board disapproves a lease or tenant. Upon entering into an agreement for the lease, an Owner shall provide written notice to the Board, or its designee, of the lease agreement and furnish the names of the prospective tenant. The Board may require that the Owner deliver to the tenant, a copy of the Restrictions and obtain a written instrument executed by the tenant acknowledging receipt of the Restrictions which receipt will be provided to the Board. The Board shall have the right to charge an Owner a reasonable fee (not to exceed \$250.00) as determined by the Board for the processing of each lease.

2.22 Fences. The design, construction materials, height and location of all other fences must otherwise be approved by the Architectural Control Committee.

2.23 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 may be performed only with the prior written approval of the Architectural Control Committee.

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

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

2.26 Construction Activities. This Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner upon any Lot within the Property. No such construction activities will 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 Board in its sole good faith judgment, the Board will 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 Board may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection therewith.

ARTICLE 3

CHIMNEYHILL-AUSTIN HOMEOWNERS ASSOCIATION

3.01 Organization. The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Articles nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.02 Membership.

(a) Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

<p>If you acquire a Lot you automatically become a member of the Association. Membership is Mandatory!</p>

(b) If required by the Board, each Owner must execute a Membership Agreement and deliver the same to the Association prior to or concurrently with the recording of a deed conveying fee title to a Lot to such Owner. Each Owner must notify the immediate

transferee of his Lot of such transferee's obligation to execute and deliver a Membership Agreement, but the failure to notify a transferee will not relieve such transferee of his obligations under this *Section 3.02(b)*. The failure to execute a Membership Agreement will not prevent any person from being a Member or Owner under the terms of the Articles, Bylaws or Restrictions, or excuse any Member from the payment of Assessments. If a Membership Agreement is required by the Board, an Owner who has not executed and delivered a Membership Agreement will automatically forfeit his right to vote as a Member and additionally forfeit his right to the use and enjoyment of the Common Area. Such Owner will not be entitled to restoration of his voting privileges and rights in the Common Area until execution and delivery of a Membership Agreement by such Owner. However, the Board may, at the Board's sole discretion, provide that a Member will be entitled to the full privileges of membership in the Association, notwithstanding the failure to execute a Membership Agreement. In the event Members are entitled to a key, membership card or other token evidencing or facilitating the right to use any Improvements erected or placed on the Common Area, the Board may require any Member who has not executed a Membership Agreement to return the same to the Board immediately.

Within thirty (30) days after acquiring legal title to a Lot, each Owner must provide the Association with: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot; (2) the Owner's address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name and phone number of any resident other than the Owner.

You may be required to execute a Membership Agreement before using any of the Association's property or voting on any Association matter. Your obligation to pay assessments to the Association and comply with this Declaration, the Design Guidelines, or the rules and regulations will not be affected by your failure to execute a Membership Agreement. Also, you must provide certain information to the Association upon acquiring a Lot.

(c) Every Member will have a right and easement of enjoyment in and to all of the Common Area and an access easement by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot, subject to *Section 3.02(b)* above and subject to the following restrictions and reservations:

- (i) The right of the Association to suspend the Member's voting rights and right to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such member is in violation of any provision of this Declaration;
- (ii) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;

- (iii) The right of the Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;
- (iv) The right of the Association to make reasonable rules and regulations regarding the use of the Common Area and any Improvements thereon; and
- (v) The right of the Association to contract for services with any third parties on such terms as the Association may determine.
- (vi) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

3.03 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members will be calculated as follows:

(a) The Owner of each Lot will have one (1) vote for each Lot so owned. In the event of the re-subdivision of any Lot into two or more Lots: (i) the number of votes to which such Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision, e.g., each Lot resulting from the re-subdivision will be entitled to one (1) vote; and (ii) each Lot resulting from the re-subdivision will be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights and Assessments will continue to be determined according to the number of original Lots contained in such consolidated Lot.

(b) When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot (or in the Membership Agreement relating to such Lot if required by the Board), and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 3.03*.

(c) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) remain past due, for any period during which such Owner or such Owners' Lot(s) are in violation of this Declaration, and, as provided in *Section 3.02(b)* above, for any period during which such Owner has failed to execute and deliver a Membership Agreement.

3.04 Powers. The Association has the powers of a Texas nonprofit corporation. It further has the power to do and perform any and all acts that 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

this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property (including the operation, maintenance and preservation thereof) or the Association.

When you acquire a Lot, you will be required to comply with the terms of this Declaration, the Design Guidelines, and any rules and regulations adopted by the Board. Yes, there are lots of rules!

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect assessments and to determine Assessment Units, as provided in *Article 5* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to this Declaration or the Design Guidelines. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed a special Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Assessments. The Association will 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. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS,**

DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.04(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by any governmental authority.

(h) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon sixty (60) days written notice to the Manager. To the extent permitted by law, the Board may delegate any other duties, powers and functions to the Manager. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD FROM LIABILITY FOR ANY**

OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for the Property and/or Common Area, including but not limited to irrigation related to operation of the Garden Irrigation System, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law (including the Texas Non-Profit Corporation Act) or under the terms of the Restrictions or as determined by the Board.

(k) Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of the Board, the Association, or the Members.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise.

(n) Allocation of Votes. To determine votes when permitted pursuant to Section 3.03 above.

(o) Membership Privileges. To establish rules and regulations governing and limiting the use of the Common Area, and any Improvements thereon.

3.05 Acceptance of Common Area. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. If such property is accepted by the Association it will thereafter be maintained as Common Area by the Association for the benefit of the Members.

3.06 Indemnification. To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Articles or Bylaws of the

Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

3.07 Insurance. The Board may purchase and maintain, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability or otherwise.

3.08 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 3.04* hereinabove, the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board. The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the occupant of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the occupant of such Owner's Lot) can

make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

ARTICLE 4 INSURANCE

4.01 Insurance. Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot or any Improvements or personal property located on a Lot.

4.02 Restoration. In the event of any fire or other casualty, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION**

AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

4.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this Article 4, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 5 COVENANT FOR ASSESSMENTS

5.01 Assessments.

(a) Assessments established by the Board pursuant to the provisions of this Article 5 will be levied against each Lot in amounts determined pursuant to Section 5.05 below. The total amount of Assessments will be determined by the Board pursuant to Section 5.03 and/or 5.04.

(b) Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed to the Association against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

5.02 Maintenance Fund. The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will 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.

5.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Declaration, including, but not

limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the covenants and restrictions contained herein, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will 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. All such regular Assessments will 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.

5.04 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration. The amount of any special Assessments will be at the reasonable discretion of the Board. In addition to the special Assessments authorized above, the Association may, in any fiscal year, levy a special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area. Any special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units.

5.05 Amount of Assessment. The Board will levy Assessments against each "Assessment Unit", with each Lot being allocated one (1) Assessment Unit. Unless otherwise provided in this Declaration, Assessments levied pursuant to *Section 5.03* and *Section 5.04* will be levied uniformly against each Lot based on the Assessment Units allocated thereto. For example, if the total regular Assessments to be levied by the Board during any fiscal year is equal to \$10,000, and the regular Assessment is to be allocated among one hundred (100) Lots each being allocated one (1) Assessment Unit, the regular Assessment for each Assessment Unit would be equal to \$100.00 ($\$10,000 \div 100$ Assessment Units).

5.06 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be a charge upon the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under applicable law.

5.07 Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied 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 will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of 1 and 1/2% per month), together with all costs and expenses of collection, including reasonable attorneys fees.

5.08 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this *Article 5* is, together with late charges as provided in *Section 5.06* and interest as provided in *Section 5.07* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 5.01(b)* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for tax liens and all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question, provided such Mortgage was recorded in the Official Public Records of Travis County, Texas before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, 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 may be signed by one of the officers of the Association and will be recorded in the Official Public Records of Travis County, Texas. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. Such lien for payment of Assessments may be enforced by the non-judicial foreclosure of the defaulting Owner's Lot by the Association in like manner as a real property mortgage with power of sale under Tex. Pro. Code § 51.002. (For such purpose, Robert D. Burton of Travis County, Texas, is hereby designated as trustee for the benefit of the Association, with the Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.) The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) 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 will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any first-lien Mortgage securing indebtedness incurred to acquire such Lot, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first lien Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 5.08*, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such 12 day period) to such Owner, in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any service provided under a Bulk Rate Contract or any other service provided by the Association, including but not limited to utility or cable services, provided through the Association and not paid for directly by a Owner or occupant to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Any utility or cable service will not be disconnected or terminated on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by applicable law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than a first lien Mortgage or Assessment Liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a to a third party.

Yes, the Association *can* foreclose on your Lot!
If you fail to pay assessments to the Association, you may lose title to your Lot if the Association forecloses its assessment lien.

5.09 Exempt Property. The following area within the Property will be exempt from the Assessments provided for in this Article:

- (a) all area dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Public Records of Travis County, Texas; and
- (b) the Common Area.

5.10 Fines and Damages Assessment. The Board may assess fines against an Owner for violations of any restriction set forth in this Declaration, the Design Guidelines, or any rules adopted by the Board which have been committed by an Owner, an occupant of the Owner's Lot, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 5.10* will be considered an Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities located by the Owner or the Owner's family, guests, agents, occupants, or tenants. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

The procedure for assessment of fines and damage charges will be as follows:

- (a) the Association, acting through an officer, Board member or Manager, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;
- (b) the notice of the fine or damage charge must describe the violation or damage;
- (c) the notice of the fine or damage charge must state the amount of the fine or damage charge;
- (d) the notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and
- (e) the notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation (if the violation is capable of being remedied) and avoid

the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges will be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 5.07* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.01(b)* of this Declaration. Unless otherwise provided in this *Section 5.10* the fine and/or damage charge will be considered an Assessment for the purpose of this Article, and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 5*.

Proposed - Subject to Review

ARTICLE 6
ARCHITECTURAL CONTROL COMMITTEE

6.01 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property without the prior written approval of the Architectural Control Committee.

6.02 Architectural Control Committee.

(a) Composition. The Architectural Control Committee will be composed of not more than five (5) persons (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner. The Board will have the right to appoint and remove (with or without cause) all members of the Architectural Control Committee. The Board, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the Architectural Control Committee. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the Architectural Control Committee unless the sub-committee exercising such duties and responsibilities is dissolved by the Board. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with the Board. The Architectural Control Committee will have the right to employ consultants and advisors as it deems necessary or appropriate.

(b) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation will be submitted in accordance with the Design Guidelines or any additional rules adopted by the Architectural Control Committee together with any review fee which is imposed by the Architectural Control Committee in accordance with *Section 6.02(c)* to the Architectural Control Committee at such address as may be designated from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a majority of the members of the Architectural Control Committee. The Architectural Control Committee may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Architectural Control Committee or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Architectural Control Committee may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Architectural Control Committee, in its sole discretion, may require. Site plans must be approved by the Architectural Control Committee prior to the clearing of any Lot, or the construction of any Improvements. The Architectural Control Committee may

refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Architectural Control Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(c) Design Guidelines. The Architectural Control Committee, with the approval of the Board, will have the power, from time to time, to adopt, amend, modify, or supplement the Design Guidelines. Notwithstanding the foregoing, neither the Architectural Control Committee nor the Board is under no obligation to adopt the Design Guidelines. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the Architectural Control Committee will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the Architectural Control Committee and used to defray the administrative expenses incurred by the Architectural Control Committee in performing its duties hereunder; provided, however, that any excess funds held by the Architectural Control Committee will be distributed to the Association at the end of each calendar year. The Architectural Control Committee will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the Architectural Control Committee. The Architectural Control Committee will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, and as approved by the Board, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(d) Actions of the Architectural Control Committee. The vote of a majority of all of the members of the Architectural Control Committee taken at a duly constituted meeting will constitute an act of the Architectural Control Committee.

(e) Failure to Act. Any failure of the Architectural Control Committee to act upon either (1) any plans and specifications submitted to it as provided herein or (2) a request for a variance will not be deemed a consent to such plans and specifications or variance, and the Architectural Control Committee's written approval of all plans and specifications submitted to it and requests for variances will be expressly required.

(f) Variances. The Architectural Control Committee may grant variances from compliance with any of the provisions of the Design Guidelines or this Declaration, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use. All variances must be evidenced in writing and must be signed by at least a majority of the

members of the Architectural Control Committee. Plans and specifications which have been approved by the Architectural Control Committee without conditions or exceptions and which reflect deviations from the Design Guidelines or this Declaration will constitute a writing for the purpose of the foregoing sentence. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the Design Guidelines.

(g) Duration of Approval. The approval of the Architectural Control Committee of any plans and specifications, whether by action or inaction, and any variances granted by the Architectural Control Committee will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such plans and specifications or request for a variance to the Architectural Control Committee, and the Architectural Control Committee will have the authority to re-evaluate such plans and specifications in accordance with this *Section 6.02(g)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(h) No Waiver of Future Approvals. The approval of the Architectural Control Committee to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Architectural Control Committee will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Architectural Control Committee.

(i) Non-Liability of Committee Members. **NEITHER THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER, WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT OR BAD FAITH OF THE ARCHITECTURAL CONTROL COMMITTEE OR ONE OR MORE OF ITS MEMBERS, AS THE CASE MAY BE.**

ARTICLE 7 MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this Article apply to the Declaration and the Bylaws of the Association.

7.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an “**Eligible Mortgage Holder**”), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or occupant which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

7.02 Examination of Books. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

7.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law will relate only to the individual Lots and not to any other portion of the Property.

ARTICLE 8 GENERAL PROVISIONS

8.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Records of Travis County, Texas, and continuing through and including January 1, 2055, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word “change” meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least seventy percent (70%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be

given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Travis County, Texas. Notwithstanding any provision in this *Section 8.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision will expire (twenty one) 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

8.02 Eminent Domain. In the event it becomes necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot.

8.03 Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Travis County, Texas, of an instrument executed and acknowledged by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Members entitled to cast a majority of the number of votes entitled to be cast by members of the Association.

8.04 Enforcement. The Association will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

8.05 Higher Authority. The terms and provisions of this Declaration are subordinate to federal and state law, and local ordinances. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

NOTICE

Users of this Declaration and the Design Guidelines should periodically review statutes and court rulings that may modify or nullify the terms and provisions of those documents or their enforcement, or which may create rights or duties not contemplated therein.

8.06 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision

of this Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

8.07 Conflicts. If there is any conflict between the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted pursuant to the terms of such documents, the provisions of this Declaration will govern.

8.08 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

8.09 Acceptance by Grantees. Each grantee of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

8.10 Damage and Destruction.

(a) Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 8.10(a)*, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Any damage to or destruction of the Common Area will be repaired unless a majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) In the event that it should be determined by the Board that the damage or destruction of the Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

(d) If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 5*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

(f) In the event that any proceeds of insurance policies are paid to Owners, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

8.11 No Partition. Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part will be permitted, nor will any person acquiring any interest in the Property or any part seek any such judicial partition. This *Section 8.11* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

8.12 View Impairment. The Association does not guarantee or represent that any view over and across the Lots, or any open space within the Property will be preserved without impairment. The Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

8.13 Safety and Security. Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Association shall not in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Property, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any

tenants and other occupants of such Owner's Lot that the Association, its Board and committees are not insurers or guarantors of security or safety and that each Person within the Property assumes all risks of personal injury and loss or damage to property, including Lots and any personal property located on a Lot, resulting from acts of third parties.

8.14 Notices. Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

ARTICLE 9 DISPUTE RESOLUTION

9.01 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) The Association and its officers, directors, and committee members, all parties subject to this Declaration (collectively, the "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 9.02* in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" will refer to any claim, grievance or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Declaration, the Design Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board; or
- (ii) the rights, obligations, and duties of any Bound Party under the Declaration, the Design Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board; or
- (iii) the design or construction of improvements within the Property, other than matters of aesthetic judgment under *Article 6*, which will not be subject to review.

The following will not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 9.02*:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner; and
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration; and
- (iii) any suit which does not include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration, the Design Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board; and
- (iv) any suit in which any indispensable party is not a Bound Party; and
- (v) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by *Section 9.02(a)*, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

9.02 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") will give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in *Section 9.02(a)* (or within such

other period as the parties may agree upon), the Claimant will have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Travis County, Texas.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant will be deemed to have waived the Claim, and the Respondent will be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant will thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party will bear its own costs of the mediation, including attorney's fees, and each Party will share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award will, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

9.03 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association will not initiate any judicial or administrative proceeding unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, except that no such approval will be required for actions or proceedings:

(a) initiated to enforce the provisions of the Declaration, the Design Guidelines, the Articles, Bylaws, and rules and regulations adopted by the Board, including collection of assessments and foreclosure of liens; or

(b) initiated to challenge *ad valorem* taxation or condemnation proceedings; or

(c) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(d) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Travis County, Texas.

**CHIMNEYHILL-AUSTIN HOMEOWNERS
ASSOCIATION, a Texas non-profit corporation**

By: _____
Printed Name: _____
Title: President

By: _____
Printed Name: _____
Title: Secretary

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2005, by _____, President of Chimneyhill-Austin Homeowners Association, a Texas non-profit corporation, on behalf of said non-profit corporation.

[seal] _____
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2005, by _____, Secretary of Chimneyhill-Austin Homeowners Association, a Texas non-profit corporation, on behalf of said non-profit corporation.

[seal] _____
Notary Public, State of Texas

**OWNER'S CONSENT AND APPROVAL OF AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

Lot: [INSERT LOT NUMBER]
Block: [INSERT BLOCK NUMBER]
Subdivision: [INSERT SUBDIVISION NAME AND RECORDING INFORMATION]
Address: [INSERT STREET ADDRESS]

The undersigned owner(s) of the real property in Travis County, Texas more particularly described above hereby accept(s) and approve(s) the Amended and Restated Declaration of Covenants, Conditions and Restrictions to which this consent and approval is attached, and hereby agrees that the above-described property will hereafter be bound by all of the terms and provisions thereof.

EXECUTED this ____ day of _____, 20__.

By: _____
Printed Name: _____

By: _____
Printed Name: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 20__ by _____.

[seal]

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 20__ by _____.

[seal]

Notary Public, State of Texas

CONSENT OF MORTGAGEE

Lot: [INSERT LOT NUMBER]
Block: [INSERT BLOCK NUMBER]
Subdivision: [INSERT SUBDIVISION NAME AND RECORDING INFORMATION]
Address: [INSERT STREET ADDRESS]

The undersigned, being the sole owner and holder of deed of trust lien dated _____, recorded as _____, Official Public Records of Travis County, Texas, securing a note of even date therewith, hereby consents to the recording in the Official Public Records of Travis County, Texas of the Amended and Restated Declaration of Covenants, Conditions and Restrictions attached hereto, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall encumber the above-described property which is subject to the undersigned's lien and shall replace in its entirety that certain Declaration of Covenants, Conditions and Restrictions, dated September 2, 1975, recorded in Book 5253, Page 1292, *et. seq.*, Official Public Records of Travis County, Texas, as amended by that certain Amended Declaration of Covenants, Conditions and Restrictions, dated May 6, 1987, recorded in Book 6557, Page 462, *et. seq.*, Official Public Records of Travis County, Texas and that certain Second Amended Declaration of Covenants, Conditions and Restrictions, dated August 19, 1985, recorded in Book 9317, Page 14, *et. seq.*, Official Public Records of Travis County, Texas.

_____, a

By: _____
Printed Name: _____
Title: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2005
by _____ of _____ a
_____, on behalf of said _____.

(seal)

Notary Public Signature