

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, Made on the date hereinafter set forth by Alfred D. Hughes, hereinafter referred to as the "Declarant".

WITNESSETH

WHEREAS, Declarant is the successor in interest to the owner of certain property in The City of Austin, County of Travis, State of Texas, which is more particularly described in that certain Deeds of record in Vol. 4721, Pages 1774 to 1778, Vol. 4757, Page 1486, and Volume 8014, Page 525, all in the Travis County Deed Records and both being incorporated herein by reference for a full description of said property.

WITNESSETH

WHEREAS, Declarant desires to create thereon a residential community with permanent greenbelts and open spaces, and other common facilities for the benefit of the said community; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said greenbelts, open spaces and other common facilities: and to that end, desires to subject the property herein described to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create a Home Owner's Association to which should be delegated and assigned the powers of maintaining, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created:

NOW THEREFORE, Declarant hereby declares that all of the property herein described shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Cat Mountain Homeowner's Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more

Section 2. "Owner" shall mean and refer to the record owner, whether one or more person or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property herein before described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All common areas including green belts, walks, park and hike and bike trails, drives (excluding dwelling sites and private patio, and detached housing areas), as shown on the plat recorded in Volume 76, Page 97, and Book 83, Page 151 B, C, D, Travis County Texas, Plat Records.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivisions map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Alfred D. Hughes, his successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II POWERS IN DECLARANT

Section 1. Changes in Boundaries. The Declarant reserves the right to make such changes in the boundaries of lots not sold to others and on the Common Area as it deems advisable, provided that such changes shall not unreasonably or substantially adversely affect the boundaries or the beneficial use and enjoyment of any lot ten owned by persons other than the Declarant, and provided that Declarant complies with all provisions of any applicable law or ordinance.

Section 2. Adding and Removing Property Owned by Declarant. Declarant reserves, and shall at all times have the right, without the consent or approval of any other person, to add to or remove from the provisions of this Declaration, or to plat or replat the boundaries of dimensions of any lot or other property owned by Declarant and may designate the lots or other property owned by Declarant which shall and shall not be entitled to the use and enjoyment of any of the common areas and other privileges, subject to the obligations of this declaration of covenants, conditions and restrictions.

Section 3. Temporary Administration. until such time as Declarant has sold and conveyed sixty-five percent (65%) of the total area of the properties, as hereinabove defined and described, or the expiration of sixty (60) months after the date of this declaration is filed for record, whichever occurs first, Declarant shall have the right, but shall not have the duty, to act as the sole administrator for the government and administration of the affairs of the association, and during such period of Temporary Administration, Declarant shall have the right to exclusively exercise and perform all of the rights, powers, authority, functions and duties of the association if Declarant shall elect to exercise or perform all or any of the same.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

- (b) the right of the Association to suspend the voting rights and right to the use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) 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 purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of member agreeing
- (d) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said Common Property and the rights of such shall be subordinate to the rights of the homeowners hereunder.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contact purchasers who reside on the property.

Section 3. Owners' Use. Owners' use of their lot and the Common Areas are subject to the provisions of the Articles herein regarding common scheme restrictions, architectural control, party walls, exterior maintenance, and all other articles herein.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to any may not be separated from ownership of any Lot which is subject to assessment

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted into Class A membership when the total votes outstanding in the Class A membership equal to the total votes outstanding in the Class B membership, but such conversion shall not effect the provisions contained in Article II hereof.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot by acceptance of a deed to each lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, and (2) special assessments, for capital improvements, such assessments to be established and collected as hereinafter provided. the monthly and special assessments, together with interest, costs, and reasonable attorney's fees, shall to the full extent permitted by law, be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interests, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. the assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Twenty Seven and 11/100 Dollars (\$27.11) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.

Section 4. Special assessment for Capital Improvements. In addition to the monthly assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that 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, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than 15 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, provided that the monthly rate for the Lots owned by the Declarant shall be fixed at one-fourth (1/4) the assessment rate for the other Lots.

Section 7. Date of Commencement. Monthly Assessments Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area and shall continue for each o the months remaining in the calendar year. The Board of Directors shall fix the amount of the monthly assessment against each Lot at least thirty (30) days before each January 1. Written notice of the monthly assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid on the date when due, shall be immediately delinquent and shall, together with such interest and cost of collection as is hereinafter provided, immediately become a continuing lien on the property which shall, to the full extent permitted by law, bind such property in the hands of the then Owner, his heirs, devisees, personal representative, successors and assigns. If the assessment is not paid within thirty (30) days after the due (delinquent) date, the assessment shall bear interest from the due (delinquent) date at the rate of ten percent (10%) per annum, and the Association may accelerate and declare immediately due and payable the next eleven (11) ensuing monthly assessments and may either (1) bring an action at law against the Owner personally obligated to pay the same or (2) foreclose the lien against the property, or (3) both, and, in either event, there shall be added to the amount of such assessment interest as provided and all costs of collection, including reasonable attorney's fees, not less than the minimum fee scheduled of the State Bar of Texas. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-sue of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof. No extinguishment of the lien shall relieve the delinquent lot Owner from his personal obligation and liability therefore.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (a) All property dedicated and accepted by any local governmental authority and devoted to public use;
- (b) All Common Area as defined in Article I, Section 4 hereof;
- (c) All additional Common Area which may be acquired through annexation.

Section 11. All Assessment Pro Rata. The assessment made against any Lot shall in no case be higher or lower than the assessment against any other Lot, except for (i) any Special Assessment allowed pursuant to Section 4 of Article VI, Section r of Article IX, and Section 5 of Article X, of this Declaration which are properly attributable, in the judgment of the Board of Directors of the Association, to less than all of the Lots and (ii) the adjustments provided in Section 9 above.

Section 12. No diminution of abatement of assessments shall be allowed or claimed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Area or Lots or from any action taken to comply with any law, ordinance or order of a governmental authority.

ARTICLE VI
MAINTENANCE BY AND SERVICES OF THE ASSOCIATION

Section 1. Common Area. The Association shall maintain the lands and improvements of all Common Areas as provided in this Declaration.

Section 2. Easement. The Association is hereby granted an easement of use and right of way on all Lots in order to comply with the terms of this Article and entry on a Lot for such purpose shall not be deemed trespass.

Section 3. Willful or Negligent Acts. In the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, is family, guests or invitees, the Association shall add cost of such maintenance or repairs, as a Special Assessment of such Owner.

Section 4. Merger with other Associations. The Association may merge with any other association which has objectives and purposes similar to the Association upon a vote of two-thirds (2/3) of the Memberships of each class at a meeting duly called for that purpose, written notice of which has been given to all Members not less than ten (10) nor more than fifty (50) days in advance of the meeting.

ARTICLE VII PARTY WALLS

Section 1. General Rules. In the case of some of the residences constructed on the Lots, the Declarant has built or may build residences adjoining each other by a wall located on or near the boundary line of two Lots. The wall or other structure separating such residences shall be and remain a party wall and shall be subject to the following provisions.

Section 2. Destructive Acts. Each Owner of a residence having a party wall covenants to do nothing to disturb the integrity and support provided by the wall or other structure by means of a penetration or otherwise. Any Owner (or person for whom an Owner is responsible) causing any such damage or injury shall be liable for the restoration thereof and for any other costs or expenses incurred in connection therewith.

Section 3. Damage or Injury. If damage or injury is caused by neither of such Owners or persons for whom they are responsible, then the restoration and other costs and expenses shall be borne equally by both such Owners except to the extent insurance proceeds may be available. Further, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 4. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a part wall shall be shared by both owners who make use of the wall in equal proportions.

Section 5. Application. This article shall apply whether the party wall be located exactly on the boundary line between the adjoining Lots or merely in near proximity to the boundary.

Section 6. Dispute. The Arbitration procedure specified in Article IX, Section 2 and Section 3, shall apply to any dispute concerning a party wall.

ARTICLE VIII PERMITTED USES AND RESTRICTIONS

Section 1. General Restriction. The Lots shall be used solely for private single family residential purposes and there shall not be construed or maintained thereon more than one single family residence with a 2-space covered parking facility. No Lot may be used as an apartment house, double house, flat, lodging house, hotel or for any business purpose. Anything contained in this Section to the contrary notwithstanding, an Owner may lease his Lot to a tenant for a term of a minimum of six (6) months.

Section 2. Noxious Uses. The land and improvements located on each Lot shall not be used so as to disturb the neighborhood or occupants of adjoining property, or to constitute a nuisance or to violate any public law, ordinance or regulation from time to time applicable thereto. Nor shall such land and improvements be used for any purpose which will create or emit any objectionable, offensive or noxious odors, dust, gas, fumes or other such material.

Section 3. Use of Common Area. The Common Area shall be used for park, recreational, social, access, utility easement and other purposes directly related to the private single family residential use authorized hereunder, except that Declarant shall have the right to an office for its own exclusive use in any clubhouse until Declarant has sold all of the Lots.

Section 4. Animals. No animals or birds, other than a reasonable number generally recognized house or yard pets, shall be maintained on any Lot or the Common Area and then only if they are kept bred, or raised thereon solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. Not structure for the care, housing, or confinement of any animal or bird shall be maintained so as to be visible from neighborhood property. Upon the written request of any Owner, the Board of Directors of the Association shall conclusively determine, in its sole and absolute discretion whether, for the purpose of this paragraph, a particular animal or bird is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable.

Section 5. Antennas and Signals. No antenna or other device for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot, whether attached to a building or structure or otherwise, without approval of the Board of Directors of the Association, except that the Declarant or the Association may erect a common television antenna. No radio signals, television signals, or another from of electromagnetic radiation shall originate from any Lot which may unreasonable interfere with the reception of television or radio signals on any other Lot.

Section 6. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or bar, and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during construction, repair or remodeling of a dwelling on any such Lot or Common Area shall be moved immediately after the completion of construction.

Section 7. Trailers, Boats and Motor Vehicles. No mobile home, trailer of any kind, truck camper, permanent tent or similar structure, boat or inoperable motor vehicle of any type shall be kept, placed, maintained, constructed or repaired upon any property or street or private driveway in such a manner as will be visible from neighboring property or a public street: provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction any improvement approved by the Environmental Control Committee, and provided further that trailers, truck campers, and boats may be kept and placed in such public parking areas if any, as may be designated by the Board of Directors. In addition, no motor vehicle of any type, whether operable or inoperable, may be constructed, reconstructed, or repaired upon any property or street or private driveway in such a manner as will be visible from neighboring property.

Section 8. Nuisance. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Common Area, and not odors shall be permitted to arise therefrom, so as to render any such property or portion thereof unsanitary, unsightly, offensive, or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property.

Section 9. Repair of Buildings. No building or structure upon any property within any Lot or Common Area shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.