

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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THIS DECLARATION, made on the date hereinafter set forth by Robert L. Myer and wife, Sharon K. Myer, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Austin, Travis County, Texas (the "Property"), which is more particularly described as follows:

Lot 4, Block "A", ONION CREEK SECTION 3, a subdivision in Travis County, Texas, of record in Plat Book 75, Page 381 of the Plat Records of Travis County, Texas; and

Lot 6, Block "A", ONION CREEK SECTION 3, a subdivision in Travis County, Texas, of record in Plat Book 75, Page 381 of the Plat Records of Travis County, Texas.

WHEREAS, Declarant desires that the Property be impressed with certain covenants, restrictions, and easements running with the land, for the benefit of the Owners of the Property, the benefit of the public, and the more appropriate development and benefit of the Property, and desire to set forth such agreement in writing;

NOW, THEREFORE, Declarant hereby declares that the Property 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 Property and be binding on all parties having any right, title or interest in the 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. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Property" shall mean and refer to that certain real property hereinbefore described, together with all improvements and appurtenances thereto.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property.

Section 4. "Declarant" shall mean and refer to Robert L. Myer and wife, Sharon K. Myer.

ARTICLE II
RECIPROCAL EASEMENTS

Reciprocal easements are hereby granted between and among the Lots and any conveyance of any Lot shall expressly reserve easements for the following:

- a) the use and maintenance of the common structural elements of the dwelling structure situated on the Lots, including without limitation the common wall, and common roof and foundation areas of the structure;
- b) the installations and maintenance of public utilities which traverse the Lots, including water, wastewater, electricity, telephone and cable service, as the same are in existence on the date hereof or which are necessary in the future to comply with applicable Codes of the City of Austin; and
- c) the use and maintenance of the common driveway entrance between the Lots, as reasonably necessary for ingress to and egress from the respective Lots by the Owners thereof and their families, tenants, guests and invitees.

ARTICLE III
MAINTENANCE

Each Owner shall have the right, responsibility and obligation to maintain, repair and replace the dwelling structure, improvements, yards and landscaping on that Owner's Lot including, without limitation, the following:

- a) the interior of the dwelling structure, including the appliances, furnishing, fixtures and equipment therein;
- b) all window glass, door panels and trim, and door hardware;
- c) all portions of the plumbing systems and components, the electrical systems and components, the heating and air conditioning systems and components, and the utilities, sewer, power, water, gas, electricity and other common lines running through the dwelling structure;

- d) the foundations, exterior walls, bearing walls and columns, girders, beams, slabs, supports, roofs, attics, ceilings and floors; and
- e) all yards, grass, landscaping and trees, sprinkler systems, driveways and sidewalks, and drainage facilities and easements.

Each Owner shall do no act or omit to do any act that will impair the structural soundness or integrity of any dwelling structure or impair any easement or hereditament.

ARTICLE IV PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall that is built as a part of the original construction of the dwelling structures upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, 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 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the parties may choose to arbitrate the dispute, in which event each party may choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE V
VIOLATIONS

If any person, corporation or entity of any other character shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law, on in equity, against said person or entity violating or attempting to violate such agreement or covenant, or to take any other action authorized by ordinance or utility service regulations of the City of Austin.

ARTICLE VI
GENERAL PROVISIONS

Section 1. Enforcement. Any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by all Owners and approved by the City of Austin, Texas.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this Declaration on this 19th day of July, 1993.