

DECLARATION OF COVENANTS AND CONDITIONS

This Declaration is made this 14th day of June, 1983 by SPICEWOOD ASSOCIATES, a joint venture, hereinafter called "Declarant,"

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in Travis County, Texas, which is more particularly described in the attached Exhibit "A"; and

WHEREAS, Declarant desires to create thereon a community street lighting and other 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 street lighting and other facilities; and to this end, desires to subject the property herein described to the covenants, 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 Homeowners Association to which should be delegated and assigned the powers of maintaining, administering and enforcing the covenants and collecting and disbursing the assessments and charges hereinafter created;

NOW

THEREFORE, Declarant hereby declares that all of the properties described shall be held, sold and conveyed subject to the following 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 properties 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 "SPICEWOOD
AT BULLCREEK HOMEOWNERS ASSOCIATION, INC., its
successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner,
whether one or more persons or entities, or 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. "Owner" and "Member" are
used interchangeably throughout this document.

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

Section 4. "Lot" shall mean and refer to any plot of land
within the Properties which is a part of a recorded
subdivision map or plot.

Section 5. "Declarant" shall mean and refer to SPICEWOOD
ASSOCIATES, a joint venture, its successors and
assigns.

Section 6. "Member" shall mean and refer to every person or
entity who holds membership in the Association.

ARTICLE II 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 and may not be
separated from ownership of any Lot which is subject to
assessment.

Section 2. Every member of the Association shall be entitled
to one vote for each Lot owned.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of
Assessments.

The Declarant, for each Lot owned within the
Properties hereby covenants, and each Owner of any Lot
by acceptance of a deed therefore, whether or not it
shall be so expressed in such deed, is deemed to
covenant and agree to pay the Association the regular
asspsments or charges to be established and collected

as hereinafter provided. The regular 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. The obligation to pay such assessments being part of the purchase price of each Lot when sold to an Owner, an express Vendor's Lien is hereby retained to secure the payment thereof in each such instance and is hereby transferred and assigned to the Association, each such lien to be superior and paramount to any homestead or other exemption provided by law. Each such assessment, together with interest, 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. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them.

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 improvement and maintenance within the Properties.

Section 3. Regular Assessments.

- A. Until January 1, 1985, each Member, other than Declarant, shall be assessed at the rate of Two Dollars (\$2.00) per Lot per month, payable in advance, commencing with the month in which title to the Lot is divested by conveyance from Declarant. Declarant shall be assessed an amount sufficient to cover the difference between the total monthly charges and expenses for the maintenance and operation of the street lighting system within the Properties less the amount of monthly assessments collected from other Members.
- B. After January 1, 1985, all Members, including Declarant, shall be assessed at the uniform monthly rate of Two Dollars (\$2.00) per month, payable in advance, until the amount of such assessment is increased or decreased as hereinafter provided.
- C. The monthly assessment may be increased by the Board of Directors of SPICEWOOD AT BULLCREEK HOMEOWNERS ASSOCIATION, INC. one (1) time during any twelve (12) month period by not more than (10%) above the

assessment of the previous period without a vote of the membership. Any such increase shall prevail as the monthly assessment until further adjusted by the Board of Directors. Any increase in the monthly assessment above ten percent (10%) or more frequently than once during a twelve (12) month period must be approved by an affirmative vote of two-thirds of the Members voting in person or by proxy at a meeting duly called for this purpose. The monthly assessment may be decreased by the Board of Directors at any time.

- D. The Board of Directors is expressly authorized to appoint third parties as collectors of the monthly assessments including, but not limited to, the Northwest Travis County Municipal Utility District No. 2.

Section 4. Notice and Quorum for Any Action Authorized Under Section 3.

Written notice of any meeting called for the purpose of taking any action under Section 3 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) 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 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 sixty (60) days following the preceding meeting.

Section 5. Certification

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 6. Effect of Nonpayment of assessments: Remedies of the Association.

If any assessment is not paid within thirty (30) days after the due date, the assessment shall become delinquent and shall bear interest from the due date at the highest rate permitted by law and the Association may either (1) bring an action at law against the Owner personally obligated to pay the same, or, (2) foreclose any lien against the Property which secures such assessment, 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.

Section 7. Subordination of the Liens to Mortgages

The liens for the assessments mentioned and provided for herein shall be subordinate to the lien of any first mortgage or any other purchase money lien or construction 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 only as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments 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 therefor.

ARTICLE IV POWERS AND AUTHORITY OF THE ASSOCIATION

The Association shall have the powers of a Texas non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association shall have the power and authority at all times as follows:

- (a) To levy and collect assessments as provided in Article III
- (b) To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers and functions to the Manager. The Members of the Association hereby releases 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.
- (c) To retain and pay for legal and accounting services necessary and proper in the operation of the Association, the enforcement of this Declaration, or in the performance of any other duty, right, power or authority of the Association.
- (d) To employ third parties for the purpose of billing and/or collecting assessments.

ARTICLE V INDEMNIFICATION

The Association shall 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 proceedings, 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 the expenses (including attorney's fees, judgements, fines, and amounts paid in settlement) actually and reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest 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 Nob Contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he 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. The Board may purchase and maintain insurance on behalf of any person who is or was 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 hereinunder or otherwise.

ARTICLE VI ANNEXATIONS

Additional land may be annexed to the Association by the Declarant without the consent of Members at any time before January 1, 1985; provided, however, that nothing herein be construed to require Declarant to annex additional lands. Thereafter, any additional land may be annexed to the Association with a two-thirds (2/3rds) consenting vote of the Members voting at a meeting duly called for this purpose, written notice of which shall be sent to all Memebrs not less than thirty (30) days and not more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The presence of Members or of proxies entitled to cast sixty~ (60%) of the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

EXHIBIT 'A'

Spicewood at Bullcreek, Section One, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Volume 7093, Pages 397-412 of the Plat Records of Travis County, Texas; and

Spicewood at Bullcreek, Section Two, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 7093 Pages 397-412, of the Plat Records of Travis County, Texas.