

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AUSTIN WOODS, SECTION 2  
PLAT AND SUBDIVISION BOOK 46, PAGE 55  
JEFFERSON COUNTY, KENTUCKY**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR AUSTIN WOODS SUBDIVISION, SECTION 2** is made on this 20<sup>th</sup> day of  
March 2000, by **SCH/AUSTIN WOODS, LLP** (Developer).

**WITNESSETH:**

**WHEREAS**, Developer is the owner of certain real property in Jefferson County, Kentucky, which is to be developed as a residential subdivision;

**NOW THEREFORE**, Developer does hereby declare that all property described in this instrument, and such additions as may be made pursuant to Article 1, 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 the real property. The easements, restrictions, covenants and conditions shall run with the real property and shall be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to the benefit of each owner.

**ARTICLE I - PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS**

**Section 1. Listing Property.** The real property which is subject to this Declaration is located in Jefferson County, Kentucky, and is more particularly described as follows:

BEING Lots 1 through 9 and 42 through 91 inclusive, as shown on the Plat of Austin Woods, Section 2. of record in Plat and Subdivision Book 46, page 55 in the Office of the Clerk of Jefferson County, Kentucky; and

Being part of the property acquired by Developer by Deed dated September 29 1995 as recorded in Deed Book 6646. Page 382 and part of the property acquired by Developer by Deed dated August 27, 1996, as recorded in Deed Book 6780, Page 239, Office of the Clerk aforesaid.

**Section 2. Additions to Foisting Property.** Additional land may become subject to this declaration in the following manner:

(a) Developer intends to make this section a part of a larger community to be known generally as Austin Woods, which will generally consist of Section 2 and subsequent additional sections, plats of which will be recorded in the office of the Jefferson County Clerk. Developer reserves the right to create cross easements and to restrict all of the properties according to the terms of this Declaration. The common area initially covered by this Declaration shall inure to the benefit of the owners of any new Lots which may

become subject to this Declaration and the common area allocable to the owners of any new Lots shall inure to the benefit of the owners of Lots recorded earlier, each to enjoy the common area of the other and to have and to hold the same as if each new Lot had been developed and subjected to this Declaration simultaneously.

(b) All additions shall be made by filing with the Office of the Clerk of Jefferson County, Kentucky, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. The Supplementary Declaration may contain additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

(c) Other additional residential property and common area which are not presently a part of the general plan of development of Austin Woods may be annexed to Austin Woods by Developer.

## **ARTICLE II - USE RESTRICTIONS**

**Section 1. Primary Use Restrictions.** No Lot shall be used except for private single family residential purposes. No structure shall be erected, placed or altered or permitted to remain on any Lot except one (1) single family dwelling designed for the occupancy of one (1) family (including any domestic servants living on the premises), not to exceed two and one-half stories in height with attached, semi-attached or detached garage, for not more than three (3) cars, that is for the sole use of the owner and occupants of the Lot.

**Section 2. Nuisances.** No noxious or offensive trade or activity shall be conducted on any Lot, nor shall anything be done which may be or become any annoyance or nuisance to the neighborhood.

**Section 3. Use of other Structures and Vehicles.**

(a) No structure of a temporary character shall be permitted on any Lot except temporary tool sheds or field offices used by a builder or Developer, which shall be removed when construction or redevelopment is completed.

(b) No outbuilding, trailer, basement, tent, shack, garage, bam or structure other than the main residence erected on a Lot shall at any time be used as a residence, temporarily or permanently.

(c) No trailer, truck (other than pickup truck), motorcycle, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any Lot at any time unless housed in a garage or basement. No automobile or pickup truck which is inoperable shall be habitually or repeatedly parked or kept on any Lot (except in a garage) or on any street in the subdivision. No trailer, boat, truck or other vehicle except an automobile

or a pickup truck, shall be parked on any street in the subdivision for a period in excess of twenty-four (24) hours in any one calendar year.

(d) No automobile or pickup truck shall be continuously or habitually parked on any street or public right-of-way in Austin Woods.

**Section 4. Animals.** No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept, provided they are not kept, bred or maintained for any commercial or breeding purposes.

**Sections 5. Clothes Lines; Fences or Walls; Swimming Pools; Antennae and Receivers or Transmitters; Mail and Newspaper Boxes.**

(a) No outside clothes lines shall be erected or placed on any Lot

(b) No fence or wall of any nature may be extended toward the front or street side property line beyond the rear or side wall of the residence^ Fences can be of boards pickets or chain link wire. No fence or wall shall be over six (6) feet high unless design and placement are approved in writing by Developer, which approval shall be within the sole and absolute discretion of the Developer and may be arbitrarily and unreasonable withheld. Developer reserves the right to place a fence on the outer perimeter of the subdivision or to replace any existing fences. Fences placed by Developer, will be the responsibility of the Homeowners Association for maintenance and repairs

(c) No above-ground swimming pools shall be erected or placed on any Lot from the date hereof unless its design and placement are approved in writing by Developer, which approval shall be within the sole and absolute discretion of the Developer and may be arbitrarily and unreasonable withheld.

(d) No antennae (except for standard small television antennae) or microwave and other receivers and transmitters (including those currently called satellite dishes) shall be erected or placed on any Lot unless design and placement are approved in writing by Developer, which approval shall be within the sole and absolute discretion of the Developer and may be arbitrarily and unreasonable withheld.

(e) All mail box and newspaper holders placed on any Lot shall be of a design approved by Developer. Replacement mailboxes and newspaper boxes shall conform with the originals.

(f) All houses shall have an address stone of a design approved by Developer

**Section 6. Duty to Maintain Lot: Erosion and Sediment Control.**

(a) From and after the date of purchase of a Lot until construction of a single family residence is started. Developer reserves the right to perform all maintenance on the Lot, including but not limited to mowing, at the owner's expense.

(b) From and after the date construction of a single family residence on a Lot is started, it shall be the duty of each Lot owner to keep the grass on the Lot properly cut to keep the Lot free from weeds and trash, and to keep it otherwise neat and active in appearance. Should any owner fail to do so, then Developer action as it deems appropriate including mowing, in order to make the Lot neat and attractive, at the owners expense.

(c) Each Lot owner shall be responsible for making certain that any builder who performs any construction on such owner's Lot adheres to and regularly notifies suppliers and subcontractors of their obligation by virtue of this Declaration to adhere to the "Builder Erosion and Sediment

Control Site Standards and Guidelines", if any, then in effect, of the Home Builders Association of Louisville which, as of the date of this Declaration, are as follows:

(i) Leave as much vegetation intact as possible on the Lot during construction;

(ii) Install silt fences or straw bales embedded four (4) inches into grade on the Lot at beginning of construction as needed to prevent sediment from leaving Lot in any direction, and if appropriate, divert upstream runoff from the Lot, and in all cases comply with the subdivision drainage plans;

(iii) Install and maintain gravel drive with extra length for a wash off area for all deliveries and installations coincident with beginning excavation on the job site;

(iv) Discourage trucks from entering onto the Lot other than on the gravel drive;

(v) When conditions warrant, pump or convey concrete or use plasticizer or other methods to avoid mud on the streets;

(vi) Backfill and rough grade the Lots as soon as possible in the construction process and establish final grade as soon as practical; and,

(vii) Shovel and sweep the streets as needed in front of Lot to prevent any buildup of mud or dirt in curb or on the street.

(d) Upon owner's failure to comply with the provisions of this Section 6 of this Declaration, Developer, its successors, assigns, officers, agents, employees and contractors, may, without notice, enter upon the Lot and take such actions as they in the., sole discretion deem necessary or appropriate in their discretion to cause such compliance Such Lot owner, shall immediately upon demand, reimburse Developer or other performing party for all costs and expenses incurred in order to comply herewith, together with interest at a the rate of twelve percent (12%) per annum or such lower rate as may constitute the maximum then permitted by applicable law, and such amounts shall, together with all interest accrued and unpaid thereon, and all costs of collection incurred therewith including, without limitation, court costs and reasonable attorneys fees, and such costs expenses and interest shall constitute a lien on that Lot and the improvements thereon to secure the repayment of such amounts. Such lien shall be prior and superior to all other liens and claims against such Lot to the fullest extent permitted by law and it may be enforced by foreclosure against that Lot and the improvements thereon, but such lien shall be subordinate to any first mortgage thereon.

#### **Section 7. Duty of Repair and Rebuild.**

(a) Each owner of a Lot shall, at his sole cost and expense, repair his residence, keeping the same in condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

(b) If all or any protection of a residence is damaged or destroyed by tire or other casualty, then owner shall, with all due diligence, promptly repair or rebuild such residence in a manner which will substantially restore it to its apparent condition immediately prior to the casualty, or completely remove said structure, filling in any basement areas and planting the Lot in grass, within ninety (90) days of the date of said casualty.

**Section 8. Business: Home Occupations.** No trade or business of any kind (and no practice of medicine, dentistry, chiropractic, osteopathy and other like endeavors) shall be conducted in any building or on any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Notwithstanding the provisions hereof or of Section 1 of this

Article II, it is further understood that a new house may be used by the builder thereof as a model home for display or for the builder's own office provided said use terminates within eighteen (18) months from completion of the house or at the expiration of such additional time as may be expressly agreed to in writing by Developer. The Developer may use any residence as an office for the period of duration for the development of subdivision and for such period thereafter as may be reasonably necessary or Developer may place an office trailer on one (1) or more of said Lots on said property for use as a business and sales office during the period of development and for such period thereafter as may be necessary.

**Section 9. Signs.** No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or other structure on any Lot, except one (1) sign for advertising the sale or rent thereof, which shall not be greater in area than nine (9) square feet; provided, however, Developer shall have the right to:

- (i) Erect larger signs when advertising the subdivision;
- and,
- (ii) Place Lot number signs on Lots

**Section 10. Disposal of Trash.** No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Rubbish, trash, garbage, building scrap or

other waste shall not be kept on any Lot except in sanitary containers. There shall be no burying of building scraps.

**Section 11. Utility Services.**

(a) Each property owner's electric utility service shall be underground throughout the length of the service line from Louisville Gas & Electric Company (LG&E) point of delivery to customer's building; and title to the service lines shall remain in and the cost of installation and maintenance thereof shall be borne by the respective Lot owner upon which said service line is located.

Appropriate easements are hereby dedicated and reserved to each property owner, together with the right of ingress and egress over abutting Lots or properties to install, operate and maintain electric service lines to LG&E's termination points. Electric service lines, as installed, shall determine the exact location of said easements.

The utility and telephone easements shown on the plat shall be maintained and preserved in their present condition and no encroachment therein and no change in the grade or elevation thereof shall be made by any person or Lot owner without the express written consent of LG&E and South Central Bell Telephone Company and their respective successors and assigns.

(b) Easements for overhead transmission and distribution feeder lines, poles and equipment appropriate in connection therewith are reserved over, across and under all spaces (including open and drainage space area) outlined by dash lines and designated for underground and overhead facilities. Above-ground electric transformers and pedestals may be installed at appropriate points in any electric easement.

In consideration of bringing service to the property shown on this plat, LG&E is granted the right to make further extensions of its lines from all overhead and underground distribution lines.

(c) The utility and telephone easements hereby dedicated and reserved to each Lot owner, as shown on the plat, shall include easement for

the installation, operation and maintenance of cable television service to the Lot owners, including the overhead and/or underground installation and service of coaxial cables, cable drop wires, converters, home terminal units and other necessary or appropriate equipment, as well as easements for the installation, operation and maintenance of future communications, telecommunication and energy transmission mediums.

(d) The sewer and drainage easements hereby dedicated and reserved to each property owner, as shown on the plat. shall include easement for the installation, operation and maintenance of the sewer and drainage system. No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewage system. Connections on each Lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.

Drainage of each Lot shall conform to the general drainage plans of Developer for the subdivision as approved by the Louisville and Jefferson County Metropolitan Sewer District (MSD) and no encroachment therein and no change in the grade or elevation thereof shall be made by any person or Lot owner without the express written consent of MSD From and after the date construction of a single family residence is started on any lot which has a drainage easement and/or abuts on a drainage easement, it shall be the duty of the Lot owner to maintain and preserve the drainage easement and keep it in good repair, so that it functions properly. If drainage is blocked or altered the Lot owner shall correct the problem at his expense or Developer may correct problem at the Lot owner's expense.

**Section 12. Obligation to Construct or Reconvey.** Any improvements begun on any Lot shall be completed no longer than six (6) months from date of beginning. Every Lot owner shall, within twelve (12) months from the date of contract for a Lot without a dwelling thereon, commence in good faith the construction of a single family dwelling approved according to Article III, Section 1, upon each Lot conveyed. If Construction does not commence within the specified period of time, Developer may elect to repurchase any and all Lots on which construction has not commenced for one hundred percent (100%) of the purchase price, without interest, of said Lot or Lots hereunder sold by Developer, in which event the Lot owner shall immediately reconvey and deliver possession of said Lot or Lots to Developer by deed of special warranty. If Developer has not exercised this right to repurchase within three (3) years from the date such right vests in Developer, the Developer's right to repurchase shall cease with respect to that particular Lot.

### **ARTICLE III - ARCHITECTURAL CONTROL**

#### **Section 1. Approval of Construction Plans,**

(a) No structure may be erected, placed or altered on any Lot until the construction plans and specifications shall have been approved in writing by the Developer. The construction plans and specifications shall show the following:

- (i) The locations of improvements on the Lot;
- (ii) The type of exterior material;
- (iii) The location and size of the driveway (it shall be concrete),
- (iv) The erosion and sediment control precautions to be used during construction of all improvements on the Lot. and,

(v) The elevation of the lowest grade immediately adjacent to the proposed foundation and the proposed elevation of the top of the first floor.

(b) References to "Developer" shall include any entity, person or association to whom Developer may assign the right of approval. References to "Structure" in this paragraph shall include any building (including a garage), fence, wall, antennae (except for standard small television antennae) and microwave and other receivers and transmitters (including those currently called "satellite dishes").

**Section 2. Building Materials: Roof: Builder.**

(a) The exterior building material of all structures, including garages shall extend to within two (2) feet of ground level and shall be either brick stone brick veneer or stone veneer, vinyl or metal siding or a combination of same. The exterior building material of the front elevation of all structures, including garages, shall be either brick, stone, brick veneer or stone veneer or a combination of same. Developer recognizes that the appearance of other exterior building materials (such as dryvit) may be attractive and reserves the right to approve in writing the use of other exterior building

(b) The type of roof shingle on all structures shall be either the GAF Weathered Gray 20 Year Sentinel or Wood Line, or the Tamco Weathered Gray. The roof pitch of all structures shall not be less than a plane of six (6) inches vertical for each plane of twelve (12) inches horizontal.

**Section 3. Minimum Floor Areas.** Any residential structure erected or placed

on any Lot in Section 2, exclusive of basements, open porches and garages, shall contain not less than:

(a) Eleven hundred (1,100) square feet for a one story dwelling,

(b) Thirteen hundred (1,300) square feet for a one and one-half story dwelling with a minimum of eight hundred (800) square feet on the ground level floor;

(c) Fourteen hundred (1,400) square feet for a two story dwelling, with a minimum of six hundred and fifty (650) square feet on the ground level floor.

**Section 4 Setbacks.** No structure shall be located on any Lot nearer to the front Lot line or the side street line than the minimum building setback lines shown on the recorded plat, except that windows and steps may project into said areas, and open porches may project into said areas not more than six (6) feet if in compliance with governmental requirements.

**Section 5. Garages, Carports: Storage Sheds.**

(a) A garage is not required on any Lot. Garages may be attached or semi-attached to the house. If detached from the house the garage must be erected on the rear of the Lot but not on any public utility easement or landscape buffer as shown on the plat of said subdivision. Garages shall for not more than three (3) cars and shall be for the sole use of the owner and occupants of the Lot. All plans for a garage are subject to prior approval by Developer as provided in Section 1 of this Article III.

(b) No carports shall be built on any Lot.

(c) No detached storage sheds shall be built or placed on any Lot. All storage sheds shall be attached to the rear elevation of the residence

or garage if the garage is attached or semi-attached to the residence. A storage shed shall be installed at the time of construction for all residential structures which do not have a garage on the Lot. The floor area of all storage sheds shall have a minimum of twenty-four (24) square feet.

**Section 6. Landscaping: Sidewalks: Driveways: Trees.**

(a) At the time a residence is constructed upon any Lot, the owner of that Lot shall cause the front and side yards of the Lot to be graded and sodded, and the rear yard to be graded and seeded or sodded, such grading to be in accordance with the grade and drainage plan for the subdivision as specified by the Developer.

(b) At the time a residence is constructed upon any Lot, the owner of that Lot shall install trees, shrubs and other plantings in the front yard, including a minimum of one tree at least 1-1/2 inches in diameter, the plantings having a current fair market value of not less than five hundred dollars (\$500), excluding planting charges.

(c) At the time a residence is constructed upon any Lot, the owner of that Lot shall cause a sidewalk to be constructed, except on courts containing less than 20 Lots and on Lots fronting Brown Austin Road, so as to provide access to adjoining sidewalks and provide a continuous walkway throughout the entire subdivision. Otherwise, each owner shall cause a sidewalk to be constructed on their Lot within one year from the date construction of a residence has begun on eighty percent (80%) of the Lots in Austin Woods, whether or not the Lot owner has begun construction on their Lot.

(d) Sidewalks are to be built in accordance with the regulations of Jefferson County. They shall be constructed of Portland cement concrete four (4) feet wide and they shall be installed to provide proper and adequate drainage. The rear edge of the sidewalks are to be on the front boundary line of each Lot. On corner Lots, sidewalks shall be built parallel to adjoining roads.

(e) At the time a residence is constructed upon any Lot, the owner of that Lot shall cause a driveway to be constructed of Portland cement concrete, extending from the edge of the curb to either the garage or the rear wall of the house. Driveways shall be built in accordance with the regulations of Jefferson County to the following specifications:

(i) Eight (8) foot minimum width; and  
(ii) Flared in straight lines beginning at the front edge of the sidewalk to eleven (11) foot minimum width at intersection with the concrete curb.

(f) Every effort shall be made to preserve trees with a diameter larger than four (4) inches at the ground during construction of the improvements to the Lot, and afterwards.

(g) The curbs and gutters of each Lot shall conform to the general curb and gutter plans of Developer for the subdivisions as approved by the Louisville and Jefferson County Metropolitan Sewer District (MSD) and no change in the curbs and gutters shall be made by any person or Lot owner without the express written consent of MSD. From and after the date construction of a single family residence is started on any Lot it shall be the duty of the Lot owner to maintain and preserve the curbs and gutters which abut the Lot, keep them in good repair, and ensure that no damage is done to them so that they function properly. If the curbs and gutters are damaged in any way, the

owner of that Lot shall repair the damage at his expense or Developer may correct problem at the Lot owner's expense.

(h) Upon owner's failure to comply with the provisions of this Section 6 of this Declaration, Developer, its successors, assigns, officers,

agents, employees and contractors, may, without notice, enter upon the Lot and take such actions as they in their sole discretion deem necessary or appropriate in their discretion to cause such compliance. Such Lot owner, shall immediately upon demand, reimburse Developer or other performing party for all costs and expenses incurred in order to comply herewith, together with interest at a the rate of twelve percent (12%) per annum or such lower rate as may constitute the maximum then permitted by applicable law, and such amounts shall, together with all interest accrued and unpaid thereon, and all costs of collection incurred therewith, including, without limitation, court costs and reasonable attorneys' fees, and such costs, expenses and interest shall constitute a lien on that Lot and the improvements thereon to secure the repayment of such amounts. Such lien shall be prior and superior to all other liens and claims against such Lot to the fullest extent permitted by law and it may be enforced by foreclosure against that Lot and the improvements thereon, but such lien shall be subordinate to any first mortgage thereon.

**Section 7. Developer's Assigns.** Any responsibility hereunder assumed by the Developer shall become the sole obligation of any successor or assign to the Developer, provided the Developer files written notice of the assignment and indication of the new Developer, person or entity responsible for the obligations imposed upon the initial Developer.

#### **ARTICLE IV - HOMEOWNERS ASSOCIATION; ASSESSMENTS**

##### **Section 1. Articles of Incorporation.**

(a) The Articles of Incorporation of the AUSTIN WOODS HOMEOWNERS ASSOCIATION, INC. (Homeowners Association) which may be amended from time to time, dated Nov. 8, 1999. are recorded in Corporation Book 549, Page 913, in the office of the Clerk of Jefferson County, Kentucky. Every owner of a Lot in Section 2 of the Austin Woods Subdivision (and such other sections which Developer shall in the future by deed restrictions so provided) shall be a member of the Association, and by acceptance of a deed for any Lot, agrees to accept membership in and does thereby become a member of, the Association. Such owner and member shall abide by the Association's bylaws, rules and regulations, shall pay the assessments provided for when due, and shall comply with decisions of the Association's Board of Directors

(b) The objects and purposes of the Association shall be set forth in its Articles of Incorporation and shall be to serve the common good and general welfare of its members, and shall include, unless such obligations are assumed by any municipal or governmental agency having jurisdiction therefore, the operation, management, maintenance and repair of the streets, medians, Lots that are not building sites but are common areas, crosswalks, gatehouses, irrigation systems, storm drains, retention and other basins, streams, fences, street lights and entrances as may be shown on the aforesaid plat, and acceptance of Lots that are not building sites, but are common areas, for purposes of operation, management, maintenance and repair.

The objects and purposes of the Association shall include the absolute and mandatory responsibility to maintain the Lots on said plat designed as "Not A Building Site" in such fashion as not to create a potential or actual health or safety hazard. Failure of the Association to maintain the Lots on said plat designed as "Not A Building Site" shall authorize any governmental authority concerned with maintenance of such areas to perform the required maintenance and have a claim upon said property for the reasonable

expenses thereof, together with the right of such authority to enforce the restrictions herein relating to maintenance and repair obligations.

No common areas, open spaces or islands in the right-of-way shall be dedicated to a unit of local government without the acceptance of the unit of local government involved and the approval of the Louisville and Jefferson County Planning Commission. The Homeowners Association can not amend this restriction without approval from the Louisville and Jefferson County Planning Commission.

(c) Any assessments levied by the Association shall be used only for purposes generally benefiting the Association, and shall constitute a lien upon the Lot and improvements against which each such assessment is made. This lien shall be subordinate to the lien of any first mortgage or vendor's lien on the Lot and shall be enforceable against the real estate by foreclosure or otherwise.

(d) The initial assessment hereunder shall be one hundred dollars (\$ 100) per Lot due upon purchase of the Lot by contract or deed and payable date of deed. The annual assessment hereunder shall be at a rate not higher than one hundred dollars (\$100) per annum per Lot beginning January 1, 2000. After January 1, 2001, the Board of Directors of the Association may from time to time increase or decrease the assessment and the Board of Directors shall determine the due date of each assessment.

**Section 2. Administration of Assessments.** Until Class B membership cease and is converted to Class A membership pursuant to Section 12 of this Article IV, Developer or its nominee shall administer the assessments and receipts therefrom, which may only be used for purposes generally benefiting Austin Woods, as permitted in this Declaration.

**Section 3. Classes of Membership.** The Homeowners Association shall have two classes of voting membership:

(a) Class A. The Class A members shall be all Lot owners, with the exception of Developer. Class A members shall be entitled to one (1) vote for each Lot owned.

(b) Class B. The Class B member shall be Developer. Developer shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When the Developer, in its sole discretion, shall determine;

(ii) When the Developer, in its sole discretion, shall transfer control to the Class A members;

(iii) When ninety percent (90%) of the Lots which may be developed on the property described in Article I have been sold by Developer; or,

(iv) Transfer of control by Developer no later than twenty (20) years from the date of the sale of the first Lot to a Lot owner other than Developer.

**Section 4. Homeowners Association's Right of Entry.** The Authorized representative of the Homeowners Association or the Board shall be entitled to reasonable access to the individual Lots as may be required in connection with the preservation of property on an individual Lot or in the event of any emergency or in connection with the maintenance of repairs or replacements within the common area, or any equipment, facilities or fixtures affecting or serving other Lots or the common area or to make any alteration required by any

governmental authority, including the right to enter upon or through any Lot for access to any common area for the maintenance and improvements thereof. No Lot owner shall damage or change in any way any common area or the landscaping thereon.

**Section 5. 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. The common area means and refers to all non- residential areas which are shown on any recorded final subdivision plat within any part of Austin Woods made subject to the Homeowners Association.

The Homeowners Association shall have the right to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Homeowners Association. Developer may dedicate utility or service easements at its sole desecration.

Anything to the contrary herein notwithstanding, the Homeowners Association (the Lot owners) shall be responsible for the maintenance of all open space and common areas, so long as the Austin Woods subdivision is used as a residential subdivision or until properly dedicated to a unit of local government. This provision shall not be amended

#### **ARTICLE V - GENERAL PROVISIONS**

**Section 1. Enforcement.** Enforcement of these restrictions shall be by proceeding of law or in equity, brought by any owner or by Developer against any party violating or attempting to violate any covenant or restrictions, either to restrain violation, to direct restoration and/or to recover damages. Failure of any owner or Developer to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions,

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

**Section 3. Restrictions Run With Land.** Unless canceled, altered or amended under the provisions of these Articles I and IV, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of fifteen (15) years from the date this document is recorded, after which time they shall be extended automatically for successive periods often (10) years. These restrictions may be canceled, altered or amended at any time by the affirmative actions of the owners of a majority of the Lots subject to these restrictions.

**Section 4. Other Property.** These restrictions do not extend to, nor apply to any other property that is owned or may be acquired by SCH/Austin Woods, LLP, a Kentucky Limited Liability Partnership, which other property may be and remain unrestricted.

**Sections. Amendments to Articles and Bylaws.** Nothing in this declaration shall limit the right of the Homeowners Association to amend, from time to time, its Articles of Incorporation and Bylaws.

**Section 6. Non-Liability of the Directors and Officers.** Neither Developer nor the directors and officers of the Homeowners Association shall be personally liable to the owners of the Lots for any mistake or judgment or for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The owners shall indemnify and hold harmless each of the directors and officers and their respective heirs, executors, administrators, successors and assigns in accordance with the Bylaws of the Homeowners Association.

**Section 7. Board's Determination Binding.** In the event of any dispute or disagreement between any owners relating to the property subject to this Declaration, or any questions of interpretation or application of the provisions of this Declaration or the Bylaws, the determination thereof by the Board shall be final and binding on each and all such owners.

