

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
MESA TRAILS, A PLANNED UNIT DEVELOPMENT**

This is a total revision and replacement of the current Declaration of Covenants, Conditions, and Restrictions for Mesa Trails, as recorded in Volume 6928, Page 1580, Real Property Records of Travis County, Texas, as amended. All of the above documents are revised and totally replaced by this "Declaration of Covenants, Conditions and Restrictions for Mesa Trails-Revised 1993." The project consists of 47 lots and units thereon.

The terms, covenants, conditions, easements, restrictions, uses, limitations, and obligations in this Declaration shall be deemed to run with the land and shall be binding upon any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, and assigns.

**ARTICLE I  
DEFINITIONS**

1.01 "Association" shall mean and refer to the Mesa Trails Homeowner's Association, Inc., a Texas non-profit corporation, its successors and assigns.

1.02 "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, provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an owner.

1.03 "Property" shall mean and refer to that certain real property herein described, including Lots and Common Area, described and encompassed by the Mesa Trails Subdivision, and any resubdivisions thereof, according to the plat thereof recorded in Platbook 80, Pages 35, 36, as recorded in the Plat Records of Travis County, Texas, and such additions thereto as may be brought within the jurisdiction of the Association.

1.04 "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners, as depicted on the plat for Mesa Trails Subdivision and recorded with the County Clerk of Travis County, Texas, including the private streets, greenbelts, walkways, recreational areas, common drives, off-street parking areas, parks, trails, swimming pool, sprinkler systems, lighting fixtures located thereon, entrance structures, maintenance structures, and all fixtures, equipment and improvements located thereon including mailboxes, and perimeter fences around the whole property. Such Common Area specifically to include Lots 48 and 49, Mesa Trails as designated on the plat.

1.05 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Mesa Trails-Revised 1993, and any future amendments thereto.

1.06 "Lot" shall mean and refer to all Lots in the subdivision being Lot 1 thru 47, inclusive, and excluding Lots 48 and 49 which are part of the Common Area.

1.07 "Declarant" shall mean and refer to Mesa Trails, Inc., its successors and assigns.

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

1.09 "Bylaws" shall mean the Bylaws of the Association as amended from time to time.

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1.10 "Mortgage" shall mean a security interest, mortgage,

1.11 "Mortgagee" shall mean the person who holds a Mortgage as security for repayment of a debt and shall include, without limiting the generality of the foregoing, the Federal Home Loan Mortgage Corporation or other similar government agency, and any bank, savings and loan association or similar financial institution.

1.12 "Person" shall mean a natural person, firm, corporation, partnership, trust or other legal entity.

## ARTICLE 2 POWERS IN DECLARANT

2.01 *Declarant's Rights* Declarant has sold all its lots and no longer has any special rights under this Declaration.

## ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

3.01 *Membership in Association* Every record 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. The Association members shall be all Owners 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, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one vote be cast, in person or by proxy, with respect to any Lot.

## ARTICLE 4 OWNERS RIGHTS IN THE COMMON AREA

4.01 *Owner's Easements of Enjoyment.* Every Owner shall have a right and easement of enjoyment in and to the Common Area together with a right and easement of passage in and across any portion of the Common Area depicted as a private street on the plat which shall be appurtenant to and shall pass with the title to every Lot. Owner's use of the Common Area shall be subject to the following provisions:

4.02 *Delegation of Use.* Any Owner may delegate, in accordance with the Homeowner's Association Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

4.03 *Right of Enjoyment.* An Owner's right of enjoyment of the Common Area shall be subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any Common Area facility situated upon the Common Area and to limit the number of guests of members;

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by a member 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, sell 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 members. No such dedication or transfer

shall be effective unless an instrument signed by fifty-one percent (51%) of members entitled to vote agreeing to such dedication, sale or transfer has been recorded;

(d) the right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities, constructing new facilities thereon or performing maintenance obligations and providing the services set forth herein, and in aid thereof to mortgage said Common Area, and the rights of such mortgagee in said Common Area shall be subordinate to the rights of the homeowners hereunder;

(e) the right of the Board of Directors to adopt and enforce rules and regulations regarding the use of the Common Area, including but not limited to restrictions of the number of guests who may use the Common Area and the parts of the Common Area such guests may use;

(f) the right of the Association to contract for services with third parties on such terms as the Association may determine to be in the best interests of the Association.

## ARTICLE 5 COVENANT FOR MAINTENANCE, ASSESSMENTS, UTILITIES AND INSURANCE

5.01 *Creation of the Lien and Personal Obligation of Assessments*; The Declarant and each Owner of any Lot by acceptance of a deed therefor, 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, (2) special assessments for capital improvements and deficits (3) assessments placed on individual owner for repair and replacement of owner's property (4) for a master policy or fire and extended coverage insurance on dwellings if such policy is adopted by Association, (See Rev 8.03 and 5.14 (B)); and (5) sums due by the owner to the Association. All assessments are to be established and collected as hereinafter provided. All assessments, together with interest, costs, and reasonable attorneys fees, shall, to the full extent permitted by law, be a charge on the land and 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. Such lien shall be superior to any homestead or other exemption provided by law. Each such assessment, together with interest, costs, and reasonable attorneys 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 successors in title unless expressly assumed by them, but, nevertheless, the lien as to any and all such assessments shall continue to be a lien upon any such Lot as provided above.

5.02 *Purpose of Monthly Assessments*. The monthly assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, pleasure, recreation and other nonprofitable purposes of the members of the Association. Included in these assessments can be the costs incurred for;

(1) Maintenance and repair of the common area and its improvements, including landscaping

(2) Maintenance of grass, shrubs, sprinkler system, and minor tree trimming of the portion of Lots from the outer walls of any courtyards or fences to the streets or Common Area. (or from the exterior walls of buildings if there are no courtyards or fences)

(3) Insurance as required in Article 8.03 and 5.13

(4) Creating and maintaining a Reserve Fund for replacement of the facilities and improvements of the Common Area

(5) Normal business activities related to the conduct of the Association's business including management, attorney and auditing fees.

(6) Other purposes consistent with this declaration which apply equally to all owners.

5.03 *Levy and Due Dates of Monthly Assessments* The Board of Directors will set the amount of the monthly assessments against the Owners every year prior to the annual meeting and notify the Owners thirty (30) days prior to the start of the new fiscal year. The Board may increase or decrease the amount established from the previous year providing that any increase does not exceed that amount by ten percent (10%). Failure of the Board of Directors to fix the following year's monthly assessment as provided herein shall not be deemed a waiver or a release of any owner from the obligation to pay the monthly assessments fixed for the preceding year, and shall continue until a new assessment is fixed. An increase in monthly assessments over ten percent (10%) of the previous year's assessment amount can only be made by a majority vote of the Owners. All monthly assessments will be equal for all Lots, and be due the first of each month.

5.04 *Special Assessments 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 any deficit created by an excess of expenditures of the Association over receipts for the previous year, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area including fixtures and personal property related thereto as well as construction, reconstruction, repair or replacement of the private streets or parking areas, PROVIDED that any such assessment shall have the assent of a majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, or at the annual meeting. (Refer to 9.03 (1) (3).

5.05 *Levy of Special Assessments for Capital Improvement.* Any contemplated action as authorized by Section 5.04 shall be authorized by a majority (51%) vote of the members represented in person or by proxy at the annual meeting or at a meeting especially called for this purpose. Written notice of a special meeting for this purpose will be sent to all members not less than seven (7) days nor more than sixty (60) days in advance of such a meeting.

5.06 *Assessment for Insurance on Dwellings.* If the Association elects to have a group or master policy for fire and extended coverage insurance covering dwellings on the property, each owner who participates in this policy will be assessed an amount set by the insurance carrier for the owners dwelling. The method of collecting this assessment will be at the discretion of the Board of Directors. Those not participating in a master policy must comply with provisions listed in 5.13 (B).

5.07 *Special Assessments Against Individual Owners.* The Board of Directors may by majority vote elect to assess any Owner for all costs incurred by the Association by actions taken for compliance of Articles 5.16, 8.02, and 9.04 or any other costs incurred by the Association due to an Owners action or failure to act.

5.08 *Nonpayment of Assessments.* The Association shall have a lien on an Owner's Lot, including any rentals and insurance proceeds relating to the Unit, to secure payment of all monies owned or required to be deposited by the Owner to the Association. The lien

shall automatically attach to the unit on the due date of the monies owned and no notice of lien shall be necessary. The Association's lien may be foreclosed via court proceedings or via nonjudicial foreclosure procedures as if it were a nonjudicial foreclosure of a mortgage lien. The Association shall have power of sale and all other powers necessary for nonjudicial foreclosure. The Board shall have the power to appoint a trustee for purposes of foreclosing the lien nonjudicially. All funds realized from any foreclosure sale shall be applied first to the cost and expense of foreclosure, including but not limited to attorneys fees. The Owner shall have the right to judicially enjoin such foreclosure on the same grounds as in any other nonjudicial foreclosure in this state. Up to the time of actual foreclosure, the Owner shall have the right to pay all sums due and owing to the Association (including attorneys fees in connection with the proposed foreclosure), thereby avoiding foreclosure.

If an assessment is not paid within thirty days after the due date, the assessment will become delinquent and may bear interest from the delinquent date at the highest lawful rate per annum, and the Association may accelerate and declare immediately due and payable the next 11 ensuing monthly assessments and may add administrative charges for the collection of overdue assessments. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

5.09 *Subordination of Lien to Mortgagees.* The Association lien provided for herein shall be subordinate to the lien of any first mortgage created to secure payment of any part of the purchase price for a Lot or any loan to an Owner or to Declarant or any loan made for the improvement of any Lot. Sale or transfer of any Lot shall not 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 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 thereon. No extinguishment of the lien shall relieve the delinquent Lot Owner from his subsequent personal obligation and liability therefor.

5.10 *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 a local government authority and devoted to public use;
- (b) all Common Area as defined in Article 1.04 hereof;
- (c) all additional Common Area which may be acquired through annexation, purchase, deed of gift, resubdivision or otherwise.

5.11 *Special Provisions.* Notwithstanding anything herein to the contrary, the assessments made against any Lot shall in no case be higher or lower than the assessment against any other Lot, except for any Special Assessments allowed pursuant to Article 5.01, 5.06 and 5.07 which are properly attributable in the judgment of the Board of Directors of the Association, to less than all of the Lots; and no diminution or 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.

5.12 *Insurance on Common Area.* The Board of Directors of the Association shall obtain and continue in effect blanket property insurance to insure the buildings and structures in the Common Area and the Association against the risks of loss or damage by

fire and other hazards as are covered under standard extended coverage provisions in an amount equal to at least 100% of the insurable value of such improvements, including but not limited to personal liability and vandalism coverage, with replacement clause endorsement. Such insurance will name as the insured the Mesa Trails Homeowners Association, Inc.

The Board of Directors of the Association will obtain comprehensive public liability insurance covering the Common Area with coverage of at least \$1,000,000 per occurrence for personal injury and/or property damage, insuring the Association, its Board of Directors, agents and employees, and each Owner, from and against liability in connection with the Common Area. Such policy shall contain a "severability of interest" clause which will preclude the insurer from denying the claim of a lot owner because of negligent acts of the Homeowner's Association or other unit owners. A summary of insurance shall be made available to any homeowner upon written request to the Board of Directors.

5.13 *Board of Director's Liability Insurance.* The Board of Directors have the authority to have the Association purchase a directors and officers liability insurance. Such insurance and any indemnification payments shall be treated as common expense.

5.14 *Insurance on Dwellings.* Each owner shall be obligated to either participated in a group or master policy or obtain and maintain a policy of fire and extended coverage.

(a) *Master or Group Policy.* The Association may elect to have a group or master policy for fire and extended coverage covering dwellings by a two thirds (2/3) majority vote of the members who must then participate in such a policy. In such a case the Board of Directors shall have the authority to contract for such insurance which will cover those dwellings and not be less than 100% of the replacement costs. In such event, each owner shall be obligated to pay his/her respective share of such insurance determined by the insured value of his/her property. The master policy of this insurance shall be no less than the full insurance value of all the buildings covered. Each owner shall be designated as an additional insured on his dwelling and shall be furnished with evidence of such insurance coverage.

(b) *Insurance in lieu of Master or Group Policy.* If there is no Master or Group Policy for fire and extended coverage on dwellings or the Owner does not wish to participate in such a policy, he/she shall obtain and maintain fire and extended coverage insurance on the improvements on his lot in an amount equal to at least 100% of the insurable value of such improvements. For the benefit of all other owners, the Association shall be named an additional insured in such a policy as its interest may appear, such policy to provide that it cannot be canceled except upon thirty (30) days written notice to the Association an additional payee shall be sent to the Board or designated agent.

5.15 *Attorney-in-Fact.* Each Owner hereby appoints the Association as its agent and attorney-in-fact for the collection of all proceeds payable under any policy of fire and extended coverage insurance; and the Board of Directors of the Association, acting as such Owner's agent, may negotiate, compromise and settle any disputed claim with the insurance company providing such policy of fire and extended coverage insurance and may execute any releases, acquittances, discharges and other documents as may be necessary to effect such end and may institute such actions at law as it deems necessary to collect the proceeds of said insurance, provided, however, if the mortgagee of any Lot requires such proceeds attributable to such Lot be paid to it, they shall be so paid to such mortgagee.

5.16 *Restoration.* In the event of any fire or other casualty covered under any policy of fire and extended coverage insurance, the Association shall collect all insurance proceeds and any inaction on part of the owner to restore and repair the damaged property would be cause for the Association to the extent of such proceeds, as the agent

of such Owner, to repair, restore and replace any damaged or destroyed structures to their previous state using the same or similar materials as were originally used in the structures. The Association shall not be liable to any Owner or his family for any delay in the completion of any repair, restoration or replacement due to causes beyond the reasonable control of the Association, its contractors or subcontractors. Specifically, the Association shall not be liable for delay occasioned by weather, shortage or unavailability of materials and strikes or other work stoppages. To the extent that insurance proceeds are not sufficient to effect such repair, restoration or replacement, the Association may levy against the Owner of the structure damaged or destroyed, a Special Assessment sufficient to effect such repair, restoration or replacement.

5.17 *Mechanic's and Materialmen's Lien.* Each Owner whose structure is repaired, restored or replaced by the Association 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 structure to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allowable to such repair, restoration or replacement. Upon request by the Board of Directors of the Association and before the commencement of any reconstruction, repair, restoration or replacement, an Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

5.18 *Title to Proceeds.* Any proceeds of insurance collected by the Association and any Special Assessment collected by the Association pursuant to the provisions of 5.06 and 5.07 above shall at all times remain the property of the Owner or Owners affected by the circumstances causing such proceeds to be paid or such assessments to be levied; and title thereto shall not pass to the Association. All such proceeds and assessments shall be deposited in a trust account or accounts to be maintained by the Association and shall not be commingled with funds belonging to the Association, the Association to act as the special agent or trustee of the Owner or Owners in the handling and disposition of such funds. The agency hereby created shall be irrevocable, it being for the benefit of all Owners, unless revoked by the concurrence of two-thirds (2/3) of the votes of members of the Association who are voting in person or by proxy at a meeting duly called for such purpose, at which meeting the presence of members or proxies shall constitute a quorum.

5.19 *Utilities.* The Board of Directors shall have the exclusive authority to contract for all utilities for the Common Area.

## ARTICLE 6 PARTY WALLS, PRIVACY WALLS AND FENCES

6.01 *General Rules of Law to Apply.* In the case of some or all of the residences constructed on the Lots, the Declarant has built residences adjoining each other by privacy walls and fences located on or near the boundary line of two lots, or the walls as part of the original construction of the homes on the property may be placed on the dividing line between two Lots, and, if so, each such wall or fence shall constitute a party wall, remain a party wall and shall be subject to this Article. In other cases, there will be privacy walls and fences surrounding an owner's dwelling.

6.02 *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.

6.03 *Damage or Injury.* If damage or injury is caused by either 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 negligence 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.

6.04 *Repair and Maintenance.* The cost of reasonable repair and maintenance of a party wall including its support structure shall be shared by both Owners who make use of the wall in equal proportions. The facings shall be the responsibility of the Owner for whose lot they exist. Each Owner shall be responsible for the cost of maintenance and repair of any privacy wall, gate or fence on his lot not deemed a party wall.

6.05 *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.

6.06 *Dispute.* In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each such dispute shall be resolved by arbitration in the manner provided in Article 11.

6.07 *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.

## ARTICLE 7 PERMITTED USES AND RESTRICTIONS

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

7.02 *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 purposes which will create or emit any objectionable, offensive or noxious odors, dust, gas, fumes or other such material.

7.03 *Use of Common Area.* The Common Area shall be used for park, recreational, social, access, parking, utility easement and other purposes directly related to the private single family residential use and any other property uses authorized hereunder.

7.04 *Animals.* No animals or birds, other than one generally recognized as a small house or yard pet 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 breeding or raising or commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be visible from neighboring property. The Board may, from time to time, designate specific areas for pet defecation to the extent pets are allowed. Limitation of kind and number of pets allowed in a Unit may be set from time to time by the Board and shall uniformly apply to all Owners, their family, guests, and tenants.



7.05 *Antennas and Signals.* No antenna or other device for the transmission or reception of television signals, radio signals, citizens band radio, 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 prior approval of the Board of Directors of the Association, except that the Association may erect a common television antenna. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot which may interfere with the reception of television or radio signals on any other Lot.

7.06 *Temporary Occupancy.* No trailer, or any incomplete building, tent, shack, garage or barn, metal outbuilding, 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 the construction, repair or remodeling of a dwelling on any such Lot or Common area shall be moved immediately after the completion of construction.

7.07 *Outbuildings Prohibited.* No tent, shack, or metal outbuilding shall be placed upon any lot so as to be visible from any neighboring property, any street or private drive, with the exception of such buildings temporarily placed thereon during construction, repair or remodeling of a dwelling on any such Lot or Common Area shall be moved immediately after the completion of construction.

7.08 *Trailers, Boats and Motor Vehicles.* No mobile home, motor home, trailer of any kind, truck camper, motorized recreational vehicle, dune buggy, motorcycle, van, truck (other than pickup trucks), permanent tent or similar structure, boat, or inoperable motor vehicle of any type shall be kept, placed, maintained, constructed, reconstructed or repaired upon any property or street or private driveway in such a manner as will be visible from neighboring property, private drive, 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 of any improvements approved by the Board of Directors and provided further that trailers, truck campers, motor homes 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.

7.09 *Nuisances.* No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Common Area, and no 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. Residents shall refrain from playing radios, televisions, stereos and other noise producing devices at sound levels so high as to be objectionable to other residents. 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.

7.10 *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.

7.11 *Trash Containers and Collection.* No garbage or trash shall be placed or kept on any Lot or Common Area except in covered containers of a type, size and style which are approved by the Association, which may include the requirement that all containers will be disposable. In no event shall such containers be maintained so as to be visible from

neighboring property except to make the same available for collection and, then, only the shortest time reasonably necessary to effect such collection.

7.12 *Clothes Drying Facilities.* Outside clotheslines or other facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Common Area unless they are erected, placed or maintained exclusively within a fenced service yard or otherwise concealed and not visible from neighboring property.

7.13 *Sidewalk Encroachments.* No tree, shrub or planting of any kind on any Lot or Common Area shall be allowed to overhang or otherwise encroach upon any sidewalk or other pedestrian way from ground level to a height of seven feet without the prior approval of the Architectural Control Committee.

7.14 *Right of Way.* During reasonable hours, any member of the Architectural Committee, or member of the Board of Directors or any other representative of any of them, shall have the right to enter upon and inspect any Lot or Common Area for the purpose of ascertaining whether or not the provisions of these restrictions have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

7.15 *Mineral Exploration.* No Lot or Common Area shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

7.16 *Machinery and Equipment.* Without the approval of the Board of Directors of the Association no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Travis County, Texas, in connection with the use, maintenance or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association, provided, however, such machinery or equipment may be so placed, operated or maintained by any governmental, or quasi-governmental agency or a public utility.

7.17 *Diseases and Insects.* No Owner shall permit any thing or condition to exist upon any Lot or Common Area which will induce, breed or harbor plant diseases or noxious insects.

7.18 *Restriction on Further Subdivision.* No Lot shall be further subdivided and no portion less than all of any Lot nor any easement or other interest therein, shall be conveyed by any Owner, except, however, that easements may be granted to any governmental or quasi-governmental agency or public utility or to the use of the public or to the use of the owners.

7.19 *Signs.* No signs whatsoever (movable or affixed), including, but not limited to, commercial, political and similar signs, which are visible from neighboring property shall be erected or maintained on any Lot except:

- (a) Such signs as may be required by law;
- (b) A residential identification sign of a combined total face area of seventy-two square inches or less;
- (c) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen by twenty-four inches in height and width and having a face area not larger than three square feet;

(d) A "for sale" or "for rent" sign, of a reasonable type, size and appearance, which is similar to other signs customarily used in Travis County, Texas, to advertise individual parcels of residential real property;

The content and location of all signs shall be subject to such rules as the Board of Directors of the Association may promulgate.

7.20 *Tanks, Solar Devices and Windmills.* No elevated tanks, solar devices or windmills shall be erected without prior written approval of the Architectural Committee.

7.21 *Increased Insurance Costs.* Nothing shall be done on any Lot or on the Common Area which will result in the increase of fire and extended coverage insurance premiums thereon or the cancellation of such insurance.

7.22 *Waste.* No waste shall be placed on any Lot or the Common Area.

7.23 *Lighting.* No lighting or illumination shall be placed upon any Lot or Common Area in such a manner as to cause unreasonable glare or illumination on any other Lot.

7.24 *Garages.* Garages are for the exclusive use of the owners, their family, guests, and lessees. Garage doors shall be closed to within 12 inches of the garage floor at all times except as necessary for entry and exit and when people are in the garage.

7.25 *Garage and Yard Sales;* Yard, garage and similar sales are prohibited at any location in Mesa Trails Circle.

7.26 *Parking;* Vehicles of any kind are not to be parked such as to impede traffic and shall not be parked on the side of the street with the red painted curb. Additionally no vehicle shall be habitually parked in driveways, streets and designated parking areas.

7.27 *Building Encroachment Easements.* No construction may exceed the limits of dedicated easements on adjacent Lots or the Common Area. As a maximum no encroachment may exceed the limits shown on the recorded plat of this property.

7.28 *Minimum Floor Area and Exterior Walls.* Any residence constructed on said Lots must have not less than 1,500 square feet, exclusive of open or screen porches, terraces, patios, driveways, carports, and garages.

7.29 *Setbacks.* No building shall be located on any Lot nearer to the front Lot line or nearer to the side lot line than the minimum building setback lines shown on the recorded plat. For the purpose of this provision, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of the building on any Lot to encroach upon another Lot in violation of the provisions of this Declaration.

7.30 *Easements.* Easements for the installation of utilities and drainage facilities are reserved as shown on the recorded plat. No utility company, water district, political subdivision, or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees or flowers, or to other property of the Owner situated within any such easement. Easements for parking will be reserved and created as the need arises.

7.31 *Construction Responsibilities.* An Owner who is having a Unit or other structure worked on, repaired, or remodeled shall take reasonable and necessary precautions to prevent damage to the Common Area (including any streets) caused by construction companies, workmen, suppliers, or service companies working on or

delivering materials to or removing materials from the work site on the Owner's Unit. Such Owner shall be liable to the Association for any damages to the Common Area and for costs of cleaning up or replacing property in the Common Area destroyed or damaged by such construction companies, workmen, suppliers, or service companies. Such Owner shall be liable to the respective Unit Owners for any damage to another Owner's Unit and for any costs of cleaning up or replacing property, which may be destroyed or damaged by such construction companies, workmen, suppliers, or service companies and the Association shall have the right to repair such damage at the Association's expense, in which event the cost of repair shall be owed to the Association by the Unit Owners who caused the damage or whose construction company, workmen, suppliers, or service company caused the damage.

## ARTICLE 8 GENERAL OBLIGATIONS OF OWNERS

8.01 *General Maintenance.* Subject to the Association, landscaper maintenance duties under Section 5.02, each Owner at his own expense shall keep, maintain and care for any buildings and other improvements located on his Lot and otherwise keep his Lot, including any drainage areas or easement areas of the Lot, and all improvements thereon in conformity with its condition when new, specifically, the owner shall maintain and care for all interior and exterior fences and gates and be responsible for same. However, no Owner shall injure, remove or destroy any tree which has reached a height in excess of ten feet without the approval of the Grounds Committee of the Association. Removal or trimming of a tree on a Lot which interferes with drainage or which is adversely affecting another Lot Owner roof or building, in the judgment of the Board, shall be the sole responsibility of the Lot Owner.

8.02 *Failure to Maintain.* In the event an owner fails to maintain his/her property, in a condition acceptable to the Board of Directors, and refuses to take corrective action upon due notification of the deficiencies, the Board of Directors on a majority vote shall cause the deficiencies to be corrected and assess the owner for all costs associated with such any action.

8.03 *Insurance.* Each Owner shall be obligated to either participate in a Group Policy or obtain and maintain a fire and extended coverage insurance policy in accordance with Article 5.13. If an owner is not a participant in the Group Policy the Owner shall have a copy of the Owner's insurance policy and yearly renewal listing the Mesa Trails Homeowner's Association as an additional payee sent to the Board of Directors or at the Board's discretion to the property manager.

8.04. *Compliance with Restrictions and Regulations.* Each Owner is responsible for complying with Article 7, permitted uses and restrictions and all rules and regulations enacted by the Board of Directors for the general benefit of the membership as well as all Directives of the Board related to maintenance and architectural matters. Further each Owner is responsible for the compliance by tenants or guests of that Owner to the permitted uses and restrictions, and Association rules and regulations as applicable.

## ARTICLE 9 ARCHITECTURAL CONTROL

9.01 *Construction of Improvements.* Since the maintenance of environmental and architectural harmony and unity is essential for the preservation and enhancement of the value of the Lots and the harmonious functioning of the community affected hereby, no improvements may be erected on any Lot by anyone without the approval of the Board of Directors. The term "improvements" shall include but not be limited to additions to or alterations of any buildings, detached buildings, the erection of any fence; the moving of

any structure from another locality to a Lot; the grading, scraping, excavation or other rearranging of the surface of any Lot; the construction of any driveway, alleyway, walkway, entryway, patio or similar item; the alteration or replacement of any exterior surface, including the repainting of any painted surfaces and the painting of formerly unpainted surfaces; and the planting, replanting or rearrangement of any plant life visible from another Lot, the Common Area, or any public street.

9.02 *Architectural Committee.* The Board of Directors of the Association shall appoint an Architectural Committee composed of at least three (3) members to approve improvements proposed to be made by any owner and to monitor the compliance of the improvements to the approved plans. The Architectural Committee shall meet within fifteen (15) days after Owner has made an application, submitting at that time two (2) final sets of plans and specifications. The Architectural Committee will make its recommendation to the Board of Directors at or prior to the next meeting of the Board. The Board of Directors will approve or disapprove the Architectural committee's recommendation. If the plans are disapproved special reference to those features which caused the disapproval will be made. Approval may be conditioned upon completion in a given period of time. All decisions will be made by a majority vote of the Board of Directors. The Board of Directors will instruct the committee chairperson to notify the requester in writing of the Board's decision.

9.03 *Extent of Board of Directors Authority.* The Board of Directors shall have the authority, prior to granting its approval to relocate on the plans, structures, landscaping and other proposed improvements and may require change in the appearance of the proposed improvements. Such relocations, changes, and other requirements may be based upon, among other things, aesthetic preference of the majority of the Board of Directors or impervious cover guidelines and the decision of the Board of Directors shall be final and binding.

9.04 *Compliance to Plans.* The improvements shall comply to the plans or deviations approved by the Board of Directors. Any unapproved deviation may warrant action by the Board to require the Owner to make proper alterations to the nonconforming feature so as to conform to the approved plans. Failure of the Owner to correct the deviation may result in the Board causing the deviation to be corrected at the Owner's expense.

9.05 *Grading, Excavation and Runoff Control Plans.* These plans are to accompany architectural plans submitted to the Architectural Committee and shall include a description of proposed cuts and fills, plans for handling excavated material and plans for controlling runoff during construction and after the construction proposed on site is completed.

9.06 *Landscaping Plan.* A landscaping plan shall accompany an architectural plan submitted to the Architectural Control Committee and it shall include a description of the overall landscaping plan and specific information about plans for existing trees on site with trunks measuring 10" in diameter or more and measuring 4' above existing ground level.

## ARTICLE 10 EASEMENT AND RIGHTS

10.01 *General Easement.* The Association, reserves the right and easement to the use of the Common Area and any Lot or portion thereof, as may be needed for repair, maintenance or construction on such Lot or any other Lot or the Common Area.

10.02 *Crossover Easement.* If the Owner of any Lot must, in order to make reasonable repairs or improvements to a building on his Lot, enter or cross the Common

Area or a Lot of another Owner, such Owner shall have an easement to do so; provided that such Owner shall use the most direct, feasible route in entering and crossing over such an area and shall restore the surface so entered or crossed to its original condition at the expense of said Owner and further provided such easement shall not exist on the land of any other Lot Owner if the purpose for the entrance or crossing is one requiring, by virtue of Article 9 of this Declaration, approval of the Board of Directors of the Association, unless such approval has been given.

10.03 *Alteration Easement.* If the Owner of any Lot, must, in order to make reasonable repairs or improvements to a building on his Lot, alter the building of any other person, such Owner shall have the right to do so, provided that such Owner shall (i) create as little alteration as possible consistent with good building and engineering practices, (ii) promptly restore the building altered to its original condition at the expense of said Owner, and (iii) provide such bonding as the Owner of the building to be altered shall reasonably require, and further provided such alteration shall not be allowed if the purpose for which the alteration must occur is one requiring, by virtue of Article 9 of the Declaration, approval of the Board of Directors of the Association, unless such approval has been given.

10.04 *Encroachment Easement.* If any structure erected or reconstructed by an Owner with the approval of the Board of Directors shall encroach on the Lot on an adjoining Owner, the latter grants to such Owner an easement permitting the persistence of such encroachment. In addition, an overhang easement is granted to any Owner whose eaves, gutters or similar items overhang a reasonable distance on or about the Lot of another Owner.

10.05 *Drainage Easement.* Each Owner covenants to provide such easements for drainage and water flow as the contours of the land and the arrangement of buildings thereon requires.

10.06 *Utility Easement.* An easement of ingress and egress is hereby granted on all Lots and the Common Areas in favor of any utility company for the purpose of the repair, construction and maintenance of all utility lines, provided, however, no utility line may be constructed and no existing utility line may be relocated without the approval of the Board of Directors.

10.07 *Blanket Easement.* An easement is hereby retained in favor of the Association over the Lots and the Common Areas for the construction of any and all roads and streets, parking areas, a common cable television system, underground utility installation and repair, a common sprinkler, lighting or other item for the common benefit of the Owners. An easement is further granted for the purpose of the repair and maintenance of any item so constructed. An entry upon any Lot or the Common Area to effectuate the foregoing purposes shall not be deemed trespass. Each Owner covenants not to damage or destroy any portion of an item so constructed and shall hold the Association harmless for the cost of repairing or replacing any portion damaged or destroyed by such Owner, his family, his guests and invitees.

## ARTICLE 11 ENFORCEMENT, COMPLAINTS, DISPUTES AND REMEDIES

11.01 *Enforcement.* The Board of Directors acting for the Association shall have the authority to enforce the provisions of the declaration and any rules and regulations duly enacted by the Board in accordance and consistent with the Declaration and Bylaws of the Association.

11.02 *Complaints by Owner.* If any Owner believes any other Owner is in violation of this Declaration he or she, may notify the President of the Association who will cause an investigation of the complaint in an appropriate manner. The complaint and result of the investigation shall be subsequently reported to the Board for their consideration and action. The majority decision of the Board along with any correcting action to be taken will be transmitted in writing to both parties involved. If there is a violation and the offending owner does not take the appropriate corrective action, the Board may take any appropriate action authorized by the Declaration.

11.03 *Complaints by Association.* If the Board of Directors, acting for the Association, believes any Owner is in violation of the Declaration, the Board will so notify such Owner in writing explaining its reason for such complaint and requesting corrective action, prior to enforcing any punitive action authorized by the Declaration.

11.04 *Complaints Against Board of Directors.* If any Owner believes the Board of Directors is in violation of its powers or duties as defined in the Declaration or Bylaws, or has a complaint against the Board for any of its actions that Owner shall notify the Board in Writing stating the reason for the complaint. The Board will consider the complaint and attempt to resolve the issue with the Owner.

11.05 *Disputes.* If any Owner disagrees with the Board's action on any complaint and cannot come to an agreement with the Board or with another owner, he may notify the president of the Association to choose a neutral party to arbitrate the dispute in such a manner as the arbitrator deems best. The arbitrator shall in all cases announce his/her decision within thirty (30) days after transmittal of the complaint to the arbitrator. The arbitrator shall be paid a reasonable fee plus expenses, the cost of which shall be borne by the losing party.

11.06 *Remedy of violations.* If the arbitrator as provided in 11.05 upholds the Board's decision, the Owner shall be so notified in writing and shall promptly remedy the violation of this Declaration and if he fails to do so within thirty (30) days after the date of such notice the Board may take any action authorized by this Declaration, including instituting appropriate legal action.

## ARTICLE 12 DEVIATIONS

12.01 *Deviations.* The Association may grant approval for deviations from the restrictions provided in Article 7. Such approval shall require the affirmative vote of all first mortgagees and two-thirds of the Members voting at a meeting duly called for this purpose, written notice of which shall be delivered to all Members not less than seven (7) days nor more than sixty (60) days before the date of the meeting, setting forth the purposes of the meeting.

## ARTICLE 13 GENERAL PROVISIONS

13.01 *Administration and Enforcement.* the restrictions herein set forth shall run with the land and bind the present Owner except as otherwise provided, its successors and assigns, and all parties claiming by, through or under it, shall be taken to hold, agree and covenant with the Owner of said land, its or their heirs, personal representatives, successors and assigns, and with each of them, to conform to and observe such restrictions as to the use of said Lots and the construction of improvements thereon. No restriction herein set forth shall be personally binding on any person except in respect to breaches committed during his ownership of title to his Lot. No lawsuit for enforcement of these

covenants may be commenced until the procedure specified in Article 11 as appropriate, has been completed. Afterward, the Association, or any Owner, shall have the right, if any such dispute is not resolved by arbitration, to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges nor hereafter imposed by the provisions of this Declaration. Failure of any Owner or Owners or the Association to enforce any of the restrictions herein set forth shall in no event be deemed a waiver of the right to do so or to enforce other restrictions or provisions of this Declaration.

13.02 *Specific Powers.* The Association or any Owner may utilize any of the rights and remedies set forth below, for the enforcement of all restrictions, conditions, covenants, reservations, liens, bylaws, rules, charges, and liabilities now and hereafter imposed by the provisions of this Declaration, the Bylaws, or Rules.

All rights of a first lien mortgagee which are contained elsewhere in the Declaration or Bylaws and which might be construed to conflict with the rights of the Association as set forth below shall be controlling over the provisions of this Section. This Section is not intended to take precedence over or repeal any rights of a first lien mortgagee contained in the Declaration; otherwise, this Section shall control over any other conflicting provision elsewhere in the Declaration or Bylaws.

(a) *Rules and regulation authority.* The Board may adopt rules and regulations for governing the property and obtaining compliance by Owners and their family, guests, and tenants with the Declaration and with Association bylaws, rules, and regulations provided that same are not prohibited by this Declaration or Texas law. The rules may address any subject relating to uses of Units, Common Areas, construction, repairs, parking, garage doors, unsightly objects, relationships between Owners, tenants and/or the Association, enforcements, and other subjects reasonably affecting the project. The rules must be consistent with and not in conflict with this Declaration. The standards published by the Architectural Committee may be adopted in whole or in part as rules by the Board.

(b) *Late charges.* The Board may adopt late charges, from time to time, for late payments by the Owners of monies owed to the Association.

(c) *Returned check charges.* The Board may assess returned check charges against an Owner, as set by the Board from time to time, for each returned check, plus late charges, until acceptable payment is received.

(d) *Suspension of voting rights.* The voting rights of any Owner who is more than 30 days delinquent on any sum owed to the Association shall be automatically suspended without notice. Such suspension rights shall extend to general or special membership meetings, mail ballots, committee meetings, board meetings and all other meetings.

(e) *Fines.* The Board may assess fines against an Owner for violations by the Owner or his family, guests, agents, or tenants of standards of conduct contained in the Declaration and the Association rules. Fines may also be assessed for violation of suspended common facility use rights. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owners. There must be notice of the alleged infraction and fine to the Owner no later than 45 days from the alleged infraction.

(f) *Remedies against tenants.* The Board shall have authority to evict tenants of Owners, after reasonable notice, for substantial or repeated violations of Association rules. The Board shall have authority to enforce all rules against the Owner's



tenants, including collection of fines for violations of the declaration or bylaws by the tenants.

(g) *Tenants may pay.* If an Owner is delinquent in the payment of any sum due the Association, for a period of 30 days or more, any tenant of the Owner occupying the unit may pay any sums due to the Association by the Owner in order to avoid suspension of common area use rights; and the Tenant may deduct same from rent due to the Owner. The Association may enter into indemnity agreements to protect tenants who pay money to the Association under authority of this section.

(h) *Leasing.* The Board may adopt reasonable requirements for leasing a Unit. For example, (1) registration of tenant names, work phones, home phones, and emergency contact persons, and (2) requiring attachment of Association rules and regulations to the lease and posting of same inside the Unit. The Board may recommend (but not require) that a particular lease form be used. The management company managing the Association does not have authority to act for the Association in leasing or managing individual units. A unit owner may contract with the same management company which manages the Association to lease or manage a unit owned by the Owner. Additionally, in such case the unit owner shall inform the tenant that in leasing or managing the Owner's unit, the management company is not acting on behalf of the Association.

(i) *Interest.* All sums due the Association by Owners shall bear interest from due date at the highest lawful rate, compounded annually.

(j) *Fees for special services.* Fees chargeable to Owners for special services (such as furnishing resale certificates, copies of declarations, copies of information sent to mortgagees, copies of accounting records, etc. shall be set by the Board from time to time.

(k) *Parking limitations.* Vehicle owners shall reimburse the Association for any costs incurred in towing vehicles illegally parked provided notice required in applicable statutes is complied with in accordance with applicable statutes regarding illegal parking. Owners shall be responsible for parking violations of their tenants.

(l) *Publication of delinquencies.* The Board may disclose and publish to Association members and mortgagees the financial condition of the Association, including a list of names and amounts of any delinquencies. The Board may notify mortgage lenders and tenants of delinquent monies owed by such Owners to the Association.

(m) *Name and address of new Owners.* An Owner may not sell or convey his Lot without all monies due and owing to the Association being paid in full; and if such Owner does sell, convey, or transfer his Lot without paying such monies, such selling Owner shall remain liable for all monies accruing to the Association thereafter on such until such monies are paid in full. If an Owner sells or transfers Ownership of his unit and fails to notify the Association of the sale, the selling Owner shall continue to be liable for the assessments accruing after the sale or transfer until such time as the selling or transferring Owner notifies the Association in writing of the name and address of the new Owner. The selling or transferring Owner shall have a right of indemnity against the new Owner for recovery of any sums paid by the selling or transferring Owner under this paragraph.

(n) *Change of address.* The Board may require the respective Owners to keep the Association timely informed of their current addresses and any change of addresses.

(o) *Names and addresses of tenants.* The Board may require Owners to notify the Association of current names and addresses of tenants of their respective Units.

(p) *Lien of the Association.* The Association shall have a lien on an Owner's Lot, including any rentals and insurance proceeds relating to the Unit, to secure payment of all monies owned by the Owner to the Association. The lien and foreclosure of the lien is addressed further in Section 5.09.

(q) *Lien of other owners.* Pipe leaks which are due to breaks, faulty connections, freeze damage, overflows, nails, or protrusions into the pipes or appliances which exclusively serve the Owner's Unit and which are the Owner's maintenance responsibility under the Declaration, bylaws, or rules, shall be the sole responsibility of the Unit Owner. The owner shall be solely responsible for any damages to other Units or common areas and any cost of repairs due to such leaks, etc. regardless of fault. The Owner of an adjacent damaged Unit shall have a lien (for the cost of such repairs or repair damage) on the Unit of the Owner who has failed to repair or pay for damages or repair costs under this subparagraph provided that (1) the Board of Directors, after notice and hearing opportunity to both owners, has determined that the damaged Owner is entitled under the declaration to reimbursement for such damage and/or repairs, and (2) a notice of such lien, with a brief description of the facts and the amounts owed, has been thereafter recorded in the county real property records by the damaged Owner. Such lien may be foreclosed only after judicial hearing. The lien shall be subordinate to the lien of any first lienholder and the lien of the Association. In any litigation between owners regarding the foregoing the prevailing party shall recover attorneys fees and the maximum lawful rate of interest from the nonprevailing party.

(r) *Venue and lawsuit authority.* All obligations of owners, tenants, and the Association arising under this Declaration, the Bylaws, or Rules shall be performed in Travis County, Texas, and venue for any lawsuits relating thereto shall be in Travis County, Texas. The Association shall have the right to file and defend a suit (including injunctions) and recover on behalf of the Owners in any cause of action based on damages to the common facilities or Common Area or based on liabilities of Owners and their families, guests, agents, tenants, or third parties accruing to Owners and/or the Association.

(s) *Attorney's fees.* If delinquent accounts or other violations are turned over to the Association's attorney, the Owner shall be liable for all attorney's fees, incurred by the Association in collections, filing liens, foreclosing liens, releasing liens, prosecuting lawsuits, and/or otherwise enforcing the Declaration, Bylaws, and rules.

(t) *Association Entry.* The Association shall have the right to enter an Owner's Unit for purposes of inspection for water leaks, gas leaks, frozen pipes, and prevention of water pipe freezing (by turning on heat or dripping faucets). The Association may request but not require Owners to furnish the Association with entry keys to their Units for such purposes. If the Unit is unoccupied at the time such entry is needed, only a locksmith may be used for gaining entry except in case of extreme emergency such as a fire. Emergency utility leaks may be repaired by the Association at the Owner's expense, without prior notice. Utility leaks for which the Owner is responsible under the Declaration, bylaws, or rules may be repaired by the Association at the Owner's expense with prior notice delivered to the Unit if the Owner fails to promptly repair them. If the Unit is vacant and for sale or lease, the Unit Owner shall furnish a key to the Unit to the Association until it is sold or leased, such key to be used only in the event of suspected utility leaks or repairs thereof.

(u) *Notices to multiple Owners, tenants, mortgagees.* Notice to or from one of multiple Owners or tenants of a Unit shall be deemed as notice to or from all Owners or tenants of that Unit. If an Owner is more than 60 days delinquent, the Association may

send to the Owner's tenant a copy of any association notices or communications with the Owner.

13.03 *Invalidation.* The invalidation of any of the covenants or restrictions set forth herein by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

13.04 *Duration and Amendment.* All of the restrictions set forth herein shall continue and be binding for a period of twenty-five (25) years from the date of the original instrument and shall automatically be extended thereafter for successive periods of ten (10) years; provided, however, that the Owners of three-fourths (3/4) of the Lots may, at the end of such twenty-five (25) year term or at the end of any successive ten (10) year period thereafter, by a written instrument signed by all of such persons, vacate or modify all or any part of this declaration. During the initial twenty-five (25) year period a vacation or modification hereof shall be effective if approved by two-thirds of the Owners of the Lots. Any such vacation or modifications shall be filed of record in the Travis County Deed Record promptly when executed.

13.05 *Notices.* All notices given or required to be given by the Association to its Members shall be deemed to have actually been given if actually received and, whether or not actually received, when deposited in the United States mail, postage prepaid, and addressed to the Member at his address as it appears on the books of the Association. and shall be deemed given when mailed.

13.06 *FHA/VA Provisions.* The Board of Directors may, by unanimous vote, at any time amend this Declaration or the Bylaws by instrument duly signed, acknowledged and filed for record, for the sole purpose of having the Declaration comply with financing eligibility requirements of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, Federal Housing Administration, or comparable federal agencies.

13.07 *Protection of Mortgagees.*

(a) *Notice to Association.* An Owner who mortgages his Lot shall, upon written request of the Association, notify the Association giving the name and address of his mortgagee. The Board shall maintain such information in a book entitled "Mortgagees of Lots."

(b) *Notice of default.* The Association shall notify a first mortgagee in writing, upon request of such mortgagee, of any default by the mortgagee in the performance of such mortgagor's obligations as set forth in the Declaration which is not cured within thirty (30) days.

(c) *Examination of books.* The Association shall permit first mortgagees to examine the books and records of the Association during normal business hours.

(d) *Reserve fund.* The Association shall establish an adequate reserve fund for replacement of common area components in order to fund the same by regular monthly payments rather than by extraordinary special assessments.

(e) *Annual audits.* The Association shall furnish each first mortgagee upon request, the latest annual audited financial statement of the Association.

(f) *Notice of meetings.* The Association shall furnish each first mortgagee upon request of such mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such mortgagee to attend such meetings, one

such request to be deemed to be a request for prior written notice of all subsequent meetings of the Association.

(g) *Approval for amendments to declaration, etc.* The prior written approval of each first mortgagee shall be required for the following: (i) abandonment or termination of Mesa Trails, a Planned Unit Development, (ii) any material amendment to the Declaration, Articles of Incorporation, or Bylaws of the Association, adversely affecting the interest of the mortgagee, (iii) a change in the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner; or use of hazard insurance proceeds for losses to any common area for other than the repair, replacement or reconstruction of such common area.

(h) *Leases.* The Association shall require that all leases of any units must: (i) be in writing, and (ii) provide that such leases are specifically subject in all respect to the provisions of the Declaration and Bylaws of the Association, and that any failure by the Lessee to comply with the terms and conditions of such documents shall be a default under such leases. Other than the foregoing, there shall be no restriction on the right of any owner to lease his unit, except that the term must be at least six (6) months.

(i) *Notice of damage or destruction.* The Association shall, upon request of a mortgagee, furnish the first mortgagees timely written notice of any substantial damage or destruction of any part of the common area and facilities if such loss exceeds \$10,000.00 or damages to a residence exceeds \$1,000.00.

(j) *Notice of condemnation or eminent domain.* The Association shall furnish the first mortgagees timely written notice of any condemnation or eminent domain proceeding regarding all or any portion of the common elements and facilities and of any proposed acquisition of all or any part of such properties through condemnation or eminent domain proceedings if such taking exceeds \$10,000.00.

(k) *Management agreements.* Any management agreement entered into by the Association will be terminable by the Board for cause upon not more than thirty (30) days' written notice and without cause and without the payment of a termination penalty upon not more than ninety (90) days' written notice. The term of such management agreement will not exceed a period of one (1) year. Renewal can be made by agreement of the Board and the management company for successive one (1) year periods.

(l) *Claims for unpaid assessments.* Any first mortgagee who obtains title to the lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage shall not be liable for such lot's unpaid dues or charges which accrued prior to the acquisition of title to such lot by the mortgagee.

(m) *Nonimpairment of Mortgagees.* Nothing contained in this Declaration shall impair or be construed to impair the rights of any first Mortgagee to:

- (1) Foreclose or take title to a lot pursuant to the remedies provided in the Mortgage; or
- (2) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or
- (3) sell or lease a lot and its improvements acquired by the Mortgagees.

(n) *No priority over Mortgagee's lien.* Nothing contained in this Declaration shall give or be construed to give any Owner or any other party priority over any rights of the first Mortgagee of any lot pursuant to its Mortgage in the case of a distribution to

such Owner of insurance proceeds or condemnation awards for losses to or a taking of, such lot and/or the Common Elements.

13.08 *Diminution or Abatement.* No assessment of any character in this Declaration provided for may be abated or diminished or be allowed or claimed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Areas or Lots or from any action taken to comply with any law, ordinance or order of a governmental authority.

13.09 *Liability of Board Members.* The members of the Board of Directors and Officers of the Association shall not be liable to any Owner or any person claiming by or through any Owner for any act or omission of such Director or Officer in the performance of his duties unless such act or omission is (1) a breach of the Director's duty of loyalty to the Association or its members, (2) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, (3) a transaction from which a Director receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director's office, or (4) an act or omission for which the liability of the Director is expressly provided for by a statute. The Association shall indemnify all such Directors and Officers from all claims, demands, actions and proceedings and any expenses in connection therewith, except if such Director or Officer has acted in violation of the foregoing. The Board may purchase (but is not requested to purchase) directors and officers liability insurance. Such insurance and any indemnification payments shall be treated as a common expense. The Board of Directors is authorized and directed to modify the Association's corporate charter to conform to the above.

13.10 *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 proceeding, whether civil, criminal administrative, or investigative by reason of the fact that he/she is or was a director, officer, committee member, employee, servant or agent of the Association against expenses (including attorney's fees, judgments, fines and amount paid in settlement) actually and reasonably incurred by him/her 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 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, shall not of itself create a presumption that the person did not act in good faith or in a manner which he/she 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/her against such liability hereunder or otherwise.

13.11 *Certification.* The undersigned president of the Association hereby certifies that this Declaration of Covenants, Conditions, and Restrictions for Mesa Trails - Revised 1993 has been adopted in accordance with all procedures and requirements contained in the Second Restatement of the Declaration of Covenants, Conditions, and Restrictions for Mesa Trails Circle, as recorded in Volume \_\_\_\_, Page \_\_\_\_, Real Property Records of Travis County, Texas, as amended or supplemented.

(1) FOR A NATURAL PERSON  
ACTING IN HIS OR HER OWN  
RIGHT

MESA TRAILS HOMEOWNERS ASSOCIATION, INC.

STATE OF TEXAS  
COUNTY OF TRAVIS

By [Signature] 12/15/93  
President

THIS INSTRUMENT WAS ACKNOWLEDGED  
BY MARCEL GRES  
NOTARY PUBLIC SIGNATURE



12/15/93

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS  
12083 0021

FILED

93 DEC 15 PM 1:32

DANA DEBEAUVOIR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

STATE OF TEXAS                      COUNTY OF TRAVIS  
I hereby certify that the instrument was FILED on  
the date and at the time stamped herein by me, and  
was duly RECORDED, in the Volume and Page of the  
said RECORDS of Travis County, Texas, on

DEC 15 1993



*Dana Debeauvoir*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

RETURN:

MARCEL DR CHARLOTTE GRES  
7914 MESA TRAILS CIRCLE  
AUSTIN, TX. 78731

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

12083 0022