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COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MESA VALLEY

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THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

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51.00 INDX 1 1 02/15/94  
5.00 RECM 1 1 02/15/94  
1.00 SEC 1 1 02/15/94

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA VALLEY is made this 21st day of DECEMBER, 1993, by BLUEBONNET PLAZA, LTD., a Texas limited partnership.

13.84-CHK2

**W I T N E S S E T H:**

A. "Declarant" (as hereinafter defined) is the record owner of certain real property located in Travis County, Texas, being described in Article I, Section 1.23 of this "Declaration" (as hereinafter defined);

B. In order to protect the value and desirability of the "Property" (as hereinafter defined), Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property, together with any other land which the Declarant may hereafter add thereto, subject to the covenants, assessments, conditions, charges and liens hereinafter set forth;

C. Declarant has deemed it desirable, and in the best interests of the "Owners" (as hereinafter defined) for the preservation of property values and efficient maintenance and improvement of the common area within the Property, to create an entity to which would be delegated and assigned the powers and responsibilities of maintaining certain common area within the Property, enforcing these covenants, collecting and disbursing the assessments and charges hereinafter created and performing all other functions as set forth in this Declaration; and

D. Declarant intends to cause a non-profit corporation to be incorporated under the Texas Non-Profit Corporation Act to be designated as such entity.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, mortgaged, conveyed and occupied subject to the covenants, assessments, easements, conditions, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property, and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

Article I  
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings:

1.01 Additional Property. "Additional Property" shall mean such tract or tracts of land, other than the Property, made subject to this Declaration in accordance with the provisions of Article VIII hereof.

1.02 Architectural Committee. "Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of "Improvements" (as hereinafter defined) upon the Property.

1.03 Architectural Committee Rules. "Architectural Committee Rules" shall mean the rules and regulations adopted by the

Architectural Committee, as the same may be amended from time to time.

1.04 Articles. "Articles" shall mean the Articles of Incorporation of Mesa Valley Owners Association, Inc., which shall be filed in the office of the Secretary of State of the State of Texas, as from time to time amended.

1.05 Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the "Association" (as hereinafter defined) under the terms and provisions of this Declaration.

1.06 Association. "Association" shall mean Mesa Valley Owners Association, Inc., a Texas non-profit corporation.

1.07 Board. "Board" shall mean the Board of Directors of the Association.

1.08 Bylaws. "Bylaws" shall mean the Bylaws of the Association adopted by the Board, and as from time to time amended.

1.09 Common Area. "Common Area" shall mean all real property, including easements and other real property interests, together with the improvements thereon, granted to the Association for the common use and enjoyment of the Owners. The Common Area to be granted to the Association at the time of conveyance by Declarant of the first "Lot" (as hereinafter define) is described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes. Additional Common Area may be designated by Declarant and granted to the Association from time to time.

1.10 Declarant. "Declarant" shall mean Bluebonnet Plaza, Ltd., a Texas limited partnership, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Bluebonnet Plaza, Ltd. as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.11 Declaration. "Declaration" shall mean this instrument, and as it may be amended from time to time.

1.12 Improvement. "Improvement" or "Improvements" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.13 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on the "Plat" (as hereinafter defined), together with all Improvements located thereon.

1.14 Member. "Member" or "Members" shall mean any person, persons, entity or entities holding membership rights in the Association.

1.15 Mesa Valley Restrictions. "Mesa Valley Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with "Mesa Valley Rules" (as hereinafter defined), Architectural Committee Rules and the Articles and Bylaws of the Association from time to time in effect, as each of the foregoing may be amended from time to time.

1.16 Mesa Valley Rules. "Mesa Valley Rules" shall mean the rules and regulations adopted by the Board, as the same may be amended from time to time.

1.17 Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.

1.18 Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.19 Owner. "Owner" or "Owners" shall mean a person or persons, entity or entities, including Declarant, holding a fee simple interest in any portion of the Property, but shall not include a Mortgagee.

1.20 Person. "Person" or "Persons" shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.

1.21 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such improvement.

1.22 Plat. "Plat" shall mean the subdivision plat of the Property recorded in Volume 92, Page 334-335 of the Plat Records of Travis County, Texas, as the same may be amended from time to time.

1.23 Property. "Property" shall mean that real property which is subject to the terms of this Declaration, which is comprised of the property described on Exhibit "E", attached hereto and incorporated herein by reference for all purposes.

1.24 Supplemental Declaration. "Supplemental Declaration" shall mean any supplement to this Declaration filed for record by Declarant in the office of the County Clerk of Travis County, Texas, to bring Additional Property within this Declaration in accordance with the provisions of Article VIII hereof.

## Article II GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

2.01 Antennae. No exterior radio or television antenna, or an aerial or satellite dish receiver, or other devices designed to receive telecommunication signals, including, but not limited to, radio, television or microwave signals which are intended for cable television, network television reception or other entertainment purposes shall be erected or maintained, except by Declarant, without the prior written approval of the Architectural Committee.

2.02 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located on the Property without the prior written approval of the Board.

2.03 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests in the Lot less than the whole be conveyed by the Owner without the prior

written approval of the Architectural Committee; provided, however, that when Declarant is the Owner, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee.

2.04 Signs. No sign of any kind shall be displayed to the public view on the Property without the prior written approval of the Architectural Committee except for signs which are part of Declarant's overall marketing plan for the Property. The Architectural Committee may permit signs of any type advertising a portion of the Property for sale or lease or it may set standards for the same.

2.05 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion of it unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view.

2.06 Noise. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

2.07 Construction of Improvements. No Improvements shall be constructed upon any of the Property without the prior written approval of the Architectural Committee.

2.08 Dwelling Size. For any one-story residence within the Property, the floor area of the main structure, exclusive of open porches and garages, shall not be less than two thousand (2,000) square feet. For any two-story or split-level residence within the Property, the combined floor area of the main structure, exclusive of open porches and garages, shall not be less than two thousand five hundred (2,500) square feet.

2.09 Repair of Buildings. All Improvements upon any of the Property shall at all times be kept in good condition and repair and adequately painted and otherwise maintained by the Owner thereof.

2.10 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvements or the removal of any Improvements shall be performed only with the prior written approval of the Architectural Committee.

2.11 Roofing Materials. Unless otherwise approved by the Architectural Committee, roofs shall be constructed of the following materials: (i) wood shingles; or (ii) asphalt or composition shingles with a weight of two hundred forty (240) pounds or more per square; provided, however, it is specifically contemplated that the Architectural Committee may, in its discretion, approve types of building materials other than as set forth above and, if so, it is expressly acknowledged that such approval by the Architectural Committee, in the form described in Article V hereof, shall not be considered a variance for purposes of Section 5.08 hereof.

2.12 Electric Service. An electric distribution system, part of which will be underground, will be installed within the Property. The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code)

the underground service cable and appurtenances from the point of the electric company's metering on the customer's structure to the point of attachment at such company's installed transformers of energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. All electric service to any Lot shall be single phase, 120/140 volt, three wire, 60 cycle, alternating current.

2.13 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Committee.

2.14 Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

2.15 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the proper approval of Declarant, approval dependent on the nature, size, duration and location of such structure.

2.16 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth.

2.17 Unightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the above, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Unless otherwise approved by the Architectural Committee, each single family residential structure constructed within the Property shall have garage space sufficient to house at least two (2) vehicles and with a minimum garage door opening of sixteen feet (16'); provided, however, it is specifically contemplated that the Architectural Committee may, in its discretion, approve garage space with a minimum garage door opening less than sixteen feet (16') and, if so, it is expressly acknowledged that such approval by the Architectural Committee, in the form described in Article V hereof, shall not be considered a variance for purposes of Section 5.08 hereof. Without the written consent of the Architectural Committee, Lot Owners shall not keep more than two (2) automobiles in a manner which allows them to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. No automobiles or other vehicles may be parked overnight on any

roadway within the Property. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from public view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap or refuse of trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.

**2.18 Mobile Homes, Travel Trailers and Recreational Vehicles.** No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) hours.

**2.19 Fences.** Any fence constructed on a Lot requires the prior written consent of the Architectural Committee. Chainlink and similar fences shall not be permitted without the prior written approval of the Architectural Committee. Without limiting the generality of the foregoing, (a) the Architectural Committee may, in its discretion, specify the materials of which any proposed fence must be constructed, or require that any proposed fence be screened by vegetation or otherwise so as not to be visible from other portions of the Property, (b) the Architectural Committee shall require that the fence(s) along the rear lot lines of Lots 21-27 shall present a generally uniform appearance from Mesa Drive, (c) the Architectural Committee shall require that if fences are constructed along the rear lot lines of Lots 2-4, such fences shall present a generally uniform appearance from Mountain Villa Drive and such fences must be screened by vegetation or otherwise so as to restrict visibility of such fences from Mountain Villa Drive.

**2.20 Animals - Household Pets.** No animals, including pigs, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words, may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof and shall be screened so as not to be visible from any other portion of the Property.

**2.21 Maintenance of Lawns, Plantings and Improvements.** Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot, including any Common Area comprising a part of such Owner's Lot, cultivated, pruned, mowed and free of trash and other unsightly material, and shall maintain all Improvements situated thereon.

**2.22 Construction Activities.** Exterior construction activity shall only occur during daylight hours on any Improvement on a Lot located within the Property, and no construction activity may occur on Sundays; apart from these two limitations, nothing in this Declaration shall be construed so as to unreasonably interfere with, or prevent, normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with

reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction.

2.23 Construction in Place. All dwellings constructed on the Property shall be built in place on the Lot and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Committee.

2.24 Unfinished Structures. No structure shall remain unfinished for more than one (1) year after the same has been commenced.

2.25 Setback Requirements. Setback requirements for each of the Lots shall be as follows: (a) setbacks from front Lot lines: twenty-five feet (25'); (b) setbacks from rear Lot lines: ten feet (10'); and (c) setbacks from side Lot lines: five feet (5') from each side Lot line; provided, however, the combined side setbacks for each Lot must be a minimum of fifteen feet (15').

2.26 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes.

2.27 Masonry Requirements. All Improvements shall have a minimum of fifty percent (50%) of their exterior walls of stone or masonry construction. In computing this percentage (1) all gables shall be excluded from the total area of exterior walls; (2) all windows and door openings shall be excluded from the total area of the exterior walls; and (3) stone and masonry used on fireplaces, chimneys and walls of an attached garage may be included in the computation as stone or masonry used.

2.28 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article II or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

### Article III USE RESTRICTIONS

3.01 General. The Property shall be improved and used solely for single family residential use or for Common Area.

3.02 Restricted Actions by Owners. No Owner shall permit anything to be done on the Property, or any portion thereof, or in the Common Areas, which would violate any applicable public law or zoning ordinance, or which will result in the cancellation of or increase of any insurance carried by the Association, or which would be in violation of any covenant, condition or restriction set forth in this Declaration, the Mesa Valley Restrictions or in any other written instrument, whether or not filed of record, governing in any manner the ownership, use, occupancy and/or development of the Property, or any portion thereof, all of which covenants, conditions and restrictions are and shall be incorporated herein by reference, or which would be in violation of any law.

3.03 Damage to the Common Areas. Each Owner shall be liable to the Declarant and/or the Association, as applicable, for any damage to any portion of the Common Areas caused by the negligence

or willful misconduct of the Owner, or his family members, tenants, agents, employees, invitees or guests, as applicable.

3.04 Common Area. No land within any Common Area shall be improved, used or occupied, except in such manner as shall have been approved by Declarant, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and Improvement. Declarant may, by written instrument, delegate its right to grant such approval to the Board. Access to any Common Area may be limited to persons currently paying assessments, fees and other charges, or otherwise conditioned or restricted, or made available to non-owners, all on such terms and conditions as Declarant may determine, in its sole discretion.

3.05 Transfer of Development Intensity. As required pursuant to Section 13-2-545(g) of the Land Development Code of the City of Austin, this Agreement shall constitute a restrictive covenant binding upon Lots 18 and 19, as shown on the Plat, for the purpose of evidencing the transfer of development intensity rights from the "water quality transition zones" within said Lots 18 and 19 to Lots 30, 34 and 35 of the "Edward's Mountain Subdivision," as reflected in Note #18 of the Plat.

Article IV  
MESA VALLEY OWNERS ASSOCIATION, INC.

4.01 Organization. The Declarant shall, at such time as Declarant deems appropriate, but no later than sixty (60) days from the date hereof, cause the formation and incorporation of the Association. The Association shall be a non-profit corporation created for the purposes, charged with the duties and vested with the powers prescribed by law or set forth in its Articles and Bylaws and in this Declaration. Neither the Articles nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.02 Membership. Any Person, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said property interest.

4.03 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of members to the Board of Directors of the Association, and on all other matters to be voted on by the Members, shall be calculated as provided below. Owners entitled to votes pursuant to (A) below are hereinafter sometimes referred to as "Class A Members." Declarant which is entitled to vote pursuant to (B) below, is hereinafter sometimes referred to as the "Class B Member."

- (A) The Owner of each Lot within the Property shall have one vote for each Lot so owned.
- (B) In addition to the votes to which it is entitled by reason of subparagraph (A) of this section, for every one (1) vote to which Declarant is entitled due to its ownership of Lots, Declarant shall have an additional five (5) votes for each Lot owned by Declarant until December 31, 2005. Thereafter, Declarant shall have only the votes, if any, to which it is entitled under subparagraph (A) of this section.

4.04 Powers and Authority of the Association. The Association shall have the powers of a Texas non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or



proper for or incidental to the exercise of any of the express powers granted to it by the laws of the State of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

- (A) Mesa Valley Rules and Bylaws. To make, establish, and promulgate, and in its discretion to amend or repeal and re-enact, such Mesa Valley Rules and Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.
- (B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.
- (C) Records. To keep books and records of the Association's affairs.
- (D) Assessments. To levy assessments as provided in Article VI below. An assessment is defined as that sum which must be levied against the Property in the manner set forth in Article VI in order to raise the total amount for which the levy in question is being made.
- (E) Right of Entry and Enforcement. To enter at any time in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot for the purpose of enforcing the Mesa Valley Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Mesa Valley Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and Improvements thereon and shall be enforced in the same manner and to the same extent as provided in Article VI hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Mesa Valley Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Mesa Valley Restrictions.
- (F) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (G) Conveyances. To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way or mortgages out of, in, on, over or under any Association property for the purpose of constructing, erecting, operating or maintaining the following:
  - (1) Roads, streets, walks, driveways, trails and paths;
  - (2) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
  - (3) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

- (4) Any similar public, quasi-public or private improvements or facilities.

Nothing above, however, shall be construed to permit use or occupancy of any improvement or other facility in a way which would violate applicable use and occupancy restrictions imposed by other provisions of this Declaration.

- (H) Manager. To maintain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.
- (I) Association of Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association; to maintain and repair easements, roads, roadways, rights-of-way, median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Property, as appropriate.
- (J) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration or the Articles or Bylaws of the Association.
- (K) Construction on Association Property. To construct new improvements or additions to Association properties, subject to the approval of the Architectural Committee as required by this Declaration.
- (L) Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service or perform any function on behalf of Declarant or other person.
- (M) Property Ownership. To acquire and own and to dispose of all manner of real and personal property, whether by grant, easement, lease, gift or otherwise.

4.05 Maintenance. The Association shall (i) maintain all streets which have been completed but not accepted by the appropriate governmental entity for maintenance and (ii) maintain all Common Area granted to the Association for maintenance, by or with the consent of Declarant.

4.06 Street Lighting. The Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain the street lights within the Property, if any, within the Property, other than any street lights operated by any governmental authority.

4.07 Common Area.

- (A) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

- (1) To accept, own, operate and maintain all Common Area which may be granted to it by Declarant, together with all improvements of whatever kind and for whatever purpose which may be located in said areas; and to accept, own, operate and maintain all other property, real and personal, as may be conveyed, granted or leased to the Association by Declarant and to maintain in good repair and condition all lands, improvements, and other Association property owned by, granted to or leased to, the Association. Such maintenance shall include but not be limited to mowing and removal of rubbish or debris of any kind.
- (2) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by, granted to or leased to, the Association, to the extent that such taxes and assessments are not levied directly upon the Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (3) To execute mortgages, both construction and permanent, for construction of facilities, including improvements on property owned by or leased to the Association. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second, or other junior lien as shall be deemed appropriate by the Association, on the improvement or other facility to be constructed, together with such underlying and surrounding lands as the Association deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of the members of the Association, or otherwise, or any combination thereof, as may be deemed appropriate by the Association, but subject to the limitations imposed by this Declaration.
- (4) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment of the Common Area. Such insurance shall be in an amount as the Board shall deem appropriate.

4.08 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 is or was a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best 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 reasonably believed to be in, or not opposed to, the best interests of the

Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association, against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

Article V  
ARCHITECTURAL COMMITTEE

5.01 Membership of Architectural Committee. The Architectural Committee shall consist of not more than three (3) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as Declarant, its successors or assigns, deems appropriate. The initial Voting Members of the Architectural Committee shall be designated by the Declarant.

5.02 Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.

5.03 Advisory Members. The Voting Members may from time to time designate Advisory Members.

5.04 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided in Section 5.05 below.

5.05 Declarant's Rights of Appointment. Declarant, its successors or assigns, shall have the right to appoint and remove all members of the Architectural Committee. Declarant may delegate this right to the Board by written instrument. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee.

5.06 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules not in conflict with this Declaration as it may deem necessary or proper for the performance of its duties, including, but not limited to, a building code, a fire code, a housing code and other similar codes as it may deem necessary and desirable. Each Owner shall comply with said rules as the same may be amended from time to time, and failure to comply with said rules shall constitute a default of this Declaration, and any Owner, including Declarant, at its sole expense, and/or the Board may seek any of the remedies set forth herein for default of this Declaration.

5.07 Review of Proposed Construction. Whenever in this Declaration the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Committee. The Architectural Committee may review Plans and Specifications submitted for its

review and such other information as it deems proper. Until receipt by the Architectural Committee of any information or document deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. No Improvement shall be allowed on any Lot (i) which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property, (ii) which is of such height and located on the Property as to hinder the views from other Lots of the City of Austin skyline, Lake Austin or other views deemed desirable by the Architectural Committee, including, without limitation, the view of the valley southward from Cross Valley Run along Lots 10 and 11, or (iii) which has an impact on neighboring residences or residences in the general vicinity of the Improvement in question which is deemed by the Architectural Committee, in its sole discretion, to be undesirable for any reason, including, without limitation, as a result of the proximity of the Improvement in question to the property line separating such Lot on which the Improvement is situated from adjoining Lots and/or Improvements; provided, however, the Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence, the decision of the Architectural Committee shall be final and binding so long as it is made in good faith and the consideration and weight given any particular factor or combination of factors shall be solely within the discretion of the Architectural Committee. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness or conformance with building or other codes.

5.08 Variance. The Architectural Committee may grant variances from compliance with any of the provisions of this Declaration when, in the opinion of the Architectural Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument, in recordable form, and must be signed by at least two (2) of the Voting Members of the Architectural Committee. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof.

5.09 Actions of the Architectural Committee. The Architectural Committee may, by resolution, unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all of the Voting Members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

5.10 No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

5.11 Work in Progress. The Architectural Committee, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications.

5.12 Nonliability of Architectural Committee Members. Neither the Architectural Committee, nor any member thereof, nor the Board, nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its member or the Board or its member, as the case may be. Neither the Architectural Committee, nor the members thereof, shall be liable to any Owner due to the construction of any Improvement within the Property.

5.13 Address. Plans and Specifications shall be submitted to the Architectural Committee, c/o Randy Kemper, 4111 Medical Parkway, Suite 201, Austin, Texas 78756, or such other address as may be designated by Declarant, its successors and assigns, from time to time.

5.14 Fees. The Architectural Committee shall have the right to require a reasonable submission fee for each set of Plans and Specifications submitted for its review.

5.15 Certificate of Compliance. Upon completion of any Improvement approved by the Architectural Committee and upon written request by the Owner of the Lot, the Architectural Committee shall issue a Certificate of Compliance (the "Certificate") in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the Architectural Committee pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the Architectural Committee of the actual construction of the Improvements or of the workmanship or materials thereof. The Owner is hereby notified that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the Architectural Committee of the construction, workmanship, materials or equipment of the Improvements. Preparation of such a Certificate and recordation of such Certificate, if elected by either the Architectural Committee or the Owner of the improved Lot, shall be at the expense of the Owner of the improved Lot.

#### Article VI FUNDS AND ASSESSMENTS

##### 6.01 Assessments.

- (A) Assessments established by the Board pursuant to the provisions of this Article VI shall be levied on a uniform basis against each Lot within the Property. The amount of the Assessment shall be determined by dividing the total amount determined by the Board to be necessary pursuant to Section 6.03 and/or 6.04 hereof by the total number of Lots within the Property.
- (B) Each unpaid Assessment, together with interest and costs of collection, as provided below, shall be the personal obligation of the Owner of the Property against which the Assessment fell due, and shall become a vendor's lien against each such Lot and all of its Improvements. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

6.02 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes

authorized by this Declaration, as it may from time to time be amended.

6.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Mesa Valley Restrictions, including but not limited to, the cost of all maintenance, the cost of providing street lighting, if any, the cost of enforcing the Mesa Valley Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as provided herein, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner as provided above. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the regular annual assessment per Lot for the year 1994 exceed the sum of One Hundred Fifty and No/100 Dollars (\$150.00). Thereafter, at the Board's sole and absolute discretion, the maximum regular annual assessment permitted hereunder may be increased by no more than five percent (5%) per year. The maximum regular annual assessment may be increased by more than five percent (5%) during a year only by affirmative vote of two-thirds (2/3) of each class of Members, voting in person or by proxy, at a meeting duly called for such purpose.

6.04 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under the Mesa Valley Restrictions. The amount of any special Assessments shall be at the reasonable discretion of the Board. In no event shall the total special assessment per Lot during the year 1994 exceed the sum of One Hundred and No/100 Dollars (\$100.00). Thereafter, the maximum special assessment permitted hereunder may increase by no more than ten percent (10%) per year. In addition to the special Assessments authorized above, the Association may, in any assessment year, levy a special assessment applicable to that assessment year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, provided that any such special assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

6.05 Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof, (or if there is no such highest rate, then at the rate of one and one-half percent (1.5%) per month) together with all costs and expenses of collection, including reasonable attorneys' fees.

6.06 Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with interest as provided in Section 6.05, and the cost of collection, including reasonable attorney's fees, be a continuing lien (the "Assessment Lien") and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner,

and such Owner's heirs, devisees, personal representatives, successors or assigns. There is hereby retained a present vendor's lien ("Vendor's Lien") upon each Lot within the Property to secure the payment of all Assessments, whether regular or special, which may be levied by the Association pursuant to the terms hereof, which Vendor's Lien shall be further secured by a separate valid and subsisting deed of trust lien ("Deed of Trust Lien") retained herein, and each Owner, by acceptance of a deed or other conveyance to any Lot within the Property, does hereby grant, bargain, sell and convey unto the Association, as Trustee, such Lot, IN TRUST, upon the terms and conditions hereinafter contained, to secure payment of all Assessments and all late charges, interest, expenses and attorneys' fees and costs incurred in connection with any such Assessment. Said Vendor's Lien and Deed of Trust Lien are, where the context may require, included within the references in this Declaration to the "Assessment Lien." It is expressly intended that, by acceptance of a deed or other conveyance or muniment of title to a Lot within the Property, each Owner acknowledges that title is accepted subject to the Assessment Lien, which shall be deemed to be an express contractual lien and shall be superior to any defense of homestead or other exemption, the Assessment Lien having been created prior to the creation or attachment of any homestead right with respect to any Lot. Nothing contained in this Section or otherwise in this Declaration shall be deemed to subordinate the Assessment Lien to any homestead claim hereafter arising. The Assessment Lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust lien of record, securing in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment Lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination may be signed by an officer of the Association. To evidence the aforesaid Assessment Lien, the Association may prepare a written notice of Assessment Lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Travis County, Texas. If any Owner shall continue to be in default of the payment of any Assessment payable hereunder for a period of twenty (20) days after the recordation of any said notice of Assessment Lien, the Association may undertake such actions at law for the collection thereof and the foreclosure of the Assessment Lien or the Association, as Trustee, acting through any authorized officer or by any agent or attorney-in-fact properly authorized by any such officer, may sell the Lot(s) owned by the delinquent Owner at public auction to the highest bidder for cash pursuant to the provisions of Texas Property Code Section 51.002 as in force and effect on the date of this Declaration, or in accordance with the prescribed manner for foreclosure of contract liens provided by any future amendment to such section 51.002, or any other statute or article enacted in substitution therefor, after giving such notices as are prescribed therein in addition to the notices described above. In lieu of the foregoing, the Association may enforce any such lien as a mortgage lien in accordance with the provisions of the laws of the State of Texas, now or hereafter in effect, which provisions (including matters incorporated therein by reference) are hereby incorporated herein by reference. The commencement by the Association of any remedy permitted hereby shall not be deemed an election of remedies so as to bar the subsequent exercise of any other or similar remedy, so that the Association may at any time thereafter abandon or discontinue the pursuit of any specific remedy without waiver of its right to institute any other remedy, either by suit at law or by foreclosure of the Assessment Lien. In the event the foreclosure is accomplished, as in the case of a deed of trust under power of sale, the Association, or any person designated by it in writing, shall be deemed to be acting as the agent of the lienor and shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale



is conducted. The deed upon foreclosure shall be executed and acknowledged by any Member of the Association, by any member of the Board or by the person conducting the sale. For the purposes of this Section, a deed upon foreclosure executed and acknowledged by any Member of the Association, by any member of the Board or by the person conducting the sale shall be conclusive upon the Association and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall have the power to bid on the property at foreclosure or other legal sale, and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

Article VII  
EASEMENTS

7.01 Reserved Easements. All dedications, limitations, restrictions and reservations shown on the Plat, if any, and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant, if any, prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed, or to be executed, by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner, or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of seven and one-half feet (7.5') on each side of such Lot line.

7.02 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, gas, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this Section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Committee. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

7.03 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow ("Drainage Easements"), as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon require. Each Owner further covenants and agrees (a) to maintain any Drainage Easement areas situated on such Owner's Lot whether created as contemplated in the foregoing sentence or pursuant to the Plat, and (b) not to disturb

or displace any trees or other vegetation within such Drainage Easements as so required or as shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as may be permitted by the terms hereof and/or pursuant to the terms of any restrictions on the Plat and as further approved in writing by the Architectural Committee.

7.04 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility service using any easement area shall be liable to an Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area

7.05 Common Area. Each owner shall have an easement of use and enjoyment in and to all Common Area which shall be appurtenant to and shall pass with title to such Owner's Lot, subject to the following provisions:

- (A) The right of the Association to suspend the Owner's voting rights and right to use the Common Area for any period during which any Assessment against such Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Association;
- (B) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a majority vote of the Members;
- (C) The right of the Association to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area, all in accordance with the Articles and Bylaws;
- (D) The right of the Association to make reasonable rules and regulations regarding the use of the Common Area and any facilities thereon; and
- (E) The right of the Association to contract for services with third parties on such terms as the Association may determine.

7.06 Sales Activities; Signs. Notwithstanding any provision in this Declaration, or in any other instrument, whether or not filed of record, governing, in whole or in part, the ownership, use, occupancy and/or development of the Property, or any portion thereof, which could be construed to the contrary, for so long as the initial construction and development of Lots within the Property shall continue, Declarant hereby reserves for itself, together with the right to transfer and convey the same, the right and privilege to conduct and maintain such activities and facilities on or upon the Property (including, without limitation, the Common Areas thereof) as, in Declarant's sole discretion, shall be reasonably necessary or convenient to facilitate and further such construction, development, marketing and/or sale of Lots within the Property, together with the right of access, ingress and egress over and across the Property for such purposes. The right and privilege of Declarant to conduct and maintain such activities and facilities as aforesaid shall include, without limitation, the right of Declarant to (i) erect and maintain such signs, monuments, banners and other means of advertisement as, in Declarant's sole discretion, shall be appropriate, (ii) erect and maintain model units, and/or (iii) erect, maintain and staff business and sales offices.

Article VIII  
ANNEXATION OF ADDITIONAL PROPERTY

8.01 Additions by Declarant. Declarant hereby declares that it may, at some future time or times, expand the real property subject to this Declaration by annexing or adding, from time to time, Additional Property; provided, however, Declarant does not hereby obligate itself to such expansion. This Declaration shall automatically become effective with respect to any such annexed Additional Property on the date on which there is filed for record in the Office of the County Clerk of Travis County, Texas, a Supplemental Declaration to that effect signed and acknowledged by Declarant. Such Supplemental Declaration shall describe specifically the Additional Property being annexed, shall refer to this Declaration and shall declare that this Declaration shall apply to and affect such Additional Property that Declarant intends to add to the Property. The Supplemental Declaration shall, in addition, specify the number of Lots that are being annexed to the Property by reason of the filing of record of said Supplemental Declaration. Upon the filing of the Supplemental Declaration, each Lot comprising the Additional Property shall thenceforth be included within the definition of "Lots" as set forth in Article I hereof. Declarant may cause to be recorded as many separate Supplemental Declarations as may be desired from time to time and at any time to effect the annexation of Additional Property. Annexation of Additional Property may be accomplished by Declarant without the consent of any other party or entity.

8.02 Application of Covenants to Additional Property. Upon the filing of a Supplemental Declaration in compliance with the provisions of Section 8.01 above annexing Additional Property to the Property, this Declaration shall further apply to and affect all of the land described in this Declaration and the land described in any such Supplemental Declaration, and shall also bind all Owners of any part of such Additional Property with the same effect as if the land described in the Supplemental Declaration were originally (i) subject to and described in this Declaration and (ii) included within the definition of "Property" as set forth in Article I hereof. Thereafter, the powers of the Association shall be co-extensive with regard to all land included within the Property, as expanded, and the Board shall, pursuant to the provisions of this Declaration, constitute the Board for the Property, as expanded, and the rights, obligations and duties of each Owner shall be determined in the same manner as the rights, obligations and duties of the Owners were determined prior to the recordation of such Supplemental Declaration.

8.03 Declarant's Power of Attorney. Notwithstanding that the annexation of Additional Property may be accomplished by Declarant without the joinder or consent of any other party or entity as provided in Section 8.01 above, each Owner, in recognition of Declarant's right to annex Additional Property as aforesaid, by such Owner's acceptance of a deed or other conveyance with respect to such Owner's Lot(s), hereby covenants and agrees that it will, upon the request of Declarant, execute promptly any certificate, instrument or Supplemental Declaration evidencing the annexation of Additional Property that Declarant reasonably may request. Each Owner hereby constitutes and appoints Declarant as such Owner's true and lawful attorney-in-fact to execute any such certificate, instrument or Supplemental Declaration on such Owner's behalf. Such appointment is irrevocable and is one coupled with an interest.

Article IX  
MISCELLANEOUS

9.01 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until December 31, 2068, unless amended as herein provided. After December 31, 2068, this Declaration, including all such covenants,

conditions and restrictions hereof, shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the then Owners of at least three-fourths (3/4) of the Lots within the Property then subject to this Declaration.

9.02 Amendment.

(A) By Declarant.

- (1) Until such time as the sale by Declarant of the first Lot to a bona fide third party unrelated to Declarant is made, Declarant, at its sole discretion and without the joinder or consent of any other party, may abolish, amend or change this Declaration in whole or in part.
- (2) This Declaration may be amended for the purpose of complying with any requirements of the City of Austin, Texas, Travis County, Texas, the Veterans Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association by the Declarant acting alone until December 31, 2005, or until Declarant no longer holds a majority of the votes in the Association, whichever occurs first. No amendment by Declarant before December 31, 1999, shall be effective until there has been recorded in the Real Property Records of Travis County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Board certifying that the Declarant had the requisite number of votes.

- (B) By Owners. In addition to the method in Section 9.02 (A), this Declaration may be amended by the recording in the Travis County Real Property Records of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least seventy-five percent (75%) of the number of votes entitled to be cast pursuant to Section 4.03 hereof by Class A Members and the Class B Member.

9.03 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at such person's Lot address or the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

9.04 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

9.05 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of the Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of

Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property.

9.06 Assignment by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

9.07 Compliance with Provisions of Mesa Valley Restrictions. Each Owner shall comply strictly with the provisions of the Mesa Valley Restrictions as the same may be amended from time to time. Failure to comply with any of the Mesa Valley Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by an aggrieved Owner.

9.08 Enforcement and Nonwaiver.

- (A) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce all of the provisions of the Mesa Valley Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.
- (B) Nonwaiver. The failure to enforce any provision of the Mesa Valley Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said Restrictions.

9.09 Construction.

- (A) Restrictions Severable. The provisions of the Mesa Valley Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.
- (B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- (C) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles hereof.

9.10 Mortgagee Protection Clause. Notwithstanding any other provision of this Declaration:

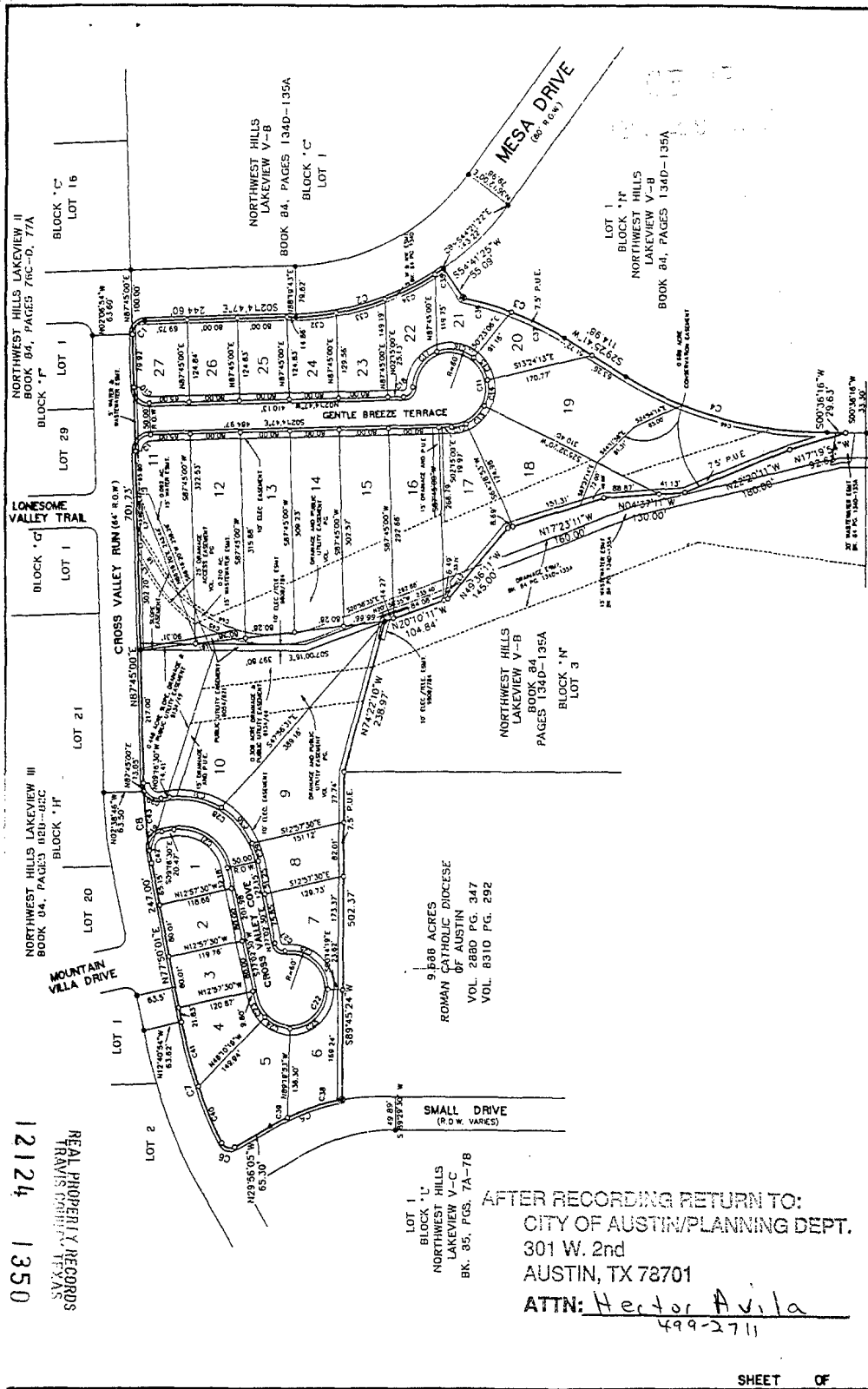
- (A) No breach of the covenants, conditions or restrictions contained herein, nor the enforcement of any lien provisions hereof, shall defeat or render invalid the lien of any deed of trust or mortgage for purchase money or improvements made to any Lots made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any such lien holder in possession of a Lot and any Owner



EXHIBIT "A"

(Common Area)

None



12124 1350  
 REAL PROPERTY RECORDS  
 TRAVIS COUNTY, TEXAS

LOT 1  
 BLOCK "L"  
 NORTHWEST HILLS  
 LAKEVIEW V-C  
 BK. 35, PGS. 7A-7B

AFTER RECORDING RETURN TO:  
 CITY OF AUSTIN/PLANNING DEPT.  
 301 W. 2nd  
 AUSTIN, TX 78701  
 ATTN: Hector Avila  
 499-2711

SHEET OF

<p><b>Bury+Pittman</b>          Consulting Engineers and Surveyors  <small>Austin, Texas TM 512 / 388-0011 Fax 512 / 388-0582</small></p>	<p><b>MESA VALLEY          SUBDIVISION</b></p>	<p><b>EXHIBIT B</b></p>
<p>DATE <b>5/25/93</b> SCALE: <b>NTS</b></p>	<p>DRAWN BY:</p>	<p>APPROVED BY: PROJECT NO.: <b>490-03.40</b></p>



FILED

FEB 15 9 31 AM '94

DANA DEBEAUVOIR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

COUNTY OF TRAVIS  
I hereby certify that this instrument was FILED on  
the date and at the time stamped hereon by me, and  
was duly RECORDED, in the Volume and Page of the  
annual RECORDS of Travis County, Texas, 1994

FEB 15 1994



*Dana Debeauvoir*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

RECORDER'S MEMORANDUM - At the time of  
recording this instrument was found to be inadequate  
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at the time the instrument was filed and recorded.

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TRAVIS COUNTY, TEXAS

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