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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MESA FOREST P. U. D.**

11:34 AM 1994

45.00 INDX

2 3 10/24/94

This Amended and Restated Declaration is made on this 3<sup>rd</sup> day of October, 1994, by I. Harold Silberberg and Adele G. Silberberg, hereinafter referred to as Declarant.

WITNESSETH

11:34 AM 1994

5.00 RECM  
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1.00 SEC

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187.16-CHK#

WHEREAS, Declarant is the owner of certain real property in the City of Austin, Travis County, Texas, described as follows:

All of MESA FOREST P. U. D., an addition in Austin, Travis County, Texas, according to the map or plat thereof recorded in Volume 93, Page 388-390, Plat Records of Travis County, Texas. ←

MESA FOREST P. U. D. LOT 1, an addition in Austin, Travis County, Texas, according to the map or plat thereof recorded in Volume 88, Page 64, Plat Records of Travis County, Texas.

WHEREAS, Declarant desires to create thereon a residential community with permanent greenbelts and open spaces, and other common facilities for the benefit of said community; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said greenbelts, open spaces and other common facilities and to this end, desires to subject the property herein described to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create a Homeowner's Association to which should be delegated and assigned the powers of maintaining, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created;

NOW, THEREFORE, Declarant hereby declares that all of the property herein described shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

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

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

1.03 "Property" and "Mesa Forest P. U. D." shall mean and refer to those certain parcels of real estate known as (i) all of MESA FOREST P. U. D., an addition in Austin, Travis County, Texas, according to the map or plat thereof recorded in Volume 93, Page 388-390, Plat Records of Travis County, Texas, and any resubdivisions thereof; and, (ii) MESA FOREST P. U. D. LOT 1, as recorded in Volume 88, Page 64, Plat Records of Travis County, Texas, and any resubdivisions thereof, and such additions to parcels (i) and (ii) 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 FOREST P. U. D., and MESA FOREST P. U. D LOT 1, as both are recorded with the County Clerk of Travis County, Texas, and such additions thereto as may be brought within the jurisdiction of the Association, including the private streets, greenbelts, walkways, sprinkler systems, lighting fixtures located thereon, entrance structures, and maintenance structures, and all fixtures, equipment and improvements located thereon including mailboxes, perimeter fences around the whole property and any recreational areas, common drives, off-street parking areas, parks, trails, or swimming pool which may be designated or constructed by the Declarant in the future. Such Common Area specifically includes Lots 58-1 and 59-1, MESA FOREST P. U. D. LOT 1, as designated on the plat and Lots 55, 56 and 57 of Mesa Forest P. U. D., as designated on the plat.

1.05 "Lot" shall mean and refer to all lots in Mesa Forest P. U. D. including the Common Area.

1.06 "Declarant" shall mean and refer to I. Harold Silberberg and Adele G. Silberberg, their executors, heirs, grantees and assigns who shall have become the owners of the Property (save and except those lots sold in the ordinary course of the business of selling such lots to homebuilders and homeowners). The term "Declarant" shall further mean any party who shall acquire unsold lots by foreclosure.

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

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

1.09 "Mortgage" shall mean a security interest, mortgage, deed of trust, or lien granted by an Owner in and to, or against, a lot for its improvements to secure the repayment of a loan, and duly filed for record in the Office of the County Clerk of Travis County, Texas.

1.10 "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.

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

1.12 "Architectural Control Committee" shall mean and refer to the Architectural Control Committee as defined in Article X of this Declaration with the duties and responsibilities as described therein.

1.13 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Mesa Forest Homeowners' Association, Inc., filed in the Office of the Secretary of State of Texas.

## ARTICLE II

### POWERS IN DECLARANT

2.01 Changes in Boundaries. Subject to the rights of any beneficiary holding a secured interest in the Property, the Declarant reserves the right to make such changes in the boundaries of Lots not sold to others and to create any necessary easements on Lots not sold to others, including utility easements and off-street parking easements, and in the Common Area as it deems advisable, provided that such changes shall not unreasonably or substantially adversely affect the boundaries or the beneficial use and enjoyment of any Lot then owned by persons other than the Declarant, and provided that Declarant complies with all provisions of any applicable law or ordinance. The reasonableness of any such boundary change or easement creation, if disputed by a Lot Owner other than Declarant, shall be determined by a registered professional engineer of a choice acceptable in advance by both parties. If no engineer is acceptable to both or if either party is aggrieved by the decision of the engineer, then an arbitrator shall be appointed by the American Arbitration Association. All costs of arbitration shall be borne by the losing party thereto.

2.02 Adding and Removing Property Owned by Declarant. Subject to the rights of any beneficiary holding a secured interest in the Property, Declarant reserves, and shall at all times have the right, without the consent or approval of any other person to plat or replat the boundaries or dimensions of any Lot or other property owned by Declarant and may increase or decrease or change the size, shape, or dimensions of any Lot or other property owned by Declarant and may designate the Lots or other property owned by Declarant which shall and shall not be entitled to the use and enjoyment of any of the common area and other privileges, subject to the obligations of this declaration of covenants, conditions and restrictions.

2.03 Temporary Administration. Until such time as Declarant has sold, conveyed and approved completed buildings and improvements on forty-four (44) Lots, as hereinabove defined and described, or the expiration of forty-eight (48) months after the date the first Lot is conveyed, or is filed for record, whichever occurs first, Declarant shall have the right, but shall not have the duty, to act as the sole administrator for the government and administration of the affairs of the Association, and during such period of Temporary Administration, Declarant shall have the right to exclusively exercise and perform all of the rights, powers, authority, functions, and duties of the Association, if Declarant shall elect to exercise or perform all or any of the same.

## ARTICLE III

### PROPERTY RIGHTS IN THE COMMON AREA

3.01 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 and Owner's Lot is subject to the provisions of the Articles herein regarding Lot restrictions and all other applicable Articles herein.

3.02 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.

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3.03 Right of Enjoyment. Subject to the powers of the Declarant granted in Article II, hereof, 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 sixty (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 more than fifty percent (50%) of the vote of both classes of members entitled to vote (combined and voting as one class) 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; and
- (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.

3.04 Exercise of Power. The powers reserved in the Association in Section 3.03 of this Article and any other powers of the Association created herein shall be exercised by the Board of Directors unless specifically provided otherwise.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

4.01 Membership in Homeowner's 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.

4.02 Classes of Membership. The Association shall have two classes of voting membership which shall be:

Class A Class A Members shall be all Owners, with the exception of the Declarant, 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.

Class B The Class B Member shall be the Declarant and shall be entitled to four (4) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership when Class A votes exceed Class B votes, but such conversion shall not affect the provisions in Article II herein.

4.03 Common Area for Benefit of all Members. No provision herein whether in this Article or elsewhere, may be construed to permit the Association to take any action respecting any Common Area within the properties hereafter conveyed to the Association which will have an adverse effect upon the right of the Declarant or any present or future Owner of any Lot within the Properties to the use or enjoyment thereof.

## ARTICLE V

### 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 and for a master policy of fire and extended coverage insurance, if applicable. All assessments are to be established and collected as hereinafter provided. All assessments, together with interest, costs and reasonable attorney's fees, shall, to the full extent permitted by law, be a charge on the land and a continuing lien upon the property against which each such assessment is made, the obligations 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 attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his 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 non-profitable purposes of the members of the Association; and for other purposes consistent with this Declaration.

5.03 Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be \$100.00 per lot; however, the Board of Directors may fix the monthly assessment at less than such amount.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership as provided in Paragraph 5.03(b) herein.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased above ten percent (10%) by a vote of more

than fifty percent (50%) of the vote of both classes of members entitled to vote (combined and voting as one class) in person or by proxy, at a meeting duly called for this purposes.

- (c) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum. The failure of the Association to fix the annual assessments as provided above for any year shall not be deemed a waiver or a release of any Owner from the obligation to pay the Monthly Assessments, but the monthly assessments fixed for the preceding year shall continue until a new assessment is fixed.
- (d) Out of such maximum monthly assessments, the Association shall create a reasonable reserve for replacement of the facilities and improvements of the Common Area.

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 street or parking areas. PROVIDED that any such assessment shall have the assent of more than fifty percent (50%) of the vote of both classes of members entitled to vote (combined and voting as one class) in person or by proxy at a meeting duly called for this purpose.

5.05 Rate of Monthly and Special Assessments. Both monthly and special assessments to all Lot Owners shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis. The assessment per lot shall be uniform for all Owners other than Declarant. Such assessments on Lots not yet sold by Declarant shall be fixed at 25% of the assessment rate for other Lots. However, the above rates as to Declarant shall apply for ordinary improvements and maintenance of the Common Area. If the Association decides to make any additional capital improvements or to acquire any additional fixtures or personal property, as distinguished from replacement or repair of existing improvements upon any Common Area, the Declarant shall not, as to any Lot remaining unsold by Declarant, bear or be responsible for or obligated for the payment of any part of any assessment made for any such purpose.

5.06 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.03 or 5.04 shall be sent to all Members not less than seven (7) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent 60% of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called within thirty (30) days following the preceding meeting, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

5.07 Commencement of Monthly Assessments. The monthly assessments provided for herein shall commence on the 1st day of the month following the conveyance of the Common Area and shall continue for each of the months remaining in the calendar year. The Board of directors shall fix the amount of the monthly assessment against each Lot at least thirty (30) days before each January 1st. Written notice of the monthly assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

5.08 Nonpayment of Assessments. Any assessments not paid on the date when due, shall be immediately delinquent and shall, together with such interest and cost of collection as is hereinafter provided, immediately become a continuing lien on the property which shall, to the full extent permitted by law, bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. If the assessment is not paid within thirty (30) days after the due (delinquent) date, the assessment shall bear interest from the due (delinquent) date at the rate of ten percent (10%) per annum, and the association may accelerate and declare immediately due and payable the next 11 ensuing monthly assessments and may either (1) bring an action at law against the Owner personally obliged to pay the same or (2) foreclose the lien against the property, or (3) both, and, in either event, there shall be added to the amount of such assessment interest as provided and all cost of collection, including reasonable attorney's fees. 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 lien of the assessments 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 personal obligation and liability therefor, except as provided in Section 5.01.

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

5.11 Insurance on Common Area. The Board of Directors of the Association shall obtain and continue in effect blanket property insurance to insure the building 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 90% of the replacement cost of such improvements, including but not limited to personal liability and vandalism coverage. Such insurance will name as the insured the Mesa Forest Homeowner's 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 Lot Owners.

5.12 Insurance on Dwellings. The Board of Directors shall have authority, but no obligation, to contract for group or master policy of fire and extended coverage insurance covering all dwellings on the property, not to exceed the replacement cost of such dwellings and not to be less than 90% of such replacement cost. In such event, each Owner shall be obligated to pay his respective share of such insurance, to be determined by insured value. The master policy of insurance shall be no less than actual insurable value of all buildings, and each

respective Owner shall be designated as an additional insured on his dwelling and shall be furnished with evidence of such insurance coverage. The manner of collection of an Owner's respective portion of such insurance shall be at the discretion of the Board of Directions.

Each Owner shall be responsible at his own expense and cost for his own personal insurance on contents of his own residence, and his personal property stored elsewhere on the Property; and for his personal liability not covered by liability insurance for all Owners obtained as a part of the common expense.

5.13 Utilities. The Board of Directors shall have the authority, but no obligation, to contract for all utilities, for the private use of all Lot Owners, as well as for the Common Area. The manner of collection of an Owner's respective portion of such water, sewer, refuse disposal, cable TV and other similar utilities shall be at the discretion of the Board of Directors, by monthly assessment or other equitable method such as direct payment to the utility companies by each Owner for their respective portion of utilities used.

## ARTICLE VI

### COVENANT FOR EXTERIOR MAINTENANCE OF LOTS

6.01 Creation of the Lien and Personal Obligation of Special Assessments for Exterior Maintenance of Lots. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay all assessments to the Association, acting as the special agent of Declarant and each such Owner, which agency is for the mutual benefit of all Owners and shall be irrevocable, except as hereinafter provided. Such assessments, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessments is made. The obligation to pay such assessment being part of the purchase price of each Lot when sold to an Owner, an express Vendor's lien is hereby retained to secure the payment thereof in each such instance and is hereby transferred and assigned to the Association, each such lien to be superior and paramount to any homestead or other exemption provided by law. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the 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.

6.02 Purpose of Assessment. The annual assessment levied for maintenance of the exterior of the Lots shall be used by the Association, as the special agent of the Owners, exclusively for landscaping and groundskeeping, including utility costs, sprinkler systems and their maintenance and upkeep, specifically to care for and replace lawns, shrubs, trees and other growing plants installed by Declarant or the Association in any area visible from the Common Area.

6.03 Easement. The Association is hereby granted an easement of use and right-of-way on all Lots in order to comply with the terms of this Article, and entry on a Lot for such purpose shall not be deemed a trespass.

6.04 Willful or Negligent Acts. In the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Owner is subject.

6.05 Title to Assessments. All assessments for exterior maintenance for Lots shall, as collected, 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 title to any sums so collected shall not pass to the Association, but shall remain vested in the Owners, the Association to act as the special agent or trustee of all the Owners in the handling and disposition of such sums.

6.06 Initial Assessment. Until the first day of the month following the conveyance of the Common Area, the annual assessment for exterior maintenance of each Lot shall be as estimated by Declarant, the annual sum of \$720.00 for each Lot. Each initial assessment shall be subject to increase or decrease as hereinafter provided.

The prorata portion of such sum, adjusted for the number of months remaining in the calendar year, shall be due and payable on the conveyance of a Lot. Thereafter, such assessment shall be payable on the first day of each month.

6.07 Levy and Due Dates of Annual Assessment by Association. The annual assessments provided for in this Article shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The initial assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association is hereby empowered to fix the annual assessment for exterior maintenance of each Lot and to decrease or increase such assessments from time to time. The Board of Directors, in fixing, increasing or decreasing such assessment shall take into consideration the size and nature of each Lot and the improvements thereon situated, uniformity in the rate of such assessments not being required; and the decision of the Board of Directors shall be final, binding and conclusive in the absence of bad faith on the part of the Board of Directors. It shall be the duty of the Board of Directors, however, to fix such assessment and any increase or decreases thereof so that they bear as near a relationship to the actual cost of such exterior maintenance as is practicable. Although the Board of Directors may increase or decrease the initial assessment, as experience may indicate, the Board of Directors shall thereafter fix the amount of each such annual assessment against each such Lot at least thirty (30) days prior to January 1 of each year, subject to subsequent increase or decrease at any time as experience may indicate, and written notice thereof shall also be established by the Board of Directors, and the assessments may be collected on a monthly basis. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

6.08 Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment for exterior maintenance of the Lots not paid when due shall be immediately delinquent and shall, together with such interest and cost of collection as hereinafter provided, immediately become a continuing lien on the property which shall, to the full extent permitted by law, bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. If the assessment is not paid within thirty (30) days after the due (delinquent) date, the assessment shall bear interest from the due (delinquent) date at the rate of ten percent (10%) per annum, and the Association may accelerate and declare immediately due and payable the next eleven (11) ensuing monthly payments and may either (i) bring an action at law against the Owner personally obligated to pay the same or (ii) foreclose the lien against the property or (iii) both, and, in either event, there shall be added to the amount of such assessment interest as provided and all costs of collection, including reasonable attorney's fees. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

6.09 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage created to secure the 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 thereof.

6.10 Third Party Beneficiary Contract. The provisions of this Article shall be construed as a contract for the benefit of third parties, it being mutually beneficial to all Owners for such lien or charge to be created.

6.11 Revocation of Power. This special power granted to the Association by the provisions of this Article to levy and collect assessments for the exterior maintenance of Lots may be revoked by the concurrence of two-thirds (2/3) of the votes of each class of members of the Association who are voting in person or by proxy at a meeting duly called for such purpose. At such meeting the presence of members or of proxies entitled to cast 70% of all the votes of each class of membership shall constitute a quorum.

## ARTICLE VII

### PARTY WALLS, PRIVACY WALLS AND FENCES

7.01 General Rules of Law to Apply. In the case of some or all of the residences constructed on the Lots, the Declarant has built or may build 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, subject to the building codes of the City of Austin.

7.02 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.

7.03 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.

7.04 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.

7.05 Application. This Article shall apply whether the party wall be located exactly on the boundary line between the adjoining Lots or in near proximity to the boundary, as and if permitted by the building codes of the City of Austin.

7.06 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 Section 9.02 below.

7.07 Right of 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 VIII

PERMITTED USES AND RESTRICTIONS

8.01 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 an enclosed 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.

8.02 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.

8.03 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.

8.04 Animals. No animals or birds, other than two generally recognized small house or yard pets (weighing under 30 pounds), 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 for 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. Upon the written request of any Owner, the Board of Directors of the Association shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal or bird is a generally recognized house or yard pet, or a nuisance or whether the number of animals or birds on any such property is reasonable.

8.05 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 Declarant or 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.

8.06 Temporary Occupancy. No trailer, basement, 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.

8.07 Outbuildings Prohibited. No tent, shack, garage, barn, or metal outbuilding shall be placed upon any Lot without the prior written consent of the Architectural Control Committee, with the exception of such buildings temporarily placed thereon during construction, repair or remodeling of a Lot or Common Area which shall be moved when construction ceases.

8.08 Trailers, Boats and Motor Vehicles. No mobile home, motor home, trailer of any kind, truck camper, motorized recreational vehicle, 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 Environmental Control Committee, 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.

8.09 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. Without limiting the generality of any of the foregoing provisions, no exterior speakers (including stereo, intercom and similar such devices), 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.

8.10 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.

8.11 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.

8.12 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.

8.13 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 height of seven (7) feet without the prior approval of the Architectural Control Committee.

8.14 Right of Way. During reasonable hours Declarant, any member of the Architectural Control 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.

8.15 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.

8.16 Machinery and Equipment. Without the approval of the Board of Directors of the Association or Declarant, 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.

8.17 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.

8.18 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. This restriction shall not impede the rights of Declarant provided in Section 2.02.

8.19 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 (72) square inches or less;
- (c) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen (18) by twenty-four (24) inches in height and width and having a face area not larger than three (3) 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; and
- (e) Development identification and sales signs required by Declarant.

The content and location of all signs shall be subject to such rules as the Board of Directors of the Association may promulgate. The provisions of this paragraph shall not prevent Declarant from commencing, erecting or maintaining structures or signs of any content or size on Lots owned by it or upon the Common Area when Declarant, in its sole discretion, deems it necessary or convenient to the development, sale, operation or other disposition of the Lots.

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

8.21 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.

8.22 Waste. No waste shall be committed on any Lot or the Common Area.

8.23 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.

8.24 Garages. No garage may be used by other than the Owner of a Lot on which the garage is situated or his family or bona fide guests and all garage doors shall be closed at all times except as necessary for entry and exit of vehicles and persons.

8.25 Rights of Declarant. Nothing herein shall be construed as prohibiting Declarant, its officers, employees or agents, from inviting any person or the general public to enter any residence situated upon any Lot owned by Declarant with a view toward the sale or lease thereof or from using such residence as a model for the purpose of making a sale or sales or from maintaining a sales force (whether one or more), in, to, or about any Lot owned by Declarant which remains unsold.

8.26 Building Encroachment Easements. No construction may exceed the limits of dedicated easements on adjacent Lots or the Common Area.

8.27 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. 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 by Declarant as the need arises.

## ARTICLE IX

### GENERAL OBLIGATIONS OF OWNER

9.01 General Maintenance. Each Owner at his own expense shall keep, maintain and care for any buildings and other improvements located on his Lot and within the fenced area and otherwise keep his Lot and all improvements thereon in conformity to 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 planted on any Lot by the Declarant or the Association or which has reached a height in excess of ten (10) feet and/or a diameter in excess of eight (8) inches without the approval of the Architectural Control Committee of the Association. Further, no such tree shall be so injured, removed, or destroyed if such an act would not be in compliance with the applicable regulations of the City of Austin.

9.02 Complaints by Owner. If any Owner believes any other Owner is in violation of this Declaration, he may so notify such Owner in writing, explaining his reasons for such complaint. If the Owner fails to remedy the alleged violation in ten (10) days after delivery of such notice, a complaint may be transmitted in writing to the President of the Association, who shall thereupon choose, within not more than ten (10) days, a neutral party to arbitrate the dispute in such a manner as the arbitrator deems best, but the arbitrator shall in all cases announce his decision within thirty (30) days after the transmittal of the complaint to the President of the Association. If the President or the arbitrator fails to act, the complaint will be considered denied. The arbitrator shall be paid his reasonable expenses, the cost of which shall be borne by the losing party.

9.03 Complaints by Association. If the Association believes any Owner is in violation of these Restrictive Covenants, it shall so notify such Owner in writing explaining its reason for such complaint. If the Owner fails to remedy the alleged violation within ten (10) days following delivery of such notice, then the Association shall have the right to (i) institute appropriate legal action, or (ii) submit the dispute to arbitration, such arbitration to be held in accordance with the rules of the American Arbitration Association by the action of a majority of arbitrators chosen by the two (2) arbitrators previously chosen. If either party fails to choose an arbitrator within fifteen (15) days after the transmission of the complaint to the Owner, the other party may choose the second arbitrator. The decision of the arbitrators shall be made within thirty (30) days after the transmission of the complaint to the Owner. If the arbitrators fail to act within ninety (90) days, the complaint will be considered dismissed. The prevailing party in any such litigation or arbitration shall be entitled to recover from the other party all costs and expenses thereof, including attorney's fees, in connection therewith.

9.04 Remedy of Violations. If the arbitrator(s) as provided in Sections 9.02 or 9.03 upholds the complaint, the Owner shall be so notified in writing and shall promptly remedy the violation of this Declaration, and if he fails to remedy such violation within thirty (30) days after the date of such notice or in the time specified in any such proceeding, as appropriate, the Association may (but shall not be obligated to) make the appropriate repairs and add the cost of

such repairs, as a Special Assessment, to the normal assessment of such Owner. The Association, and its designees, shall have the right of entry upon the Lot owned by such Owner for such purposes.

9.05 Fire Insurance. Each Owner shall be obligated to obtain and maintain or participate in a policy of fire and extended coverage insurance covering the immediate improvements on his Lot in an amount equal to at least ninety percent (90%) of the replacement cost of such improvements; and, for the benefit of all other Owners, the Association shall be named an additional insured in such policy as its interest may appear, such policy to provide that it cannot be cancelled except upon thirty (30) days written notice to the Association.

9.06 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.

9.07 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 may, to the extent of such proceeds, as the agent of such Owner, repair, restore and replace any damaged or destroyed structures to their same and similar condition existing just prior to the damage or destruction thereof. Such repair, restoration or replacement shall be commenced and completed within a reasonable time in a good and workmanlike manner using the same or similar materials as were originally used in the structures damaged or destroyed. 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 or 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 Owners of the structures damaged or destroyed, a Special Assessment sufficient to effect such repair, restoration or replacement. Such Special Assessment shall be prorated among the Owners of the structures damaged or destroyed in proportion to the extent to which such Owner's structure has been so damaged or destroyed.

9.08 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 allocable 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.

9.09 Title to Proceeds. Any proceeds of insurance collected by the Association and any special Assessment collected by the Association pursuant to the provisions of Sections 9.06 and 9.07 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 each class 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 of proxies entitled to cast 70% of all the votes of each class of membership shall constitute a quorum.

## ARTICLE X

### ARCHITECTURAL CONTROL

10.01 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 other than the Declarant or an assignee of Declarant without the approval of the Architectural Control Committee (as such term is hereinafter defined) appointed by the Association. 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.

10.02 Architectural Control Committee. The Board of Directors of the Association shall appoint an Architectural Control Committee composed of at least three (3) persons to approve improvements proposed to be made by any Owner other than the Declarant. The Architectural Control Committee shall meet within fifteen (15) days after an Owner has made application to it for approval, submitting at the time two (2) final sets of plans and specifications. The Architectural Control Committee shall render its decision within thirty (30) days after the receipt of the plans and specifications, either approving the plans or disapproving them, in the latter case making specific reference to those features which caused the disapproval. Approval may be conditioned upon completion within a specified period of time. All decisions shall be made by a majority vote of the Architectural Control Committee. A failure of the Committee to act will result in the project being considered approved.

10.03 Extent of Architectural Control Committee's Authority. The Architectural Control Committee shall have the authority, prior to granting its approval, to relocate on the plans, structures, landscaping and other proposed improvements and may require changes in the appearance of proposed improvements. Such relocation, changes, and other requirements may be based upon, among other things, aesthetic preference of the majority of the Architectural Control Committee or impervious cover guidelines and the decision of the Architectural Control Committee shall be final and binding. Further, no such relocation or change shall be permitted if it would fail to comply with the applicable building and environmental ordinances of the City of Austin.

10.04 Grading, Excavation and Runoff Control Plans. These plans are to accompany architectural plans submitted to the Architectural Control 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.

10.05 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 eight (8) inches in diameter or more measured four (4) feet above existing ground level.



ARTICLE XI

EASEMENT AND RIGHTS

11.01 General Easement. The Declarant, so long as he shall retain record title to any Lot, and 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.

11.02 Crossover Easement. If the Owner (including the Declarant) 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 10 of this Declaration, approval of the Architectural Control Committee of the Association, unless such approval has been given.

11.03 Alteration Easement. If the Owner (including the Declarant) 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 10 of this Declaration, approval of the Architectural Control Committee of the Association, unless such approval has been given.

11.04 Encroachment Easement. An overhang easement not to exceed two (2) feet is granted to any Owner whose eaves, gutters or similar items overhang on or about the Lot of another Owner. Additionally, an easement not to exceed six (6) inches is granted to any Owner whose slab/foundation encroaches on or about the Lot of another Owner.

11.05 Drainage Easement. Each Owner covenants to provide such easement for drainage and waterflow as the contours of the land and the arrangement of buildings by Declarant thereon requires.

11.06 Utility Easement. An easement of ingress and egress is hereby granted on all Lots and the Common Area 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 Architectural Control Committee.

11.07 Blanket Easement. An easement is hereby retained in favor of Declarant and the Association over the Lots and the Common Area 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 items 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 and/or Declarant harmless for the cost of repairing or replacing any portion damaged or destroyed by such Owner, his family, his guests and invitees.

ARTICLE XII

DEVIATIONS

12.01 The Association may grant approval for deviations from the restrictions provided in Article 8. Such approval shall require the affirmative vote of two-thirds (2/3) of the Members of each class voting at a meeting duly called for this purpose, written notice of which shall be delivered to all Members not less than ten (10) days nor more than thirty (30) days before the date of the meeting, setting forth the purposes of the meeting.

ARTICLE XIII

GENERAL PROVISIONS

13.01 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 action for enforcement of these covenants may be commenced until the procedure specified in Sections 9.02 and 9.03 as appropriate, has been completed. Afterwards, 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 now or 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.

13.02 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.

13.03 Right to Assign. The Declarant may, by appropriate instrument, assign or convey to any person any or all of the rights, reservations, easements and privileges herein reserved by the Declarant, and upon such assignment or conveyance being made, its assigns or grantees may, at their option, exercise, transfer or assign such rights, reservations, easements and privileges or any one or more of them at any time or times in the same way and manner as those directly reserved by them or it in this instrument.

13.04 Duration and Amendment. All of the restrictions set forth herein shall continue and be binding for a period of twenty (20) years from the date of this 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 (20) 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 (20) year period a vacation or modification hereof shall be effective if a written instrument is signed by ninety percent (90%) of the Owners of the Lots. Any such vacation or modification shall be filed of record in the Travis County Deed Records 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. If Declarant shall decide that the Lots should have available permanent loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration, the following provisions shall apply, notwithstanding anything herein to the contrary:

- (a) As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of the Common Area and amendment to this Declaration.
- (b) Declarant may, by appropriate instrument recorded in the Deed Records of Travis County, Texas, amend this Declaration to conform to the requirements specified by the Federal Housing Administration or Veterans Administration for approval as a loan guaranty project.

13.07 Protection of Mortgagee.

- (a) Notice of Association. An owner who mortgages his Lot shall 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 mortgagor 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 the Common Area components and fund the same by regular monthly payments rather than by extraordinary special assessments.
- (e) Annual Audits. If requested in writing, the Association shall furnish each first Mortgagee an annual audited financial statement of the Association within ninety (90) days following the end of each fiscal year 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) 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.

- (h) Notice of Damage or Destruction. The Association shall 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.
- (i) 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.
- (j) Management Agreement. Any management agreement entered into by the Association will be terminable by the Association for cause upon not more than thirty (30) days' written notice and without cause and without the payment of a termination fee upon not more than ninety (90) days' written notice and the term of such management agreement will not exceed a period of one (1) year, renewal by agreement of the parties to such agreement for successive one (1) year periods.
- (k) 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.
- (l) Nothing contained in this Declaration shall impair or be construed to impair the rights of any first Mortgagee to:
  - (1) Foreclosure 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 Mortgagee.
- (m) 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 Area.

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 Area or Lots or from any action taken to comply with any law, ordinance or order of a governmental authority.

13.09 Exempt Property. All properties dedicated to, and accepted by, a local public authority, and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from any assessment provided for herein.

ARTICLE XIV

JOINT USE OF PRIVATE STREETS

14.01 Amended and Restated Joint Use Easement and Residential Restriction Agreement.  
I. Harold Silberberg and Adele G. Silberberg (the "Silberbergs") as Sellers, have entered into a Contract of Sale for the Property (as described in Section 1.03 hereof) to M. James Moritz, Trustee, as the Purchaser, and the Silberbergs have executed and filed of record an amendment to that certain Joint Use Easement and Residential Restriction Agreement wherein the Silberbergs and their heirs and assigns are granted access to and use of the private streets of MESA FOREST P.U.D., by means of the two stubbed-off streets at the northerly end of the P.U.D., noted as Moritz Lane and Comfort Cove on the approved site plan for MESA FOREST P.U.D., to serve as access to the private residence of the Silberbergs and access for future development of a portion of the Silberberg property. The agreement further provides for development restriction with respect to a portion of the Silberberg property and for the sharing of certain expenses and costs as more specifically provided therein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, said Declarant being the sole owner of all of the property described in the plats of MESA FOREST P. U. D., of record in Volume 93, Page 38-39, Plat Records of Travis County, Texas, and MESA FOREST P. U. D. LOT 1, of record in Volume 88, Page 64, Plat Records of Travis County, Texas, has hereunder set his hand and seal this the 3<sup>rd</sup> day of October, 1994.

DECLARANT:

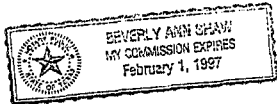
I. Harold Silberberg  
I. Harold Silberberg

Adele G. Silberberg  
Adele G. Silberberg

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

STATE OF TEXAS  
COUNTY OF Travis

This instrument was acknowledged before me on the 3<sup>rd</sup> day of October, 1994, by I. Harold Silberberg and Adele G. Silberberg.



Beverly Ann Shaw  
Notary Public, State of Texas

silber.t

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
MESA FOREST P. U. D. Page 21

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

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