

FEB 27 1985 8532

28.50  
2850

1 09 3442

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
HILLCREST MESA TOWNHOUSE SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by  
Mesa Crest Corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in The  
City of Austin, County of Travis, State of Texas, which is more  
particularly described as Hillcrest Mesa Townhouse Subdivision  
recorded in Book 60, Page 80, of the Plat Records of Travis County,  
Texas.

WITNESSETH:

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

WHEREAS, Declarant desires to provide for the preservation of  
the values and amenities in said community and for the maintenance  
of said greenbelts, open spaces and other common facilities; and  
to the end, desires to subject the property herein described to  
the covenants, restrictions, easements, charges and liens, herein-  
after 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 Home Owner'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

Section 1. "Association" shall mean and refer to Hillcrest  
Mesa Home Owners Association, Inc., its successors and assigns.

DEED RECORDS  
Travis County, Texas

5134 2174

Section 2. "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 Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 4. "Common Area" shall mean all property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as common area, driveways, and public utility easements, Lot 21 as shown on the plat recorded in Book 60, page 80, Travis County Plat Records.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivisions map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Mesa Crest Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II

POWERS IN DECLARANT

Section 1. Power in Declarant. The Declarant reserves the right to make such changes in the boundaries of lots not sold to others and on the Common Areas 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.

ARTICLE III

1 09 3444

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate 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 two-thirds (2/3) of all the members agreeing to such dedication or transfer has been recorded.

(d) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said Common Property and the rights of such mortgage in said Common Property shall be subordinate to the rights of the homeowners hereunder.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, 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.

Section 3. Owners' Use. Owners' use of their lot and the Common Areas are subject to the provisions of the Articles herein regarding common scheme restrictions, architectural control, party walls, exterior maintenance, and all other articles herein.

ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS

1 09 3A45

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2.

(a) When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) Notwithstanding anything to the contrary herein, until such time as Declarant has sold and conveyed all twenty (20) townhouse units or the expiration of thirty-six (36) months from the date said Declaration is filed for record, whichever occurs first, the Developer shall have the right to act as the sole Administrator for the government and administration of the Home Owners Association, and during such period he shall have the right to exclusively represent, act as and constitute the Association and the Board of Directors and shall have the right to exclusively exercise and perform all of the rights, powers, authority, functions and duties herein given to the Association or the Board.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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 or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together

1 09 3446

with interest, costs, and reasonable attorney's fees, shall to the full extent permitted by law, be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. 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 Declarant shall be exempt during the period of his temporary administration of the project from contributions or assessments on those units which he has built, but has not sold; however, Declarant shall remain responsible for the repair and maintenance on said units during the period of his temporary administration of the project.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. 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 Forty-five dollars (\$45.00) per Lot.

(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 10% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of all of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.

1 09 3447

Section 4. 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, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of all members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 15 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first 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

5134 2179

signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment 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 either (1) bring an action at law against the Owner personally obligated 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 costs of collection, including reasonable attorney's fees, not less than the minimum fee schedule of the State Bar of Texas. 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.

Section 9. Subordination of the Lien to Mortgagees. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. 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 became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No extinguishment of the lien shall relieve the delinquent lot owner from his personal obligation and liability therefor.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

1 09 3449

- (a) All property dedicated and accepted by any local governmental authority and devoted to public use;
- (b) All Common Area as defined in Article I, Section 4 hereof;
- (c) All additional Common Area which may be acquired through annexation.

Section 11. All Assessments Pro Rata. The assessment made against any Lot shall in no case be higher or lower than the assessment against any other Lot, except for (1) any Special Assessments allowed pursuant to Section 4 of Article VI, Section 4 of Article IX, and Section 5 of Article X, of this Declaration which are property attributable, in the judgement of the Board of Directors of the Association, to less than all of the Lots and (2) the adjustments provided in Section 9 above.

Section 12. No diminution or abatement of assessments shall be allowed or claimed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Areas or Lots or from any action taken to comply with any law, ordinance or order of a governmental authority.

ARTICLE VI

MAINTENANCE BY AND SERVICES OF THE ASSOCIATION

Section 1. Common Area. The Association shall maintain the Common Area as provided in this Declaration.

Section 2. Exterior Maintenance. The Association shall paint, repair, replace or otherwise care for all exterior improvements on all Lots including (1) roofs, gutters, downspouts, and exterior building surfaces visible from the Common Area or any other Lot and (2) lawns, shrubs, trees and other growing plants installed by Declarant or the Association in any area visible from the Common Area or any other Lot. Such maintenance obligations shall not include garage door opening equipment, air conditioning equipment, glass surfaces, window, gate and door fixtures and hardware, growing plants installed by an Owner, any improvements not visible from the Common Area or another Lot, exterior light fixtures not installed



109 3450

by the Declarant or the Association, utility meters, circuit breakers and switch panels, and any water, sewerage, or cable television systems lines within a Lot (however, the Association shall maintain any common sprinkler system).

Section 3. 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 trespass.

Section 4. 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 Association shall add cost of such maintenance or repairs, as a Special Assessment, to the normal Assessment of such Owner.

Section 5. Merger with Other Associations. The Association may merge with any other association which has objectives and purposes similar to the Association upon a vote of two-thirds (2/3) of all members at a meeting duly called for that purpose, written notice of which has been given to all members not less than ten (10) nor more than fifty (50) days in advance of the meeting. Such a merger shall not be effective until approved by the City Council of the City of Austin, and two-thirds (2/3) of the first lienholders of the Lots.

ARTICLE VII

PARTY WALLS

Section 1. General Rules. In the case of some of the residences constructed on the Lots, the Declarant has built or may build residences adjoining each other by a wall located on or near the boundary line of two Lots. The wall or other structure separating such residences shall be and remain a party wall and shall be subject to the following provisions.

Section 2. 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

5134 2182

1 09 3451

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.

**Section 3. Damage or Injury.** If damage or injury is caused by neither 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 negligent 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.

**Section 4. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by both Owners who make use of the wall in equal proportions.

**Section 5. Application.** This Article shall apply whether the party wall be located exactly on the boundary line between the adjoining Lots or merely in near proximity to the boundary.

**Section 6. Dispute.** The arbitration procedure specified in Article IX, Section 2 and Section 3, shall apply to any dispute concerning a party wall.

ARTICLE VIII

PERMITTED USES AND RESTRICTIONS

**Section 1. General Restriction.** The Lots shall be used solely for private single family residential purposes and there shall not be constructed or maintained thereon more than one single family residence with a 2-space covered parking facility. No Lot may be used as an apartment house, double house, flat, lodging house, hotel or for any business purpose, except that Declarant may use any lot for a sales office until all lots have been sold. Anything contained in this Section to the contrary notwithstanding, an Owner may lease his Lot to a tenant for a term of a minimum of six (6) months.

5184 2183

1 09 3452

Section 2. 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 purpose which will create or emit any objectionable, offensive or noxious odors, dust, gas, fumes or other such material.

Section 3. Use of Common Area. The Common Area shall be used for park, recreational, social, access, utility easement and other purposes directly related to the private single family residential use authorized hereunder.

Section 4. Animals. No animals or birds, other than a reasonable number of generally recognized house or yard pets, 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 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.

Section 5. Antennas and Signals. No antenna or other device for the transmission or reception of television signals, radio signals, 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 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 unreasonably interfere with the reception of television or radio signals on any other Lot.

Section 6. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, 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.

Section 7. Trailers, Boats and Motor Vehicles. No mobile home, trailer of any kind, truck camper, 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 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 improvement approved by the Environmental Control Committee, and provided further that trailers, truck campers, 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.

Section 8. 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. No nuisance shall be permitted to exist or operate upon any such property so as to be 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, 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.

Section 9. 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.

Section 10. 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 Board of Directors, 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.

Section 11. Clothes Drying Facilities. Outside clothesline or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Common Area unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and not visible from neighboring property.

Section 12. Sidewalk Encroachments. No tree, shrub or planting of any kind on any Lot or Common Area shall be allowed to overhang or otherwise encroach upon any sidewalk or other pedestrian way from ground level to a height of seven (7) feet without the prior approval of the Environmental Control Committee.

Section 13. Right-of-Way. During reasonable hours Declarant, any member of the Environmental 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.

Section 14. 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.

Section 15. 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.

Section 16. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Common Area which shall induce, breed, or harbor plant diseases or noxious insects.

Section 17. Restriction on Further Subdivision. No Lot shall be further subdivided and no portion less than all of any such lot nor any easement or other interest therein, shall be conveyed by any Owner, subject, however, to the provisions of Article II, Section 1 hereof and except easements may be granted to any governmental or quasi-governmental agency or a public utility.

Section 18. 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" sign or "for rent" sign, of a reasonable type, size and appearance, which is similar to other signs customarily used in Travis County, Texas, to advertise individual parcels of residential real property.

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

Section 19. Tanks. No elevated tanks shall be erected.

Section 20. Increase 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.

Section 21. Waste. No waste shall be committed on any Lot or the Common Area.

Section 22. Lighting. No lighting or illumination shall be placed upon any Lot in such a manner as to cause unreasonable glare or illumination on any other Lot.

Section 23. 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 may be necessary for entry and exit of vehicles and persons.

ARTICLE IX

GENERAL OBLIGATIONS OF OWNER

Section 1. General Maintenance. Each Owner shall maintain and care for all trees, plants, or foliage on his Lot except for areas and items maintained by the Association and otherwise keep his Lot and all improvements thereon in conformity to its condition when new. However, no Owner shall injure, remove or destroy any tree planted on any Lot by the Declarant or the Association

1 09 3457

which has reached a height in excess of ten (10) feet without the approval of the Environmental Control Committee of the Association.

Section 2. 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 Chairman of the Board of Directors 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 Chairman of the Board of Directors of the Association. If the Chairman of the Board of Directors 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.

Section 3. 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 (1) institute appropriate legal action or (2) 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 as follows: (a) one arbitrator shall be chosen by the Owner; (b) one arbitrator shall be chosen by the Association; (c) one arbitrator shall be 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.

Section 4. Remedy of Violations. If the arbitrator(s) as provided in Section 2 or Section 3 above 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 to entry upon the Lot owned by such Owner for such purpose.

ARTICLE X

FIRE AND EXTENDED COVERAGE INSURANCE

Section 1. Individual Policies. The Board of Directors may obtain a master policy of fire and extended coverage insurance covering all improvements on the Lots and Common Area. Unless and until such a master policy of fire and extended coverage insurance is obtained, each Owner shall obtain an individual policy of fire and extended coverage insurance covering the improvements on his Lot in an amount sufficient to restore or replace such improvements and the Association shall be named an additional insured in such policy as its interest may appear. Additionally, such policy shall contain a clause providing that said policy cannot be cancelled except upon thirty (30) days' written notice to the Association. Upon the request of the Board of Directors of the Association a certificate showing such insurance policy is in effect shall be given to the Association.

Section 2. Master Policy. If the Board of Directors of the Association chooses to obtain a master policy of fire and extended coverage insurance, such policy shall be in an amount sufficient to

restore or replace all improvements on the Lots and the Common Area (unless higher coverage is required by the first lienholders on a majority of the Lots) with a co-insurance clause and each Owner and each mortgagee of each lot shall be designated an additional insured as their interests may appear. The Association, upon request of any mortgagee of a Lot, shall provide such mortgagee with a certificate of insurance indicating that such insurance has been obtained and applies to the buildings on such Lot. This Section shall not preclude any Owner from obtaining an individual policy of fire and extended coverage insurance covering fixtures, improvements and contents on such Owner's lot.

Section 3. 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 master policy of fire and extended coverage insurance and any individual policy of fire and extended coverage insurance if the master policy has not been obtained and pursuant to such authority, the Board of Directors of the Association may negotiate, compromise, and settle any disputed claim with the insurance company providing the master 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 mortgage of any Lot requires such the proceeds attributable to such Lot be paid to it, it shall be so paid to such mortgagee.

Section 4. Restoration. In the event of any fire or other casualty covered under the master policy of fire and extended coverage insurance, the Association shall collect all insurance proceeds and will, to the extent of such proceeds, repair, restore and replace any damaged or destroyed structures to their same or 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

1 09 3460

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 and strikes or other work stoppages. To the extent that insurance proceeds are not sufficient to effect such repair, restoration or replacement, the Association shall 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.

Section 5. Other Insurance. The Board of Directors may obtain other insurance coverage as they deem reasonable and necessary including but not limited to Workman's Compensation Insurance, Liability, Fidelity and Content Insurance. The contents insurance mentioned above shall insure only the personal property owned and maintained by the Association which lies within the Common Area hereinbefore described.

Section 6. Assessment for Insurance. The cost of obtaining the master policy of fire and extended coverage insurance and any other insurance purchased by the Board of Directors, shall be added to and become a part of the Annual Assessment of each Owner; however, to the extent of the amount so included in the Annual Assessment, such amount shall not be included in calculating whether the Annual Assessment is in excess of the Maximum Annual Assessment. If such a master policy is so obtained and any mortgagee of a Lot requires the Owner of that Lot to escrow the portion of the master policy's premium attributable to that Lot with such mortgagee, such Owner shall have the right to so escrow such premium.

Section 7. 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, such an Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

Section 8. FHA/VA Provisions. Notwithstanding the foregoing provisions of this Article X, it is further provided that the requirement for the maintenance of insurance covering the improvements on a Lot when the Association is not obtaining the master policy of fire and extended coverage insurance shall not apply to any Lot acquired by the Veteran's Administration or the Federal Housing Administration under a mortgage foreclosure during the period of ownership by either of said governmental bodies.

ARTICLE XI.

ENVIRONMENTAL CONTROL

Section 1. Construction of Improvements. Since the maintenance of environmental and architectural harmony and unity 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 without the approval of the Environmental Control Committee (as such term is herein after defined) appointed by the Board of Directors of the Association. The term "improvements" shall include but shall not be limited to the erection of any structure, including

1 09 3462

but not limited to additions to or alteration of any buildings, detached buildings, storage buildings, tool sheds, kennels, or other buildings for the care of animals; and greenhouses; 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 other similar item, the alteration or replacing 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 the Public Streets.

Section 2. Environmental Control Committee. The Board of Directors of the Association shall appoint an Environmental Control Committee composed of at least three (3) Persons to approve improvements proposed to be made by any Owner other than the Declarant. The Environmental Control Committee shall meet within fifteen (15) days after an Owner has made application to it for approval, submitting at that time two (2) sets of plans and specifications. The environmental Control Committee shall render its decision within thirty (30) days after this meeting, 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 Environmental Control Committee. A failure of the Committee to act will result in the project being considered approved.

ARTICLE XII

EASEMENT AND RIGHTS

Section 1. General Easement. The Declarant, so long as he shall retain record title to any Lot or the Common Areas, and the Association reserve the right and easement to the use of the Common Areas and any Lot or any portion thereof, as may be

5134 2194

needed for repair, maintenance, or construction on such Lot or any other Lot or the Common Areas.

Section 2. 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 Areas or a Lot of another Owner, such Owner shall have an easement to do so; provided that said 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 XI of this Declaration, approval of the Environmental Control Committee of the Association, unless such approval has been given.

Section 3. Alteration Easement. If the Owner (including the Declarant) of any Lot, must, in order to make reasonable repairs or improvements to a building on such Lot, alter the building of any other person, said Owner shall have the right to do so; provided that said 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 the alteration must occur is one requiring, by virtue of Article XI of this Declaration, approval of the Environmental Control Committee of the Association, unless such approval has been given.

Section 4. Encroachment Easement. If any structure erected or reconstructed by Declarant or by an Owner with the approval of the Environmental Control Committee shall encroach on the Lot of an adjoining Owner, the latter grants to such

Owner an easement permitting the persistence of such encroachment. In addition, an overhang easement is granted to any Owner whose eaves, gutters or similar items overhang a reasonable distance or abut the Lot of another Owner.

Section 5. Drainage Easement. Each Owner covenants to provide such easements for drainage and waterflow as the contours of the land and the arrangement of buildings by Declarant thereon requires.

Section 6. Easement to Accouterment. Declarant in constructing single-family residences and associated accouterments on the Lots may place certain portions of such residences and accouterments consisting primarily of (but not limited to) air conditioning equipment, fences, walls, walkways, and patios on the Common Areas. Declarant and each Owner, if the proposal is approved by the Environmental Control Committee, hereby reserves the right and easement to place such items on the Common Areas. Further, the subsequent Owner of any Lot on which such item is a part is granted an easement for the purpose of traversing the Common Areas in order to effectuate repairs thereto and make replacements thereof, such easement not existing, however, if the purpose for such traversing is one requiring by virtue of Article XI of this Declaration, approval of the Environmental Control Committee of the Association, unless such approval has been given.

Section 7. Utility Easement. An easement of ingress and egress is hereby granted on all Lots and the Common Areas in favor of any utility company for the purpose of the repair, construction and maintenance of all utility lines; provided, however, no new utility line may be constructed or no existing utility line may be relocated without the approval of the Environmental Control Committee.

Section 8. Blanket Easement. An easement is hereby retained in favor of Declarant and the Association over the Lots and the Common Areas for the construction of a common cable

television system, a common sprinkler, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of the repair and maintenance of any item so constructed. An entry upon any Lot or the Common Areas 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 XIII

DEVIATIONS

The Association may grant approval for deviations from the restrictions provided in Article VIII. Such approval shall require the affirmative vote of two-thirds (2/3) of the Members voting at a meeting duly called for this purpose, written notice of which shall be delivered to all Members not less than ten (10) days nor more than fifty (50) days before the date of the meeting, setting forth the purposes of the meeting. Deviations from the provisions of Section 5, and Section 15 of Article VIII shall not require such approval.

ARTICLE XIV.

SALES OF LOTS

Section 1. Transmittal of Offer and Association's Option.

If any Owner of a Lot (other than Declarant) wishes to sell or lease the same and receives a bona fide offer for the purchase or lease of his Lot which such Owner deems acceptable, such fact shall be transmitted in writing to the Chairman of the Board of Directors of the Association and to Declarant together with a copy of such offer (which must be a written offer) and the terms thereof. The Owner shall also transmit an affidavit executed by such Owner and duly notarized, attesting that such offer has been made and the offeror, to the best of such Owner's knowledge is acting in good faith. The Association or Declarant shall



1.09 3466

have the right to purchase or lease the Lot on the terms and conditions specified in the offer. Such right is assignable, but in all cases is exercisable only within ten (10) days of the receipt of the written notice from the Owner by written notice to the Owner and the deposit of a matching down payment or deposit. If the Association and Declarant shall both exercise such option, only Declarant may consummate the proposed sale unless the Declarant shall waive such right in writing. In the event the Association or Declarant fails to exercise its option within such ten (10) days period, such Owner shall have the right to sell or lease his Lot to the person making such offer and on the terms and conditions therein set forth.

Section 2. Application to Lease; Continuing Liability.

Any lease or sublease shall be subject to the provisions hereof. The Liability of the Owner continues notwithstanding the fact he may have leased his Lot.

Section 3. Mortgages. This Article shall not affect the right of an Owner to subject his Lot to a deed of trust, mortgage or other security interest.

Section 4. Waiver. The failure or refusal of the Association, the Declarant or the party to whom either's rights under this Article have been assigned to exercise its right to so purchase or lease shall not be deemed a waiver of such right when an Owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

ARTICLE XV

GENERAL PROVISIONS

Section 1. 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 said restrictions as to the

1.09 3467

use of said Lots and the construction of improvements thereon. No action for enforcement of these covenants may be commenced until the procedure specified in Article IX, Section 2 or Section 3 as appropriate has been completed. 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.

Section 2. Invalidation. The invalidation of any of the covenants or restrictions set forth herein by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. 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 the instrument.

Section 4. Duration and Amendment. All of the restrictions set forth herein shall continue and be binding for a period of twenty-five (25) years from the date of 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-five (25) year term or at the end of any successive ten (10) years period thereafter, by a written instrument signed by all of such persons, vacate or modify all or any part of this Declaration. During the initial twenty-five (25) year period a vacation or modification hereof shall be effective if a written instrument be 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. In order

1 09 3468

for any such amendment to be effective as to holders of any lien on any Lot, such amendment must be executed by at least fifty percent (50%) of all holders of liens of the type specified in Article V, Section 8. Further, no such vacation or modification shall be effective unless approved by the City Council of the City of Austin.

Section 5. 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.

Section 6. 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 apply, notwithstanding anything herein to the contrary.

(a) The following actions may require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Common Area, and amendment of 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.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this the 26th day of February, 1975.

MESA CREST CORPORATION

(NO SEAL)

BY R. J. Mayfield  
President

ORIGINAL DIM

5134 2200

1 09 3469

STATE OF TEXAS  
COUNTY OF TRAVIS

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared, R.T. MAYFIELD, PRESIDENT of MESA CREST CORPORATION, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said MESA CREST CORPORATION, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 26th day of February, 1975.

NOTARY SEAL

*Linda Heitkamp*  
Notary Public in and for  
Travis County, Texas.

FILED

FEB 27 8 58 AM '75

*Louis Thompson*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

STATE OF TEXAS  
I hereby certify that this instrument was FILED on the date and at the time stamped across by me, and was duly RECORDED, in the Volume and Page of the Public Records of Travis County, Texas, as shown herein by me, on

FEB 27 1975



*Louis Thompson*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

5134 2201